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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *IP-Enabled Services, WC Docket No. 04-36*

Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Protection and Competition Act of 1992, MB Docket 05-311

Dear Ms. Dortch:

This letter responds to NCTA's July 31, 2006, *ex parte* submission,¹ in which NCTA repeats its discredited claim that AT&T's U-versesm television product is a cable service subject to legacy cable regulation, including cable franchising requirements. In its most recent letter, NCTA dresses up the same threadbare arguments it has been making for over a year with the claim that "recent events" have put to rest any doubt as to whether IPTV is a "cable service" under Title VI. The only such recent event of any import, however, was the June 7, 2006, *Decision* of the State of Connecticut Department of Public Utility Control ("Connecticut DPUC"), which held that U-verse is *not* a cable service.² None of the other "events" discussed by NCTA in its letter has any bearing on the question of whether U-verse is or is not a cable service under Title VI. NCTA's letter, moreover, continues to ignore critical details concerning the manner in which U-verse is transmitted to customers. Those details establish as a matter of concrete fact and law that U-verse is not cable service.

U-verse Is Not Cable Service

NCTA asserts that the definitions of "cable service" and "cable system" in Title VI are "technology neutral."³ That is only the case, however, in a very limited sense. It is

¹ Letter from Neal M. Goldberg, General Counsel, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 05-311 (July 31, 2006)("Goldberg Letter").

² DPUC Investigation of the Terms and Conditions Under Which Video Products May be Offered by Connecticut's Incumbent Local Exchange Companies, *Decision*, State of Connecticut Department of Public Utility Control Docket No. 05-06-12 (June 7, 2006)("Decision").

³ *Goldberg Letter* at 3.

unmistakably and unremarkably correct that the definition of “cable service” in Title VI does not specifically refer to IP; nor does it include any mention of analog, digital, or QAM. However, that does not mean that technology is immaterial to the definition of “cable service” under Title VI. To the contrary, the technical manner in which service is transmitted to customers is the *sine qua non* of Title VI’s definition of “cable service” and thus the primary distinguishing characteristic between cable service and non-cable video programming service.

Congress did not define the term “cable service” to include all manner of video programming services. Specifically, by limiting the definition of “cable service” to the “one-way transmission to subscribers,”⁴ Congress clearly delineated between “cable service” and other video programming services based on the manner in which video programming is transmitted to customers. Application of the definition in Title VI to any particular service thus necessarily involves consideration of the technical details of the manner in which such service is transmitted to customers. In contrast to the one-way passive distribution networks of NCTA’s member cable companies, AT&T’s IP switched video distribution network is an interactive, dynamic, two-way network. In short, the technical transmission characteristics of AT&T’s IP switched video network confirm that U-verse is not cable service.

NCTA asserts that AT&T’s argument that U-verse is not a cable service “has received a uniformly negative response from Congress.”⁵ That is simply not true. To the contrary, the legislation sponsored by Congressman Barton and that passed the House (H.R. 5252) would alter the definition of “cable service” in Title VI for the express purpose of ensuring that IP-based and other next generation video services, which may not – and in AT&T’s case do not – fit within the existing definition of “cable service,” nonetheless fit within the national franchise scheme set forth in the bill. Such alteration in the operative phrase in Title VI would not have been necessary if the classification of U-verse was as clear as NCTA would have the Commission believe.

Even a cursory comparison of AT&T’s network and traditional cable networks plainly reveals that AT&T’s U-verse product is not cable service as that term is defined in Title VI—that is, it is not *the one way transmission to subscribers* of video programming. As AT&T has informed the Commission, AT&T’s U-verse product is an IP-based, point-to-point service. Critically, unlike cable service, the distribution of U-verse service entails constant interaction between AT&T’s IP network and customer equipment to create a *two-way transmission of video program information*.⁶ Without such constant communication between a customer’s equipment and an AT&T network IP server, AT&T’s U-verse service will not work. Upstream data from customer equipment are required not only to initiate but also to maintain the data transmission stream containing video programming to a customer. In contrast, cable service, whether digital or analog, entails limited, if any, interaction between the customer and the cable network, and

⁴ 47 U.S.C. § 522(6).

⁵ *Goldberg Letter* at 3.

⁶ While AT&T will provide U-verse—as well as other IP-enabled services—over its upgraded Project Lightspeed network, AT&T’s network architecture remains fundamentally the same. AT&T’s upgraded network will remain a two-way, point-to-point, switched network that allows customers to send or obtain communications—including voice and data communications—upon demand.

certainly *no* interaction that impacts the transmission of video programming. The two-way nature of AT&T's IP network and its U-verse video service conclusively demonstrates that U-verse is not cable service.⁷

NCTA also continues to largely ignore other critical distinctions between AT&T's IP distribution network and cable networks. In a traditional cable network architecture, each video signal is assigned its own frequency (a 6 Megahertz ("MHz") portion of the frequency spectrum is reserved for analog channels) and a cable set top box is used to tune (*i.e.*, select from among the entire suite of video programming broadcast to the customer) the specific television or cable channels already transmitted to the box. Cable operators thus use their networks to broadcast one-way transmissions of all video programming to all subscribers simultaneously. Thus, the distribution architecture of cable networks is reflected in the very precise words of the definition of "cable service" in Title VI. The use of "video programming" as compared to "a video program" and to all "subscribers" as compared to "a subscriber" reflect the push-down passive transmission of an entire suite of video programming to all subscribers.⁸ On the other hand, AT&T's U-verse service architecture does not assign each channel its own frequency, nor does it broadcast a full suite of video programming to every customer. Unlike the broadcast architecture used to provide cable service, AT&T's U-verse service will provide and transmit only an individual video transmission to a customer after that customer first requests the specific video program from AT&T's IP servers.⁹

Notwithstanding NCTA's refusal to acknowledge the fundamental differences between AT&T's U-verse video service provided over AT&T's IP network from cable service provided over cable networks, numerous companies, analysts, and commentators have highlighted the unique features of video over IP that distinguish it from cable service:

⁷ See Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities, *Declaratory Ruling and Notice of Proposed Rulemaking*, 17 FCC Rcd 4798 ¶ 64 (2002) ("Cable Modem Order"), *aff'd*, *National Cable & Telecom. Ass'n v. Brand X Internet Servs.*, 125 S. Ct. 2688 (2005)(subscriber interactivity that "'produce[s] a subset of data individually tailored to the subscriber's request'" or "offers the capacity to engage in transactions . . . or the capacity to communicate instructions or commands to software programs stored in facilities off the subscribers' premises would not be" cable service.).

⁸ See *Cable Modem Order* ¶ 61 ("the phrase 'one-way transmission to subscribers' in the [statutory] definition reflects the traditional view of cable as primarily a medium of mass communication, with the same package or packages of video programming transmitted from the cable operator and available to all subscribers").

⁹ NCTA claims that unless video programming content is distributed bi-directionally—*i.e.*, that unless video programming is distributed by customers to service providers as well as by service providers to customers—a video programming service must be "cable service" under Title VI. *Goldberg Letter* at 4. That is plainly absurd. Video programming always flows in one direction—from the service provider to the subscriber. Indeed, because under Title VI "the term 'video programming' means programming provided by, or generally considered comparable to programming provided by, a television broadcast station," 47 U.S.C. § 522(20), it is nearly impossible for video programming to be distributed by subscribers as well as service providers. NCTA's claim also is fundamentally inconsistent with the Commission's *Cable Modem Order*. In declaring that cable modem service was not "cable service," the Commission relied on the two-way interaction between subscribers and cable modem service providers and never suggested that a service is cable service under Title VI unless video programming also is transmitted from subscribers to service providers.

- “The IPTV network is an interactive, two-way, switched network with a server-based architecture designed to support a range of IP-based services, including video in an integrated environment. . . . [T]he architecture of the typical IPTV network is not one premised on the receipt of a signal at a local head-end for distribution to a defined, closed community. Rather, IP-based networks are regional or nationwide networks that rely on a handful of regional servers to distribute bits of data, broken into IP packets, over a widely dispersed network.”¹⁰
- “Instead of just delivering more channel options to already overwhelmed consumers, IPTV has the capability to let consumers customize the way they select, view and interact with video programming, based on the device they are viewing, the specific tastes of an individual viewer and other details, such as time of day, presence information and pre-set policies. As telecom service providers deploy IPTV, it will be integrated with their existing voice and data services onto a single IP-based platform that enables powerful integration of services. . . . IPTV holds the real possibility of delivering an integrated service that builds on a multitude of data networking capabilities.”¹¹
- “One feature that will make the second phase of IPTV so powerful is support for switched video services. Unlike a broadcast approach, which provides all subscribers with a fixed number of identical channels, switched video can support a virtually unlimited number of program choices. ‘To each house, you’re providing a unique video experience,’ says Dave Olisar, Staff Portfolio Marketing Manager at Tellabs. That flexibility will let IPTV subscribers, for example, select different viewing angles when watching a sporting event or spool up a PG-13 version of an R-rated movie if children will be watching. To add even more flexibility, IPTV providers envision enhancing switched video services by tapping into the power of the Internet. Merging Web functionality with video enables offerings such as the fantasy football package, or what Baumesiter and O’Malley call ‘integrated merchandising,’ such as the ability to order a piece of furniture or clothing seen on TV.”¹²
- “IPTV’s greatest potential, though, comes in its ability to turn the viewing experience into something more than just passively watching entertainment emanating from a glowing box. . . . [B]ecause IPTV exists in the IP domain, it gives carriers the ability to offer services that blend

¹⁰ Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection Act of 1992, *Comments of Microsoft Corporation* at 6, MB Docket No. 05-311 (Feb. 13, 2006).

¹¹ Carol Wilson, *IPTV Is Not an Island*, *Telephony* at 5 (May 2006).

¹² Joan Engebretson, *Couch Potatoes No More*, *Tellabs Emerge* at 9 (Summer 2006).

video and data into a new form of entertainment that includes things like e-commerce, interactive gaming, and access to massive libraries of video content on demand.”¹³

- “IPTV allows a service provider to “deliver a much more personalized entertainment experience to customers. The end result is compelling to content providers, advertisers, and consumers alike, and doesn’t sacrifice good business economics. In particular, IPTV allows the service provider to deliver only those channels that the consumer wants at any given time – unlike traditional television broadcasting, where every channel is delivered to every home on the network. For the first time, it will be economical to deliver a college basketball game to everyone who wants to see it, for example, rather than just a particular local community. Of course, IPTV offers more benefits than this to the consumer. For one thing, it raises interactive television to a new level. While interactive TV has been around for more than a decade, it has offered little more than a choice of camera angles from which to view an event. IPTV gives the viewer access not to just an event but to the information related to it. You would have the ability to look at stats and live footage of one game, for example, while watching another. And because this is a secure data network, it gives you the ability to look up player-specific information right on the TV while watching a game. Likewise, you would be able to send photos or home movies from your PC right onto the TV, message your friends while you watch a show “together” across great distances, and receive called ID information on your TV.”¹⁴
- “Delivering content over Internet protocol has several advantages. One is interactivity—IPTV can be two-way, allowing the viewer to interact with the content to achieve iTV (interactive TV) features such as commenting on the show, choosing winning contestants, or buying merchandise worn by the actors. Another is convergence—using Internet protocol for many different types of content (including voice/telephone, data and video) allows it all to be delivered using the same “digital language,” so to speak, over one basic channel, which tends to be much more efficient than using the old analog means still commonly used for media such as radio or telephone.”¹⁵

Indeed, even the cable industry’s own engineers understand that IPTV is not cable service:

Unlike cable, [cable engineering executives] noted, telco IPTV is switched digital by nature and already technically ready for video-on-demand service. They also said IPTV, *unlike cable*, doesn’t depend on shared bandwidth access and doesn’t

¹³ Vince Vittori, *Capitalizing on IPTV Revenue*, Telephony at 5 (Oct. 2005).

¹⁴ Mike Quigley, *The Real Meaning of IPTV*, Business Week Online (May 20, 2005), available at http://www.businessweek.com/print/technology/content/may2005/tc20050520_4620.htm?chan=tc.

¹⁵ Christopher Harz, *IPTV: Boom or Bust*, Animation World Magazine (Jan. 27, 2006), available at http://mag.awn.com/article_view.php?id=2769&page=all.

require tuner-based set-top boxes. “IPTV is the future of television,” said Nimrod BenNata, Harmonic vp-solutions: “It’s a cool technology with unique capabilities.”¹⁶

There is no factual basis for NCTA’s claims, and AT&T urges the Commission to promptly find that IP switched video offerings such as AT&T’s U-verse is not cable service, and thereby fulfill its statutory mandate under § 706 of the Act to remove barriers to infrastructure investment necessary for the deployment of advanced telecommunications capability to all Americans, and to bring to American consumers increased choice in video programming.

The Connecticut Department of Public Utility Control’s Decision Firmly Holds that U-verse Is Not a Cable Service and Is Not Subject to Title VI

As noted, at least one regulatory agency has already rejected all of NCTA’s arguments that U-verse is a cable service. In a *decision* that will hasten the benefits of competition to Connecticut consumers, the Connecticut DPUC found that AT&T’s IPTV product “is distinguishable from cable television service.”¹⁷ In particular, the Connecticut DPUC found that the two-way nature of the service “distinguishes IP-enabled video from traditional cable service.”¹⁸ The Connecticut DPUC described in detail the differences between U-verse and cable service:

[AT&T’s] video customer interaction is nearly identical to that which is normally associated with typical telecommunications carrier activities (e.g., the transmission of voice and data over the Internet). While modern [cable television] systems may offer some two-way video capabilities (e.g., VOD), the Department believes that these capabilities are limited when compared to [AT&T’s] IPTV network. That is, in the IP-based network, two-way capability and interaction is ever-present, always requiring a dynamic interaction between the customer and network. In the instant case, this two-way interaction is between each customer’s set top box and [AT&T] servers. [AT&T’s] network continues tracking customer video streams to ensure that the proper video packets are received by the appropriate customers unlike traditional [cable television] systems. If [AT&T] were to use this network solely for the provision of voice and data services, it would not be considered a cable system; rather, it would be considered a high speed broadband network. Inclusion of a video packet stream in addition to voice and data does not in the opinion of the Department, transform the network into a cable system.¹⁹

¹⁶ *Cable Technologists Fear Bell IPTV, Web Video, Peer-to-Peer*, Communications Daily at 6 (Jan. 17, 2006)(Emphasis added.).

¹⁷ *Decision* at 1.

¹⁸ *Decision* at 40; *see also id.* at 38 (“the delivery of the IPTV programming differs from that provided by CTAV operators. In particular, with IPTV programming, only the video data stream requested by the subscriber is transmitted between [AT&T’s] servers and customers as opposed to the programming ‘broadcast’ over the entire [cable television] network by the system operators.”).

¹⁹ *Id.* at 39 (footnotes and citations omitted); *see also id.* at 40 (“It is clear to the Department that delivery of [AT&T’s] video product will require regular upstream and downstream communication between the video subscriber and IP-video server, thus requiring a two-way capability not necessarily required by [cable television]

In addition, it found:

. . . unlike the provision of typical [cable television] services, [AT&T] will be offering its video service through telecommunications. In particular, [AT&T] will be making available through a server, its video product together with its voice and data services. Thus, subscribers to [AT&T's] video service will be acquiring content (i.e., video programming) from [AT&T's] server. Subscribers will also have the ability to select and view more than one video data stream at the same time. This application commonly known as picture-in-picture (PIP) viewing, will deliver to subscribers numerous data streams transmitted from [AT&T's] server and offer requesting consumers multiple video signals on a concurrent basis. This application differs from that typically offered by cable operators in that [cable television] consumers can access programming only by tuning to a different channel frequency. That is, [cable television] consumers' television sets must have the PIP capability whereby the sets contain two tuners as opposed to the sole tuner necessary for the [AT&T] IPTV subscriber to avail himself of the PIP capabilities.

The *Decision* thus concluded that U-verse is not a “cable service” as defined in Title VI of the Act, but “is simply another IP data stream transmitted in a manner similar to data flow on the Internet. Therefore, [AT&T's] IP-video product should not be subject to legacy cable franchising requirements.”²⁰

As its primary response to the Connecticut DPUC's *Decision*, NCTA suggests that the force of the *Decision* is somehow lessened by the fact that it is the “subject of appeals in state and federal courts by the Connecticut Office of Consumer Counsel, ‘the top agency representing consumers in the state of Connecticut,’ and a number of cable parties.”²¹ The fact that various parties appealed the *Decision*, however, in no way undercuts the validity of the *Decision*. Indeed, the Connecticut DPUC recently issued an order denying motions by the cable industry to stay the *Decision*.²² In addition, the mere fact that the Office of Consumer Counsel (“OCC”) is a party to any such appeal proves nothing. The OCC, along with Cablevision, and NCTA's satellite association—the New England Cable Television Association (“NECTA”)—participated as parties to the proceeding before the Connecticut DPUC. It is the Connecticut DPUC, however, which has “full regulatory responsibility” for all telecommunications companies in Connecticut

operators for the conventional distribution of cable video programming. It is this two-way interactivity that most clearly distinguishes IP-enabled video from traditional cable service. Indeed, the Department finds no difference between the manner in which a voice, data or video packet stream is interacted with and delivered to the customer in this scenario.”).

²⁰ *Id.* at 44.

²¹ *Goldberg Letter* at 2.

²² DPUC Investigation of the Terms and Conditions Under Which Video Products May be Offered by Connecticut's Incumbent Local Exchange Companies, *Decision*, State of Connecticut Department of Public Utility Control Docket No. 05-06-12 (July 19, 2006).

and for awarding cable franchises in Connecticut.²³ It is thus the Connecticut DPUC that has ultimate regulatory responsibility for safeguarding consumers of communications services in Connecticut. And it was the Connecticut DPUC in its adjudicatory capacity that determined, after weighing all of the evidence and arguments in the proceeding, that, as a matter of fact and law, U-verse is not cable service.

NCTA's sole retort to the substance Connecticut DPUC's *Decision* consists of nothing more than the tag line that the *Decision* is "clearly erroneous."²⁴ The *Decision*, however, reflects the Connecticut DPUC's in-depth analysis of both federal and state law. It also is based on a voluminous record consisting of hundreds of pages of pre-filed written testimony by various parties, including AT&T, NECTA and Cablevision; multiple days of live testimony by and cross-examination of various expert witnesses; multiple statements and briefs filed by various parties; and multiple rounds of oral argument by all parties to the proceeding. In short, the *Decision* is based on a detailed, thorough record and a proceeding in which all parties, including the cable industry, was afforded every opportunity to participate. In no sense is the *Decision* "clearly erroneous." To the contrary, the comprehensive analysis in the *Decision*, squarely rejecting all of the same arguments NCTA has raised in this proceeding, fully supports the conclusion that U-verse is not cable service.

NCTA's Claims Concerning AT&T's Rollout of U-verse in San Antonio are Both Irrelevant and Incorrect

A large component of NCTA's *ex parte* appears devoted to nothing more than belittling AT&T's rollout of U-verse in San Antonio. In addition to inaccurately portraying AT&T's U-verse service, NCTA's claims are irrelevant to the question of whether U-verse is or is not a cable service under Title VI.

In essence, NCTA continues to advance its "quacks like duck" test, in which all services that appear to provide the same video programming features are classified the same under Title VI. Title VI, however, does not define cable service as any service providing video programming that "looks like" video programming provided by cable service.²⁵ Rather, as discussed above, the question is whether video programming is distributed over a one-way transmission architecture or an architecture that is fundamentally two-way, such as AT&T's IP switched video network. NCTA's claims concerning AT&T's rollout of U-verse in San Antonio are thus irrelevant to the question of whether U-verse is or is not a cable service.

²³ See

[http://www.dpuc.state.ct.us/DPUCINFO.nsf/0d8b07e37dc39ddd852565c4006e8f5f/3ede9c550bcf22be85256b5600599939/\\$FILE/AGCYHIST.doc](http://www.dpuc.state.ct.us/DPUCINFO.nsf/0d8b07e37dc39ddd852565c4006e8f5f/3ede9c550bcf22be85256b5600599939/$FILE/AGCYHIST.doc).

²⁴ *Goldberg Letter* at 2.

²⁵ Congress certainly knew how to define terms using a "quacks like a duck" test of the sort NCTA espouses. For instance, Congress defined "video programming" to include programming "generally considered comparable to programming provided by[] a television broadcast station." 47 U.S.C. § 522(20). But Congress did not define "cable service" to include service "generally considered comparable to" traditional cable television service.

In any event, NCTA is wrong that U-verse service is “similar” to cable service. Even in its initial roll-out to San Antonio customers, U-verse is easily distinguishable from cable service. In addition to providing hundreds of all-digital channels of video programming, and a library of video on demand programming, AT&T’s U-verse service in San Antonio includes fast channel changing, the ability to search video programming using fields such as title, genre, and cast and crew, and a programming guide that includes the ability to view simultaneously program guide information, a picture-in-picture version of programming described in the program guide, and currently viewed programming in the background.

Moreover, these are just features in AT&T’s initial rollout of U-verse. AT&T will introduce additional features as it provides U-verse service in additional markets by the end of the year, including the ability to view photos stored on the Internet, the ability to play games, and the ability to remotely program DVRs through the Internet. And even those features will be just the tip of the iceberg. Because U-verse harnesses the power of IP, it “opens up the possibility for other, more exotic functionality like TV-based caller ID and remote DVR programming that cable and satellite operators would have trouble implementing.”²⁶ In order to encourage the deployment of broadband facilities and services, the Commission should refrain from espousing NCTA’s static view of U-verse, just as it refused to espouse a static view of voice over IP service.

It Is Entirely Appropriate for the Commission to Consider Public Policy Concerns in Order to Fulfill Its Statutory Mandates

NCTA’s disdain for Commission consideration of policy concerns in this proceeding is both disingenuous and inconsistent with the Commission’s statutory mandate. There are sound reasons to subject video over IP services to distinct regulatory treatment, just as voice over wireline, voice over wireless, and voice over IP are all subject to substantially different regulatory regimes, despite the fact that—to the consumer—voice service is comparable regardless of the network over which it is provided.²⁷ Indeed, in this very proceeding, NCTA urged the Commission to refrain from subjecting voice over IP services to traditional telecommunications regulation—including franchising requirements—because doing so would stifle investment and innovation in broadband services.²⁸ Those very same concerns are just as valid for video over IP as they are for voice over IP.

²⁶ <http://www.engadget.com/2006/06/27/atandt-rolls-out-u-verse-iptv-in-texas/>

²⁷ Similarly, the Act and the Commission have subjected cable operators and DBS providers to different regulatory regimes despite the fact that *60 Minutes*, *The Simpsons*, and *CSI* appear the same to consumers whether they are transmitted over a cable network or by DBS.

²⁸ IP-Enabled Services, *Reply Comments of the National Cable & Telecommunications Association* at 11, WC Docket No. 04-36 (July 14, 2004); see also Testimony of Kyle McSlarrow, President and CEO, National Cable & Telecommunications Association, Before the United States Senate Committee on the Judiciary, “Video Competition in 2005: New Choices for Consumers,” at 17 (Oct. 19, 2005) (“It is not unreasonable to consider, from time to time, whether existing regulations and requirements continue to serve important governmental purposes — for all competitors subject to those regulations.”), available at http://judiciary.senate.gov/testimony.cfm?id=1642&wit_id=4706; *IP-Enabled Services, Reply Comments of Cablevision Systems Corp.* at 3, WC Docket No. 04-36 (July 14, 2004) (a deregulatory approach “should be applied

The Commission should act to remove the specter of traditional Title VI franchising regulation from video over IP for the very same reason the Commission refused to subject voice over IP service to traditional state franchising regulation. Because such regulation would frustrate the goals of the Act by imposing costs and burdens on voice over IP providers that would delay or deter broadband entry and innovation.²⁹ Ensuring that U-verse and other video over IP services are unburdened by legacy cable regulation will spur competition not only for video programming services, but for all broadband enabled services. In contrast, adoption of the paradigm espoused by NCTA—shoehorning new and innovative services such as U-verse into legacy service classifications and regulatory regimes—will simply drive those new services to achieve no more than resemble the services that consumers receive today.

AT&T has never suggested that public policy considerations “trump statutory requirements.”³⁰ However, consistent with long-standing principles of statutory construction, it is entirely appropriate for the Commission to look to the language, structure and purposes of the Act when interpreting statutory provisions. By interpreting the definition of “cable service” in a manner that fosters innovation, competition, and a pro-deregulatory framework, the Commission will best achieve its statutory mandate under § 706 of the Act to remove barriers to infrastructure investment necessary to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.

If you have any questions, please do not hesitate to contact me at (202) 457-3052.

Sincerely,

/s/ Jim Lamoureux
General Attorney
AT&T Services, Inc.

cc: Daniel Gonzalez
Heather Dixon
Michelle Carey
Rudy Brioché
Scott Bergman

to all IP-enabled services,” regardless of the technology used to provide the service or the functionality offered to the end user.)(Emphasis added.).

²⁹ AT&T's advocacy of streamlined franchising for new entrants in the Commission's "621 NPRM" proceeding, Implementation of Section 621(a) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Protection and Competition Act of 1992, MB Docket No. 05-311, is fully consistent with AT&T's position that U-verse is not subject to franchising requirements because it is not a cable service. AT&T fully supports all deregulatory actions implemented by the Commission to ensure that new entrant video program distributors are not subject to legacy cable franchise requirements, just as the Commission took action to ensure that voice over IP providers were not subject to legacy voice franchise requirements.

³⁰ *Goldberg Letter* at 5.

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