Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Promoting Innovation and Competition in the	)	MB Docket No. 14-261
Provision of Multichannel Video	)	
Programming Distribution Services	)	

COMMENTS OF THE ALLIANCE FOR COMMUNITY MEDIA

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Table of Contents

COMMENTS OF THE
ALLIANCE FOR COMMUNITY MEDIA

The Alliance for Community Media ("ACM"), submits these comments in response to the Commission's Notice of Proposed Rulemaking ("*NPRM*") in this docket.[1]

INTRODUCTION AND SUMMARY

The Alliance for Community Media is a non-profit trade association that represents over 3000 Public, Educational and Government (PEG) Access channels throughout the United States. The association's members are non-profits, local governments, school districts and other entities which operate PEG channels on cable systems and provide a wide variety of local media services for communities across the United States, and individuals concerned about the availability of local community programming.

ACM comments on two issues raised in the *NPRM*. We support the *NPRM*'s conclusion (at ¶¶ 72-77) that managed linear IP video service is a "cable service" within the meaning of the Cable Act, and that therefore an entity that provides such services over a ROW-crossing "closed transmission path" system is a "cable operator" of a "cable system" within the meaning of the Act. ACM disagrees, however, with the *NPRM*'s tentative conclusion (at ¶ 78) that a cable operator would be "a non-cable MVPD … with respect to its OTT [over-the-top Internet video] service." Under the plain language of the Act, OTT video service, when offered by a cable operator over a cable system, is clearly a "cable service."

[1] *In the Matter of Franchising Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261, Notice of Proposed Rulemaking, FCC 14-210 (rel. Dec. 19, 2014) ("*NPRM*").

I. THE *NPRM* IS CORRECT THAT MANAGED LINEAR IP VIDEO SERVICE OFFERED OVER A ROW-CROSSING LANDLINE NETWORK IS A "CABLE SERVICE," AND THUS THAT A PROVIDER OF SUCH SERVICE IS A "CABLE OPERATOR" UNDER THE CABLE ACT.

ACM strongly supports the conclusions (*NPRM* at ¶¶ 72-77) that linear IP video service falls within the Cable Act's definition of "cable service," 47 U.S.C. § 522(6); and therefore any entity that provides such services over landline, ROW-crossing facilities that it owns or in which it or its affiliates have a significant interest is a "cable operator," 47 U.S.C. § 522(5), providing such a "cable service" over a "cable system," 47 U.S.C. ¶ 522(7).

The *NPRM* correctly finds that these conclusions flow directly from the plain language of the Cable Act. The *NPRM* also correctly observes that both "the Commission and other authorities have previously concluded that the statute's definition of 'cable service' includes linear IP video service."[2]

ACM agrees with the *NPRM's* position that these conclusions represent "good policy, as it ensures that cable operators will continue to be subject to the pro-competitive, consumer-focused regulations that apply to cable even if they provide their services via IP" (*NPRM* ¶ 75). The *NPRM* recognizes that, among the important public interest obligations that apply to cable operators are "franchising requirements," including franchise fee requirements (*id.* ¶ 76 & n.230, listing 47 U.S.C. ¶ 542) and "public, educational, or governmental" access channel and facilities requirements (*id.* & n.222).

The *NPRM*'s conclusion that linear IP video service is a "cable service" necessarily means that AT&T's U-verse video service is a "cable service," and thus that AT&T is a "cable operator" providing that service over a "cable system." ACM is pleased that the Commission

[2] *NPRM* ¶ 72 & n.203 (citing *Cable Television Technical and Operational Requirements*, 27 FCC Rcd 9678, 9681, ¶ 5 (2012), and *Office of Consumer Council v. Southern New England Telephone Co.*, 515 F. Supp.2d 269 (D. Conn. 2007), *vacated on other grounds*, 368 Fed. Appx. 244 (2d Cit. 2010)).

appears to have lain to rest AT&T's longstanding claims to the contrary. The *NPRM*'s conclusions on these issues will be equally important to preserving the public interest policies of the Cable Act going forward, most especially policies that support PEG channels, as traditional incumbent cable operators are increasingly likely to transition to linear IP video service in the years ahead.

II. THE PROVISION BY A CABLE OPERATOR OF OTT OVER A CABLE SYSTEM IS A "CABLE SERVICE."

ACM respectfully disagrees with *NPRM*'s tentative conclusion (at ¶ 78) that a cable operator's OTT video programming service offerings are not a "cable service." This tentative conclusion appears to be at odds with the Cable Act's definition of "cable service." A cable operator's OTT offering would clearly be "video programming," as the *NPRM* itself elsewhere recognizes.[3] Because a cable operator would exercise editorial control over its OTT video programming offering by choosing what to include in that offering, the operator's provision of OTT video programming to subscribers over its cable system would constitute "the one-way transmission to subscribers" of "video programming" within the meaning of 47 U.S.C. § 502(6)(A) under both Commission[4] and court precedent.[5] That subscribers may access such programming over Internet access provided over the cable operator's system is not material, because the "cable service" definition also encompasses "subscriber interaction … which is required for the selection or use of such video programming or other programming service," 47 U.S.C. § 522(6)(B).

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[3] *NPRM* ¶ 16 & n.35. Even if OTT video services were not "video programming," they would clearly be "other programming service," because they would be "information that a cable operator makes available to all subscribers generally," 47 U.S.C. § 522(14), which would also make them a "cable service," 47 U.S.C. § 522(6)(A)(ii).

[4] *Video Dialtone Reconsideration Order*, 7 FCC Rcd 5069, 5071-72 (1992), *pet. for review denied sub nom. NCTA v. FCC*, 33 F.3d 66 (D.C. Cit. 1994); *Internet over Cable Declaratory Ruling*, 17 FCC Rcd 4798, 4834 (2002), *review granted sub nom. Brand X Internet Services v. FCC*, 345 F.3d 1120 (9th Cir. 2003), *rev'd sub nom. NCTA v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

[5] *NCTA v. FCC*, 33 F.3d at 72.

For these reasons, a cable operator's OTT video programming offerings would fall squarely within the Act's "cable service" definition. And within the cable operator's cable footprint, those cable services would accordingly be provided over that cable operator's cable system.

A cable operator's provision of OTT video programming service outside of its cable footprint (see *NPRM* ¶ 78) would not change the fact that this OTT service is still a "cable service" when provided over other operators' cable systems. The "cable service" definition does not draw a distinction as to whether a "cable service" is provided by the cable operator or someone else. In that case, however, the out-of-footprint OTT provider would not be a "cable operator" outside of the footprint. As a result, any local taxes or fees on the out-of-footprint operator's OTT service revenues would fall under 47 U.S.C. § 542(h), which addresses fees and taxes on cable services provided by a person other than a cable operator, rather than 47 U.S.C. § 542(b), which addresses fees imposed on a cable operator's provision of cable service.

But this difference in the applicable Cable Act franchise fee provision does not change what the out-of-footprint cable operator's OTT service is, and it clearly would be a "cable service" whenever it is offered over a cable system.

Further, from a public policy perspective the promotion of localism is a bright line objective the FCC must preserve. Allowing or promoting an asymmetric scheme of public interest benefits for the services cable operators provide will *diminish* the very benefits that PEG channels and franchise fees help to provide the American public. This aspect of the *NPRM* would set up an incentive for cable operators to promote services that escape the public benefits promoted in the Cable Act and would harm both localities and the channels that are meant to serve their information needs.

CONCLUSION

The Commission should agree with the *NPRM*'s conclusion that the Cable Act's "cable service" definition includes linear IP video service. However, it should not adopt the *NPRM*'s tentative conclusion that a cable operator's OTT video programming offering is not a "cable service" and conclude instead that such an offering is a "cable service."

Respectfully submitted,

/s/

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