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

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| 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 DISTRICT OF COLUMBIA AND THE PUBLIC ACCESS CORPORATION OF THE DISTRICT OF COLUMBIA


Eric Richardson
Director
DC OFFICE OF CABLE TELEVISION
Gavin Logan,
Attorney Advisor

1899 9th Street NE
Washington, DC 20018
(202) 671-0068

Nantz Rickard
President & CEO
PUBLIC ACCESS CORPORATION
OF THE DISTRICT OF COLUMBIA
901 Newton St, NE
Washington, DC 20017


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## SUMMARY

The District of Columbia agrees with commenters in this proceeding supporting classifying over-the-top ("OTT") providers of live programming as multichannel video programming distributors ("MVPDs").

The District also agrees with commenters that the Commission errs in its tentative conclusion "that video programming services that a cable operator may offer over the Internet should not be regulated as cable services." When those services are provided over a cable operator's system, or as an enhancement to the operator's cable service offered exclusively to cable subscribers, they are properly defined as "cable services."

Further, the District agrees with the commenters that the Commission should avoid creation of an asymmetric system where legal classification creates a regulatory inconsistency allowing cable operators to avoid important public obligations of constitutional dimensions. As the Commission is undoubtedly aware, the law, precedent, and fairness demand that cable operators pay fair compensation for use and occupancy of public rights-of-way. Therefore any definitional change the Commission adopts regarding MVPDs should ensure that Congress' intent for strong public interest requirements is carried forward, including obligations associated with consumer protections, franchising and PEG access channels and support.

**Comments of**
**The District of Columbia**
**and The Public Access Corporation of the District of Columbia**

## I. INTRODUCTION

The District of Columbia Office of Cable Television ("District" or "DC" or "OCT") submits these comments in response to the Notice of Proposed Rulemaking ("NPRM"), released December 19, 2014, in the above-entitled proceeding.[1]

As the agent of the District of Columbia franchising authority, OCT is responsible for enforcing federal and District cable television laws and regulations; establishing cable franchise agreements between cable providers and the District of Columbia; mediating disputes and enforcing customer service regulations between cable service providers and their customers; facilitating open access to the District government through its three (3) cable channels, the District Council Channel (DCC), the District of Columbia Network (DCN) and its educational cable channel, the District Knowledge Network (DKN); promoting competition and working to attract the deployment and maintenance of advanced cable services in the District.

To this end OCT is responsible for, among other things, inspection of customer service centers throughout the District, inspection of the cable systems and infrastructure in the District, and ensuring the adherence to the cable providers' respective franchises. Furthermore, in fiscal year 2014 OCT produced 820 programs between DCC and DCN, all of which provided District residents with valuable information on advancements and proceedings taking place within District

[1] In re Franchising Innovation &Competition in the Provision of Multichannel Video Programming Distrib. Servs. , MB Docket No. 14-261, Notice of Proposed Rulemaking, FCC 14-210 (rel. Dec. 19, 2014). 29 FCC Rcd 15,995 (2014), 80 Fed. Reg. 2078 (proposed Jan. 15, 2015) ("NPRM").

Government and the District community at large. OCT also produced another 109 programs on DKN, which are educational in nature. Finally, throughout FY14 OCT trained 85 students as interns, introducing them to the many facets of television production and grooming them to become the Districts next producers, videographers and editors. Through these efforts and many more, OCT keeps District residents informed on all aspects of their government and educates them on many of the issues that impact their everyday lives.

The Public Access Corporation of the District of Columbia ("DCTV") is a 501(c)3 nonprofit organization established by D.C. law to govern and manage the cable channels set aside for public use, and other assets reserved for public access as provided for by the cable television franchise agreements. DCTV provides media and television training for youth and adults, HD equipment and facilities for producing community programming, opportunities for DCTV members to have community programming scheduled telecast on the basic tier of District's cable television systems, and for viewers, cable channels dedicated entirely to local programming by and for the communities of Washington, DC. Approximately one half of all programming is faith-based and, along with the government and educational access channels, the channels are the only channels in a media rich market to focus on DC's communities. This includes the only local exposure of every Board of Elections-certified candidate for DC Council, Delegate to U.S. House of Representatives, and Mayor in the Primary, Special and General elections.

The District of Columbia ("District"), with three cable operators, is among the few localities nationwide that are served by more than one cable operator. The three cable operators are Comcast and RCN, both of which provide service citywide, and Verizon, a more recent entrant to the market which is building out its FiOS system to serve the entire city. The District relies on important contributions it receives through franchise agreements with cable operators,

including cable franchise fees and public educational and government access ("PEG") support and channels. Under DC law, cable providers are required, among other things, to pay the District a franchise fee of 5% gross revenues, to set aside PEG channel capacity, to pay a PEG support fee of 2% of gross revenues, provide support for the District's institutional network ("I-NET") and to meet other community needs as determined through a needs ascertainment. *See* D.C. Code 34-1254.05 (2008). This has resulted in franchise agreements that include other valuable cable-related public benefits such as an Institutional Network, and cable service to schools, police and fire stations.

The deployment and operation of the District's communications systems is a result of longstanding policies that have been successfully implemented to promote excellent advanced communications infrastructure, competition in communications services, localism, diversity and economic development, and ensure public needs are met through the benefits from the use of its Right of Ways ("ROW").

In accordance with District law, and consistent with federal law, when private entities use the District's ROW in for-profit enterprises, the District is entitled to and receives compensation for that use of the publicly owned ROW. Compensation from use of ROW includes franchise fees and PEG support and channels. The compensation for and management of the use of ROW is negotiated in accordance with federal and DC law, and implemented through Cable Franchise Agreements or Open Video System Agreements.

II. WASHINGTON, D.C. AGREES WITH AND SUPPORTS THE COMMENTS FILED BY ANNE ARUNDEL COUNTY, MARYLAND, ET AL., CITY OF SAN ANTONIO TEXAS, NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS, AMERICAN COMMUNITY TELEVISION AND THE ALLIANCE FOR COMMUNITY MEDIA.

The Commission has received comments in this NPRM from Anne Arundel County, Maryland, et. al[2] (the City of Boston, Massachusetts; Montgomery County, Maryland; the City of Ontario, California; Tacoma, Washington; the Michigan Coalition To Protect Public Rights-Of-Way[3]; the Michigan Municipal League;[4] the Michigan Townships Association;[5] the Mt. Hood Cable Regulatory Commission;[6] the Public Corporation Law Section of the State Bar of Michigan;[7] and the Texas Coalition of Cities for Utility Issues),[8] the City of San Antonio, Texas,[9]

[2] Anne Arundel County, Maryland et al Commenters include: Anne Arundel County, Maryland; the City of Boston, Massachusetts; Montgomery County, Maryland; the City of Ontario, California; Tacoma, Washington; the Michigan Coalition To Protect Public Rights-Of-Way; the Michigan Municipal League; the Michigan Townships Association; the Mt. Hood Cable Regulatory Commission; the Public Corporation Law Section of the State Bar of Michigan; and the Texas Coalition of Cities for Utility Issues.

[3] The Michigan Coalition to Protect Public Rights-Of-Way is a coalition of more than 80 Michigan municipalities, townships, and organizations that protect citizens' control over public right-of-way, and the right to receive fair compensation from companies that use public property.

[4] The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of hundreds of Michigan cities and villages, many of which are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates the Legal Defense Fund through a board of directors. The purpose of the Legal Defense Fund is to represent the member cities and villages in litigation of statewide significance.

[5] The Michigan Townships Association (MTA) is a Michigan non-profit corporation whose membership consists of in excess of 1,235 townships within the State of Michigan joined together for the purpose of providing education, exchange of information and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government services under the laws of the State of Michigan. The MTA, established in 1953, is widely recognized for its years of experience and knowledge with regard to municipal issues. Through its Legal Defense Fund, the MTA has participated on an amicus curiae basis in a large number of state and federal cases presenting issues of statewide significance to Michigan townships.

[6] The Mt. Hood Cable Regulatory Commission (MHCRC) negotiates and enforces cable service franchise agreements, manages the public benefit resources and assets derived from the franchises, and advocates on behalf of the public interest on communications policy issues at local, state and federal levels. The MHCRC serves the communities, residents and local governments of Portland, Fairview, Gresham, Troutdale, Wood Village, and Multnomah County, Oregon.

[7] The Public Corporation Law Section is a voluntary membership section of the State Bar of Michigan, comprised of approximately 610 attorneys who generally represent the interests of government corporations, including cities, villages, townships and counties, boards and commissions, and special authorities. The Public Corporation Law Section Council, the decision-making body of the Section, is currently comprised of 20 members, with one current vacancy on the 21 member Council. The position expressed in the Anne Arundel County, Maryland, et al Comment is that of the Public Corporation Law Section only and is not necessarily the position of the State Bar of Michigan.

[8] The Texas Coalition of Cities for Utility Issues is a coalition of more than 110 Texas cities dedicated to protecting

the National Association of Telecommunications Officers and Advisors ("NATOA"),[10] American Community Television[11] and the Alliance for Community Media.[12] The city of Washington, D.C. and the Public Access Corporation of the District of Columbia respectfully submit these comments agreeing with, supporting and corroborating their comments, including the following:

## A. THE COMMISSION CORRECTLY CONCLUDED IP VIDEO SERVICE IS A CABLE SERVICE

The District agrees with other commenters[13] in this proceeding that "[t]he Commission is correct in its conclusions that "merely using IP to deliver cable service does not alter the classification of a facility as a cable system or of an entity as a cable operator."[14] A Linear IP video service meets the definition of "cable service" under the Act, because it involves the one-way transmission to subscribers of video programming and subscriber interaction required for the selection or use of such video programming.[15] Because the definition of cable system is not dependent on the transmission technology used to deliver cable service, it follows that the transmission technology used does not

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and supporting the interests of the citizens and cities of Texas.

[9] San Antonio, Texas, with approximately 1.4 million residents, is the second largest city in Texas, and the seventh largest city in the nation.

[10] NATOA is a national trade association that promotes local government interests in communications, and serves as a resource for local officials as they seek to promote communications infrastructure development.

[11] American Community Television is a non-profit, 501 (c) 4 organization dedicated to the preservation of public, educational and government access television channels through the promotion and advocacy of positive federal legislation. ACT works, through communication with federal officials, for the passage and protection of federal statutes which establish and enhance the ability of local communities to use electronic media for the benefit of their citizens via public, educational and government access (PEG) television channels and to insure the accessibility for all citizens regardless of their socio-economic status.

[12] 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.

[13] Anne Arundel County, Maryland et al, City of San Antonio, Alliance for Community Media, American Community Television, and National Cable Television Association.

[14] Anne Arundel County, Maryland et al Comments at Section I, and citing NPRM ¶ 71.

[15] *Office of Consumer Counsel v. Southern New England Telephone Co*., 515 F. Supp. 2d 269, 276 (D. Conn. 2007), *vacated on other grounds*, 368 Fed.Appx. 244 (2d Cir. 2010) , citing 47 U.S.C. § 522(6).

alter the classification of a facility as a cable system.[16]" Furthermore, "A cable operator's status does not change simply because it offers its service in IP format rather than in analog or QAM digital or any other format that results in the provision of video programming to its paying customers." National Cable Television Association ("NCTA") Comments, page 33.

New facilities-based communications providers are entering the market of cable television. Google has launched Google Fiber in three cities, Austin, Kansas City, and Provo. It has announced plans to deploy in four more cities—Atlanta, Charlotte, Nashville and Raleigh-Durham.[17] Google is also planning deployment in Portland, Phoenix, Salt Lake City, San Antonio and San Jose. In Portland, Oregon, the city's website states that, according to Google, the franchise is not a cable franchise even though multi-channel video service is anticipated to be one of the services.[18] Other entities besides Google may also decide to deploy these types of communications infrastructure. Consumers and businesses could benefit from expanded deployment of advanced communications infrastructure, but only if critical public interest obligations that are well-developed public policy[19] apply to all. The District agrees with the NCTA:

> "[I]mportant public interest obligations, to which the facilities based entities that serve video customers today have devoted substantial resources. And if the Commission decides to give OVDs the statutory benefits of MVPD status, it cannot avoid giving them the statutory obligations as well. Nor does the statute give OVDs that meet the definition of an MVPD the option to decide whether they want the benefits and burdens of MVPD status any more than it gives facilities-based MVPDs the right to opt out of such status." NCTA Comments, page 31.

[16] Anne Arundel County, Maryland et al Comments at Section II, *See Also* City of San Antonio at Section I, page 2 and Alliance For Community Media Comments, Section I.
[17] See Google Fiber, Expansion Plans, https://fiber.google.com/newcities/ (last visited Mar. 23, 2015).
[18] "Google will be providing commercial access to its state-of-the art fiber network for a variety of high-speed two-way communications services and applications, known and unknown, including but not limited to video and data services utilizing the Internet. … the agreement with Google is not a cable franchise." http://www.portlandoregon.gov/revenue/article/487751 (last visited March 23, 2015).
[19] NPRM ¶ 76, 77.

Even the traditional cable provider, AT&T—which once operated in the District as a traditional cable system under a cable franchise agreement—has maintained it is not subject to Title VI and should not be subject to cable requirements and obligations, merely because it uses IP technology. As the District continues to pursue its policies supporting continued deployment and advancement of its communications infrastructure, we are pleased that the Commission does not recognize such claims by AT&T[20], Google, or other potential "dark fiber" installations that may seek to build out in the District's public ROW and use such infrastructure to provide cable service.[21]

## B. IP VIDEO PROGRAMMING SERVICES OFFERED THROUGH LANDLINES IN THE PUBLIC ROW IS A "CABLE SERVICE," AND A PROVIDER OF SUCH SERVICE IS A "CABLE OPERATOR" UNDER THE CABLE ACT

The District agrees with other Commenters in applauding and supporting the NPRM's conclusions (at ¶¶ 72-77):

> "(1) linear IP video service falls within the Cable Act's definition of "cable service," 47 U.S.C. § 522(6); and (2) 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)." City of San Antonio, Texas Comments, page 2.[22]

Further, the District agrees with other commenters and strongly endorses the Commission's conclusion (at ¶ 71) that "to the extent an operator may provide video programming services over its own facilities using IP delivery within its footprint it remains subject to regulation as a cable operator."

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[20] See Note 14, and NPRM ¶ 71.

[21] 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, 276 (D. Conn. 2007), *vacated on other grounds*, 368 Fed. Appx. 244 (2d Cit. 2010)).

[22] *See also,* Anne Arundel County, Maryland et al, Section III; Alliance for Community Media Comments Section I; American Community Television Comments.

"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 unquestionably be provided over that cable operator's cable system." City of San Antonio, Texas Comments, page 5.[23]

"The line drawn by the statute is tied directly to whether the video programming is travelling over a closed transmission system that is controlled by the programmer. If it is, and it uses the public rights-of-way, the system operator is subject to franchise obligations related to its video programming services. 47 U.S.C. § 541. Any other interpretation will allow a cable operator to use over-the-top technology to evade requirements for consumer protection, service availability, PEG programming, and franchise fees." 47 U.S.C. § 542. Anne Arundel County, Maryland Comments, Section IV., page 10.

## C. CABLE SERVICES OFFERED BY A CABLE COMPANY TO ITS CABLE SYSTEM SUBSCRIBERS REMAIN CABLE SERVICES EVEN WHEN ACCESSED OUTSIDE THE FRANCHISE AREA

The District is aligned with and emphatically supports other Commenters in disagreeing with the NPRM's tentative conclusion (at ¶ 78) "that a cable operator would be "a noncable MVPD … with respect to its OTT [over-the-top Internet video] service."

"[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 unquestionably 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 the 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." City of San Antonio Comments, page 4.

Among the potential implications of this conclusion indicated in paragraph 78 are that when a cable company provides cable services over IP, the same video programming may not be "cable services" if accessed by cable system subscribers outside the cable company's franchised area. NPRM ¶ 78. …The Commission thus appears to be suggesting that the cable franchise boundary is a new restriction on the definition of "cable services over a cable system. The Act does not indicate that one is a cable operator only to the extent that one provides a cable service over its own facilities and within its own footprint. Anne Arundel County, Maryland Comments, Section V., page 11.

The "cable service" definition does not draw a distinction as to whether a "cable

[23] *See also* Alliance for Community Media Comments, Section I, page 3.

> service" is provided by the cable operator or someone else. Alliance for Community Media Comments, page 4.

All other cable operators that have provided cable service in the District, including the current providers Comcast, RCN and Verizon FiOS, have operated under cable franchise agreements or open video system agreements. The District has promoted competition by providing a level playing field, with the terms of each agreement similar to the others so that no provider is granted an "edge" over the other providers, and each meets critical public interest obligations which are sound, well-developed public policy. If the Commission were to adopt its tentative conclusion of paragraph 78, it would create an asymmetric scheme that encourages some cable operators to develop and promote services that allow them to escape the public benefits in the Cable Act, and receive an arbitrary and unfounded competitive edge.

Since the District would not be released from its commitment or obligation to ensure a level playing field for cable providers, the Commission's adoption of this asymmetric scheme may also have the effect of abrogating existing franchise agreement contracts. Even if the agreements remained in force, the incumbent cable operators would insist on renegotiation of the terms to the lesser requirements of the OTT cable providers competing with them—a race to the bottom of the value of ROW, consumer protections and public safety requirements—with the public losing essential services and protections as explained elsewhere in these comments and by other commenters. Alternatively, all cable providers may seek to restructure how they provide services to benefit from the asymmetric scheme that the Commission may adopt, which is both contrary to the Act, and has the potential to significantly reduce or eliminate essential public services and protections.

## D. THE COMMISSION SHOULD AVOID RULE CHANGES WHICH THREATEN PROPERTY RIGHTS

The District strongly agrees with Anne Arundel, Maryland, et al, that adoption of a video programming service that is exempt from franchising requirements raises significant Constitutional concerns, and "the Commission should tread softly if its proposals might have the effect of dismantling cable television franchising."[24]

> "A cable operator uses the public rights-of-way in exchange for franchise obligations, including construction and safety and consumer protection standards, franchise fee payments, and community benefits in the form of capacity and support for public, educational and governmental programming. 47 U.S.C. § 542(b). If cable video services can be provided by a franchise holder over-the-top, and this is treated as a "non-cable MVPD," even though these services could not exist but for the cable franchise, then these video programming services would potentially no longer be subject to franchise obligations. NPRM ¶ 37. As the Commission states, "[i]ncumbent cable systems have made plain their intent to use a new transmission standard that will permit cable systems to deliver video via IP." *Id*. at ¶ 2. If the Commission redefines certain video services provided by a cable system arbitrarily as "non-cable" services, and "non-cable" cable operators are no longer to be responsible to provide compensation for use of the rights-of-way, the Commission's action could constitute a regulatory taking that requires just compensation. (*City of Dallas, Texas v. FCC*, 165 F.3d 341, 348 (5th Cir. 1999), *reh'g and suggestion for reh'g en banc denied*, (May 28, 1999))."

## E. MVPDs AND CABLE OPERATORS HAVE SIGNIFICANT PUBLIC INTEREST OBLIGATIONS

The District joins with the Coalition members of Anne Arundel County, Maryland, et al and other commenters that "wish to emphasize the importance of the extensive obligations that existing MVPDs have to the public interest, which balances their privileges."[25] Similar to the

[24] Anne Arundel, Maryland, et al Comments, Section VI., page 12.
[25] Anne Arundel County, Maryland, et al Comments, Section VII, page 13.

Coalition members, the District is a local and state[26] franchising authority that has issued franchises consistent with federal law. Also like the Coalition members, the District's franchises contain obligations, such as the requirement of set-aside channel capacity on subscriber networks for PEG access video programming channels and a provision to support the District's I-Net, requiring that MVPDs cooperate with the District on matters of homeland security, and impose significant public safety, construction and service obligations. The District's franchises also require compliance with significant consumer protections, which includes the obligation to provide information that is accessible to all, including citizens with disabilities. NPRM ¶ 56

The District strongly agrees with the Coalition members and other commenters that "[i]t is essential for the Commission to ensure that any transition to IP networks and development of new MVPDs can occur without harm to these public benefits."[27]

## III. CABLE SPECIFIC REQUIREMENTS INCLUDING PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS SUPPORT AND CHANNELS ARE CRITICAL AND THESE REQUIREMENTS MUST APPLY TO OTT MVPDS

The District is appreciative that the Commission recognizes that "Congress emphasized strongly that the public interest demands that cable subscribers be able to access their local commercial and noncommercial broadcast stations.[28] That congressional policy directive persists today; and the continued application of these requirements to cable operators that provide video programming over IP will ensure that …cable-centric regulations will apply, regardless of the method that the cable operator uses to deliver the cable service."[29]

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[26] The Communications Act defines the term "State" to include "the District of Columbia." 47 U.S.C. § 153(40).
[27] Anne Arundel County, Maryland, et al Comments, Section VII, page 14. *See also*, City of San Antonio, Texas Comments, pp 3-6
[28] *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues*, Notice of Proposed Rulemaking, 7 FCC Rcd. 8055, 8056, ¶ 4 (1992).
[29] NPRM ¶ 77.

> "The NPRM is equally correct in finding that, in addition to being required by the Cable Act's language, 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). As the NPRM recognizes, 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)." City of San Antonio, Texas Comments, page 3.

Cable-specific regulations include PEG access support and channels. These comprise a substantial contribution of the cable operators' public interest requirements, and are essential services for District residents, encompassing a wide range of benefits. Such benefits include localism, the ability to meet a broad range of local and community based programming needs, the unparalleled government transparency and participation afforded by PEG channels, diversity of programming participants and providers in a time in which diversity is greatly needed, and the means to encourage, promote and increase civic engagement and democratic participation.

PEG channels, support and facilities continue to be critical resources, and are valuable compensation for use of public ROW. As such, this compensation should not be threatened, diminished or dissolved by the creation of a regulatory option to provide cable services while avoiding such important, well-established obligations and the sound public policy requirements of cable-specific regulations, as would result from the Commission's tentative conclusion that "video programming services that a cable operator may offer over the Internet should not be regulated as cable services."[30] Even if the Commission decides that certain cable-specific regulations will not be applied to OTT cable services provided outside the geographic footprint, we strongly urge the Commission that PEG channels, support and facilities continue to be required. We echo commenters in this proceeding expressing the same sentiments held by the

[30] NPRM ¶ 78.

District:

> "We are concerned that the continued viability of these requirements will suffer as more Internet-based video programming services come on line. These requirements are not burdens; rather, they promote localism and diversity. It would be unfortunate if the Commission were to take any action in this proceeding that would undermine these requirements, especially thee continued support and carriage of PEG channels." NATOA Comments, page 4.

> "[F]rom 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." Alliance for Community Media Comments, page 4.

## CONCLUSION

The Commission should adhere to the NPRM's conclusion that the Cable Act's "cable service" definition includes linear IP video service. It should decline, however, to 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." Any definitional change the Commission adopts regarding MVPDs should ensure that the Commission does not adopt a legal classification which creates a regulatory difference that allows cable operators to avoid important public obligations of constitutional dimensions. In any definition the Commission adopts, the Commission must ensure Congress' intent for strong public interest requirements is carried forward, including obligations associated with consumer protections, franchising and PEG access channels and support.

Respectfully submitted,

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Gavin Logan
Attorney Advisor
District of Columbia Office of the Attorney General
1899 9th Street, NE
Washington, DC 20018
(202) 671-0068

Eric Richardson
Executive Director, DC Office of Cable Television

Nantz Rickard
President & CEO
Public Access Corporation of the District of Columbia
901 Newton Street, NE
Washington, DC 20017

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