

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Public Notice on Interpretation of the Terms)	MB Docket No. 12-83
“Multichannel Video Programming Distributor”)	
and “Channel” as Raised in Pending Program)	
Access Complaint Proceeding)	

REPLY COMMENTS OF AT&T¹

One thing is clear from the opening comments – there is no clear consensus or answer to the questions whether and how the terms “channel,” as used in the definition of the term “multichannel video programming distributor” (MVPD), and “MVPD,” as defined in the Communications Act, should apply to an over-the-top, subscription-based video programming distribution service. Although parties disagree on how these statutory terms should be interpreted, most agree that the answers to these questions will have a profound effect on the development and growth of video and broadband competition for years to come.² As a consequence, many agree with AT&T that the Commission should not attempt to answer those broader public policy questions in the narrow confines of a restricted, adjudication proceeding, based on one particular set of facts, such as Sky Angel’s complaint against Discovery

¹ AT&T submits these comments on behalf of itself and its wholly owned operating company affiliates.

² See American Cable Ass’n (ACA) Comments at 28-30 (noting that how the Commission resolves these issues could have far reaching consequences); Comcast Comments at 10-12 (arguing that treating online video providers (OVDs) as MVPDs would completely revamp the regulatory landscape); Discovery Comments at 8 (expanding the interpretation of MVPD would dramatically alter the video programming business model); M3X Media, Inc. (M3X) Comments at 2 (how the term MVPD is interpreted affects the National Broadband Plan); Motion Picture Arts Ass’n of America (MPAA) Comments at 2 (how the term MVPD is interpreted could have far-reaching effects on multiple interrelated industries); Open Internet Coalition (OIC) Comments at 2 (the issues raised in the notice have far-reaching implications).

Communications.³ Rather, the Commission should do so through a broader rulemaking proceeding, in which all interested parties can participate without restriction and in which the Commission can carefully weigh all relevant technological, economic and policy factors in resolving these issues.

The complexity of the issues posed in this proceeding are exemplified by the debate over whether the term “channel” as used in the definition of MVPD includes as a necessary element a “transmission path,” and, if so, what factors must be present to constitute such a transmission path.⁴ AT&T does not take a position on whether the term channel must include a transmission path as a necessary element, but, even if it does, it is not clear that interpretation of the term “channel” necessarily would narrow the scope of the definition of “MVPD” to include only “facilities-based” providers or providers of “last mile facilities,” as a number of commenters have suggested. We note that, in an IP-based network/system, such as our own Uverse TV service, which is an MVPD service, there is no unique “transmission path” associated with any particular “channel” or programming stream, or over which programming packets are routed. Rather, the packets of multiple programming streams (or channels) share the same transmission

³ Comcast Comments at 15 (the questions present are too far-reaching to resolve in an industry-wide rulemaking, much less for the Bureau to address after a public notice in response to a single program access complaint); Computer & Communications Industry Ass’n (CCIA) Comments at 5-6 (the current proceeding is not well suited to address an issue as important as to whether an OVD is an MVPD); M3X Comments at 7 (suggesting that the Bureau recommend that the FCC institute a rulemaking to develop online MVPD requirements).

⁴ Compare ABC Television Affiliates Ass’n, *et al.* (the Affiliates Ass’ns) Comments at 10 (nothing in the statute requires the provision of a transmission path); ACA Comments at 5 (the most reasonable interpretation of the term MVPD requires an entity to make available a transmission path); Cablevision Comments at 5 (the definition of MVPD requires an entity to provide a transmission path); Comcast Comments at 4 (the Act requires MVPDs to include a transmission path as part of their services); CCIA Comments at 2 (the Bureau should define MVPDs as entities that make available both multiple streams of programming and a transmission path); DIRECTV Comments at 5 (providing a transmission path cannot be a prerequisite to qualifying as an MVPD); Discovery Comments at 4 (in context, the term “channel” in the definition of MVPD refers to a physical transmission path); NCTA Comments at 2 (an MVPD as defined in the Act must provide multiple streams of programming and a transmission path); Public Knowledge Comments at 10 (nothing in the text or legislative history of the Act suggested Congress intended to hide an unstated requirement that MVPDs must be facilities-based); Saga Communications at 2 (the concept of a transmission path is no longer relevant).

path – often at the same time (such as when multiple viewers in a home are watching different channels at the same time). Moreover, in other IP-based networks/systems, there may not, and in many cases is not, a single path over which the video packets travel. To the contrary, the packets associated with a particular programming stream/channel may be routed over multiple, distinct paths to reach the same destination, at which they are assembled to present video programming to viewers. Insofar as video programming distributors of all stripes are migrating to IP technologies in order to reap the significant economic and bandwidth efficiencies offered by IP-based systems, interpreting the term “channel” to require a unique transmission path dedicated to a particular stream of video programming could render the MVPD classification a null set, which may be inconsistent with Congress’s intent.

Even the seemingly narrow question whether Sky Angel itself provides a transmission path does not have a clear answer. Some parties opposed to Sky Angel’s classification as an MVPD argue that the term MVPD requires that the video service provider be responsible for (*i.e.*, provide) the “transmission path” associated with the “channels” of programming it provides, and that, since Sky Angel does not provide such a “transmission path,” it cannot be an MVPD.⁵ But, it is by no means clear that Sky Angel does not provide at least a portion of the “transmission path” over which the programming it distributes travels. Sky Angel, through its business arrangements with one or more Internet service providers, plays a critical role in the establishment of the “transmission path” between the servers on which its content resides and its subscribers’ locations. In that sense, the transmission path for its programming appears to be jointly provided by Sky Angel and its customers through their ISPs.

⁵ See ACA Comments at 6-7; Cablevision Comments at 6; NCTA Comments at 3-5.

Given the complexity and importance of these questions to the development of the video marketplace and, more generally, the Internet, it is critical that the Commission address them in the context of a rulemaking if there is no way to narrowly address them in a manner that is specific only to the facts presented in Sky Angel's complaint. As the Commission has found in the context of other parts of the Communications Act, the classification of IP-based services presents fundamental questions regarding regulation and the continued development of the Internet and IP ecosystem. Before answering the questions presented in this context, the Commission, at a minimum, must review its analysis in other similar contexts to ensure that it applies a consistent and defensible logic, not only within the context of Title VI, but across all parts of the Communications Act. For these reasons, and those articulated in our opening comments, we strongly encourage the Commission to defer the issues raised in this proceeding to a rulemaking.

Respectfully submitted,

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