

IN THE SUPREME COURT OF OHIO

City of Maple Heights, Ohio,	:	
	:	
Respondent,	:	Case No. 2021-0864
	:	
v.	:	
	:	Certified-Questions-of-State-Law from
Netflix, Inc. and Hulu, LLC,	:	the U.S. Northern District of Ohio,
	:	Eastern Division; No. 1:20-cv-01872-JG
Petitioners.	:	
	:	

MERIT BRIEF OF RESPONDENT CITY OF MAPLE HEIGHTS, OHIO

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Respondent, the City of Maple Heights, Ohio (“Maple Heights”) submits this brief in response to Petitioners Netflix, Inc.’s (“Netflix”) and Hulu, LLC’s (“Hulu”) (collectively, “Petitioners”) respective merit briefs regarding the certified questions of state law. For the reasons set forth herein, as well as the reasons set forth in Maple Heights’ oppositions to Petitioners’ motions to dismiss in the district court (ECF Nos. 33-34), this Court should find that Petitioners are subject to the requirements of the Ohio Fair Competition and Cable Operations Act, R.C. §§ 1332, *et seq.* (the “Act”).

I. INTRODUCTION

Petitioners’ assertion that they are not video service providers under the Act depends primarily upon their untenable position that they do not provide video programming “over wires and cables” because they do not construct, own, or operate those wires and cables. But nothing in the Act—or in any case or statute upon which Petitioners rely—requires a video service provider to own, operate, construct, or physically access wireline facilities in public rights-of-way to be subject to video service provider fees. Pursuant to the plain language of the Act, the only requirement is that Petitioners provide their video programming “*over* wires or cables.” And the Act expressly provides that Petitioners’ use of “internet protocol technology” does not exempt them from being required to pay video service provider fees.

Petitioners cannot reasonably dispute that they provide their video programming “over wires or cables” located in public rights-of-way because, without them, Petitioners could not deliver their video programming to their subscribers. Indeed, Petitioners’ ability to deliver their content—and, in turn, operate their enormously profitable businesses—depends wholly on the

quality and strength of these wireline facilities. Over-the-top¹ video service providers, such as Netflix and Hulu, are driving bandwidth consumption by consumers to record levels and, consequently, Internet-service providers must input more fiber into their networks and build additional capacity (located in public rights-of-way) to handle the increased traffic.² Petitioners compensate the Internet-service providers for this, but not Maple Heights and other Ohio municipalities and townships. The modest 5% video service provider fee is, therefore, not a burden at all, but merely a small return of the tens of billions of dollars in benefit conferred on Petitioners across the United States—a portion of which Petitioners are statutorily obligated to remit to Maple Heights in exchange for the physical impact Petitioners’ video service has on Maple Heights’ public rights-of-way. For these reasons and the following reasons, this Court should find that Petitioners are video service providers that are required to pay video service provider fees under the Act.

First, the Act’s clear and unambiguous language vests municipalities with standing to pursue claims with respect to disputes over compensation under the Act. R.C. § 1332.33(D). Petitioners’ construction of the Act would lead to absurd results and render portions of the Act meaningless. It would permit municipalities to assert claims for underpayment of video service provider fees in any court of competent jurisdiction, but prohibit a municipality from enforcing the terms of the Act against a video service provider that deliberately chooses not to comply with its requirements altogether. Indeed, Petitioners’ interpretation of the Act incentivizes video service

¹ The term “over-the-top” is a term of art in the industry that refers to video service providers that bypass traditional cable, broadcast, and satellite television platforms and provide video programming directly to viewers via the Internet.

² Thus, while it may be true that Petitioners do not physically construct and operate facilities in the public rights-of-way to transmit their content, they certainly access and place a physical burden on the public rights-of-way in Ohio municipalities.

providers to ignore the Act's requirements and not seek authorization from the Director of Commerce because—even if a video service provider is somehow subsequently found to be in violation of the Act—municipalities would be prohibited from pursuing claims for past-due video service provider fees. The Ohio General Assembly could not have intended to undercut the requirements of the Act in this way. Thus, even if the plain terms of the Act did not contemplate an express right of action (which they do), Maple Heights has an implied right of action under the Act.

Second, the clear and unambiguous language of the Act, requires only that a video service provider provide video programming, “over wires or cables located at least in part in public rights-of-way.” Petitioners do not dispute that their video content is provided over wires or cables located in public rights-of-way. Instead, they claim that they are not video service providers because they do not construct, own, or operate the wires or cables that they use. But there is no provision in the Act that requires a video service provider to construct, own, or operate wires or cables to be subject to video service provider fees. And, while the Act provides authorization for video service providers to construct or operate video service networks in the public rights-of-way, it does not mandate that *only* video service providers who construct and operate networks in the public rights-of-way are required to hold a video service authorization. The plain language of the statute is permissive. Under the plain language of the Act, a video service provider may—but is not required to—construct and operate facilities within the public rights-of-way. If the Ohio General Assembly intended to limit the Act to video service providers that construct, own, and operate video service networks, it would have expressly stated so.

Third, while Hulu tacitly concedes that it provides video programming that is comparable to broadcast television, Netflix contends that, because it does not offer live, pre-scheduled content,

it does not provide video programming. But Netflix’s content is nonetheless comparable to broadcast television because it competes with and plays many of the same movies, television shows, and documentaries that are available on broadcast television. Indeed, to the viewer, Netflix’s video programming is indistinguishable in format, genre, and quality when compared to broadcast and cable television.³

Finally, the public Internet exception does not apply to Netflix and Hulu. The plain language of the Act requires that Petitioners’ video programming be “provided solely as *part of* and via a service that enables end users to access content, information, electronic mail or other services offered over the public Internet.” This exception was intended to apply to Internet service providers (“ISPs”). But, unlike ISPs that provide public Internet access to end users to “access content, information, electronic mail, or other services,” as well as video content that is incidental to or only “part of” of the service they offer, video programming is not “part of”—but is the entirety of—Netflix’s and Hulu’s service. Furthermore, even if video programming was “part of” Netflix’s and Hulu’s service, it cannot be determined on the present record whether they transmit their content via the “public Internet.” The term “public Internet” is a term of art that has specialized meaning in the communications industry and whether Petitioners deliver their video programming over the public Internet—or tunneled through a premium and privately “managed network”—is an issue of fact that can only be decided after discovery (and expert analysis⁴) reveals the precise manner in which Petitioners’ content is delivered to their subscribers. But, given the importance of offering fast, high quality video content via the Internet to Petitioners’ businesses, it is likely

³ To further illustrate the point, in 2021, Netflix won 44 Emmy Awards (more than double any other network or platform), which are awards provided for excellence in the *television industry*.

⁴ Indeed, all parties to this action retained experts in the district court to opine on whether Petitioners use the public Internet to deliver their video programming.

that they utilize a premium and private “managed network” with characteristics that are differentiated from, and not within the capabilities of the public Internet.

For these reasons and the reasons set forth fully below, this Court should determine that Petitioners are video service providers subject to video service provider fees under the Act.

II. STATEMENT OF FACTS

A. The Federal District Court Litigation.

Maple Heights commenced this action in the United States District Court for the Northern District of Ohio, alleging that Petitioners are video service providers throughout the State of Ohio because they provide their video programming over wires and cables located, at least in part, in the public rights-of-way of Ohio municipalities and townships. Compl., ECF No. 1 at ¶ 1. As such, Petitioners are subject to the requirements of the Act, including the requirement that they pay each Ohio municipality and township, in which they provide video service, a video service provider fee of up to five percent of gross revenue derived from subscribers located in Ohio municipalities and townships. *Id.* at ¶¶ 2, 10-15. Petitioners, however, have failed to comply with the terms of the Act, necessitating this lawsuit and entitling Maple Heights to past and future video service provider fees. *Id.* at ¶¶ 3, 16-23.

Petitioners moved to dismiss Maple Heights’ Complaint, asserting that they are not video service providers under the Act and that Maple Heights lacks standing to enforce the terms of the Act against them. *See* Netflix Motion to Dismiss, ECF Nos. 21, 21-1; *see also* Hulu Motion to Dismiss, ECF Nos. 23, 23-1. Judge James S. Gwin of the United States District Court for the Northern District of Ohio, *sua sponte*, certified the following questions to this Court:

1. Whether Netflix and Hulu are video service providers under Ohio law; and

2. Whether Maple Heights can sue Defendants to enforce Ohio's video service provider provisions.

Certification Order, ECF No. 81 at 3.

B. Petitioners Use the Infrastructure of Internet-Service Providers Located in Public Rights-of-Way to Deliver Video Programming to Their Subscribers.

Petitioners admit that their subscribers “must use a broadband Internet connection, such as DSL or fiber optic cable to receive their programming on an Internet-connected device, such as a computer or smart television.” Netflix Answer, ECF No. 22 at ¶ 15, App’x at 82; *see also* Hulu Answer, ECF No. 24 at ¶¶ 11, 15, App’x at 113-14. Petitioners use the infrastructure of ISPs to transmit their video programming from their servers to their subscribers. Netflix Answer, ECF No. 22 at ¶ 11; *see also* Hulu Answer, ECF No. 24 at ¶¶ 11, 15, App’x at 113-14; Compl., ECF No. 1 at ¶¶ 11-15; Malfara Report, ECF No. 54-1 at ¶¶ 21-23, 28-46, App’x. at 17, 18-24. Petitioners cannot reasonably dispute that the infrastructure of ISPs in municipalities and townships in the State of Ohio, including Maple Heights, are located in public rights-of-way and that without Petitioners’ use of such infrastructure, they would be unable to deliver their video programming to their subscribers. *See* Compl., ECF No. 1 at ¶ 15; Malfara Report, ECF No. 54-1 at ¶¶ 21-23, 28-46, App’x. at 17, 18-24. Thus, without the use of wires and cables located in public-rights-of-way, Petitioners would be unable to transmit video programming in municipalities and townships in the State of Ohio, including in Maple Heights.

C. Petitioners are “Video Service Providers” Under the Act.

The Act defines “video service” as the “provision of video programming over wires or cables located at least in part in the public rights-of-way, *regardless of the technology used to deliver that programming, including internet protocol technology or any other technology.*” R.C. § 1332.21(J) (emphasis added). “Video programming” is defined as programming “generally

considered comparable to programming provided by a television broadcast station.” R.C. § 1332.21(I); 47 U.S.C. § 522(20). Petitioners provide their subscribers with programming that is comparable to that of a television broadcast station, including television shows, movies, and documentaries that audiences are accustomed to watching on television.⁵ *See* Compl., ECF No. 1 at ¶ 10; Netflix Counterclaim, ECF No. 22 at ¶ 15, App’x at 101-02; Hulu Answer, ECF No. 24 at ¶ 9, App’x at 113; Simon Report, ECF No. 54-2 at, e.g., ¶¶ 35-64, App’x at 45-60. Hulu also provides a live television over-the-top service that is not only comparable—but identical to broadcast television. *Id.* at ¶ 6. And, as set forth above, their programming is provided to their subscribers via Internet protocol technology over wires or cables located at least in part in the public rights-of-way. Netflix Answer, ECF No. 22 at ¶¶ 11, 15, App’x at 80-82; *see also* Hulu Answer, ECF No. 24 at ¶¶ 11, 15, Appx’ at 113-14. The plain language of the Act does not require a video service provider to construct or operate wireline facilities or a video service network. *See* R.C. § 1332.21(J). Thus, Petitioners are video service providers under the Act.

D. Petitioners Have Refused to Comply with the Act.

As video service providers, Petitioners must receive authorization from the Ohio Director of Commerce to provide video service in the State of Ohio. R.C. § 1332.23(A). To receive authorization, Petitioners must submit an application to the Director of Commerce specifying, among other things, the geographic and political boundaries of their proposed video service areas

⁵ More specifically, both Netflix and Hulu: (1) transmit the same television programs and movies that are or were at one time broadcast by television stations; (2) to the extent they develop original programs or acquire programs not broadcast by television stations in the U.S., such programs are in genres and formats that are identical to the programs broadcast by television stations; (3) engage in the same production process as is used by television stations; and (4) complete for and win awards, such as the Emmy Awards, that are specific to the television industry. Indeed, to the viewer, Netflix’s and Hulu’s video programming is indistinguishable in format, genre, and quality when compared to broadcast and cable television. Simon Report, ECF No. 54-2 at ¶¶ 35-76, App’x at 45-64.

and a description of the types of technologies they will use to deliver their video programming. R.C. § 1332.25(A)(2)-(3). Before providing video service in any video service area, Petitioners are required to provide ten days' advance, written notice of their video service to the respective municipality or township. R.C. § 1332.27(A). Petitioners here have *not* applied to the Director of Commerce for authorization to provide video service in the State of Ohio and have *not* provided the required notice to Ohio municipalities and townships that they are providing video service within their geographic and political boundaries. *See generally* Compl., ECF No. 1 at ¶¶ 9-23.

E. As Video Service Providers, Petitioners Are Required to Pay Video Service Provider Fees to Maple Heights.

The Act requires all video service providers, like Petitioners, to pay a video service provider fee to each municipality or township, including Maple Heights, in which they offer video service. R.C. § 1332.32(A). All video service providers are required to pay a fee, on a quarterly basis, of up to five percent of their gross revenues from the provision of services in the municipality. R.C. § 1332.32(C)(1)(a). Upon receipt of the required written notice from the video service provider (R.C. § 1332.27(A)), the municipality or township is required to provide written notice of the percentage of the video service provider fee owed, as specified by municipal ordinance. R.C. § 1332.32(C)(2). Since Petitioners have not obtained the required authorization and have admittedly failed to send Maple Heights and all other Ohio municipalities and townships the required notice, Petitioners have been providing video service in Maple Heights without paying the required video service provider fee, in violation of the Act. *See generally* Compl., ECF No. 1 at ¶¶ 9-23.

The Act permits a municipality or township to conduct an audit for the purpose of verifying the accuracy of a video service provider's calculation of the video service provider fees that it paid to the municipal corporation or township in the audit period. R.C. § 1332.33(A). An action by the

municipality or township to dispute the amount of video service provider fee due may be brought in a court of competent jurisdiction. R.C. § 1332.33(D). The Act’s audit provision, however, assumes that the video service provider has not refused to comply with the terms of the Act altogether, like Petitioners have done here. *See* R.C. § 1332.33. Petitioners contend, however, that their refusal to comply with the terms of the Act insulates them from liability and prevents Maple Heights and other municipalities from instituting private causes of action against them to collect the video service provider fees they are owed. *See, e.g.*, ECF No. 23-1 at 13-15. But the Ohio General Assembly could not have intended such an absurd result—allowing municipalities to enforce the Act against those that fail to make full payment but not those that ignore the requirements of the Act entirely—thereby incentivizing video service providers to simply refuse to seek a video service authorization because municipalities and townships are without redress for past-due video service provider fees. *See Mishr v. Bd. of Zoning Appeals of Village of Poland* (1996), 76 Ohio St. 3d 238, 240 (“It is a cardinal rule of statutory construction that a statute should not be interpreted to yield an absurd result.”).

III. ARGUMENT

A. Proposition of Law No. 1: Petitioners’ Failure to Obtain a Video Service Authorization Does Not Exempt Them From Paying Video Service Provider Fees.

Petitioners contend that, because they failed to seek and obtain a video service authorization from the Ohio Director of Commerce, they cannot be found to be video service providers under the Act. Netflix Br. at 10-13; Hulu Br. at 4-5. Petitioners are wrong and their construction of the statute would lead to absurd results and render portions of the Act meaningless. The Act expressly requires any entity that provides “video service” to seek and receive a video service authorization from the Ohio Director of Commerce. R.C. § 1332.21(A). Otherwise, they are not permitted to provide video service anywhere in the State of Ohio. *Id.*

If failure to obtain the required state-issued video service authorization could excuse the obligation to make the required payments, the statute would be neutered and the specific grant of jurisdiction to the courts to hear disputes over compensation would be nullified. *See* R.C. § 1332.33(D). The Ohio Legislature specifically delegated to the courts the responsibility of adjudicating compensation disputes, and Petitioners would pull the rug out from under the judiciary. Thus, Petitioners’ interpretation directly contradicts the Ohio Supreme Court’s admonition that “[n]o part of the statute should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.” *State ex rel. Carna v. Teays Valley Local Sch. Dist. Bd. of Educ.*, 131 Ohio St. 3d 478, 483, 967 N.E.2d 193, 198 (2012) (quotations and brackets omitted). Further, this Court should not interfere with the Ohio General Assembly’s intent to grant authority to hear disputes over compensation to the judiciary. *See State v. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, 919 N.E.2d 190, ¶ 18.

Under Petitioners’ view, a video service provider that ignores the Act entirely, refuses to seek the required authorization, and deliberately chooses not to comply with any of its requirements will be rewarded with immunity and dismissal of any lawsuit by a municipality in which it uses public rights-of-way. That is an absurd result, and Petitioners overread the statute to achieve it. Nothing in the Act provides that an entity otherwise qualifying as a “video service provider” is exempt from a judicial proceeding under R.C. § 1332.33(D), so long as it refrains from obtaining a video service authorization. This Court should not endorse this absurd construction. *See State ex rel. Clay v. Cuyahoga Cty. Med. Exam’rs Office*, 152 Ohio St. 3d 163, 2017-Ohio-8714, 94 N.E.3d 498, ¶ 22 (“The absurd result principle in statutory interpretation provides an *exception* to the rule that a statute should be interpreted according to its plain meaning.

It is premised on a guiding principle of statutory construction: that when the General Assembly enacts a statute, it does not intend to produce an absurd result.”) (quotations and citations omitted); *Carna*, 131 Ohio St. 3d at 484 (“Statutes must be construed, if possible, to operate sensibly and not to accomplish foolish results.”).

In addition, Petitioners ignore that Maple Heights seeks declaratory relief, including ordering it to cure their noncompliance with the Act. Thus, despite Petitioners’ refusal to obtain the authorization required by the Act, the district court can still hear this case and order meaningful relief. At a minimum, Maple Heights is entitled to seek a declaration that Petitioners must comply with the authorization requirement. Otherwise, there is nothing to prevent Petitioners and other video service providers from simply refusing to comply with the requirements of the Act, even though they provide video service. Petitioners’ argument is akin to a situation where a driver is pulled over by the Ohio State Highway Patrol for speeding, and tells the officer that the officer cannot ticket him because he does not have a driver’s license. That is the equivalent of what Petitioners seek to do here.

The legislature could not have intended to incentivize video service providers to refuse to comply with the Act altogether. Under Petitioners’ interpretation of the Act, video service providers may refuse to apply for a state-issued authorization because, even if they are subsequently found to be in violation of the statute, there is no penalty for noncompliance because a municipality cannot seek redress for past-due franchise fees. In addition to being an absurd result, Petitioners’ interpretation undermines the purpose of the Act. Indeed, the court in *City of Creve Coeur* held that Petitioners’ same argument regarding a substantially similar statute was unreasonable. *See City of Creve Coeur v. Netflix, Inc., et al.*, No. 18SL-CC02819, at 11-12 (Mo. Cir. Ct. Dec. 30, 2020), App’x at 11-12 (“It is unreasonable to conclude that the legislature

intended that a video service provider could avoid the Fee by simply choosing not to register. Failing to apply for state-issued video service authorization would simply be a violation of the Act’s stipulation that no ‘person shall commence providing video service’ until they have ‘obtained . . . an authorization.’”).

Netflix relies heavily upon an opinion from a district court in Texas which, according to Netflix, agrees that the “holder” requirement is a prerequisite to finding an express right of action. Netflix Br. at 11. While the district court in Texarkana found that only a franchise certificate “holder” has a right of action, Maple Heights respectfully submits that the Texarkana court got it wrong. Regardless, that court was interpreting a different statute, with different statutory provisions, under a different state’s law, and its holding is neither binding nor persuasive.

B. Proposition of Law No. 2: Maple Heights Has a Right of Action to Sue Netflix and Hulu under the Act.

1. The Act Provides an Express Right of Action.

Petitioners contend that Maple Heights has no right to bring its claims. Netflix Br. at 13-14; Hulu Br. at 5-7. Petitioners are wrong. The Act expressly specifies that municipalities may bring actions “to dispute the amount of video service provider fee due . . . in a court of competent jurisdictions.” R.C. § 1332.33(D). Adopting Petitioners’ reading of the statute—that municipalities only have the right to bring a claim for underpayment based upon the results of an audit—would lead to similarly absurd results as those addressed above. Petitioners’ interpretation of the Act would allow municipalities to enforce the Act and seek payment of video service provider fees against those that actually follow the law but fail to make full payments of the video service provider fee—but not those that refuse to seek authorization and deliberately choose not to comply with any of the Act’s requirements. The Ohio General Assembly could not have intended this absurd result. *Cuyahoga Cty. Med. Exam’rs Office*, 152 Ohio St. 3d at 167. Rather, it is more

plausible that the Act’s audit provision presupposes that the video service provider has complied with the terms of the Act in the first instance. The Act’s audit provision thus assumes that municipalities have the right to enforce non-payment of video service provider fees, in addition to underpayment.⁶

Moreover, contrary to Petitioners’ assertions, nothing in the Act states that the Ohio Director of Commerce has *exclusive* authority to enforce the statute.⁷ To the contrary, municipalities have an express right of action to enforce the statute in any court of competent jurisdiction. R.C. § 1332.33(D). Indeed, the Ohio Director of Commerce has *no authority* to adjudicate disputes with respect to compensation to municipalities or townships under the Act. *See* R.C. § 1332.24. Rather, the Act expressly provides that the Ohio Director of Commerce’s role is limited to investigating violations of the Act, assessing civil penalties for noncompliance, and seeking a judicial order enjoining or requiring compliance with the Act. *See* R.C. § 1332.24(B)-(C). Since the Act mandates that all civil penalties assessed by the Director of Commerce shall be deposited in the state treasury (R.C. § 1332.24(C)(2)), Petitioners’ contention that Maple Heights is not left without a remedy is false. Under Petitioners’ interpretation, municipalities and townships are left without an adequate remedy at law because they are precluded from seeking declaratory

⁶ Amicus curiae, DirectTV, LLC (“DirectTV”), wrongly asserts that Maple Heights concedes that the Act does not provide for an express cause of action. But Maple Heights has consistently maintained that the Act provides an express right of action both before the district court and this Court.

⁷ Petitioners and amicus curiae DirectTV make much of the fact that the Act grants the Director of Commerce sole authority to issue video service authorizations and municipalities and townships do not have authority to enter into local franchise agreements. But Maple Heights does not seek to usurp the power of the Director of Commerce by forcing Petitioners to enter into local franchise agreements with it. Rather, Maple Heights seeks a declaration that Petitioners are required to apply for and receive authorization *from the Director of Commerce* and that its failure to do so entitles Maple Heights to past and present video service provider fees.

relief and precluded from bringing an action for any damages for past or present non-compliance.⁸ See *City of Creve Coeur*, No. 18SL-CC02819, Appx. at 11-12 (“The ability to conduct an audit or contest the ‘amount’ allegedly owed from a video service provider does not address Plaintiff’s desire to determine whether or not the VSPA applies to the Defendants at all.”); see also *id.* (“The Plaintiff does not have an exclusive and adequate remedy at law sufficient to hold Plaintiff’s requested relief inappropriate and unavailable.”).⁹

2. Assuming for the Sake of Argument That There is No Express Right of Action under the Act, Maple Heights Has an Implied Right of Action.

To the extent this action falls outside the legislature’s explicit provision for actions to dispute the amount of video service provider fee due, this Court should infer that Maple Heights has a right to bring its claims. “In determining whether a private right of action should be inferred from a statute, Ohio courts have relied on a three-part test adapted from the United States Supreme

⁸ Amicus curiae, the State of Ohio, asserts that Maple Heights is not left without a remedy because it is permitted to file a writ of mandamus to force the Director of Commerce to investigate Petitioners and require them to obtain a video service authorization. But, even assuming that Maple Heights could assert a mandamus action (which, to put it mildly, is less than clear), such action still would provide *no remedy* for past or presently due video service provider fees because the Director of Commerce has *no authority* to adjudicate compensation disputes under the Act. See *State ex rel. Manley v. Walsh*, 142 Ohio St. 3d 384, 2014-Ohio-4563, 31 N.E.3d 608, ¶ 18 (“Mandamus is an extraordinary remedy to be issued with great caution and discretion and only when the way is clear.”) (internal quotations omitted).

⁹ Netflix misleadingly asserts that every court to address the issue of standing under comparable state statutes has held that municipalities do not have a right to sue Netflix and Hulu. Netflix Br. at 14 n. 4. Netflix, however, conveniently ignores the court’s order in *Creve Coeur*. See App’x at 1-12. Moreover, Netflix fails to disclose that the Court’s order in *City of Lancaster* is a “tentative” ruling that permitted the plaintiff to amend its complaint and has no precedential value. Additionally, as set forth above, the district court in Texas wrongly held that Netflix and Hulu could avoid being subject to the Act by refusing to apply for the required certificate of franchise authority. It did not hold that municipalities never have standing to enforce the terms of the statute. And, while the district court in Arkansas determined that municipalities did not have standing under that statute, it analyzed provisions that are unique to the Arkansas statute and are not implicated in any way by the parties’ arguments here. Further, the Arkansas court’s ruling is presently the subject of a pending appeal.

Court decision in *Cort v. Ash*, 422 U.S. 66 (1975).¹⁰ That test examines: (1) whether the statute creates a right in favor of the plaintiff; (2) whether there is any indication of legislative intent, explicit or implicit, to create or deny a remedy through private right of action; and (3) whether it is consistent with the underlying purposes of the legislative scheme to imply such a remedy.” *Anderson v. Smith*, 196 Ohio App. 3d 540, 544, 964 N.E.2d 468, 472 (Ohio Ct. App. 2011). Each of the *Cort* factors weighs in favor of inferring a right of action for Maple Heights.

First, the Act creates rights in favor of Maple Heights. It requires video service providers to pay a fee to municipalities, like Maple Heights, in exchange for the privilege of using the municipalities’ public rights-of-way. In this way, it was enacted for, and resulted in, a benefit for municipalities. Hulu’s bald assertion to the contrary is disingenuous.

Second, the Legislature explicitly granted municipalities the right to bring judicial actions “to dispute the amount of video service provider fee due.” And there is no evidence of any legislative intent to deny municipalities, like Maple Heights, a remedy for a video service provider’s failure to obtain authorization and pay the required fees. Hulu asserts that R.C. § 1332.26(A) evidences an intent of the legislature not to imply a cause of action on behalf of municipalities. Hulu Br. at 6. But that provision simply states that municipalities no longer have authority to require video service providers to enter into local franchise agreements. It does not speak to enforcement of the Act at all. Rather, the Act expressly grants municipalities the right to

¹⁰ At least one Ohio court has determined that the *Cort* test is no longer valid. *See Grey v. Walgreen Co.*, 197 Ohio App.3d 418, 2011-Ohio-6167, ¶¶ 8-11 (“There is ample authority for the proposition that the *Cort* test is no longer valid. The United States Supreme Court has gradually focused on the single factor of whether there was a legislative intent to grant a private right of action.”). This court has determined that the correct inquiry is whether there is a legislative intent to grant a private right of action. *Id.* To the extent this Court agrees, for the reasons above and the reasons that follow, the Ohio General Assembly intended to grant municipalities and townships, like Maple Heights, a private right of action to bring disputes over compensation under the Act in courts of competent jurisdiction. *See* R.C. § 1332.33(D).

bring judicial actions for underpayment of video service provider fees. R.C. § 1332.33. That provision assumes that the video service provider does not refuse to comply with the terms of the Act altogether. It is only logical that the legislature intended to permit municipalities and townships to seek damages for non-payment, in addition to underpayment.

Third, it is entirely consistent with the Act to imply a remedy for Maple Heights: the Act requires video service providers to pay municipalities in exchange for use of public rights-of-way. Petitioners argue that this action would usurp the Director’s authority. Hulu Br. at 6. But that is not true; rather, it would supplement the Director’s authority under the Act. The Legislature did not grant the Director *exclusive* enforcement authority, nor did it grant the Director any authority to bring actions to recover damages for a video service provider’s failure to pay the statutory fee to municipalities altogether. *See* R.C. § 1332.24. Further, the Director must seek judicial relief to require compliance with the Act (*id.* § 1332.24(C)(1)(a)), and has no authority to: (a) entertain disputes between municipalities and video service providers; (b) seek (or award) damages; or (c) issue regulations concerning the Act. The Director also lacks discretion when issuing video service authorizations. *See id.* § 1332.25(D) (“The director *shall* issue a video service authorization” if the application is complete.”) (emphasis added).

Indeed, contrary to DirectTV’s assertions, Ohio courts imply a private right of action in circumstances, such as here, where there is an intent manifested by the legislature, the statute does not explicitly state that a private right of action “is not available as a supplement to other remedies,” and those affected by non-compliance with the statute will not have an adequate remedy. *See, e.g., Upperman v. Grange Indemn. Ins. Co.*, 135 Ohio Misc. 2d 8, 2005-Ohio-6227, 842 N.E.2d 132, ¶¶ 6-14 (“[D]espite defendants’ protests, the court concludes that an implied right of action for damages is a reasonable supplement to the other more limited remedies provided by statute.”); *id.*

at ¶ 18 (“Allowing an implied private right of action for damages ... will not interfere with the ongoing enforcement activities of the [Ohio Department of Insurance]; it will merely supplement them.”); *Edwards v. Perry Twp. Bd. Of Trustees*, 5th Dist. Stark No. 2015CA00107, 2016-Ohio-5125, at ¶ 21 (implying private right of action because plaintiffs had a clear right in their favor but did not have adequate remedy).¹¹ Here, implying a right of action for damages will not interfere with the Director of Commerce’s enforcement activities; it will merely supplement them. And denying Maple Heights a right of action for damages will leave it without an adequate remedy. See *City of Creve Coeur*, No. 18SL-CC02819, App’x at 11. Accordingly, Maple Heights is permitted to bring a private right of action for declaratory relief and corresponding damages under the Act.¹²

¹¹ The cases relied upon by DirectTV to assert that there is no implied caused of action are readily distinguishable because, unlike here, the statutes at issue provided adequate administrative remedies and there was no express provision, like R.C. § 1332.33(D), creating rights in favor of the plaintiff. See, e.g., *Strack v. Westfield Companies*, 33 Ohio App. 3d 336, 338, 515 N.E.2d 1005 (9th Dist. 1986) (providing for an administrative hearing process in which aggrieved insureds can attempt to resolve their complaints with insurers); *Grey v. Walgreen Co.*, 197 Ohio App.3d 418, 2011-Ohio-6167, 967 N.E.2d 1249, ¶ 15 (8th Dist.) (finding there was no indication that a private remedy was necessary to enforce the statute); *Patterson v. Rite Aid Corp Hdqtrs.*, 752 F. Supp. 2d 811, 815-17 (N.D. Ohio 2010) (same); *Nielsen v. Ford Motor Co.*, 113 Ohio App. 3d 495, 500, 681 N.E.2d 470 (9th Dist. 1996) (involving statute that was not intended to protect the interests and did not create any rights in favor of plaintiffs); *Doe v. Adkins*, 110 Ohio App.3d 427, 674 N.E.2d 731 (4th Dist. 1996) (involving administrative code provisions that did not create any civil remedies in favor of plaintiff); *Automation Tool & Die, Inc. v. Medina Hosp.*, 9th Dist. Median No. 18CA0009-M, 2019-Ohio-1691, 130 N.E.3d 327, ¶ 21 (authorizing a private cause of action would not assist the purpose of the statute). Here, it is undisputed that the Director of Commerce has no authority to adjudicate disputes between video service providers and municipalities over the failure to pay video service provider fees and the Act creates a right in municipalities to dispute the amount of video service provider fees owed in courts of competent jurisdiction. R.C. § 1332.33(D).

¹² Hulu also speculates that permitting the City to proceed with its lawsuit “could have very tangible and disruptive fiscal impact throughout the state” due to its payment of state sales tax. Hulu Br. at 7. But there is no evidence in the record to support Hulu’s speculation and when, as here, the statutory language is unambiguous the Court may not resort to public policy considerations. *State ex rel Paluch v Zita*, 141 Ohio St. 3d 123, 125-26 (2014).

C. Proposition of Law No. 3: Petitioners Provide Video Service under the Act.

1. Netflix and Hulu Provide Their Video Programming “Over Wires or Cables.”

Petitioners each contend that they are exempt from the Act because they do not own, construct, or operate facilities, wires, cables, or networks located in the public rights-of-way. Netflix Br. at 15-22; Hulu Br. at 8-10. But nothing in the Act or in any case or statute upon which Petitioners rely requires a video service provider to own, operate, construct, or physically access wires or cables in public rights-of-way to be subject to video service provider fees. Rather, the Act clearly specifies that franchise fee requirements apply to *all* video service providers. *See* R.C. § 1332.21(J), (M). And the Act does not limit the definitions of a “video service provider” or “video service” to those that own, construct, or operate facilities, wires, cables, or networks; rather, a video service provider is an entity that provides video programming “*over* wires or cables located at least in part in the public rights-of-way, *regardless of the technology used to deliver that programming, including internet protocol technology or any other technology.*” R.C. § 1332.21(J) (emphasis added). The common meaning of the word “over” in this context is “across” or “through.”¹³ The plain language of the statute therefore requires only the use of wires or cables to transmit video programming. And Petitioners do not dispute that they transmit their video programming “over wires or cables” or that they use a “video service network” to “deliver video service.” R.C. § 1332.21(J); *see also* R.C. § 1332.21(L).

Instead, Petitioners contend that, because the Act defines the term “video service network” as “wires or cables and associated facilities or components used to deliver video service,” it somehow requires video service provider fees to be paid only by those that construct, own, or operate “video service networks.” Netflix Br. at 15; Hulu Br. at 10-12. But nothing in the Act says

¹³ <https://www.merriam-webster.com/dictionary/over>

that only those that own, operate, or construct networks in the public rights-of-way are video service providers and, if that was the legislature’s intent, it could have easily stated so. The provisions that Petitioners point to (*see* Hulu Br. at 11; Netflix Br. at 15) merely authorize a video service provider to construct and operate facilities or networks in the public rights-of-way. They do not mandate that *only* video service providers who construct and operate facilities or networks in the public rights-of-way are required to receive a video service authorization. The plain language of the statute is permissive. Under the Act, a video service provider may—but is not required to—construct and operate facilities within the public rights-of-way.¹⁴

Hulu wrongly asserts that a review of various provisions of the Act “makes clear” that is applies only to video service providers with their own “video service network” in the public rights-of-way. Hulu Br. at 10-11. But a review of the provisions identified by Hulu reveals that there is simply nothing in the Act that *requires* a video service provider to own, operate, or construct its own “video service network”:

- Neither the definition of “video service network” nor the definition of “video service” states that a video service provider *must* construct, own, or operate a “video service network” or any other facility or infrastructure in the public rights-of-way. R.C. §§ 1332.21(J), (L).
- Section 1332.23(B) simply authorizes incumbent cable providers, which—by virtue of the technology used by those cable providers—necessarily constructed and operated their own cable systems, to continue to provide video service via local franchise agreements already in place for a period of time after the Act was enacted. *See* R.C. §

¹⁴ Proposed amicus curiae the State of Ohio unwittingly recognizes the permissive language of the Act and acknowledges video service providers that obtain a video service authorization “may,” but are not required to, construct facilities in the public rights-of-way. State of Ohio Br. at 5.

1332.23 (“Video service authorization – video service as cable service.”); *see also* R.C. §§ 1332.23(B)(1)(a) and (C). In contrast, both the definition of “video service” and the video service authorization application recognize that video service may be provided in the future via “internet protocol technology” or “alternative technology” and do not speak to constructing, owning, operating, or physically accessing video service networks or facilities in the public rights-of-way. R.C. §§ 1332.21(J), 1332.25(A)(3).

- The video service application simply requires video service providers to specify the geographic and political boundaries in which they intend to provide video service and the technological methods they will use to deliver video programming. R.C. § 1332.25(A)(2)-(3). Tellingly, the application does not require video service providers to specify whether they own, operate, or construct video service networks or the locations of those networks when identifying the manner in which they will provide video service. *Id.*
- Section 1332.24(A)(1) states that a video service provider authorization confers authority both to “provide video service in its video service area” and to “construct and operate a video service network in, along, across, or on public rights-of-way for the provision of video service.” *See* R.C. § 1332.24(A)(1). If, as Petitioners contend, authorization was required only for those that construct and operate a video service network, it would not be necessary to separately confer authority to provide video service. The legislature could have simply stated that a video service authorization confers authority to construct and operate a video service network by which the video service provider may provide video service. Petitioners’ interpretation of the Act renders the separate grant of authority to “provide video service” superfluous.

- Section 1332.26(D)(5) and (7)'s "disconnection" language does not speak to "disconnection" of a network, but rather speaks to "disconnection" of video service. These provisions can just as easily be applied to Petitioners' video service.
- Section 1332.29(A)(2) actually recognizes that a video service provider may satisfy the obligation to serve a minimum percentage of households by utilizing "alternative technology" that does not rely upon the video service provider's own video service network.
- Section 1332.30(C) simply states that no video service provider that operates its own video service network can be forced to provide an institutional network over that video service network. It neither states nor implies that all video service providers must have their own video service networks.
- Section 1332.31 does not even mention the term "video service network," much less presume that all video service providers must operate their own video service network in order to qualify as a video service provider.

In sum, Hulu over-reads the statute in an attempt to create ambiguity where none exists. Nothing in the Act, including the provisions identified by Hulu, *requires* a video service provider to own, operate, or construct its own "video service network" to be subject to the requirements of the Act, including payment of video service provider fees.¹⁵

Indeed, a Missouri court has explicitly addressed (and rejected) the same arguments that

¹⁵ Amicus curiae DISH Network L.L.C. ("DISH") asserts that the "shared focus of the Ohio and federal legislatures on preventing redlining" constitutes "powerful evidence" that the Act was intended only to apply to facilities-based video service providers. DISH Br. at 8-9. But just because the legislature allegedly intended to prevent redlining by those video service providers that own and operate their own video service networks, it does not necessarily follow that it also intended the Act to apply exclusively to those video service providers that construct, own, or operate video service networks.

Petitioners make here under a substantially similar statute. *See City of Creve Coeur*, No. 18SL-CC02819, App’x at 5-8. In *City of Creve Coeur*, similar to the Act, the plain language of the statute defined “video service” as the “the provision of video programming provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology...” *Id.* at ¶ 5 (emphasis added); *see also* R.C. § 1332.21(J). The court held that the plaintiff plausibly alleged that Netflix and Hulu were video service providers subject to a franchise fee—irrespective of whether they own or operate facilities in public rights-of-way. *See generally id.* The same is true here.

Despite their conclusory arguments to the contrary, Petitioners cannot reasonably dispute that they transmit their video programming “over” wires or cables located in public rights-of-way, because, without them, Petitioners could not deliver their video programming to their subscribers. Petitioners deliver their video services through subscribers’ ISPs, which own and operate wireline facilities in public rights-of-way. *See* Compl. ¶¶ 10–15. The ISP acts in the role of a common carrier for Petitioners’ content. The end-user customer communicates directly with Petitioners either using an Internet browser or, more commonly, by means of a “Smart TV” or devices such as Roku or Apple TV that include software developed in part by Petitioners that facilitates the direct connection to Petitioners’ platforms. Whether via the web or a set-top device, the end-user customer orders specific content from Petitioners, which Petitioners then arrange to deliver to that customer via the ISP’s wireline facilities.

That Petitioners “deliver” their video programming “over” wires or cables to transmit their video programming is further underscored by their interactions with ISPs and the technology they use. For example, Netflix has established direct interconnection arrangements with all major ISPs and provides direct connection of its so-called “Open Connect” system to each ISP’s distribution

network. Compl. ¶¶ 11–13. Netflix furnishes each ISP with hardware (so-called “Open Connect boxes”) that is co-located at an ISP-owned facility. *Id.* These devices store Netflix content for the ISP to access and deliver to its end users who subscribe to Netflix’s service. *Id.* Netflix has also established “peering” arrangements for the interchange of traffic with the ISP, and, unlike the vast majority of websites on the public Internet, Netflix directly compensates the ISP for carrying Netflix content to the ISP’s subscribers. In exchange for such compensation, the ISP provides Netflix with a level of bandwidth (HD-quality) that is otherwise not ordinarily available to other content providers.¹⁶ Such compensation may be in the form of cash payments or via arrangements known as settlement-free peering, a type of barter arrangement whereby traffic is exchanged between interconnecting networks without any explicit payments by either to the other. While the exact manner in which Hulu provides its content is less clear without the benefit of discovery, it is likely that it uses similar technology and arrangements with ISPs. Compl. ¶ 14. Petitioners thus actively *use* and *access* wireline facilities located in public rights-of-way to deliver their video programming to their subscribers.

Indeed, Petitioners’ ability to deliver their content—and, in turn, operate their enormously profitable businesses—depends wholly on the quality and strength of these wireline facilities. Over-the-top video service providers, such as Netflix and Hulu, are driving bandwidth consumption by consumers to record levels and, consequently, ISPs must input more fiber into their networks and build additional capacity (located in public rights-of-way) to handle the increased traffic. Petitioners’ provision of video service, therefore, physically impacts the public

¹⁶ See, Zachary M. Seward, “The inside story of how Netflix came to pay Comcast for internet traffic,” *Quartz*, August 27, 2014, <https://qz.com/256586/the-inside-story-of-how-netflix-came-to-pay-comcast-for-internet-traffic/> (accessed 12/1/20) (noting that Netflix pays Comcast to ensure HD-quality viewing).

rights-of-way in the State of Ohio. Petitioners compensate the ISPs for this, but not Maple Heights. The modest video service provider fee is therefore just a small return of the tens of billions of dollars in benefit conferred on Petitioners across the United States by the use of public rights-of-way—a portion of which Petitioners are statutorily obligated to remit to Maple Heights and other Ohio municipalities under the Act in exchange for the physical burden they place on the infrastructure located in the public rights-of-way.

In support of their flawed interpretation of the Act, Petitioners rely upon the definition of “occupy or use” found in R.C. § 4939.01(J). But the Ohio General Assembly’s use of this definition in the Ohio Revised Code for public utilities demonstrates that, if it had intended to limit video service providers to those that “occupy or use” the public rights-of-way as that term is defined in R.C. § 4939.01(J), it would have expressly incorporated that definition into the Act. The fact that it did not expressly limit video service providers to those that “occupy or use” or “place a tangible thing” in the public rights-of-way to provide their video programming, strongly suggests that the Ohio General Assembly did not intend to limit video service providers to those that construct, own, or operate facilities in the public rights-of-way. *See NACCO Industries, Inc. v. Tracy*, 79 Ohio St.3d 314, 316, 1997-Ohio-368, 681 N.E.2d 900 (“[The legislature] is generally presumed to act intentionally and purposely when it includes particular language in one section of a statute but omits it in another.”).

Petitioners also rely upon a California state court ruling that is neither controlling nor persuasive.¹⁷ Netflix Br. at 19-20; Hulu Br. at 15. First, the order is a “tentative” ruling that permitted the plaintiff to amend its complaint and has no precedential value. *See Netflix’s Appx.*

¹⁷ Netflix also cites to *City of Ashdown, Arkansas v. Netflix, Inc.* in support of its argument. Netflix Br. at 20. But, in *City of Ashdown*, the court *did not* decide whether Netflix and Hulu were video service providers under the Arkansas statute.

at 31. Second, the court found that the plaintiff’s interpretation of the statute would create inconsistencies with numerous statutory provisions that are unique to the California statute. *See id.* at 44-45. Here, as explained above, Maple Height’s interpretation is not inconsistent with the plain language of any statutory provision in the Act. Third, the court found that there was legislative history specific to the California statute that supported its conclusion. *See id.* at 45-46. Here, neither Netflix nor Hulu cite to any legislative history of the Act in support of their interpretation of the statute.¹⁸

2. Petitioners’ Attempt to Read Requirements into the Statute That Do Not Exist Should be Rejected.

Unable to dispute that, pursuant to the plain language of the statute, they provide video service “over wires or cables,” Petitioners (and amicus curiae) urge the Court to consider the legislative history of the Act and other extraneous policy considerations. But when, as here, the plain language of the statute is clear and unambiguous, the court’s “review ‘starts and stops’ with the unambiguous statutory language.” *Gabbard v. Madison Local School District Bd. of Educ.*, No. 2020-0612, 2021-Ohio-2067. Courts may “employ rules for construing ambiguous language only when a definitive meaning proves elusive, despite a thorough and objective examination of the statutory language.” *Ohio Neighborhood Fin., Inc. v. Scott*, 139 Ohio St. 3d 536, 542 (2014). “Otherwise, allegations of ambiguity become self-fulfilling.” *Id.* Petitioners are subject to video service provider fees under the plain language of the Act and, because that language is clear and unambiguous, the Court’s analysis should end there.

¹⁸ As explained more fully below, while Netflix and numerous amicus curiae assert that their interpretation of the Act is supported by the legislative intent of the statute, they do not provide *any* legislative history in support of their assertions. And, even if they did, because the plain language of the statute is clear and unambiguous, the Court need not resort to a legislative history review here.

Even if the Act’s plain language were unclear, however, Petitioners’ attempt to read requirements into the statute that do not exist should be rejected. Netflix, in particular, relies heavily upon purported legislative intent and the “circumstances surrounding the VSA Law’s enactment.” Netflix Br. at 16. Importantly, however, Netflix does not actually provide *any* legislative history of the Act to support its arguments. Rather, both Netflix and Hulu rely upon what they characterize as the omission of internet “streaming services” from the Act to support their argument that the Ohio General Assembly did not intend to apply the Act to over-the-top video service providers, like Netflix and Hulu. But, while it is true that the Ohio legislature could not have specifically foreseen the proliferation of over-the-top video programming, it is because such services largely *did not exist* in 2007—not because it did not intend the Act to apply to emerging technologies, like over-the-top video programming. Otherwise, the phrase “*regardless of the technology used to deliver that programming, including internet protocol technology or any other technology*” would be rendered meaningless.¹⁹ R.C. § 1332.21(J) (emphasis added); *see also Boley*, 125 Ohio St. 3d at 513 (“No part [of a statute] should be treated as superfluous unless that

¹⁹ Netflix and amicus curiae DISH contend that this language was intended to apply only to Internet Protocol Television providers that construct and operate their own wireline facilities, like telephone providers AT&T and Verizon. Netflix Br. at 16-17; DISH Network Br. at 9-10. Just recently, however, AT&T—the entity that was the impetus for the Act and other similar laws across the country—notified franchise authorities in California and Illinois of its intent to transfer its state issued franchise authority to DirectTV. *See* California Transfer Notice, App’x at 120-139; *see also* Illinois Transfer Notice, App’x at 140-209. Importantly, the transfer notices state that DirectTV will provide the same Internet protocol-enabled video service over AT&T’s wireline telecommunications network—***a network that DirectTV does not construct, own, or operate.*** AT&T and DirectTV have therefore confirmed that ownership of wireline facilities is not what mandates compliance with the Act, since DirectTV will deliver its video programming just like Petitioners—by providing it to its subscribers over someone else’s network. To the extent the Court finds the plain language of the Act ambiguous, it may take judicial notice of the transfer notices because they have been filed with state regulators and their accuracy cannot be reasonably questioned. *See* Evid. R. 201(B).

is manifestly requires, and the court should avoid that construction which renders a provision meaningless or inoperative.”).

Indeed, Netflix began offering its over-the-top video service in January 2007 and, even then, the service was in its infancy and offered a small fraction of the content available via its DVD subscription service. Hulu did not begin offering its over-the-top video service until March 2008. While some “streaming services” may have existed in some form for a short time before the Act was enacted, they certainly were not ubiquitous and were not technologically advanced enough to compete with broadcast or cable television, as they are now. Indeed, as set forth more fully below, the FCC has determined that over-the-top video service providers have since reached the threshold of sufficient quality to be comparable and to compete with broadcast and cable television. Simply put, the Ohio General Assembly’s “omission” of over-the-top providers from the Act does not mean it did not intend the Act to apply to emerging technologies that provide service comparable to broadcast television, but was due to the fact that it could not have foreseen that over-the-top video service providers would one day reach the televisions of Ohio’s residents via the click of button, would begin producing their own television shows, movies, and documentaries, and, in the case of Hulu, would offer live television—directly competing with broadcast and cable television and causing many consumers to “cut the cord.”²⁰

Netflix also relies upon the FCC Third Report and Order—which interprets sections of the Communications Act and does not address the pertinent issues here—for the proposition that part

²⁰ That Netflix and Hulu provide competing services to cable and broadcast television is evidenced by the “cord cutting” phenomenon that has been projected by one study to carve approximately \$33.6 billion out of U.S. pay TV revenues by 2025. *See* Ben Munson, *Cord cutting to carve \$33.6B out of U.S. pay TV revenues by 2025*, Oct. 6, 2021, available at <https://www.fiercevideo.com/video/cord-cutting-to-carve-33-6b-out-u-s-pay-tv-revenues-by-2025>

of the bargain justifying franchise fees for cable operators is for “access” to facilities located in public rights-of-way. Netflix Br. at 17. But, as explained above, regardless of whether Petitioners own, operate, or construct facilities located in public rights-of-way, they certainly *use* and *access* them to provide their video programming “over” wires or cables. And that use and access is having a physical impact on the public rights-of-way in the State of Ohio. *See* Third Report and Order, *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 As Amended by the Cable Television Consumer Protection & Competition Act of 1992*, 34 FCC Rcd. 6844 ¶ 84 (Aug. 2, 2019).²¹

Finally, Netflix’s reliance on the FCC’s ruling in *In re Entertainment Connections, Inc.*, 13 FCC Rcd. 14277 (1998) for the proposition that it does not “use” wires or cables to transmit its video programming is also misplaced. That ruling examined whether a *satellite* television system operator was a “cable operator” of a “cable system” under the Communications Act. It does not shed light on what it means to provide video programming “*over* wires or cables located at least in part in public rights-of-way,” under the Act. *See* R.C. § 1332.21(J) (emphasis added). Furthermore, the case was decided in 1998 and relies upon the vacated decisions in *AT&T Communications v. City of Austin, Tex.* and *AT&T Communications of the Southwest, Inc. v. City of Dallas*, which lack any precedential value and are readily distinguishable.²² These courts’

²¹ Amicus curiae DISH essentially urges this Court to find that the Federal Cable Act preempts the Act. DISH Br. at 6-7. But that issue is not presently before the Court. Indeed, Netflix asserted that Maple Heights’ claims were preempted by the Federal Cable Act in the district court and the issue was fully briefed. *See* ECF No. 21-1 at 9-13; ECF No. 34 at 9-14. The district court, however, declined to certify that question to this Court because it does not present a question of state of law and the district court is equally capable of answering it.

²² The vacated decisions in *AT&T Communications v. City of Austin, Tex.* and *AT&T Communications of the Southwest, Inc. v. City of Dallas*, provide Petitioners no support because the courts examined different local ordinances, in light of federal requirements for *telephone* service. 40 F. Supp. 2d 852, 855 (W.D. Tex. 1998) (“[T]he question before the Court [wa]s whether the City . . . ha[d] erected a barrier to entry into the local telecommunications services market in

understanding of technology and the type of technology that existed in 1998 is further underscored by the court’s view of imposing right-of-way fees for “electromagnetic radiation” traveling through another company’s local landline as “bizarre.” See *In re Entertainment Connections, Inc.*, 13 FCC Rcd. 14277 (1998); *City of Austin, Tex.*, 40 F. Supp. 2d at 855; *City of Dallas*, 52 F. Supp. at 761 n. 19. As the understanding of Internet technology has advanced, it is clear that over-the-top video service providers, like Petitioners, physically impact the public rights-of-way by requiring ISPs to input more and more fiber into their networks and build additional capacity to keep pace with the increased demand in bandwidth. Accordingly, while Petitioners may not own and operate wireline facilities, their services drive demand and it is consistent with the purpose of the Act—to encourage investment in video programming infrastructure—to require Petitioners to pay the video service provider fees.

D. Proposition of Law No. 4: Netflix Provides Video Programming under the Act.

Netflix contends that the Act does not apply to its offerings, asserting that it does not provide “video programming” because its content is not comparable to programming provided by a television broadcast station. Netflix Br. at 22-24. Netflix is wrong. The video programming that Netflix provides is comparable to that provided by television broadcast stations.²³ See *City of Creve*

violation of the [Telecommunications Act of 1996].”); see also 52 F. Supp. 756, 756 (N.D. Tex. 1998) (“Telecommunications companies brought action against city under Federal Telecommunications Act of 1996 (FTA) and Texas Public Utilities Regulatory Act (PURA), challenging adoption and enforcement of franchise ordinance attempting to regulate provision of local telephone service in city.”); *Bell Atlantic-Maryland, Inc. v. Prince George’s Cnty., Md.*, 49 F. Supp. 2d 805, 805 (D. Md. 1999) (“Telecommunications service provider brought action challenging validity of county’s telecommunications franchise ordinance.”); *Pac. Bell Tel. Co. v. City of Walnut Creek*, 428 F. Supp. 2d 1037, 1043 (N.D. Cal. 2006) (involving franchise fee for operating telephone lines).

²³ Netflix itself has argued that it provides video programming comparable to that of a television broadcast station. See *National Ass’n of the Deaf, et al. v. Netflix, Inc.*, 3:11-cv-30168, Dkt. 47, pp. 2–3, 13, 15, 17 (D. Mass. May 29, 2012) (characterizing itself as a provider of video

Coeur, No. 18SL-CC02819, App’x at 5-6 (“Plaintiff’s petition contains facts sufficient to support its allegations that the Defendants’ streaming service is ‘video programming’ comparable to broadcast television programming.”). Netflix provides the same types of shows, movies, and programming content that audiences are accustomed to watching on television. Indeed, historically much of Netflix’s programming is the same as shown on television broadcast networks. On many television devices today, viewers are able to switch seamlessly—merely by pressing a button—between video programming delivered by Netflix, Hulu, cable operators, and other services. Thus, to viewers, Netflix’s video programming is not only comparable to broadcast television, it is indistinguishable. *See* Simon Report, ECF No. 54-002 at ¶¶ 20-77, App’x at 39-64.

Relying on a Kentucky state trial court decision, Netflix asserts that it does not provide “video programming” because its services are “on demand” and Netflix does not offer live or scheduled programming. Netflix Br. at 23-24 (citing *Kentucky v. Netflix, Inc.*, No. 15-CI-01117 (Ky. Cir. Ct. Aug. 23, 2016)). This approach, however, directly contradicts the FCC’s interpretation of the corresponding provision of the Communications Act, 47 U.S.C. § 522(20). The FCC “held that video distributed over the Internet qualifies as ‘video programming.’” *Promoting Innovation & Competition in the Provision of Multichannel Video Programming Distribution Servs.*, 29 FCC Rcd. 15995, ¶ 16 (2014).²⁴ Thus, the FCC specifically rejected Netflix’s assertion that it is not comparable to television broadcast stations because its

programming under the Twenty-First Century Communications and Video Accessibility Act (47 C.F.R. § 79.4), which defines “video programming” like it is defined by the Act: programming “generally considered comparable to programming provided by a television broadcast station.”).

²⁴ The FCC explained that nearly two decades ago it had found “streaming video” not yet comparable to programming provided by broadcast stations because it lacked “television quality,” but reversed itself in 2010, holding that “intervening improvements in streaming technology and broadband availability enable such programming to be ‘comparable to programming provided by . . . a television broadcast station.’” 29 FCC Rcd. 15995, ¶ 16 and n. 35.

programming is on demand and not live or scheduled programming. Rather, the FCC, interpreting a statute it is authorized to enforce, found that “streaming video” services are comparable to television broadcast programming. The FCC, not a ruling by a Kentucky state trial court on administrative review, is the more persuasive authority with respect to this determination, since “the court must give considerable weight and due deference to the [agency’s] interpretation of the statute it administers unless its statutory construction is plainly unreasonable.” *R.R. Ventures, Inc. v. Surface Transp. Bd.*, 299 F.3d 523, 548 (6th Cir. 2002); *see also City of Creve Coeur*, No. 18SL-CC02819 at 6-7, App’x at 6-7 (distinguishing *Kentucky v. Netflix, Inc.*).

Moreover, Netflix’s approach is contrary to the Act. The Ohio General Assembly recognized that technology used for distributing video programming could change over time. As such, the legislature specified that the Act applies with respect to the service being performed (the distribution of video programming), rather than the specific business model or particular technology used. *See* R.C. § 1332.21(J) (defining “video service” “regardless of the technology used to deliver that programming, including internet protocol technology or any other technology.”). Thus, the legislature intended and deemed that programming services were “comparable” to those provided by broadcast television stations when they were of sufficient quality to compete with such broadcast programming. As the FCC already found, Netflix has reached that threshold.

Netflix once again relies upon *City of Lancaster v. Netflix, Inc.* in support of its argument that it does not provide video programming. Netflix Br. at 23-24. But, as explained above, the order is a “tentative” ruling that permitted the plaintiff to amend its complaint and has no precedential value. Moreover, the decision is poorly reasoned and wrongly decided. Even though Hulu concedes that it provides live, pre-scheduled, linear programming comparable to broadcast

television, the court inexplicably determined that *both Netflix and Hulu* do not provide video programming because they do not provide prescheduled or live programming. *See* Netflix’s Appx. at 47-48. The court’s analysis thus is both factually and legally incorrect. This Court should follow the FCC’s finding that over-the-top video service providers, like Netflix and Hulu, are comparable to television broadcast stations because they have reached a level of sufficient quality to provide competing services—not a “tentative” state court ruling from another jurisdiction.

E. Proposition of Law No. 5: The Public Internet Exception Does Not Apply to Netflix and Hulu.

Petitioners wrongly assert that the Act’s public Internet exception applies to their video service. *See* Netflix Br. at 24-27; Hulu Br. at 8-10. The statutory definition of “video service” excludes, among other things, “video programming provided to persons in their capacity as subscribers to commercial mobile service” and “video programming provided solely as part of and via a service that enables end users to access content, information, electronic mail or other services offered over the public internet.” R.C. § 1332.21(J). Petitioners argue that their services fall within this narrow definitional carveout. But Petitioners’ services do not fall within that exclusion for at least two reasons. First, the public Internet exception was intended to apply to ISPs and Petitioners do not provide video content “*solely as part of . . . a service.*” (emphasis added.) Unlike ISPs that provide end users *access* to video programming, in addition to other services (such as email, information, and other content) over the public Internet, Netflix and Hulu do not offer video programming that is incidental to or “part of” other content, information, or services accessed by end users. Rather, like broadcast and cable television providers, providing video programming is *the entirety* of the services offered by Petitioners. *See City of Creve Coeur*, No. 18SL-CC02819, App’x at 8 (“The Defendants’ video programming cannot be a ‘part of’ a service that enables users to access content, information, electronic mail, or other services’ if it is the sole feature offered by the service.”).²⁵

²⁵ Netflix unwittingly admits that the public Internet exception is intended to apply to ISPs because they are the entities that enable end users to access content, information, and electronic mail over

Second, Petitioners’ video programming is not “offered over the *public* internet.” *Id.* at 8 (“Plaintiff has alleged facts sufficient to support its allegation that streaming services do not fall within this exception because they do not provide their video programming over the public internet.”). Petitioners’ programming is only accessible to paying subscribers who need login credentials to access content from Petitioners’ private servers, which likely operate on a private “managed network.” *Cf. Sandvig v. Barr*, 451 F. Supp. 3d 73, 85–86 (D. D.C. 2020) (analyzing difference between public and private websites and noting the “view of the internet as divided into at least two realms—public websites (or portions of websites) where no authorization is required and private websites (or portions of websites) where permission must be granted for access.”). Indeed, the term “public Internet” is a term of art that has specialized meaning in the communications industry.²⁶ *See* Malfara Report, ECF No. 54-001 at ¶¶ 33-36, App’x at 20-21. Whether Petitioners’ content is provided over the “public Internet” depends upon the specific methods Petitioners use to route their content over the Internet. *Id.* Similar entities often use transmission flows outside the realm of the “public Internet” which offers only a best effort grade of service, and use premium “Managed Networks” that allow performance which the public Internet does not offer. *Id.* At the very least, whether Petitioners use the public Internet is an issue

the public Internet. Netflix Br. at 26. It then disingenuously contends that the public Internet exception applies to Netflix because ISPs actually provide its video programming to Netflix’s subscribers as “as part of and via a service that enables users to access content, information, electronic mail, or other services offered over the public internet.” *Id.* This sophistry should be rejected. Under Netflix’s circular logic, Amazon does not “provide” merchandise to its customers when an intermediary such as UPS drops off the package. But just as Amazon provides its merchandise directly to carrier hubs where the carrier transports them to the end customer, Netflix “provides” its video programming through subscribers’ ISPs. Furthermore, under the Act’s plain language, Netflix’s content is not provided as “part of” the ISPs’ service because Netflix’s subscribers must pay a separate subscription fee over and above the subscription fee that those subscribers pay to their ISPs.

²⁶ Petitioners attempt to utilize the dictionary definition of the word “public” to support their argument. Netflix. Br. at 26-27; Hulu Br. at 9-10. But Petitioners’ arguments are disingenuous, as they, like Maple Heights, recognize that the term has specialized meaning and retained experts to opine on the meaning of the term “public Internet,” as that term is used in the communications industry and by the FCC.

of fact and Maple Heights has sufficiently alleged that the exclusion does not apply. *See* Compl., ECF No. 1 at ¶¶ 9-25; *see also City of Creve Coeur*, No. 18SL-CC02819, Appx. at 7-8.

The orders of the Nevada and Arkansas federal courts applying the public Internet exception to Petitioners are incorrect and contrary to the court’s order in *City of Creve Coeur*, which interpreted a statute that is more consistent with the plain language of R.C. § 1332.21(J). Furthermore, as these courts failed to appreciate, interpreting the public Internet exception to apply to all content transmitted over the Internet, as Petitioners argue, would render almost meaningless the Nevada, Arkansas, and Ohio statutes’ express inclusion of “video programming” provided via “internet protocol technology or any other technology.” R.C. § 1332.21(J).

These orders also ignore the very purpose of the public Internet exception. This exception language was intended to apply to ISPs—not content providers like Petitioners. As the FCC told Congress in language that virtually mirrors the Act’s exception language, ISPs (a/k/a “internet access service providers”) “combine computer processing, information storage, protocol conversion, and routing with transmission to enable users to access Internet content and services.” *In re Federal-State Joint Board on Universal Service*, FCC 98-67, 13 FCC Rcd. 11501, 11531 at ¶ 63, 1998 WL 166178, at *21 (F.C.C. Report to Congress Apr. 10, 1998) (emphasis added); accord *In re GTE Tel. Operating Cos.*, FCC 98-292, 13 FCC Rcd. 22466, 22468-69, 1998 WL 758441 (F.C.C. Oct. 30, 1998) (using same definition of ISP). This FCC language about ISPs served as the template for Congress’s definition of both “Internet access” and “Internet access service” in the 1998 Internet Tax Freedom Act (“ITFA”) that later became the template for the Act’s exception in this case. Moreover, Netflix itself has previously made this distinction in arguments to the FCC, representing that it is a content provider—not an access provider—and that ISPs are the ones that “enable” the “access” to content. This view of the role of ISPs versus content providers is recognized across the industry, in various federal and state laws, in the legislative history to those laws, and in court decisions.

State and local taxes on ISPs are generally prohibited by the federal ITFA, which, among other things, prohibits taxing Internet access. And while Maple Heights argues that the Act does

not impose a “tax,” and therefore the ITFA does not bar its claims here, it was reasonable for the drafters of the Act to wish to avoid any potential conflict with the ITFA. The ITFA defines “Internet Access” using similar language as the public Internet exclusion. ITFA § 1105(5), 47 U.S.C. § 151 notes. “The term ‘Internet access’ (A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet.” *Id.* This definition, however, as amended in 2007 (the same year of the enactment of the Act), critically excludes “voice, audio or *video programming*, or other products and services ... that utilize Internet protocol or any successor protocol and *for which there is a charge*, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E).” *Id.* (emphasis added).²⁷ Thus, the ITFA clearly distinguishes “Internet access” and paid video content provided through such Internet access. This distinction carries over to the Act’s public Internet exception.

This backdrop highly suggests that the Ohio General Assembly included the Act’s exception language to ensure that the video service provider fees would not run afoul of the ITFA and to ensure that ISPs, by virtue of this video programming going over their wires and cables, were not themselves assessed a video service provider fee. There is simply nothing to suggest that the legislature was concerned about exempting pure video content providers, like Petitioners, from paying video service provider fees. Indeed, it is easy to see why an ISP would satisfy the Act’s exception, but not Petitioners. For example, a customer does not get her Netflix video programming “solely as part of and via her” ISPs Internet access service. That customer pays separately for Netflix and other over-the-top services, and does not receive those over-the-top services simply because she is a customer of the ISP. Thus, ISPs fall within the Act’s exception

²⁷ As originally enacted in 1998, the ITFA defined “Internet Access” using terminology even more similar to that used in the Act. It was defined as “a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users.” The current definition cited above was enacted by a 2007 amendment. 110 P.L. 108, 121 Stat. 1024.

language. But Petitioners cannot qualify under the same exception. While a Netflix customer gets Netflix’s video programming through her Netflix account, that Netflix service does not “enable” her to “access” any other content over the Internet (public or otherwise). Thus, the public Internet exception does not apply to Petitioners.

IV. CONCLUSION

For the foregoing reasons, Respondent City of Maple Heights, Ohio respectfully requests that this Court determine that Petitioners are video service providers that are subject to video service provider fees under the Ohio Fair Competition and Cable Operations Act, R.C. §§ 1332, *et seq.*

Dated: December 1, 2021

Respectfully submitted,

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IN THE SUPREME COURT OF OHIO

City of Maple Heights, Ohio,	:	
	:	
Respondent,	:	
	:	Case No. 2021-0864
v.	:	
	:	Certified-Questions-of-State-Law from
Netflix, Inc. and Hulu, LLC,	:	the U.S. Northern District of Ohio,
	:	Eastern Division; No. 1:20-cv-01872-JG
Petitioners.	:	
	:	

APPENDIX TO MERIT BRIEF OF RESPONDENT CITY OF MAPLE HEIGHTS, OHIO

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IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

CITY OF CREVE COUER)

Plaintiff,)

v.)

NETFLIX INC ET AL)

Defendant.)

Case No. 18SL-CC02819

DIV 18

FILED
12/30/20
JOAN M. GILMER
CIRCUIT CLERK
ST. LOUIS COUNTY, MO

ORDER

Defendants, Netflix, Inc. (“Netflix”) and Hulu, LLC (“Hulu”), both filed Motions to Dismiss Plaintiff City of Creve Couer’s Second Amended Petition in matter and Plaintiff filed their responses. The court heard argument on these Motions on August 19, 2020 and the court being fully apprised in the matter does find as follows:

1. The City of Creve Coeur, Missouri (“Creve Coeur” or “Plaintiff”) is a lawfully existing Missouri municipal corporation and home rule charter city within the meaning of Mo. Const. art. VI, sec. 19; § 82.010, RSMo, et seq. and all other applicable laws, and it has been at all times during the preceding five years. Creve Coeur is located in St. Louis County, Missouri. Plaintiff represents a proposed class that includes at least 40 Missouri municipalities.
2. Defendant Netflix is a Delaware limited liability company with its headquarters in California and with a registered agent in St. Louis County. Netflix’s primary business is its streaming service, through which customers can access a library of films and television programs. Netflix does business in Missouri, including in Creve Coeur, and has done so at all times during the preceding five years.

3. Defendant Hulu is a Delaware limited liability company with its headquarters in California. Similar to Netflix, its primary business is its streaming service, through which customers can access a library of films and television programs. In addition, Hulu also offers online streaming of live video programming. Hulu does business in Missouri, including in Creve Coeur, and has done so at all times during the preceding five years.
4. The VSPA became effective in 2007 and stipulates that a Missouri municipality can collect a fee (“the Fee”) from a video service provider. The VSPA defines a “video service provider” as “any person that distributes video service through a video service network pursuant to a video service authorization.” Mo. Rev. Stat. §§ 67.2677(17).
5. The VSPA defines “video service” as “the provision of video programming provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology whether provided as part of a tier, on demand, or a per channel basis.” Mo. Rev. Stat. §§ 67.2677(14).
6. The VSPA defines “video programming” as “programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20).” Mo. Rev. Stat. §§ 67.2677(13). Notably, the VSPA exempts from fees “any video programming solely as part of and via a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.” Mo. Rev. Stat. §§ 67.2677(14).
7. The VSPA defines “video service authorization” as “the right of a video service provider or an incumbent cable operator, that secures permission from the public service commission... to offer video service to subscribers in a political subdivision.” Mo. Rev. Stat. §§ 67.2677(15). Further, the Act states that the Missouri Public Service Commission

(“MPSC”) “shall have the exclusive authority to authorize any person to construct or operate a video service or offer video service” and video service providers “must obtain a video service authorization prior to commencing the provision of video service.” Mo. Rev. Stat. §§ 67.2679(4). Neither Netflix nor Hulu have obtained nor been asked by the MPSC to obtain authorization as a video service provider.

8. The VSPA defines “video service network” as “wireline facilities, or any component thereof, located at least in part in the public right-of-way that deliver video service, without regard to delivery technology, including Internet protocol technology or any successor technology.” Mo. Rev. Stat. §§ 67.2677(16).
9. Plaintiff alleges that Netflix uses a delivery network called “Netflix Open Connect” to deliver 100% of its video traffic. Netflix creates Open Connect Appliances (“OCA”s) which store Netflix’s video content. From there, Netflix provides the OCAs to qualifying ISPs and the OCAs are deployed directly inside the IPA networks. The ISP partner then uses the OCA to provide video content to Netflix customers. Close to 90% of Netflix’s global traffic is delivered via these direction connections between OCAs and the ISPs Netflix customers use to access the internet. Netflix has placed Open Connect servers in nearly 1,000 separate locations, with multiple locations in Missouri. Netflix has also placed OCAs in other locations where they can be connected directly to an ISP’s privately-owned network facility.
10. Hulu similarly uses delivery networks to deliver its content to consumers, and the Plaintiff alleges that the basic principles remain the same as Netflix’s Open Connect system. Hulu places its video content onto servers either inside of or directly connected to an ISP, and from there, the ISP directly delivers the content to a customer.

11. Based on these facts, the Plaintiff seeks to require the Defendant to abide by the VSPA and pay associated fees to the municipalities. The Plaintiff's Petition contains three counts Count I: Declaratory Judgment, Injunctive Relief, and An Accounting, Count II: Unjust Enrichment, and Count III: Unpaid Fees, Interest, and Penalties
12. Missouri's Declaratory Judgment Act specifically empowers this Court to "declare rights, status, and other legal relations" under statutes and municipal ordinances. *See* § 527.020, RSMo; § 527.010, RSMo. Missouri case law holds that Circuit Courts possess "exclusive" jurisdiction over claims that are equitable in nature. *First Nat. Bank of Kansas City v. Mercantile Bank & Trust Co.*, 376 S.W.2d 164, 168 (Mo. banc 1964) ("[I]t is the rule in this state that the circuit courts inherently, traditionally and historically have had exclusive, original jurisdiction in what has been termed 'purely equitable matters.'"); *State of Missouri ex rel. R-1 School Dist. Of Putnam Cty. V. Ewing*, 404 S.W.2d 433, 440 (Mo.App. 1966) ("[E]xclusive original jurisdiction of suits for a declaratory judgment is vested in the circuit courts").
13. A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.
14. The petition must invoke "substantive principles of law entitling plaintiff to relief and ... ultimate facts informing the defendant of that which plaintiff will attempt to

establish at trial.” *State ex rel. Union Elec. Co. v. Dolan*, 256 S.W.3d 77, 82 (Mo. banc 2008).

15. The Plaintiff’s petition contains sufficient allegations of fact to support its claim that the Defendants are a “video service provider” as defined by the VSPA. To be a “video service provider,” the Defendants must distribute video service through a video service network pursuant to a video service authorization. The Plaintiff alleges that the Defendants use wireline facilities located at least in part in the public right-of-way. These facts satisfy the VSPA’s definition of a “video service network.” Defendants do not seriously contest this issue.
16. Thus, the remaining inquiries to determine if the Defendants are “video service providers” are 1) do Defendants distribute “video service” as defined by the Act; and 2) do they do so pursuant to a video service authorization.
17. To provide “video service,” the Defendants must first provide “video programming,” defined as “programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20).” Mo. Rev. Stat. §§ 67.2677(17).
18. In 1992, the FCC interpreted that this definition refers to what constituted broadcast television programming in 1984. 7 FCC Rcd. 5781 at ¶ 74 (1992). While such programming is usually linear and multichannel, the FCC has determined that “video-on-demand images can be severed from the interactive functionalities and thereby constitute video programming.” 10 FCC Rcd. 244 at ¶¶ 103–111 (1994).
19. Plaintiff’s petition contains facts sufficient to support its allegations that the Defendants’ streaming service is “video programming” comparable to broadcast television

programming. Plaintiff alleges that Defendants' services include "copyrighted television shows, movies, documentaries, and other programming" – all of which are the type of programming that constituted much of television programming in 1984. Specific to Hulu, Plaintiff also alleges that Hulu provides live programming in addition to its on-demand offerings.

21. Defendants point to *Kentucky v. Netflix Inc.* in which a Kentucky Circuit Court recently held that Netflix's streaming service could not be considered programming comparable to that of a television broadcast station. *Kentucky v. Netflix Inc.*, No. 15-CI-01117, slip op. at 15 (Ky. Cir. Ct. Aug. 23, 2016). In that case, the court upheld a Kentucky Board of Tax Appeals' ("KBTA") decision that Netflix's streaming service was not a "multichannel video programming service," defined in the Kentucky statute as "programming provided by or generally considered comparable to programming provided by a television broadcast station and shall include but not be limited to:

- (a) Cable service;
- (b) Satellite broadcast and wireless cable service; and
- (c) Internet protocol television provided through wireline facilities without regard to delivery technology."

Id. at 4. The court highlighted that "Netflix's streaming service does not include the concept of channels. Netflix's content is not linear or sequential programming; the customer selects what to view and when." *Id.* at 14. Further, the court noted the Netflix's lack of live content, the personalized algorithms used for individual customers, and the ability of customers to search by actor, director, title, and cinematic style. *Id.* Contrary to traditional television services, the court

noted, Netflix enables its customers to “craft an entirely unique... personal profile and viewing experience.” *Id.*

20. While the cases are similar, there are a few relevant distinctions that prevent an application of the Kentucky court’s reasoning in this Motion to Dismiss. First, the VSPA considers a television broadcast’s programming as set forth in 47 U.S.C. Section 522(20). The Kentucky statute makes no such reference to 47 U.S.C. Section 522(20). Thus, the FCC’s determination that “video-on-demand images can be severed from the interactive functionalities and thereby constitute video programming” is not relevant in the Kentucky case as it is here. In fact, the KBTA used the dictionary definition of “programming” in its decision.
21. Further, the VSPA included in its definition of video service the provision of video programming “including Internet protocol technology whether provided as part of a tier, on demand, or a per channel basis.” The “on demand” language in the VSPA makes inapplicable the Kentucky court’s reasoning that streaming services’ nonlinear programming, lack of live content, and absence of channels differentiated streaming services from programming provided by a television broadcast station. Notably, the Kentucky General Assembly has since updated the act in question to include “on-demand programming” and “video streaming services” in its definition of a “multichannel video programming service,” suggesting that the inclusion of “on-demand” is a meaningful differentiator in the definition of “video programming.”
22. Defendants contend that their streaming services cannot be considered a “video service” because the Act’s definition of “video programming” does not include “any video programming provided solely as part of and via a service that enables users to access

content, information, electronic mail, or other services offered over the public internet.”

Mo. Rev. Stat. §§ 67.2677(14).

23. Plaintiff has alleged facts sufficient to support its allegation that streaming services do not fall within this exception because they do not provide their video programming over the public internet. The Plaintiff highlights the Defendants’ content-delivery systems that operate by keeping the video programming within or directly connected to the private network of local ISPs, who from there deliver the streaming content to the subscribers directly. These facts support Plaintiff’s assertion that Defendants’ provision of video programming bypasses the “public internet.” While Defendants state that this ISP-subscriber connection is over the public internet, the legal standard requires that the plaintiff be granted “all reasonable inferences” and that no attempt is made to deduce whether the plaintiff’s facts are “credible or persuasive.” *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 464 (Mo. banc 2001).¹ As such, Plaintiff has alleged facts to satisfy this conclusion that the Defendants provide their video programming over the public internet.
24. Defendants argue that are not video service providers because they do not have – and the MPSC has never required them to have – “video service authorization.” Thus, Defendants

¹ Even if the Defendants’ streaming services were offered over the public Internet, the plain language of the VSPA points to the conclusion that this exception should not apply in this case. To fall under the exception, the video programming must be “provided solely as *part of* and via a service.” (Emphasis added). The Defendants’ video programming is not “part of” a broader service - it is the entirety of the service. The opposite interpretation would render the “part of” phrase obsolete here, the most logical reading of the statute is that the service, in addition to video programming, must also have additional “content, information, electronic mail, or other services.”

The Defendants’ video programming cannot be “part of” a service that enables users to access content, information, electronic mail, or other services” if it is the sole feature offered by the service.

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argue, they are not a video service provider because they do not distribute video service “pursuant to a video service authorization.”

25. However, the language of the Act seems to refute this argument. First, the Act suggests that “video service authorization” is not actually necessary to be considered a “video service provider.” The VSPA defines “Video service authorization” as “the right of a video service provider... that secures permission from the public service commission pursuant to sections 67.2675 to 67.2714, to offer video service to subscribers.” Mo. Rev. Stat. §§ 67.2677(15). Thus, the lack of a video service authorization does not mean a company is not a video service provider, it just means they lack the right to offer video service to subscribers.
26. It is unreasonable to conclude that the legislature intended that a video service provider could avoid paying the Fee by simply choosing not to register. Failing to apply for a state-issued video service authorization would simply be a violation of the Act’s stipulation that no “person shall commence providing video service” until they have “obtained... an authorization.” Mo. Rev. Stat. §§ 67.2679(3).
27. The Act appears to place the onus on the video service providers, not the MPSC, to obtain a video service authorization. “Any person seeking to commence providing video service... shall file an application for a video service ... with the public service commission.” Mo. Rev. Stat. §§ 67.2679(5)
28. Defendants contend that they could not receive authorization even if they wanted to because the “internet-based Streaming Service cannot comply with many of the Act’s requirements, which are unquestionably designed to apply to cable operators.” This contention misconstrues the VSPA, as the “requirements” cited by Defendants are not

mandatory at the time of application and indeed may never be mandatory. Rather, they are potential requirements that a franchise entity *may or may not* require an authorized video service provider to meet upon ninety days' notice. Mo. Rev. Stat. §§ 67.2692(2). Defendants do not have to comply with these potential requirements to receive authorization.

29. The Internet Tax Freedom Act ("ITFA") bars discriminatory taxes on electronic commerce and defines such a tax as one that "is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information...." ITFA, Pub. L. No. 105-277, § 1100, 112 Stat. 2681-719 (1998) (codified at 47 U.S.C. § 151 note). The Defendants argue that the Plaintiff's interpretation of the Act would violate the ITFA by imposing the Fee on Netflix and Hulu without imposing it on similar services, specifically broadcast television stations.²
30. Defendants note the seemingly contradictory nature of Plaintiff's argument: that the video programming of Netflix and Hulu is "comparable" to that of a television broadcast station, yet the streaming services are not "similar" to a television broadcast station for purposes of the ITFA. However, the language of the VSPA itself reconciles the two contentions.
31. In the VSPA, "video programming" is a single component among many that form the definition of a "video service provider." The Defendants' video *programming* being comparable to the programming of a television broadcast station does not necessitate that

² Plaintiffs contend that the ITFA does not apply because the Fee is not a "tax" under the ITFA. However, because the Plaintiff argued that the Fee was a tax to avoid federal jurisdiction, this memo will assume that the Fee is indeed a tax.

the Defendants' video *service* is comparable to that of a television broadcast station. As the VSPA fees apply to video service providers, the inquiry under the ITFA is whether the Defendants' service is "similar" to the service provided by a television broadcast station.


32. The legislative of the ITFA and technologically neutral wording of the VSPA suggests that they are not. Particularly, the purpose of the ITFA was to prevent taxes that specifically targeted electronic commerce.³ The VSPA is technologically neutral; it does not specifically target electronic companies just video service providers who use the public right-of-way.
33. The Plaintiff alleges that the Fee is indeed implied to other providers of TV such as Charter, Comcast, and AT&T.
34. The Plaintiff does not have an exclusive and adequate remedy at law sufficient to hold Plaintiff's requested relief inappropriate and unavailable. Defendants' argument that § 67.2691 of the VSPA prohibits the Plaintiff from seeking equitable relief fails because the remedy available to the Plaintiff under § 67.2691 is neither adequate nor exclusive. § 67.2691 of the VSPA stipulates that "[a]ny suit with respect to a dispute arising out of or relating to the amount of the video service provider fee allegedly due to a franchise entity under § 67.2689 shall be filed by the franchise entity seeking to recover an additional amount alleged to be due... in a court of competent jurisdiction within two years following the end of the quarter to which the disputed amount relates."


³ "The bottom line is that the Internet Tax Freedom Act applies only to those taxes that are not technologically neutral. Only those taxes that single out the Internet would be affected, and every business in America would still have to pay its share of taxes." 144 Cong. Rec. S4625-01 at S4625, 1998 WL 232553 (05/11/98).

35. Section 67.2691 is not the exclusive remedy available to the Plaintiff. Plaintiff is not contesting the amount of the Fee but rather the total noncompliance of the Defendants, the remedy that the Plaintiff seeks is best afforded under § 67.2711, which provides that the court shall issue “a cure” in the event that a “video service provider is found by a court of competent jurisdiction to be in noncompliance” with any section of the statute.
36. Further, § 67.2691 does not address the crux of the issue in this case: whether or not the Defendants are actually “video service providers” as defined by the VSPA. The ability to conduct an audit or contest the “amount” allegedly owed from a video service provider does not address Plaintiff’s desire to determine whether or not the VSPA applies to the Defendants at all.
37. Collecting under this statute would potentially require the Plaintiff to enact successive debt actions to recover future payments from the Defendants. Judge Jamison of this court recently noted that a remedy at law requiring a plaintiff to bring successive actions is “plainly inadequate” and “a waste of judicial resources.” *Collector of Winchester v. Charter Comm’s, Inc.*, Nos. 10SL-CC02719, 10SL-CC03687 (St. Louis Co., Mo. Sept. 29, 2017).

Wherefore, the Court finds that the Plaintiff has alleged facts sufficient to support its allegations that the Defendants are Video Service Providers under the VSPA, the Internet Tax Freedom Act (“ITFA”) does not apply, and the Plaintiff does not have a clear remedy at law, this Court does deny both Defendants’ Motions to Dismiss.

SO ORDERED:


Judge


Division 18

December 30, 2020

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CITY OF MAPLE HEIGHTS, OHIO, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

NETFLIX, INC., and HULU, LLC,

Defendants.

Case No. 1:20-CV-01872

Hon. James S. Gwin

Magistrate Judge Thomas M. Parker

EXPERT REPORT OF DAVID J. MALFARA, SR.

Dated: April 19, 2021

INTRODUCTION

1. This expert report (“Report”) summarizes my present opinions formed in the above-captioned matter. I am more than 18 years of age and am competent to testify. I have personal knowledge of the facts contained in this Report.
2. My name is David J. Malfara, Sr. and my business address is 1430 Flores Court, Trinity, Florida 34655. For more than 40 years I have been an active participant in the continuing evolution of the telecommunications and broadband industries, as a founder, an operating practitioner of, and an investor in several service provider companies and as a management, operations, and engineering consultant to broadband and communications service providers.
3. I have provided business case analysis, strategic planning, operations and finance optimization, and emerging technology consultation to a wide variety of service provider and capital markets organizations. I have held executive management and engineering management positions in leading technology companies, most recently as principal designer and Chief Operating Officer of TransWorld Network, Corp., an organization deploying hundreds of millions of dollars’ worth of optical fiber broadband networks in rural America.
4. Attached to this Report as **Exhibit 1**, is a description of my qualifications and relevant experience. In brief summary, I am the Chief Executive Officer of Big Bang Broadband LLC, a business strategy, management, operations, and emerging technology consulting company. I am a senior member of the Institute of Electrical and Electronics Engineers (“IEEE”), and a member of the Federal Communications Bar Association (non-attorney).
5. I am also a former FCC-appointed, voting member of the National Number Portability Working Group of the North American Numbering Council (“NANC”).¹ The NANC is a Federal Advisory Committee that was created to advise the FCC on telephone numbering issues and to make recommendations that foster efficient and impartial number administration. I also sat on the NANC’s Local Number Portability Administration Transition Oversight Subcommittee,² which assisted in the transition of the nation’s Local Number Portability Administrator from *Neustar* to *iconectiv*. I am a former member of the ATIS/SIP Forum *Internet Protocol Network-to-Network Interconnection*

¹ See *FCC Announces North American Numbering Council Issue-Specific Working Groups Membership*, CC Docket No. 92-237, available at: https://apps.fcc.gov/edocs_public/attachmatch/DA-18-106A1.docx and *NANC Referral Letter*. Available at http://www.nanc-chair.org/docs/mtg_docs/Dec17_NANC_Referral_NNP.pdf

² From its Mission Statement: “The Local Number Portability Transition Oversight Subcommittee, formerly the Local Number Portability Administration Working Group (LNPA WG), is the body that makes the decisions and recommendations that form the basis of the regulatory orders issued by the FCC pertaining to LNP. The LNPA WG is also responsible for the business functionality of the national LNP system and how Service Providers inter-operate with it. Therefore, the activity of the LNPA WG has a direct bearing on the processes and systems that each Service Provider uses to participate in Local Number Portability.” See <https://www.numberportability.com/industry-info/lnpa-working-group/>

*(IP-NNI) Joint Task Force.*³ The IP-NNI Joint Task Force is an FCC-recognized cooperative effort between the Alliance for Telecommunications Industry Solutions (ATIS)⁴ and the SIP Forum⁵ to define specifications to support Service Provider to Service Provider Internet Protocol Interconnection and Routing for voice communication (*i.e.* telephone calls) and, eventually, other forms of communication. The Task Force is comprised of telecommunications technical experts representing a range of telephony service providers and suppliers, both large and small, which serve both consumers and businesses.

6. I have taught courses for several years at the annual educational program for state public utility commissioners and their staff, presented by Michigan State University | Institute of Public Utilities, and have served as a guest lecturer at the University of Pittsburgh | Graduate Telecommunications & Networking Program, and in the same capacity at the Massachusetts School of Law. I was a faculty member of the Law Seminars International conference⁶ co-sponsored by Davis Wright Tremaine and Microsoft where “Advanced Strategies for Legal, Business and Technology Issues” were presented.
7. I served for several years as a director and executive committee member of COMPTTEL (now INCOMPAS), a national public policy advocacy association for the competitive communications industry. In that capacity, and others, I have represented the interests of competitive service providers before members of the U.S. Congress and Administration as well as the Federal Communications Commission (FCC) and many state commissions.
8. I have served on the executive advisory boards of several U.S. communications service providers. I am a council member of Gerson Lehrman Group, Inc. (GLG) and provide subject matter expertise on matters pertaining to the telecommunications and broadband industries to GLG clients in the investment banking sector.

³ IP-NNI Joint Task Force, See http://www.atis.org/01_strat_init/IP-NNI/index.asp

⁴ The Alliance for Telecommunications Industry Solutions (ATIS) is a Standards Development Organization (SDO) for the telecommunications and broadband industries. ATIS is accredited by the American National Standards Institute (ANSI). The organization is the North American Organizational Partner for the 3rd Generation Partnership Project (3GPP), a founding Partner of the oneM2M global initiative, a member of the International Telecommunication Union (ITU), as well as a member of the Inter-American Telecommunication Commission (CITEL). See <http://www.atis.org/>

⁵ The SIP Forum is an industry association with members from the leading IP communications companies. Its mission: “To advance the adoption and interoperability of IP communications products and services based on SIP.” See <https://www.sipforum.org/>

⁶ See <https://www.lawseminars.com/webpdfs/15CLOUDWA.pdf> My presentation, “Access to the Internet: Prerequisite for the Cloud – How the telecommunications industry is evolving to support data in fiber backbone facilities for internet traffic; the trend towards large data center developers, providers privatizing their infrastructure and the need for edge and CDN applications” spoke to the exact subject matter of this case.

9. Within the past four years, I have provided expert testimony in litigation before the United States District Court For The Middle District Of Florida Orlando Division, Local Access, LLC - Plaintiff, Counterclaim Defendant vs. PEERLESS NETWORK, INC. - Defendant, Counterclaim Plaintiff vs. Blitz Telecom Consulting, LLC - Counterclaim Defendant, Civil Action No. 6:17-cv-00236-PGB-TBS, retained by Local Access, LLC/Blitz Telecom Consulting, LLC.
10. I am submitting this Report in conjunction with Plaintiff's motion for class certification. I understand that discovery in the litigation is ongoing, and information developed during discovery may require me to update or modify the opinions expressed in the Report and/or supply additional or rebuttal reports between now and when this case goes to trial. Specifically, I reserve the right to supplement or amend my opinions on or before the final deadline for disclosure of expert opinions. I may also develop aids for demonstration consistent with this Report, as it may be updated, for use at trial.
11. I have authored numerous publications in the past 10 years, as listed in Exhibit 1.
12. I am being compensated for all time spent in this matter at my regular hourly rate of \$350 plus expenses. My compensation is not contingent on the outcome of this matter.
13. In preparing this report, I have relied on the materials listed in Exhibit 2.

PURPOSE OF THIS REPORT

14. I have been asked by Plaintiff's counsel ("Counsel") to describe the sources, methods, and physical routing of Hulu and Netflix subscription-oriented video programming, as it is conveyed from the originating server to the requesting subscriber. Although I am submitting this report in conjunction with the City of Maple Heights, Ohio's above-captioned action, all of my opinions herein apply equally to transmission of Hulu and Netflix subscription-oriented video programming to subscribers located in all municipalities and counties in the State of Ohio, as well as nationwide. To the extent that I refer specifically to subscribers in Maple Height, Ohio, such references are illustrative.

BACKGROUND

15. The broadband industry is a technology-based industry. As a technology-based industry, it is subject to technological evolution and change. Over the years, many of these changes—along with a massive increase in traffic volume—have given rise to a need for alternative methods of content delivery to subscribers. Despite these changes, however, all such wireline methods of content delivery rely on transmission of high-speed data over publicly-owned rights of way.
16. Network and content providers have constantly searched for better ways by which content (including video content) can be transported, stored, and then routed to reach a requesting subscriber. These alternative methods of delivery were born from a desire to maximize the efficient use of collective resources. However, they have evolved to take advantage of the nation's subscribers' rapid migration from those legacy video content

provider services—such as those received through a cable service subscription—to subscriptions offered by video content providers such as Hulu and Netflix.

17. This migration has not only shifted the delivery and consumption of professionally produced video content; it has shifted the revenue model as well. While video content in the not-so-distant past was provided as a component of a subscriber “service bundle” offered by the company who owned the facilities these services transited, modern subscribers are foregoing these bundles, choosing instead to purchase alternative, *à la carte* video content subscriptions offered by video content providers such as Hulu and Netflix.
18. Importantly, this video content transits the same types of *physical* networks as its legacy predecessors. The same optical fiber, or the same evolving transmission medium of choice, is used to optimally transmit all manner of digital traffic. That traffic may include public Internet traffic, but also includes paid subscription traffic tunneled through the Internet (but not part of the public Internet) or proprietary traffic that does not touch the public Internet at all.
19. The one thing that each of these wireline networks has in common, however, is that all of them, in whole or in part, use physical routes that transit public rights-of-way.
20. In this report (“Report”), I describe the sources, methods, and physical routing of Hulu and Netflix subscription-oriented video programming, as it is conveyed from the originating server to the requesting subscriber.

SUMMARY OF CONCLUSIONS

21. My Report shows that Hulu and Netflix subscription-oriented video programming transits wireline facilities owned by wireline ISPs and located at least in part in public rights-of-way. My Report also shows that the use of these rights-of-way by ISPs affords them the convenience of a common and documented pathway to their subscribers; one that is used by all other utilities who serve those same subscribers with other utility services such as electric, water, gas, and the like. Consequently, that all wireline ISP networks, in whole or in part, use public rights-of-way to optimize physical network deployment as well as to limit the risk of damage that would result from locating network facilities in undocumented routes and pathways under private contract.
22. My Report further shows that any service provided to those wireline ISP subscribers over those facilities—including Netflix and Hulu’s services—could not be provided without transiting the public right-of-way.
23. Finally, my Report shows that manipulation of network behavior so as to affect its performance relative to individual streams of data such as video programming may change the nature of the transmission vehicle for that information stream from the logical construct of the “public Internet” to one of a premium and private “Managed Network” with characteristics that are differentiated from, and not within the capabilities of the public Internet.

VIDEO CONTENT SOURCES AND DISTRIBUTION SERVERS

24. Video content providers such as Hulu and Netflix license video content from a number of sources at various rates and with various restrictions regarding how, when, and where that content can be delivered to subscribers. For the purposes of my Report, the creation of that content and the way in which video content providers acquire the rights to provide the content are not material.
25. What is material is the way in which the content is stored, its proximity to the requesting subscriber, and the facilities used to deliver the content to the requesting subscriber.
26. While direct interconnection from video content providers to their subscribers had been the norm in the past, video content delivery has evolved to include companies and systems created exclusively to optimize that delivery mechanism. This is generally achieved by moving the content as close as possible to the requesting subscriber.
27. By placing additional storage and routing infrastructure necessary to provide the content (*i.e.*, Content Servers) within close proximity of the requesting subscriber, the highest probability of a pleasing user experience can be achieved. The “Quality of Experience” (“QoE”) key performance indicator is a major yardstick by which subscribers grade video content providers.

CONTENT DELIVERY NETWORKS

28. *Content Delivery Network* (“CDN”)s providers such as Akamai, Swarmify, Rackspace, Limelight, and others provide this geographically-distributed array of servers containing copies of content in order to bring that content closer to subscribers, thereby mitigating the risks to transmission quality inherent in long-haul transmissions, including those spanning the country as well as the world. Some content providers go even further, building their own CDNs in order to have near-exclusive control over the quality of their content delivery.
29. Netflix, for example, has developed its own CDN infrastructure that it calls Open Connect.⁷ Open Connect architecture uses a “. . . global network of thousands of OCAs...” (“Open Connect Appliances”) to house its content.⁸ These OCAs are deployed in the two ways discussed below.

⁷ See Netflix, “Open Connect Overview”, Retrieved from : <https://openconnect.netflix.com/Open-Connect-Overview.pdf>, (*Open Connect Overview*)

⁸ *Id.*

30. OCAs are first deployed within Internet exchange points (“IX”s or “IXP”s)⁹ in markets around the world where Netflix has captured a significant market share of subscribers. The OCAs are interconnected with Internet Service Providers (“ISPs”), through settlement-free public or private peering (“SFI”).

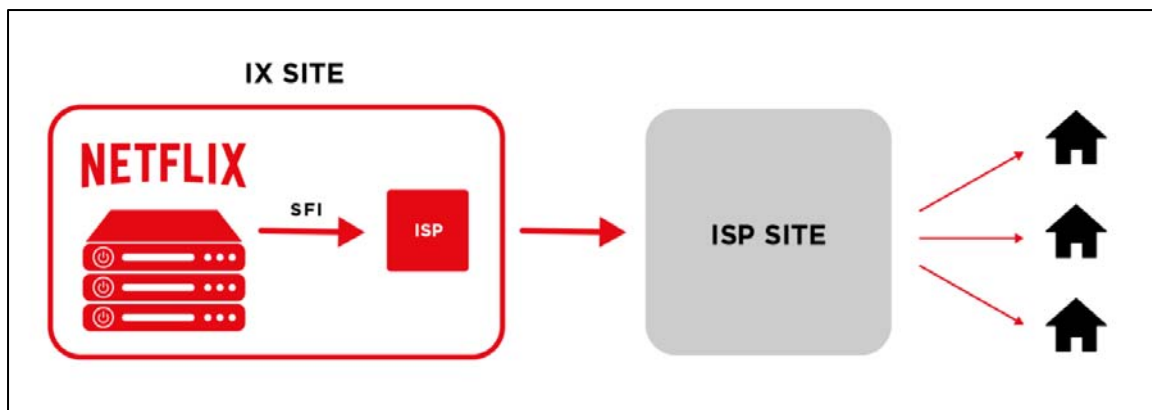


Figure 1: Netflix OCA interconnection to Tier 1 ISP in IX site. Serves smaller downstream ISPs who ultimately serve subscribers.¹⁰

31. The second way that OCAs are deployed by Netflix is on an embedded basis with qualified ISPs. Qualified ISPs are ISPs whose traffic from Netflix to their subscribers is sufficient to warrant a Netflix video content server (an OCA) to be physically installed within the confines of the ISP’s own network, often within the ISP’s data center building.
32. So located, these OCAs move the content even closer to the subscriber. Noteworthy is the fact that Netflix represents that qualified ISPs also maintain interconnection to the Netflix global CDN in order to ensure optimized “fill” activities with new content and to direct traffic to alternative OCAs located elsewhere in the event Netflix determines that the embedded OCA(s) are not viable due to lack of availability or insufficient performance.

⁹ Internet Exchange Points are physical locations where service and content providers agree to collocate, in order to reduce the cost and performance risk of interconnection, necessary in order to exchange traffic.

¹⁰ See *Open Connect Overview*

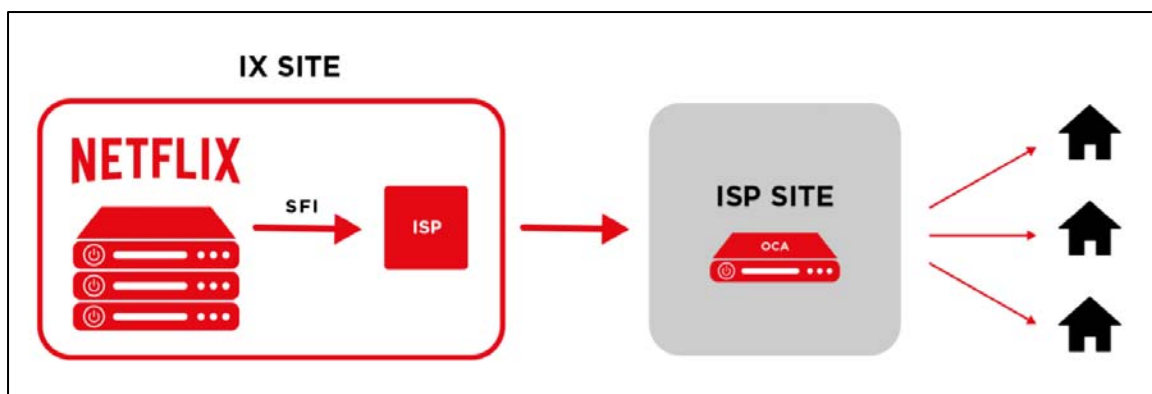


Figure 2: Netflix OCA interconnection to Tier 1 ISP in IX site, and also to smaller, qualified ISP site who ultimately serves subscribers.¹¹

USE OF PHYSICAL ROUTES AND PATHS FOR TRANSMISSION OF INFORMATION FLOWS

33. Netflix explains that the Netflix CDN ultimately relies on routing decisions made by its AWS control layer,¹² in order to “steer”¹³ subscriber requests for content to use OCAs, routes, and paths that provide fast lane performance. This constitutes real-time network management and is normally only conducted by the network provider. Discovery in this case should disclose the full extent to which a Netflix OCA can influence or modify performance based on its routing decisions, choices, and manipulation of prioritization mechanisms made available between the OCA and the ISP resulting from its AWS control plane services in response to telemetry data collected and received from OCAs. Any such use of these mechanisms would take these information flows out of the realm of the “public Internet” which offers only a *best effort* grade of service, and place them squarely in a premium “Managed Network” classification with deterministic performance which the public Internet does not offer.
34. Deterministic performance in transmission networks is the result of controlling network behavior, with actions taken based on definitional parameters that can direct or “steer” traffic to alternative routes and resources in order to maintain a defined QoE. The “Internet” has no agreed-upon prioritization scheme to maintain deterministic performance for individual information streams, although the Internet protocol

¹¹ *Id.*

¹² *Id.* “Report their status to the Open Connect control plane services in Amazon Web Services (AWS). For example, they report health metrics, BGP routes they have learned from the BGP peer (router or switch) they have a configured BGP session with, and what files they have stored on disk.”

¹³ *Id.* “. . . Essentially, OCA servers only do the following two things:

- Report their status to the Open Connect control plane services in Amazon Web Services (AWS). For example, they report health metrics, BGP routes they have learned from the BGP peer (router or switch) they have a configured BGP session with, and what files they have stored on disk.
- Serve content via HTTP/HTTPS when it is requested by a client device.”

technology can support it. Such prioritization schemes are highly controversial for public networks such as the Internet, since it would allow preferential treatment of certain traffic over other traffic based on whatever criteria was agreed upon.

35. The FCC, in prior years, has expressed deep concerns regarding this issue in the Open Internet Proceeding,¹⁴ as well as in recent dialogue under the Biden Administration.¹⁵ Therefore, Netflix's deployment and real-time operation of its own CDN as a critical component of its service offering may, by itself, obviate Netflix's claimed use of the "public Internet" as its transmission vehicle. Nevertheless, any type of traffic quality "management," as described above, is out of scope for general "Internet traffic."
36. Internet traffic and Managed Network traffic can and do occupy the same physical facilities in every wireline ISP network which supports multiple types of data traffic (*e.g.* consumer and commercial traffic). Moreover, it is clear, even at this point, that neither Hulu nor Netflix can *prevent* a qualifying ISP (or any ISP, for that matter) from using facilities that, in whole or in part, transit public rights-of-way in any municipality where its subscribers reside. All wireline ISP networks, in whole or in part, use public rights-of-way to optimize physical network deployment as well as to limit the risk of damage that would result from locating network facilities in undocumented routes and pathways under private contract.

¹⁴ See Federal Communications Commission, "Open Internet Order". Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-15-24A1.pdf>

¹⁵ See Morrison S., "How Biden's FCC could fix America's internet", January 21, 2021. Retrieved from: <https://www.vox.com/recode/21557495/biden-fcc-digital-divide-net-neutrality-section-230>

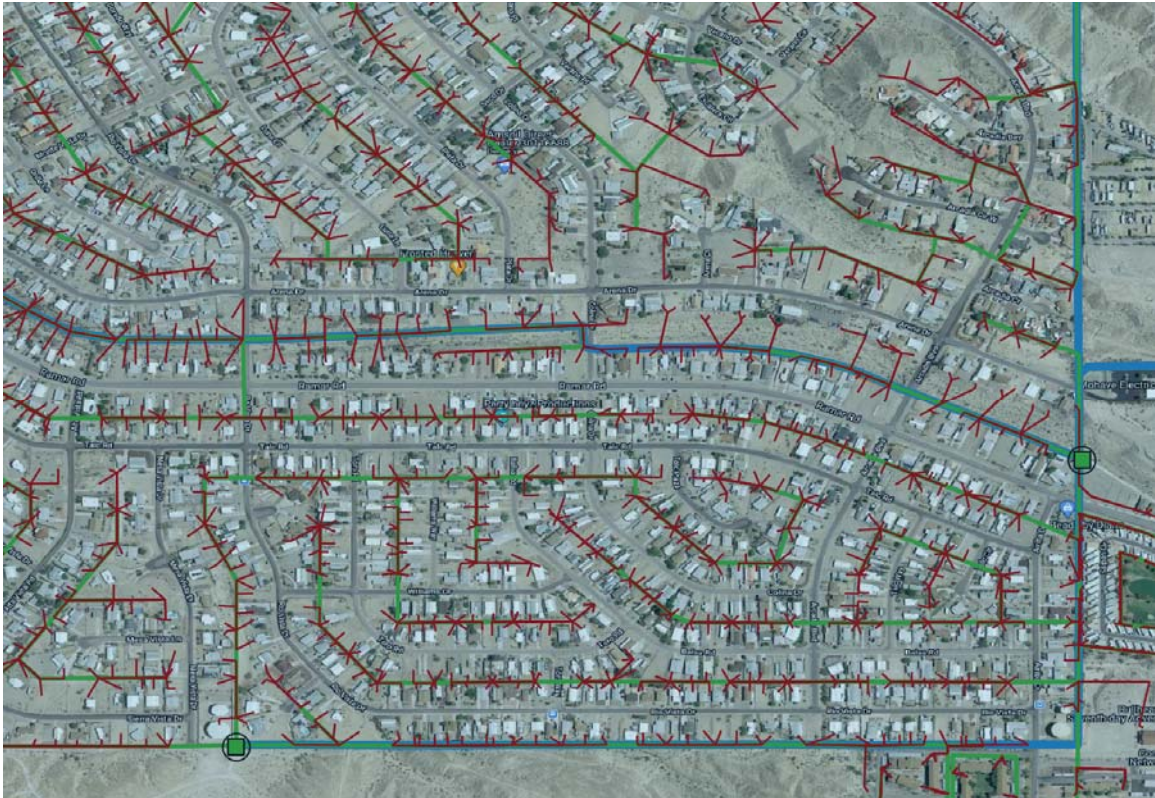


Figure 3: Typical wireline broadband network deployment in a community, showing use of public rights-of-way. Both Netflix and Hulu information streams transit these networks.

37. The historical use of public “rights-of-way” dates back to ancient times (4500 B.C.)¹⁶ when it was recognized that acquiring and using key areas, routes, and paths of contiguous land for public benefit was desirable.
38. In the United States today, there are almost 4,000,000 miles of public roadway. For more than 100 years, municipalities, counties, states, and the federal government have increasingly concluded that it was in the public interest to define and use a portion of the common land contiguous to these roadways to house public utilities such as gas, water, electricity, and, importantly, communications cables such as those needed to provide broadband access to the Internet to residents and businesses located along or reached via facilities traversing those rights-of-way.
39. Public rights-of-way are made available by municipalities, counties, states and other authorities for the primary purpose of organizing not only construction activities (*i.e.*, traffic disruption/control, public safety measures, etc.) but also to facilitate location services when work activity or catastrophic events require emergency response and

¹⁶ See Devaney, P – American Public Works Association: UPROW Committee, “Rights-of-Way Management” October 2001, pp. 2-1.

critical anchor institutions to use alternative paths and routes to re-establish utility services, communications, and the like.

40. In order to use these public rights-of-way for the placement and maintenance of facilities, the constructing party (e.g., an Internet Service Provider or “ISP”) must obtain approval by virtue of permits or franchise authorizations granted by state or local laws, statutes, or other legislative actions.¹⁷ The use of these rights-of-way by ISPs afford them, for a fee, the convenience of a common and documented pathway to their subscribers; one that is used by all other utilities who serve those same subscribers with other utility services such as electric, water, gas, and the like.
41. The alternative to these ISPs using public rights-of-way would be for those ISPs to negotiate separate land use contracts with each and every landowner over whose property the ISP must cross in order to provide its service. Because that would be an impractical endeavor, all wireline ISPs who serve subscribers along these rights-of-way use the rights-of-way as their common path of access to those subscribers. Therefore, any service provided to those wireline ISP subscribers over those facilities—including Netflix and Hulu’s services—could not be provided without transiting the public right-of-way.
42. Broadband networks (including CDNs) occupy and regularly traverse these rights-of-way. This includes physical networks that carry Internet as well as other traffic.
43. Regardless of whether their traffic is carried over the Internet or using some other, similar logical construct, neither Netflix nor Hulu construct these broadband networks. That means that they cannot prevent their information streams from occupying and/or regularly traversing these rights-of-way. In point of fact, it is impossible for Netflix’s and Hulu’s information streams to avoid public rights-of-way and still be conveyed over wireline facilities to a market of subscribers located in those municipalities.
44. Although Netflix’s traffic routing, using its Open Connect platform is described in its *Open Connect Overview* document, Hulu apparently has no such publication that describes its routing philosophy or methodology, other than to disclose that it uses a number of CDNs for transmitting video content to its subscribers. Insofar as these CDNs use ISP networks for final distribution of that content to subscribers—which, as discussed above, they unquestionably do—it is certain that for a given municipality that traffic, in whole or in part, traverses ISP facilities located in the public right-of-way. We expect that Defendants’ discovery responses will provide more insight into both Hulu’s and Netflix’s existing arrangements with CDNs and ISPs for network management and content delivery.
45. Nevertheless, Hulu has often represented that it uses a number of third-party entities, including CDNs, to distribute video programming to its subscribers. From the beginning, when Equinix announced its hosting of Hulu content,¹⁸ through Hulu’s evolution to using

¹⁷ *Id.* at 3-2.

¹⁸ See Equinix Investor Relations, “Equinix to Provide Data Center and Connectivity Infrastructure for Hulu's New Online Video Service”, March 17, 2008, Retrieved from:

Akamai, Limelight, and Level3 CDNs,¹⁹ and its disclosure²⁰ by its own Chief Architect that it now has the capability to offer “live TV,”²¹ just like older cable companies provide, Hulu is rapidly presenting itself as a cord-cutting alternative.

46. Importantly, Hulu offers all of its video programming over ISP networks that predominantly subsume the use of wireline facilities located at least in part in public rights-of-way. Like Netflix, Hulu depends upon these ISPs to carry its traffic to its final destination over facilities capable of maintaining its all-important QoE. The most capable transmission medium on the planet with this capability is optical fiber,²² which, to serve the entire Ohio market, including Maple Heights, Ohio, is necessarily located at least in part in public rights-of-way, for the reasons described earlier in this Report.

This concludes my Report.

Executed, this the 18th day of April, 2021.

David J. Malfara, Sr.

David J. Malfara, Sr.

<https://investor.equinix.com/news-releases/news-release-details/equinix-provide-data-center-and-connectivity-infrastructure>

¹⁹ See V. K. Adhikari, Y. Guo, F. Hao, V. Hilt and Z. Zhang, "A tale of three CDNs: An active measurement study of Hulu and its CDNs," 2012 Proceedings IEEE INFOCOM Workshops, Orlando, FL, USA, 2012, pp. 7-12, doi: 10.1109/INFCOMW.2012.6193524., Retrieved from: <https://ieeexplore.ieee.org/document/6193524>

²⁰ See McVeigh A. - Principal Architect, “Introducing the Hulu Technical Landscape”, October 12, 2017, Retrieved from: <https://medium.com/hulu-tech-blog/introducing-the-hulu-technical-landscape-93f4c136c568>

²¹ See Hulu Live TV offering at <https://www.hulu.com/live-tv>

²² See Hecht J., “Optical Labs Set Terabit Transmission Records” April 14, 2020 IEEE Spectrum, Retrieved from: <https://spectrum.ieee.org/tech-talk/computing/networks/optical-labs-set-terabit-transmission-records>

EXHIBITS

1. Summary of Qualifications and Experience of David J. Malfara, Sr.
2. List of Source Material used in the preparation of this Report.

EXHIBIT 1

Big Bang Broadband LLC

1430 Flores Court • Trinity, Florida • 34655
(724) 396-0432 • dmalfara@bigbangbroadband.com

David J. Malfara, Sr.

Chief Executive Officer

Qualifications

David J. Malfara, Sr. is chief executive officer of Big Bang Broadband LLC (“BBB”). BBB is a business management and technology consulting company with significant experience in the management, operation and deployment of a wide range of business models using emerging technologies to support the successful operations of telecommunications and other broadband service providers. As its CEO, Mr. Malfara directs all strategic business/business line creation, modeling, planning and design, as well as development, adaptation and deployment of next-generation technologies and networks for BBB’s carrier, service provider and enterprise clients. Mr. Malfara assists and often directs client negotiations in forging interconnection agreements, wholesale services and inter-operability frameworks with other telecommunications and broadband service providers. He advises capital markets clients on valuation trends and directs and conducts due diligence efforts on behalf of those clients in M&A initiatives. Notable projects Mr. Malfara currently directs for clients of BBB include:

- Design, management and oversight of construction, and operational development of optical fiber broadband networks and operating company.
- Drafting financial, operational and technology models for client-carrier broadband deployment in several areas of the country, including urban, suburban, and rural areas and assisting client-carriers in the realization of those initiatives.
- Comprehensive traffic studies for Interconnected VoIP service providers, for the purpose of optimizing routing engines and minimizing regulatory surcharge assessments by eliminating the need to use “safe harbor” traffic categorizations, otherwise applicable.
- Research, testing and analysis of emerging optical fiber and wireless technologies for deployment readiness in carrier-client broadband networks.
- Concept creation and drafting of business and engineering criteria for landmark agreements governing shared ownership and use of optical fibers (using advanced channelization techniques) within municipal rights-of-way.

Prior to founding Big Bang Broadband LLC, Mr. Malfara served as Chief Operating Officer of TWN Communications. As COO, Mr. Malfara helped to lead TWN efforts to bring affordable broadband service to rural America. With a specialized focus on emerging business models made possible by new technologies, his expertise in deploying carrier-grade networks and optimized business

operations helped TWN in its efforts to erase the Digital Divide in some of the most remote areas of the country.

Prior to its acquisition by TWN, Mr. Malfara served as President/CEO at ETC Group, and led its efforts to support those clients who wish to understand legacy and emerging business models for various types of communication service providers. He advised clients on valuation trends and directed and conducted due diligence efforts on behalf of those clients in M&A initiatives. He advised service provider clients in developing strategies and business models based upon emerging technologies and the evolving needs of both commercial and consumer broadband customers. These efforts encompass wireline and wireless technologies and business strategies, as well as emerging operational frameworks such as Software-Defined Networking (SDN), Network Functions Virtualization (NFV) and Lifecycle Service Orchestration (LSO) among others.

Prior to ETC Group, Mr. Malfara served as president and CEO of Remi Communications, a next-generation Competitive Local Exchange Carrier (“CLEC”) operating in the Northeast US. Some of the more notable accomplishments Mr. Malfara directed at Remi include:

- Negotiated interconnection agreements/arrangements with ILECs while deploying facilities-based CLEC services in states throughout the northeast U.S.
- Deployed one of the first business models in the U.S utilizing carrier-class Ethernet in the First Mile (IEEE 802.3ah) metro networks to support commercial demand for private broadband networking.
- Designed/developed and deployed the business model and network, based upon emerging VPLS technology, to support the telecommunication needs of the company’s large-scale enterprise customers who desired exclusive and proprietary control of their Layer-3 (IP) domain.
- Built and led project management and product certification for proof-of-concept level research lab exploring emerging technology products in provider network Layer-2 access/transport architectures as well as Voice over IP (VoIP) and IMS application platforms.
- Negotiated and led initiatives wherein Remi acted as “Beta” carrier-customer for several network equipment vendors in testing technologies comprising access, transport and application systems.
- Led the Professional Services team that was awarded a contract to completely re-design the municipal fiber network of the City of Philadelphia in order to accommodate emerging requirements for growth in both scale and scope. Successfully presented network design based on WDM at Layer-1 and PBB (802.1ah) Layer-2 transport.

Prior to Remi, Mr. Malfara was the founding president of Z-Tel Network Services Inc. which in 2001, after only 18 months of operation, became one of the largest consumer-based CLECs in the U.S. with annualized revenues of more than \$300M and more than 340,000 subscribers. ZNS was the largest operating subsidiary of Z-Tel Technologies, Inc. (Nasdaq: ZTEL) which

launched a successful Initial Public Offering in late 1999. In early 2000, Z-TEL achieved a market capitalization in excess of \$1.2 Billion. During Mr. Malfara's tenure at Z-TEL, he:

- Created, deployed and managed a successful (and one of the largest scale) business model for a nation-wide Competitive Local Exchange Carrier operating under the newly enacted Telecommunications Act of 1996.
- Built and led the executive team that built a 2400 employee work force from zero, including all network design and business operational support systems to handle a workflow of more than 22,000 telecommunications services orders per month.
- Negotiated and operated under one of the first Inter-connection Agreements (ICAs) with Regional Bell Operating Companies under the newly passed Telecommunications Act of 1996.
- Participated in many national public policy initiatives to promote a pro-competitive telecommunications regulatory environment in federal and state venues.

Before Z-TEL, Mr. Malfara served as Chairman/CEO of Pennsylvania Alternative Communications, Inc. and its two operating subsidiaries, Pace Long Distance Service and Pace Network Services. Formed in 1983, shortly after the Divestiture of AT&T, Pace Long Distance began as a regional long distance company in the Pittsburgh, Pennsylvania area and grew to a nationwide company serving thousands of residential and business customers throughout the U.S. prior to its sale to LCI International (Qwest -> CenturyLink) in 1997. Pace Network Services began operations in 1994 as a provider of SS7 signaling services (ISUP & TCAP) to the inter-exchange carrier (IXC) market and grew to be the largest provider of SS7 STP services to that carrier community with more than 100 carrier-customers prior to its sale to ICG Telecom Group (now Level3) in 1997. Noteworthy during Mr. Malfara's 14 years as CEO of Pennsylvania Alternative Communications, Inc. are these accomplishments:

- Created one of the first post-divestiture, competitive long distance companies using the newly-introduced ENFIA and, later, Feature Group D access services of the Local Exchange Carriers ("LEC"s) in order to achieve parity ("equal access") to AT&T in providing long distance telephone services.
- Launched Toll-free Portability services for commercial customers using the newly created SMS Database for toll-free long distance services as a "RespOrg" (certified Responsible Organization).
- Deployed Advanced Intelligent Network (AIN) services within the network using Digital Switch Corporation (now Alcatel-Lucent) Intelligent Peripheral platform.
- Created and deployed nationwide, wholesale SS7 signaling network and business model.
- Negotiated and closed the sale (with federal and state regulatory approvals) of the two nationwide telecommunication carriers (PLD & PNS) to publicly traded acquirers.

Mr. Malfara also served in engineering and management positions at National Computer Corporation (NCC), Honeywell Information Systems, GTE Telenet, J. Preston Levis Regional

Computing Center (State of Ohio) and Gould, Ocean Systems Division – Advanced Technology Group (DoD contractor – MK48 project).

Mr. Malfara is a former advisor, and member of the Board of Directors and Executive Committee, of INCOMPAS (f.k.a. COMPTEL). Based in Washington, D.C., INCOMPAS is the leading industry association representing competitive communications service providers and their supplier partners. INCOMPAS members are entrepreneurial companies driving technological innovation and creating economic growth through competitive voice, video, and data offerings, as well as the development and deployment of next-generation IP-based networks and advanced services utilizing fiber, copper and wireless facilities. INCOMPAS advances its members' interests through trade shows, networking, education, and policy advocacy before Congress, the Federal Communications Commission, and the courts. Mr. Malfara served as the founding chair of INCOMPAS' Technology Task Force.

Mr. Malfara has served as a guest lecturer at the University of Pittsburgh, Graduate Program for Telecommunications and Networking, presenting such subjects as "Enabling Architectures for the Service Provider Network".

Mr. Malfara has been a regular faculty member of the annual regulatory studies program conducted by Michigan State University | Institute of Public Utilities Regulatory Research and Education. The program is designed specifically for commissioners and staff personnel of local, state, and federal agencies and nonprofit organizations involved in utility industry regulation, and attendance is open only to individuals working for governmental and public-sector organizations. Courses taught by Mr. Malfara at the program include "Evolution of IP Networks and Protocols", "Telecom Technologies and Business Models" and "Broadband Investment in Rural Areas".

Mr. Malfara is a senior member of the Institute of Electrical and Electronics Engineers, the IEEE Communications Society, the IEEE Information Theory Society and the IEEE Standards Association. He is a former member of the Alliance for Telecommunications Industry Solutions (ATIS) Industry Numbering Committee (INC), the ATIS Testbed Landscape Team and the ATIS Open Web Alliance. He is a current member of the SIP Forum and the ATIS/SIP Forum Joint IP-NNI Task Force. ATIS is a Standards Development Organization accredited by the American National Standards Institute (ANSI). ATIS is also the North American Organizational Partner for the 3rd Generation Partnership Project (3GPP), a founding Partner of the oneM2M global initiative, a member of and major U.S. contributor to the International Telecommunication Union (ITU), as well as a member of the Inter-American Telecommunication Commission (CITEL).

Mr. Malfara was a voting member of the former North American Numbering Council (NANC) Local Number Portability Administration Working Group. The Local Number Portability Administration Working Group (LNPA WG), prior to its dissolution in late 2017, was the body that makes the decisions and recommendations that form the basis of the regulatory orders issued by the FCC pertaining to LNP. He was recently appointed by the FCC as a voting member of the

NANC National Number Portability Working Group and the Local Number Portability Administration Transition Oversight Subcommittee.

Mr. Malfara is a member of the Federal Communications Bar Association (non-attorney) and its Engineering and Technical, Wireless Telecommunications and Wireline Committees. He occasionally serves as a faculty member of Law Seminars International CLE conferences including a recent conference co-sponsored by Davis Wright Tremaine and Microsoft at DWT headquarters in Seattle, Washington entitled “The Cloud and Big Data”, where “Advanced Strategies for Legal, Business and Technology Issues” were presented.

He is a Council Member of Gerson Lehrman Group, Inc. (GLG) and provides subject matter expertise on matters pertaining to the telecommunications and broadband industries to GLG clients. He also sits on the Executive Advisory board of multiple U.S. broadband service providers.

Mr. Malfara addresses a wide range of business, technical, regulatory, and legislative issues related to the broadband and telecommunications industries before members of the U.S. Congress and Administration as well as state and federal regulatory agencies. He frequently represents the interests of the competitive communications and broadband industries in discussions relative to technological evolution, and its impact on service provider business models and regulatory oversight, as a speaker, author and guest lecturer. His special areas of focus include communication service provider mergers and acquisition, valuation, industry valuation trending and other M&A due diligence activities, operational audit, strategic planning, emerging business models, emerging technologies, operational & financial performance optimization.

Expert Witness Engagements

In the past four years Mr. Malfara has testified as an expert witness in:

- LOCAL ACCESS, LLC, Plaintiff, Counterclaim Defendant vs. PEERLESS NETWORK, INC. Defendant, Counterclaim Plaintiff vs. BLITZ TELECOM CONSULTING, LLC, Counterclaim Defendant, In UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA ORLANDO DIVISION Civil Action No. 6:17-cv-00236-PGB-TBS. retained by Local Access, LLC/Blitz Telecom Consulting, LLC.

Publications

In the past ten years Mr. Malfara has authored the following publications:

- “PSTN Operational Quality Standards for Adaptation to VoIP” (October, 2016 – NASUCA)
- “The Future of Fiber and Advanced Networks” (February, 2016 – FISPA)
- “SDN/NFV-enabled Networks: The Dawn of Self-Actualized Communications” (October, 2015 – INCOMPAS)

- “To the Cloud – Access to the Internet” (April, 2015 – Law Seminars International, 2nd Annual Conference on The Cloud and Big Data)
- “Virtualizing the Network – SDN & NFV” (April, 2015 – COMPTTEL)
- “Broadband Investment in Rural Areas” (August, 2013/2014 - Michigan State University, Institute of Public Utilities)
- “Enabling Architectures – Protocols and Frameworks for Today’s Service Provider Networks” (August, 2013/2014 - Michigan State University, Institute of Public Utilities)
- “The Transition to an All-IP Network: A Primer on the Architectural Components of IP Interconnection” (May, 2012 - National Regulatory Research Institute)
- “Keeping Up with Emerging Technologies: The Impact of New Trends on Your Business” (October, 2011)
- “Facilities-Based First-Mile Strategies – An Adaptive Approach to Customer Access” (June, 2011)
- “IP Multimedia Subsystem (IMS) – The Carrier-Grade Challenge to OTT Services” (May, 2011)
- “IP Interconnection for Managed VoIP – Interconnecting Next Generation Network Service Providers” (April, 2011)

The above publications appeared in various trade journals, association-based conference media, websites and magazines. Mr. Malfara also authored or co-authored several documents filed with state regulatory commissions and the Federal Communications Commission in multiple proceedings, with some including whitepapers he has authored.

EXHIBIT 2

In preparing this Report, I have relied on my own operational, technological and managerial experience over the past 45 years and the materials listed below.

- Netflix, “Open Connect Overview”, Retrieved from : <https://openconnect.netflix.com/Open-Connect-Overview.pdf>
- Federal Communications Commission, “Open Internet Order”. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-15-24A1.pdf>
- Morrison S., “How Biden’s FCC could fix America’s internet”, January 21, 2021. Retrieved from: <https://www.vox.com/recode/21557495/biden-fcc-digital-divide-net-neutrality-section-230>
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CITY OF MAPLE HEIGHTS, OHIO,
individually and on behalf of all others similarly
situated,

Plaintiff,

v.

NETFLIX, INC., and HULU, LLC,

Defendants.

Case No. 1:20-CV-01872

Hon. James S. Gwin

Magistrate Judge Thomas M. Parker

EXPERT REPORT OF DAVID SIMON

Dated: April 19, 2021

I. INTRODUCTION

1. I have been engaged by the City of Maple Heights, Ohio (“Maple Heights”), through their counsel, to provide my expert opinion regarding those matters set forth in this report (the “Report”) in the above-captioned proceeding (the “Proceeding”).

2. Specifically, I have considered, and provided my opinions regarding:

(a) a comparison of television programming streaming on Hulu and Netflix versus television programming on broadcast, cable, and satellite channels;

(b) the categories and types of television programming transmitted via broadcast, cable, satellite, and streaming television;

(c) eligibility rules for membership and awards in television industry associations;

(d) the process of producing and distributing a television program transmitted via broadcast, cable, satellite, and streaming television; and

(e) the effect of “cord-cutting” associated with streaming to the revenues of broadcast, cable, and satellite revenues.

3. I am being compensated for my work on this litigation at a rate of \$450.00 per hour. My compensation is in no way contingent on the outcome of this Proceeding.

4. During the past four years, I have provided testimony as an expert at trial or by deposition in the following matters:

(a) *Netflix, Inc. v. Relativity Media, LLC and RML Distribution Domestic, LLC* United States Bankruptcy Court Southern District of New York Chapter 11, Case No. 18-11358 (MEW) Jointly Administered, Adv. Proc. No. 18- 01552 (MEW) Amended Adversary Complaint for Declaratory Judgment, Expert Witness for the plaintiff;

(b) *Rock Fuel, LLC v. HSNi, LLC*, Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, State of Florida, Civil Division, Case No.: 14-1835-CI, Expert Witness for the plaintiff.

5. During the past ten years, I have authored the following publications:
 - (a) *Crash Course in License Fee Allocations* – Green Hasson Janks Media Clips (March 10, 2017); and
 - (b) *Crash Course in Vertical Integration and Fyn-Syn* – Green Hasson Janks Media Clips (June 15, 2017).

6. This opinion is being offered in support of Plaintiff’s Motion for Class Certification. I understand that that discovery in this case is ongoing, and documents and information obtained through discovery may require me to update or modify the opinions that I set forth in this report or to supply additional reports or rebuttal reports between the time of this report now and when this case goes to trial. Based on the foregoing, I reserve the right to supplement or amend my opinions on or before the final deadline for disclosure of expert opinions in this case.

7. All of my opinions in this Report apply equally to Netflix’s and Hulu’s television programming in the United States. Specifically, with respect to this Proceeding, all of my opinions in this Report apply equally to Netflix’s and Hulu’s television programming transmitted to every municipality and county in the State of Ohio.

8. My professional background and qualifications are set forth below and in the attached Exhibit A.

9. All of the bases and reasons for my opinions are set forth in this Report. The materials upon which I relied in forming and supporting my opinions herein are cited in this report. A complete list of these materials is attached as Exhibit B hereto.

II. PROFESSIONAL BACKGROUND AND QUALIFICATIONS

10. I am an entertainment industry executive with the education, experience, training and background that allow me to serve as an expert regarding entertainment industry custom and

practice and, specifically, the development, production, distribution, transmission and categories of television programming in entertainment industry litigation. A true and current copy of my current curriculum vitae is attached hereto as Exhibit A.

11. I have been a television industry executive for more than 43 years. I have experience in all aspects of the filmed media business, including development, production, acquisition, scheduling, marketing, and distribution of television content, as well as profit and loss analysis.

12. I have spent more than four decades working as a senior executive in various capacities in broadcasting, development, production, licensing, and distribution in the television industry, with an emphasis on evaluating and licensing television series and feature films for transmission via broadcast, cable, satellite, and streaming television program channels.

13. I have negotiated hundreds of licensing agreements for television series, specials, miniseries, and feature films for television channels in the United States and numerous international territories. I negotiated these licensing agreements with many major television production and distribution companies. I have also negotiated rights acquisitions, development, production and co-production agreements with both domestic and foreign production companies and television program channels.

14. I founded Simon Bros. Media & Entertainment, Inc. (“SBM”) in 2000 in order to provide advisory and consulting services for television networks, channels, production companies, and media-related technology companies in both the United States and around the world, including in Europe, the Middle East, Asia, South America, and Australia. I have served on boards of directors and as an advisor for both public and private companies, as well as in

interim senior executive positions. SBM clientele have ranged from start-up companies to major media conglomerates.

15. I have held executive positions at major media companies, including: (a) Fox (Vice President of Programming and Production, Fox Television Stations, Inc., 1986-1988); (b) Disney (Managing Director and Senior Vice President, Walt Disney Studios International Television Production Co., 1988-1997); and (c) DreamWorks (Head of Studio, DreamWorks Television Animation Studio, 1997-2000).

16. I have also provided expert consulting, analysis, and testimony in complex entertainment litigation matters for more than 26 years, on subjects including and related to the entertainment industry, vertical integration, and damage valuation in complex entertainment litigation. My qualifications, which are discussed in more detail below, include the necessary background, training, experience, and education to analyze information and quantify damages in entertainment industry litigation matters such as this one.

17. I am currently a member of the Academy of Television Arts and Sciences (the body that administers the Emmy Awards) and previously served as a member of its Board of Governors and co-chair of the 58th Primetime Emmy Awards Show Committee. I am a member and past-President of the National Association of Television Program Executives. I am currently a member of the British Academy of Film & Television Arts in Los Angeles and previously served on its Board of Directors and as co-chair of the Television Committee.

18. I have testified and/or consulted in approximately fourteen court cases or arbitrations involving the television and motion picture industries. I have qualified as an expert in this field with various courts and arbitration tribunals and I have testified at trial and hearings therein. In every instance in which I have been proffered as an expert witness, the court or

tribunal has qualified me as such. For example, I served as an expert witness for the plaintiffs in *Ladd v. Warner Bros. Entertainment, Inc.*, 110 Cal. Rptr. 3d 74 (Cal. Ct. App. 2010). In *Ladd*, I testified at trial over a period of two days about vertical integration, straight lining license fees and misallocated valuation of the subject feature films by the defendant. In that case, the jury returned a verdict for the plaintiffs and awarded more than \$3 million in damages based on my analysis. The verdict was upheld on appeal. The Court of Appeal cited my testimony with approval as a basis for upholding the jury's verdict and damages award.

III. BACKGROUND AND OVERVIEW

A. Television

19. Television is defined as¹:

1: An electronic system of transmitting transient images of fixed or moving objects together with sound over a wire or through space by apparatus that converts light and sound into electrical waves and reconverts them into visible light rays and audible sound

2: A television receiving set

3 a: The television broadcasting industry

b: Television as a medium of communication

c: Programming distributed over the Internet that is designed to be viewed in the same format as broadcast television.

A. Historical Perspective

20. The routine of watching television programming has significantly evolved over its 70 years of existence. As radio programming transformed into television programming in the

¹ <https://www.merriam-webster.com/dictionary/television>

1950s, radio “listeners” became television “viewers.” Both media entertained, informed, and educated the end-user, and were received on the viewer’s device. The terrestrial signal, using the public airwaves, was transmitted from broadcasting towers to rooftop or set-top antennae connected to the viewers’ television set. Programming was provided by the national networks, their local affiliates, and independent channels. The right to transmit local broadcast signals was regulated by the Federal Communications Commission (“FCC”).

21. Cable television, or community antenna television (“CATV”), came into existence at the same time as broadcast television. Up until the 1970s, CATV’s primary role was to retransmit local television stations’ signals in areas with poor over-the-air (“OTA”) reception. Those local television channels’ signals were delivered to the cable company’s headend² and then routed, via coaxial cable, to individual and multi-family dwellings (a process markedly similar to streaming television content being delivered to a viewer through an internet service provider and cable to the viewer’s internet device.) Originally, the cable companies only provided retransmitted local television channel signals.

22. As broadcast television matured, the broadcast television networks (ABC, CBS, NBC) expanded their basic content from news, soap operas, game shows, and rerun movies to the production of original television drama, comedy, and documentary series. Up until the 1970s, the networks held a virtual monopoly on the production of original network television programming. They owned (or had a financial interest through deficit financing of production in exchange for a share of the syndication profits) their television programming.

23. In or about September 1971, the FCC enacted the Financial Interest and Syndication Rules (“Fyn-Syn”) in order to establish opportunities for independent producers to

² Facility receiving broadcast signal and processing it for delivery over a cable system.

create and produce content for the networks. This led to a period of expansion of original television programming with the establishment of such independent production companies as MTM Enterprises (*The Mary Tyler Moore Show*) and Norman Lear's Tandem Productions (*All in The Family*) as significant suppliers of programming to the networks.

24. With the addition of more programming, the syndication model expanded into a mature business. There were more television channels, including local "independent" channels (without network affiliation) who needed to fill their 24/7 schedule with rerun series and movies. The goal for the production companies, producers, and program distributors was to produce as many episodes as possible so that local stations could "strip" episodes sold as reruns in syndication, at least five days a week for at least thirteen weeks.

25. The demand for television programming grew and the Fyn-Syn rules were relaxed during the 1980s, leading to the birth of new networks (Fox, WB, UPN), and the launch of new, fully-programmed basic (advertiser supported) and premium (or pay TV) cable channels.

26. The Fyn-Syn rules were ultimately abolished in 1993, at which point major media conglomerates redefined the business model for television program production and syndication by vertically integrating their intellectual properties under one entity.

27. The result of that industry redefinition and realignment was that media corporations controlled both the production and the distribution of television programming assets. Television programming premiered on their networks and, because they also controlled their library of television content, that programming could also be syndicated to their own network, broadcast, cable, and streaming television channels, as well as to third party broadcast, cable, and streaming television channels.

28. The Walt Disney Company is a classic example of the benefits of vertical integration. Disney's television live-action and animated program library includes famously "branded" Disney content, non-branded off-network and syndicated content, and a substantial library of feature films. Disney is also one of the major television production studios supplying first-run and syndicated content to their own television program services and third-party television channels. Disney also owns the ABC broadcast network, local television channels (e.g. WABC, KABC), basic cable channels (ESPN, The Disney Channel, National Geographic Channel, FX Channels, Freeform) and streaming television services (Disney+, ESPN+ and Hulu). Disney is a major resource of intellectual properties, including their brands, animation, publishing, gaming, television production, and multiple film studios, including Walt Disney Pictures, Walt Disney Animation Studios, Pixar, Marvel Studios, Lucasfilm, 20th Century Studios, Searchlight Pictures, and Blue Sky Studios.

B. Television Distribution Platforms

29. The platforms for transmitting television programming have considerably multiplied from the original system of terrestrial broadcasting and cable retransmission into multiple forms of delivery.

30. The current platform categories include:

- a. Terrestrial – Over-the-air (OTA) broadcast from transmitter to device.
- b. Cable/Satellite – Commonly known as multichannel video program distributors (MVPD), television programming is received via coaxial or fiberoptic cable (e.g. Comcast, Charter), or satellite dish to a set-top box (STB) (e.g. DirecTV, Dish Network). There are two subcategories:

- i. Basic – Channels are included in the cable or satellite service subscription. The channels feature advertiser supported programming (e.g. USA, A&E, FX); and
 - ii. Premium – Monthly fee for subscription-only channels offered as a bundle (a package of premium channels) or *a la carte* (individual premium channels) (e.g. HBO, Showtime, Starz).
- c. Streaming – Also known as “Internet Protocol Television (IPTV), which provides access to an online program library received by the viewer via broadband internet connection to an over-the-top device (OTT), smart TV, computer, tablet, or smart phone. There are four basic types of streaming television services:
 - i. AVOD – Free to user. Access to advertiser-supported video-on-demand channels with original and rerun programming (e.g. YouTube, Pluto TV, Tubi).
 - ii. SVOD – Monthly subscription video-on-demand with access to online program library of original and rerun, advertiser-free programming (e.g. Netflix, Hulu, Disney +).
 - iii. TVOD – Transactional video-on-demand. Exclusive pay-per-view event programming on a one-off basis (e.g. boxing).
 - iv. PVOD – Premium video-on-demand. Higher price point paid exclusive view of feature films before they are released in theatre (*i.e.*, DirecTV “Home Premiere”).

31. The primary difference between the television program platforms referenced above is the viewing option. Broadcast and cable channel programming is scheduled for a specific day and time (often referred to as “linear” television). The viewer can choose to watch programs live or they can record each program or film to watch at their leisure. Streaming television programming is available on-demand and can be watched at any time.

C. Netflix and Hulu

32. Netflix was originally a DVD content distributor. As advances in internet technology provided the faster delivery of content through streaming, it transformed its business to become the largest transmitter of streaming television programming.

33. Hulu was originally a joint venture between Disney, Fox and NBC to aggregate their off-network television series and films for on-demand rerun telecasts on their advertiser supported streaming television service. It transformed into a larger subscription video-on-demand service, adding more original programming and rerun series and films from third party program suppliers. Hulu is effectively controlled by Disney, the largest shareholder.

34. Netflix and Hulu share many of the same qualities. They are both video-on-demand television services for which viewers pay a subscription. Both offer original and rerun programming and rely on third party deals to acquire original, exclusive and rerun television programming and films. However, Netflix offers more original programming than Hulu. In contrast, Hulu offers “next day” (or rebroadcast) programming from major broadcast and cable channels suppliers like CBS, FX and Showtime. Hulu also offers access to live broadcast and cable television feeds from both local television stations and cable channels. However, they both share a reliance upon third parties for the supply of television programming, as do broadcast and cable channels.

35. As set forth in more detail below, both Netflix and Hulu:
- (a) rerun the exact same television programs that were first distributed in the United States or overseas via broadcast television or cable; and
 - (b) to the extent Netflix and Hulu transmit original programming, those productions are comparable in all relevant respects (including format, genre, and production process) to television programs distributed via broadcast television and cable.

D. Television Programming Formats and Genre

36. There are several program formats commonly used for broadcast, cable, and streaming television programs. The categories are as follows:

- (a) Series - Multiple episodes with recurring subject matter and self-contained story in each episode. Depending on the genre, the duration of each episode is generally 30 minutes for sitcoms and 60 minutes for drama. Since each episode is self-contained they can be re-run in any order, creating an ideal opportunity for the producer to generate incremental revenue in syndication (e.g. Law & Order, Seinfeld).³
- (b) Serial - Multiple episodes with an ongoing plot that is revealed in sequential episodic order. The storyline is commonly resolved at the end of each season or at the end of the show's run. Most serials are one hour. The episodes are intended to be re-run in order, making them less attractive in syndication (e.g. daytime soap operas like Days of Our Lives).

³ Licensing the right to transmit re-run episodes of original television series to other television program services.

- (c) Limited or Mini-Series - A unique story that is generally too long to be a feature film, but too short to be a television series. They are produced with a limited number of episodes (*i.e.*, 4-10 parts) in one or two-hour duration (e.g. HBO's Band of Brothers, CNN's Lincoln).
- (d) Made-For-TV Film - A feature-length motion picture that is produced and distributed for original premiere on television, in contrast to feature films distributed for original premiere in movie theatres, therefore making it eligible for an Oscar Award. ATAS rules regarding Emmy Award eligibility of a feature film are well defined:

Television programs that are offered for "general theatrical release" occurring prior to their airing or Internet exhibition are not eligible. A "limited theatrical release" prior to the airing or Internet exhibition of the television program cannot exceed an aggregate of up to seventy (70) days prior exhibitions. A program with a prior theatrical release loses eligibility if it does not air within a year of its initial public exhibition, regardless of if this is or is not a general release. Film festival screenings do not count as theatrical screenings. Showing a foreign television program that otherwise qualifies as an eligible foreign co-production under the Rules shall not be disqualified because of a prior limited theatrical release."⁴

- (e) Short Form - Stand-alone or series episodes commonly running 5-10 minutes in length. Typically featuring instructional, animation, documentary, drama or comedy content and many times used as "filler" programming on television channels.

37. Television programming is commonly defined by genre, in an attempt to appeal to the broadest variety of viewers. Basic genres include the following:

⁴ Academy of Television Arts & Sciences, Primetime Rules and Procedures, Rule 10a.

(a) Drama - Narrative style of fictional storytelling produced as multiple one-hour episodes with a self-contained storyline in each episode. Drama series production budgets are generally costly due to on-location shooting, stunts, special effects and ensemble casts. Television drama generally includes four basic sub-groups:

i. Procedural (*i.e.*, Law and Order: SVU)

ii. Medical (*i.e.*, Chicago Med)

iii. Action (*i.e.*, SWAT)

iv. Docudrama (*i.e.*, Chernobyl).

(b) Sitcom - A situation comedy is focused on an ensemble cast of characters.

The episodes follow the cast as they encounter typical problems in need of a solution, leading to a humorous resolution of the issue (*i.e.*, Seinfeld – The Parking Garage). The stories in each half-hour episode are self-contained and can be rerun in any order. Off-network sitcoms with more than 100 episodes are very successful in syndication (*i.e.*, Friends, Seinfeld).

(c) Reality - This genre is usually centered around a personality or a topic.

Usually one-hour episodes of unscripted, real-life situations that cover a wide variety of types including competition series, documentary, instructional, or educational programming (*i.e.*, RuPaul’s Drag Race, The Bachelor, Survivor, Rachel Ray).

(d) Talk shows - A one-hour series revolving around a host or a long-running franchise. They are recorded in a studio and feature guest interviews or performances (*i.e.*, The Tonight Show with Jimmy Fallon, Wendy Williams).

- (e) Game shows - A mainstay for broadcast and cable television, game shows are a combination of well-known game show formats and an ever-increasing number of newly developed formats. They are commonly recorded in-studio or on a set and, depending on the format, can be either half-hour or one hour in length (*i.e.*, Weakest Link, Ellen's Game of Games).
- (f) Sports - Live or recorded coverage of professional, collegiate and amateur sports. Each major sport has at least one channel dedicated to its sport. With the growth of national and regional sports channels, personality-driven, analytical, and expanded sports news coverage has become a fixture on television (*i.e.*, ESPN, MLB, NFL).
- (g) Event Programming - One-off programs, typically featuring award presentations, music concerts, stand-up comedy or coverage of an annual event (*i.e.*, Golden Globes, July 4th Concert, Macy's Thanksgiving Day Parade).
- (h) News - With the exception of the basic cable 24-hour news channels, regularly scheduled news programs on broadcast and cable channels are one of the most important assets for networks and local television stations. It requires investment in facilities, equipment, technology, and personnel. It is an important feature that generates loyal viewers and important revenue for broadcast networks and local television stations.

IV. OPINIONS

A. Netflix and Hulu Distribute Video Programming That is the Same as, or Equivalent to, the Video Programming Distributed Via Broadcast and/or Cable.

38. The current television program distribution model was established as a result of new and converging technologies. Netflix and Hulu not only provide the same type of television programming as broadcast, cable, and satellite channels, but they actually make use of off-network rerun programming.

39. To the viewer, Netflix's and Hulu's television programming is indistinguishable in format, genre, and quality when compared to broadcast, cable, and satellite services. While Netflix and Hulu also produce or fund original television program production, they recognize and partake in the value of off-network reruns and movies that have already premiered on broadcast, cable, and satellite channels.

40. Netflix and Hulu are also willing to share programming with other television networks and cable channels by licensing within a specific window of time. The sitcom *Schitt's Creek* is an example of a television series that is concurrently aired in syndication on local channels and is also offered on Netflix, and the sitcom *Fraser* on Hulu is also syndicated on local and cable channels.

41. I understand that, in this litigation, Netflix and Hulu each contend that, because their television programming is not part of a linear service, it is somehow different from other types of television programming (*i.e.*, broadcast, cable, satellite). Netflix's and Hulu's contentions are contradictory and incorrect. Viewers watch the television programs they like wherever they can find those television shows. Viewers record broadcast and cable programming in order to watch it at their convenience, and they also binge-watch streaming

“video on demand” television programming. Viewers make their viewing decisions based on the appeal of individual TV programs, *not* the distribution platform on which it appears.

42. Netflix and Hulu are aggregators of television programming, as are all program channels. For example, Hulu + Live TV recently expanded a distribution agreement with Viacom/CBS which will provide continued carriage for Viacom/CBS owned and operated channels including CBS broadcast stations, CBS Sports Network, Paramount Network, the CW, and Showtime. Hulu and Hulu + Live TV have a smaller library of “original” programming. Clearly, Hulu is aggregating the same type and quality of television programming offered on broadcast and cable/satellite television channels.

43. Netflix continues to license rerun television programming from the major studios and production companies. However, because Netflix is not owned by a media conglomerate, the supply of rerun programming has affected Netflix, as studio-owned streaming television services like Hulu take advantage of their parent companies’ programming assets. Netflix continues to create original television programs to offset the inequity. According to a recent article:

Both NBCUniversal and ViacomCBS own subscription streaming services that compete with Netflix. But the program licensing discussions envisaged licensing Netflix programs only to channels or streaming services with advertising. That ensured the shows didn’t appear on outlets that competed directly with Netflix, an ad-free subscription service. That ensured the shows didn’t appear on outlets that competed directly with Netflix, an ad-free subscription service.⁵

44. Hulu’s television programming is aptly described in a recent article in *New York Magazine*’s Vulture website:

⁵ <https://www.theinformation.com/articles/in-reversal-netflix-discussed-selling-shows-to-tv-networks>

Picking and choosing the best television programs on Hulu is a little different from cataloguing the top-shelf choices available on Amazon Prime or Netflix. Unlike those two companies, Hulu's main thrust has always been television. It started life as a way to watch last night's shows today, and that's still its purpose for a lot of people — meaning that its catalog is constantly being updated with new shows. So in looking at the best programming for your free time, we tried to focus (with a few exceptions) on shows that have been on for at least a few seasons, and mostly shows that are off now the air. If a new program takes off, we'll add it, but we tried to stick with modern classics or long-running current shows, with a handful of Hulu Originals sprinkled in, and currently running FX shows, as a lot of them are exclusive to the service. Anyway, it's time to get watching.⁶

45. Based on the top 100 list referenced above, I estimate that 73% of the television series are reruns acquired from third party distributors.

46. Netflix is a public company and is solely responsible for its television programming, without the involvement of any external media companies. As indicated earlier, Netflix television programming is dependent on its own original content and the licensing of television series and films from third party television program distributors. When funding original series Netflix's goal is to control the distribution rights after its first run on Netflix. That was the case when Netflix original series *Narcos* was licensed to Viacom/CBS' Pluto TV by the production company, Gaumont. Another Netflix original, *Bojack Horseman*, was licensed to cable channel Comedy Central by the production company, Tornante. Netflix is discussing potential licensing of their television movies with CBS Network and NBC/Universal's Peacock streaming television service. Thus far Netflix has not offered re-broadcast of live television content like Hulu.

⁶ *Vulture*, Now Streaming, March 19, 2021, "The 100 Best TV Shows on Hulu Right Now"

47. An article published by the *Loyola Phoenix* defined the Netflix relationship with rerun television series:

Netflix helped existing hits “The Office” and “Grey’s Anatomy” become cultural tentpoles. The service ushered “Parks & Recreation” from the ashes of relative obscurity into a modern mainstay. But what legacy is Netflix leaving for itself by canceling almost all of its series at 30 episodes or less?

No matter how good, a show with such a small episode count can’t become more than a cult classic. Take “Arrested Development,” a show whose linear ratings were tepid at best in its initial run on FOX in the early 2000s. The show found a renaissance as a niche hit through a Netflix revival, yet it still can’t stand with “Will & Grace” and “Seinfeld” as a household name in comedy.

Ultimately, no one’s going to remember most Netflix originals as classics—or remember them at all. Most troublingly, the Netflix model has shot traditional television in the foot, all the while using the business as a stepping stool.

Without network television, Netflix never would’ve gained relevance. Even now, as the service thrives internationally in part due to a distribution deal with the CW, the streaming company still holds itself up on the feet of broadcast television.

Linear television ratings have plummeted in recent years as people cancel their cable subscriptions and transition into the streaming era. Although Netflix actively accelerates the death of broadcast television, it’s not ready to take over in content creation. The service has excelled in capturing audiences for miniature spans of time, but rarely has a Netflix hit maintained cultural interests.⁷

⁷ <http://loyolaphoenix.com/2020/12/netflix-revitalized-the-television-industry-now-its-killing-it/>

48. In another article from the *Vulture* website recommending the top 100 television series to watch on Netflix, my analysis estimates 68% of the listed TV series were reruns acquired from third party distributors.⁸

49. The following language, taken directly from Netflix's website describes its television programming strategies to current and potential subscribers, and shows Netflix is demonstrably bidding to appeal to "television" viewers:

A First Run Series is a **television series** that Netflix makes available for streaming soon after its **initial broadcast**. When Netflix signs a First Run Series agreement, it guarantees that **Netflix is the very first place you can watch a television show after it airs on its original broadcast network**. While each First Run Series agreement is different, **Netflix viewers can usually expect individual episodes of a First Run Series to become available one week after their initial broadcast**.⁹

50. A similar description of Hulu's "television" service is found on its website:

About Hulu

Hulu is the leading premium streaming service **offering live and on-demand TV and movies, with and without commercials**, both in and outside the home. Launched in 2008, Hulu is the only service that gives viewers instant **access to current shows from every major U.S. broadcast network; libraries of hit TV series and films; and acclaimed Hulu Originals like Emmy® and Golden Globe Award-winning series The Handmaid's Tale and The Act; Golden Globe Award-winning, Emmy® Award nominated and Peabody- winning series Ramy; and Emmy® Award nominated series** including Wu-Tang: An American Saga, and Pen15 alongside hit series Little Fires Everywhere from Reese Witherspoon and Kerry Washington, Normal People, The Great, Hillary, Shrill, Solar Opposites and Oscar® and Emmy® nominated

⁸ *Vulture*, Now Streaming, March 19, 2021, "The 100 Best TV Shows on Netflix Right Now"

⁹ <https://help.netflix.com/en/node/4976> (emphasis added).

documentary film *Minding the Gap* and critically acclaimed Hulu Original films *PALM SPRINGS*, *RUN* and *HAPPIEST SEASON*. **The service also streams live news, entertainment and sports** from 21st Century Fox, The Walt Disney Company, NBCUniversal, CBS Corporation, The CW, Turner Networks, A+E Networks and Discovery Networks – available all in one place.”¹⁰

51. The statements referenced above accurately describe television programming as Netflix’s and Hulu’s core product.

52. Examples of notable first run television series originally premiering on broadcast or cable and subsequently rerun on Netflix include:

- (a) Dawson’s Creek (WB)
- (b) Evil (CBS)
- (c) Gotham (Fox)
- (d) Hannibal (NBC)
- (e) The Last O.G. (TBS)
- (f) Supernatural (WB)
- (g) Walking Dead (AMC)

53. Examples of notable first run television series originally premiering on broadcast or cable and subsequently rerun on Hulu include:

- (a) 24 (Fox)
- (b) 30 Rock (NBC)
- (c) American Horror Story (FX)
- (d) Homeland (Showtime)
- (e) Lost (ABC)

¹⁰ <https://press.hulu.com/corporate/> (emphasis added).

(f) Saturday Night Live (NBC)

(g) Simpson's (Fox)

(h) X-Files (Fox)

54. Notable examples of rerun television series that are license to **both** Netflix and Hulu include¹¹:

(a) American Horror Story

(b) Ancient Aliens

(c) Arrested Development

(d) Community

(e) Dawson's Creek

(f) Forensic Files

(g) Good Girls

(h) Grey's Anatomy

(i) How To Get Away With Murder

(j) Riverdale

(k) Star Trek (original NBC)

(l) Star Trek: Deep Space Nine

(m) Star Trek: The Next Generation

(n) Stargate

(o) Survivor

(p) Twilight Zone (original CBS)

(q) Twin Peaks

¹¹ <https://reelgood.com/source/hulu>

55. Both Netflix and Hulu produce original television programming for their respective streaming television services. In doing so, they each follow the industry standard for production processes, as explained below. In fact, Netflix is reportedly discussing licensing their original productions to television networks in order to offset their enormous original production expense.¹²

56. Both Netflix and Hulu license television programming from major studios and production companies in the U.S. and in international territories. There is no tangible difference between Netflix and Hulu television programming and every other television channel. Simply put, it's all television programming.

57. Netflix's and Hulu's programming, including their original programming, adheres to and complies with the formats and genres long established for broadcast television and cable. For example:

(a) Netflix

- i. Feature Film
 1. Dolemite Is My Name (Original)
 2. The Dig (Theatrical)
- ii. Documentary Feature
 1. 13th
- iii. Limited Series
 1. Queen's Gambit (Original 7x1hr.)
- iv. Drama Series
 1. Ozark (Original one-hour episodes)

¹² <https://www.theinformation.com/articles/in-reversal-netflix-discussed-selling-shows-to-tv-networks>

2. Breaking Bad (Off-network one hr. episodes)
 - v. Drama/Comedy Serial
 1. Bridgerton (Original one hr. episodes)
 - vi. Sitcom
 1. Frankie & Grace (Original ½ hr. episodes)
 2. The Good Place (Off-network ½ hr. episodes)
 - vii. Talk Show
 1. My Next Guest Needs No Introduction with David Letterman
(Original one hr. episodes)
 - viii. Game Show
 1. Ultimate Beastmaster (Original one hr. episodes)
 2. Jeopardy (Syndicated ½ hr. episodes)
- (b) Hulu
- i. Feature Film
 1. The United States vs. Billie Holiday (Original)
 2. Palm Springs (Theatrical)
 - ii. Documentary Film
 1. I Am Greta (Theatrical)
 - iii. Drama Series
 1. Handmaid's Tale (Original one hr. episodes)
 2. Sons of Anarchy (Off-network one hr. episodes)
 - iv. Comedy Drama
 1. Ramy (Original ½ hr. episodes)

- v. Sitcom
 - 1. Seinfeld (Off-network ½ hr. episodes)
- vi. Documentary Series
 - 1. Vice Investigates (Original one hr. episodes)
- vii. Reality Series
 - 1. I Love You, America with Sarah Silverman (Original ½ hr. episodes)
 - 2. Top Chef (Off-network one hr. episodes)

B. Netflix and Hulu Are Involved in the Same Television Program Production Process as the Broadcast and Cable Networks.

58. The process of producing original television programming is identical for broadcast, syndication, cable, and internet television. Developing a television program involves ongoing strategic planning and research to determine the types of programs necessary to either replace or optimize a channel's offering to its viewers.

59. Identifying a concept that appeals to a channel's core audience is essential. Television development projects can originate from innovative concepts or from adaptations based on books or movies. They are "pitched" to the channels directly by "network approved" talent, through a talent agency, a third-party producer, or a production company. Attaching prominent talent (writer, director, producer, actors) to a project can create an advantage.

60. As discussed above, Netflix has a disadvantage in sourcing off-network television series, resulting in Netflix outspending and producing more original programming than the competition. The following excerpt is illustrative of the marketplace:

Netflix alone invested over \$6 billion and launched around 30 new shows in 2017, followed by Amazon with \$4.5 billion in original content for its Amazon Prime streaming service, and Hulu with \$2.5 billion. HBO is third on the list with \$2.7 billion, however instead of trying to

outcompete Netflix and the other guys in dollars invested, HBO chose the path of being a highly differentiated network and becoming more selective about the content it invests in.”¹³

61. The production process for all television programs is broken down into three stages:

- (a) Pre-production is the first stage of any project. This process of planning defines how the execution each element will result in an efficient and organized production.
- (b) Principal photography begins with actual filming or recording of scenes on a set or on location.
- (c) Post Production is the final period of production where the video footage and audio are edited, enhanced, and finalized for presentation on television.

62. This process is the same regardless of whether the television program is eventually first aired on broadcast television cable, or streaming television services such as Netflix or Hulu.

63. Although both Netflix and Hulu offer streaming, video-on-demand content, they both “drink from the same well” as their broadcast, cable, satellite, and streaming competitors when acquiring rights to television programming. They both use the same pool of production companies, producers, writers, directors, and actors as their competitors use when developing and producing original television programming, as set forth below. Moreover, Netflix and Hulu source their rerun television content from the same suppliers as broadcast and cable channels do.

¹³ <https://strategyforexecs.com/hbo-vs-netflix/>

64. The life of a broadcast network television series has many stages. A good example of that is the sitcom, *The Office*. The series, based on a popular BBC sitcom in the United Kingdom, was developed for the NBC network and enjoyed a successful run for nine seasons. Each season's episodes were re-run, because they only produced an average of 25 episodes per season. *The Office* was one of the first network television series with episodes offered for download on Apple iTunes and also distributed on DVD, including Netflix, which also offered online viewing. When the series ran its course at NBC, the reruns went into syndication and were licensed by NBCUniversal Television to local television stations and TBS. It then had licensing windows on various cable channels, including Comedy Central, Nick at Nite, and The Paramount Network. It was licensed to Netflix until NBCUniversal acquired the rights for its new Peacock television streaming service. The 201 episodes of *The Office*, one of the most successful sitcoms, has been transmitted to and has pleased audiences on all television platforms.

C. Netflix and Hulu Actively Compete for Television Programming Associations and Awards

65. Earning an award is a boost for marketing to viewers and subscribers. Award eligibility rules apply to all facets of television, including broadcast, cable, and internet television channels.

66. The major awards for excellence in television programming include:

- (a) Academy of Television Arts & Sciences (Emmy Awards)
- (b) British Academy of Film & Television Arts (BAFTA TV Awards)
- (c) Hollywood Foreign Press Association (Golden Globes)
- (d) Directors Guild of America (DGA)
- (e) Writers Guild of America (WGA)

(f) Screen Actors Guild (SAG)

(g) National Association of Television Program Executives (NATPE Iris Awards)

67. The Emmy Award is the most prestigious television award. The awards are not judged by method of transmission, but rather by the votes of peers for excellence in acting, writing, producing and technical categories. *All entries, nominees and winners are come from the entire television industry.*¹⁴

68. The Emmy Awards were dominated by the broadcast networks for many years until HBO, Showtime and other premium cable channels started producing Emmy award winning original television programming. Both Netflix and Hulu have been nominated and won Emmy Awards. They compete against each other, as well as all television program services, including broadcast and cable television channels. Netflix was first nominated for Emmy awards in 2013 when House of Cards was its leading original television series. That year Netflix was nominated for 13 awards and won three Emmys. By 2020, it was nominated for 160 awards and won 21 Emmys. Hulu was first nominated a Creative Arts Emmy award in 2015 for The Mindy Project. In 2017 Hulu won multiple Emmy awards for Handmaid's Tale.

D. “Over-The-Top” (“OTT”) Providers, Such as Netflix and Hulu, Compete Directly With Broadcast Television and Cable and Have Caused A Reduction in Cable Revenues, Especially for Premium Services

69. The rise of streaming television programming led to a sharp downturn in both broadcast and cable television viewing, as well as a loss of subscribers to Pay-TV channels offered on cable and satellite services.

70. Despite “cutting the cord,” viewers remain huge fans of network and cable television series. The majority of those viewers want their “TV shows” on their streaming

¹⁴ 73rd Primetime Emmy Awards 2020-21 Rules and Procedures.

television services, proving, once again, that a television series is the same on whatever device it may be watched. The following numbers are proof positive:

Sixty percent of pay-tv subscribers, or nearly half of U.S. broadband households, are interested in streaming movies and TV shows from an online video service as part of their pay-tv subscriptions, according to new consumer research from Parks Associates. Presently, 79% of pay-tv households also have OTT subscriptions.”¹⁵

71. The increase in the number of viewers turning to streaming internet television as their sole source of television programming has caused a historic loss of cable television subscribers and, in turn, a significant decrease in viewers of broadcast and basic cable/satellite television channels. This trend is commonly known as “cord cutting.”

72. While many adult cord cutters are doing so to avoid paying for monthly cable television service, many younger cord cutters are not really “cutting the cord,” because their television viewing experience has rarely included broadcast and cable television. The cord cutting effect on millennials and Gen Z viewers has created a world in which they are less aware of their community, news, and information because they lack access to the resources provided by broadcast and cable channels. They are living in a world of selective binge-watching; unaware the very same television programming was originally created for broadcast and cable channels.

73. The economic impact of cord cutting has been devastating for broadcast and cable television, as well as for advertisers.

74. Cable television went from being a necessity to receive a broadcast signal, to becoming an equivalent television program producer to the broadcast television networks and local stations. However, the situation has gone from bad to worse for cable television companies

¹⁵ <https://www.mediapost.com/publications/article/360400/60-of-pay-tv-users-want-subs-to-include-streaming.html>

as their subscribers switch over to streaming television services, as illustrated by the latest statistics:

Cable network companies have long been considered cash cows because Americans pay for cable month after month no matter how the economy is performing. But those days are over as millions of U.S. households cancel pay TV each year for a diet of streaming services. ViacomCBS' 2020 revenue fell 6.8% from a year earlier to \$25.2 billion from \$27 billion. Discovery's year-over-year revenue fell 4% to \$10.7 billion"¹⁶

By the end of this year, 31.2 million US households will have cut the cable TV cord in aggregate. And 6.6 million households will cancel their pay TV subscriptions. By 2024, more than one-third of US households will have cut the pay TV cord. That leaves 77.6 million US households with cable, satellite, or telecom TV packages, down 7.5% year-over-year, the biggest such drop ever. Furthermore, that total is down 22.8% from pay TV's peak in 2014. By the end of 2024, fewer than half of US households will subscribe to a pay TV service."¹⁷

75. Both broadcast and cable/satellite television channel revenues have been adversely affected by the growth of streaming television services. Due to the precipitous drop in viewers, broadcast and basic cable have struggled to protect revenue from subscribers and advertising.

76. One of the drivers for cable and satellite television services was the option to subscribe to exclusive premium television channels like HBO and Showtime ("bundling"). The exclusivity no longer exists as the premium channels have joined the constantly growing list of television content offered on streaming television services. With fewer subscribers the cable and

¹⁶ <https://www.cnbc.com/2021/03/25/why-investors-struggle-to-value-media-stocks-like-viacomcbs-discovery.html>

¹⁷ <https://www.emarketer.com/content/pay-tv-suffers-historic-cord-cutting>

satellite on-demand movies and events on cable and satellite television has dwindled. Although as cable companies lose television subscribers, they are simultaneously converting many into broadband service customers.

IV. CONCLUSION

77. As explained above, television programming does not change because of the way the signal is delivered, or whether a subscriber pays for it, or the viewer's age, or based on the type of device on which it is watched. The viewing public has a long relationship with television and, despite the fact technology has transformed, the television shows that they watch have not changed. When color TV replaced black and white, the programming did not change (it just became more vibrant). Similarly, programming didn't change when the viewer hooked up to a cable box to receive a better signal. Today, with all of the choices available to watch television, viewers don't care how they get it. They just want their TV shows (or reminiscent of one cable channel imploring the viewers to chant, "I want my MTV!"). I have spent my entire career in the television business with the goal of entertaining, informing, and educating viewers. I am a student of the business. I have been part of the ever-changing landscape of television programming, from television tubes to OTT. Based on my experience and the information referenced in this report, I do not believe the television programming offered by Hulu and Netflix is any different in any way from the television programming offered on broadcast and cable television.

Executed this 19th day of April, 2021.



David Simon

EXHIBIT A

CURICULUM VITAE

David L. Simon
331 S Gretna Green Way
Los Angeles CA 90049
+1 (310) 666-4957
dsimon@simonbros.net

David L. Simon is an accomplished entertainment executive with a global career in management, strategy, development, production, programming, and marketing. A skilled executive serving in senior positions at Fox, Disney and DreamWorks, Simon has hands-on expertise in scripted, reality, documentary and animation content for multiple platforms. Simon is known for his distinctive management style encompassing team building in a constructive, motivational and positive environment and a strong track record as a start-up and troubleshooting specialist. He is a natural leader, facilitator and retains a consummate record of achieving goals.

Employment History

Simon Bros Media (06/2000 - Present)
Los Angeles CA
Founder & President

Simon Bros Media is a global corporation providing consulting and advisory services for media companies and producers offering well-honed executive skills to craft comprehensive strategic plans to achieve optimum creative and financial performance. He has a distinguished resume as an expert witness in entertainment litigation. (See attached list of clients and content development projects.)

DreamWorks Television Animation Studio (02/1997 - 03/2000)
Glendale CA
Head of Studio

Managed television animation studio, reporting to Steven Spielberg and Jeffrey Katzenberg. Key responsibilities included development, production and distribution of television animation series and direct-to-video features. The studio produced "Steven Spielberg Presents Toonsylvania" on Fox Kids Channel and the Primetime Emmy Award winner, "Invasion America" on primetime WB Network. Oversaw production of direct-to-video sequel to "Prince of Egypt" entitled, "Joseph: King of Dreams." Negotiated joint venture agreement with Nickelodeon to produce CG content.

David L. Simon CV

Walt Disney Studios International Television Production Co. (11/1988-02/1997)

London England

Managing Director/Senior Vice-President

- Launched and managed Disney's first international television production company. Hired a specialized production team of indigenous executives to produce original content in each region and set up production offices in Hong Kong, London, Madrid, Munich, Paris, Rome, Singapore, Sydney and Tokyo.
- Developed "The Disney Club" format, which attained the number one position in worldwide markets. Produced 45 weekly television series in 40 countries.
- Oversaw the production of television special events, including the six feed, five language versions of the "Grand Opening of EuroDisneyland."
- Secured financing and managed development and production of made-for-television movie and series, "Stick With Me, Kid," as a five-country co-production.
- Launched the first international Disney Channels in Taiwan, UK, Australia, and France. Hired key personnel and supervised the operation, P&L, marketing and programming.
- Member of GMTV board of directors representing Disney. Advised the planning, design and launch of the new British breakfast television service.
- Served as chairman of the board of SUPER RTL in Germany, a joint venture between Disney and CLT.

Fox Television Stations Inc. (02/1986 - 11/1988)

Los Angeles CA

Vice-President of Programming & Production

Appointed to position to launch the station group under new ownership of Fox by Rupert Murdoch. Responsible for program acquisition, scheduling, marketing, development and production for the Fox owned and operated television stations. Served as advisor to Fox Network, concentrating on network development, scheduling and programming.

Oversaw the development of first run television series including "America's Most Wanted," "COPS" and "Comic Strip Live." Executive producer of live worldwide television event, "First Annual International Music Video Awards." Created "Disney Day Off" employing the library assets of Disney's animated and live-action content.

KTLA Television (04/1981 - 02/1986)

Los Angeles CA

Director of Programming and Production

Supervised and oversaw program planning, acquisition, scheduling, development, production, P&L, marketing and FCC adherence. Executive producer of Emmy Award winning documentaries and live coverage of the annual Rose Parade and Hollywood Christmas Parade. Produced original 3D content, entertainment specials and series pilots.

David L. Simon CV

WTTG Television (04/1979 - 04/1981)

Washington D.C.

Vice-President of Programming and Production

Responsible for program planning, acquisition, scheduling, development, production, marketing, and P&L for the flagship television station. Executive Producer of the premiere, award-winning daily talk show, "Panorama." Developed pilots and prime time specials for local and national network broadcast.

WKBD Television (11/1977 - 04/1979)

Detroit MI

Director of Programming, Production & Creative Services

Oversaw all creative and operational aspects of the #1 independent television station in Detroit, including program planning, acquisition, development, production, news and marketing. Supervised the successful makeover of the station, launched its nightly newscasts and maintained successful talk and entertainment series.

KBHK Television (10/1975 - 11/1977)

San Francisco CA

Director of Retail Sales Development and Creative Services Manager

Developed and supervised the station's first retail sales development department, servicing the local sales team with the tools to successfully attract advertisers from print to television advertising. Successfully exported the program to the station group. Promoted to Creative Services Manager, responsible for on-air look, promotion, radio and print advertising, public relations and the overall positioning of the station within the market. Created all materials for the launch of Norman Lear's late night series of television series including "Mary Hartmann, Mary Hartmann" and "Fernwood2Night," with all materials distributed to all stations nationwide. Set up a record-breaking competition for the first "Star Wars" screening in San Francisco.

Broadcast Marketing Consultants (04/1973 - 10/1975)

San Francisco CA

Director of Research and Promotion

Developed research and sales tools for radio and television stations to leverage local advertisers to divert print advertising budgets into broadcasting advertising. Developed and authored reports for broadcast clients, and key contributor in the publication of books focused on the revolutionary subject matter.

David L. Simon CV

San Francisco Magazine (05/1972 - 04/1973)

San Francisco CA

Promotion Manager and Sales Representative

Produced radio spots and print advertising to solicit subscriptions for the exclusive magazine. Attracted top-level advertisers such as MasterCard and BV Vineyards.

International Experience

Australia, Belgium, Canada, China, Denmark, France, Germany, Greece, Hong Kong, Hungary, Japan, Israel, Italy, Luxembourg, Mexico, Netherlands, Norway, Portugal, Russia, Singapore, Spain, Sweden, Taiwan, Turkey, United Kingdom

Employment Eligibility

European Union (UK Passport) and United States (US Passport)

Industry and Other Associations

- **British Academy of Film & Television Arts (UK and Los Angeles)** (1988-present) L.A. Board of Directors (two terms (2008-12), Chair of Community Outreach and Education Committee, Co-Chair Television, Heritage Archive, Britannia Awards, Events Committees.
- **Academy of Television Arts & Sciences** (1975-present) Board of Governors (two terms) - Production Executive Peer Group (2002-2008). Member of Television Executives Peer Group.
- **National Association of Television Program Executives** (1975-present) Board of Directors, Executive Committee and President (1986-87).
- **San Francisco State University Foundation** (05/2013-Present) San Francisco CA - Board of Directors and serve on campaign, audit and directors committees.

Education

San Francisco State University

Bachelor of Arts – Journalism

Honors – Dean’s List

SIMON BROS MEDIA

Simon Bros Media Clients

20th Television Productions – Creative Consultant
3D Vision (Israel) – Creative Consultant
AXN Channels – Branding Consultant
Berliner Film Companie GmbH (Germany) – Board of Directors
BIB – Creative Consultant
Business News Networks – Chief Content Officer*
Cinar (Montreal) – Board of Directors
Connect Worldwide Media Group – Chief Content Officer*
Electric Farm Productions – Executive-in-Charge
Flip Your Lid Productions – Consultant/Producer*
Imagine Group (Singapore) – Marketing Consultant
Lionman Foundation – Board of Advisors/Consultant*
Literacy & Language Dynamics – Board of Advisors*
MGM Television – Consultant
MSN Video – Executive Producer
NATPE – Consultant
Netgui – Board of Advisors
New Music Channel (Vancouver, BC) – Chief Content Officer
Noodlesoup Productions – Board of Advisors
Premiere (Germany) – Consultant
Proteus – Board of Advisors
RAI (Italy) – Consultant
The Box (Israel) – Board of Advisors
TNT (Turkey) – Creative Consultant
X-Files Game – Board of Advisors
*Current

Content Development Projects

100 Years Ago in Film – Documentary series
Alan Dean Foster (UK) – Documentary film series
Crusoe Expeditions – Reality series
Firesign Theatre – Animated series
George Carlin – Animated shorts
Here, There & Everywhere (UK) – Beatles fan film
Jukebox Empire – Documentary limited series
My Hero (UK) – Sitcom series
Red Dwarf (UK) – Sitcom series
Run for Your Life – Animated series
Toby Peters Mysteries – Television series
Typewriters & Bullets – Documentary series

04.14.2021

EXHIBIT B

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6. Loyola Phoenix – *Netflix Revitalized the Television Industry. Now It's Killing It* – Dec 2, 2020
7. Vulture – Now Streaming – *The 100 Best TV Shows on Netflix Right Now* – March 19, 2021**
8. <https://help.netflix.com/en/node/4976> – *How Does Netflix License TV Shows and Movies?*
9. <https://press.hulu.com/corporate/> - *About Hulu*
10. <https://reelgood.com/source/hulu/> - *Full List of What's on Hulu*
11. <https://www.theinformation.com/articles/in-reversal-netflix-discussed-selling-shows-to-tv-networks>
12. <https://strategyforexecs.com/hbo-vs-netflix/>
13. 73rd Primetime Emmy Awards 2020-21 Rules and Procedures
14. <https://www.mediapost.com/publications/article/360400/60-of-pay-tv-users-want-substo-include-streaming.html>
15. <https://www.cnbc.com/2021/03/25/why-investors-struggle-to-value-media-stocks-like-viacomcbs-discovery.html>
16. <https://www.emarketer.com/content/pay-tv-suffers-historic-cord-cutting>

*Highlighted for emphasis

**Analysis added as footnotes

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CITY OF MAPLE HEIGHTS, OHIO, <i>et</i>)	
<i>al.</i> ,)	
)	CASE NO.: 1:20-CV-01872
Plaintiffs,)	
)	JUDGE JAMES S. GWIN
v.)	
)	MAGISTRATE JUDGE
NETFLIX, INC., <i>et al.</i> ,)	THOMAS M. PARKER
)	
Defendants.)	

**ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM
OF DEFENDANT NETFLIX, INC.**

Defendant Netflix, Inc. (“Netflix”) hereby responds to the putative Class Action Complaint (“Complaint”) of Plaintiff City of Maple Heights (“Plaintiff”), with the following Answer and Affirmative Defenses. Netflix denies all allegations contained in section headings or other portions of the Complaint that are not contained within specifically numbered paragraphs. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the Complaint that are directed toward Defendant Hulu, LLC (“Hulu”) and on that basis, denies all such allegations. Netflix’s responses to any paragraph’s allegations also apply to the allegations of any footnote in that same paragraph. All allegations, if not expressly admitted, are denied.

INTRODUCTION

1. Defendants provide video service in Ohio municipalities. When doing so, they use wireline facilities (*i.e.*, broadband wireline facilities) located at least in part in public rights-of-way.

ANSWER: The allegations in Paragraph 1 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations.

Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 1 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix affirmatively states that it is a producer and distributor of on-demand video content but that it is not an Internet service provider or a cable service provider and does not own or operate any network, infrastructure, or wireline facilities in the public right-of-way. Netflix admits that it has subscribers in various Ohio municipalities. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 1.

2. Accordingly, Defendants should be and are required by law to pay each of those municipalities a video service provider fee of up to 5% percent of their gross revenue, as derived from their providing video service in that municipality.

ANSWER: The allegations in Paragraph 2 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 2 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix affirmatively states that it is a producer and distributor of on-demand video content but that it is not an Internet service provider or a cable service provider and does not own or operate any network, infrastructure, or wireline facilities in the public right-of-way. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 2.

3. Defendants have failed to pay the required fee, necessitating this lawsuit, and entitling Plaintiff and the putative class to the relief requested herein.

ANSWER: The allegations in Paragraph 3 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 3 that relate to Hulu and on that basis, denies those allegations and

demands strict proof thereof. The allegations in Paragraph 3 are Plaintiff's characterization of this matter and therefore require no answer. Netflix denies that it was required or is currently required to pay any fee under O.R.C. §§ 1332.21 *et seq.* (the "Ohio Law"). Netflix denies that Plaintiff and the putative class are entitled to any relief whatsoever or that Netflix has violated the Ohio Law. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 3.

PARTIES

Plaintiff

4. City of Maple Heights, Ohio ("Maple Heights") is a lawfully existing Ohio municipal corporation located in Cuyahoga County, Ohio.

ANSWER: Netflix lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 4 and therefore denies them. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 4.

Defendants

5. Netflix, Inc. ("Netflix") is a Delaware corporation, headquartered in Los Gatos, California. Netflix's primary business is its video service, which offers online streaming of a library of films and television programs, as well as the distribution and production of original films and television series. Netflix does business in Maple Heights, Ohio and has done so at all times relevant to this action.

ANSWER: The allegations in Paragraph 5 state, in part, legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. To the extent Paragraph 5 may be construed to contain allegations of fact, Netflix admits it is a Delaware corporation headquartered in Los Gatos, California. Netflix admits that it offers online, on-demand streaming of certain films and television programs, as well as the distribution and production of original films and television series. Netflix denies that it provides "video service" or that its "primary business" is "video service," as defined by the

Ohio Law. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 5.

6. Hulu, LLC (“Hulu”) is a Delaware limited liability company, headquartered in Santa Monica, California. Hulu’s primary business is its video service, which offers online streaming of live video programming and a library of films and television programs, as well as the distribution and production of original films and television series. Hulu does business in Maple Heights, Ohio and has done so at all times relevant to this action.

ANSWER: The allegations in Paragraph 6 are directed only to Hulu and, as such, do not require a response by Netflix. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 6 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 6.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over this action under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). Defendants are citizens of a state different from that of Plaintiff, the putative class size is greater than 100, and the aggregate amount in controversy for the proposed Class exceeds \$5,000,000.00, exclusive of interest and costs.

ANSWER: The allegations in Paragraph 7 state legal conclusions to which no response is required. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 7 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. To the extent a response is required, Netflix admits that Plaintiff purports to assert jurisdiction pursuant to 28 U.S.C. § 1332(d), and Netflix further admits that this Court has subject matter jurisdiction to hear the claims alleged in the Complaint. Except as expressly admitted, Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 7. Netflix denies that Plaintiff and the putative class are entitled to any relief whatsoever.

8. Venue is proper in this District, and this Court has personal jurisdiction over Defendants, pursuant to 18 U.S.C. § 1965(a) and 28 U.S.C. § 1391(b), because a substantial part

of the events giving rise to the claims occurred in this District, and because Defendants “transact affairs” in this District; each Defendant continuously and systematically engaged in and continues to engage in business in this District.

ANSWER: The allegations in Paragraph 8 state legal conclusions to which no response is required. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 8 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. To the extent a response is required, Netflix admits that Plaintiff purports to assert that venue is proper in this District pursuant to 28 U.S.C. § 1391. Netflix further admits that Plaintiff purports to assert that this Court has personal jurisdiction over Netflix. Except as expressly admitted, Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 8.

FACTUAL ALLEGATIONS

9. Defendants provide video service to their subscribers to view television shows, movies, documentaries, and other programming.¹ They compete with other video service providers,² offering video programming³ that is comparable to that provided by cable companies and television-broadcast stations.

ANSWER: The allegations in Paragraph 9, including the footnotes thereto, state legal conclusions to which no response is required, but to the extent a response is required, Netflix

¹ “Video service” means the provision of video programming over wires or cables located at least in part in public rights-of-way, regardless of the technology used to deliver that programming, including Internet protocol technology or any other technology. The term includes cable service, but excludes video programming provided to persons in their capacity as subscribers to commercial mobile service, as defined in the “Telecommunications Act of 1996,” Pub. L. No. 104-104, Title VII, Sections 704(a) and 705, 110 Stat. 61, 151, 153, 47 U.S.C. 332; video programming provided solely as part of and through a service that enables users to access content, information, electronic mail, or other services offered over the public Internet. *See* O.R.C. § 1332.21(J).

² “Video service provider” means a person granted a video service authorization under sections 1332.21 to 1332.34 of the Revised Code. *See* O.R.C. § 1332.21(M).

³ “Video programming” has the same meaning as in the “Cable Communications Policy Act of 1984,” Pub. L. No. 98-549, 98 Stat. 2781, 47 U.S.C. 522 [“the term “video programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.”]. *See* O.R.C. § 1332.21(I).

denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 9 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. To the extent a response is required, Netflix admits that it offers online, on-demand streaming of television shows, movies, documentaries, and other programming to subscribers. Netflix affirmatively states that it is not an Internet service provider or a cable service provider and does not own or operate any network, infrastructure, or wireline facilities in the public right-of-way. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 9.

10. Customers view Netflix's and Hulu's video programming—such as television shows, movies, and documentaries—using an Internet-connected device. Internet-connected devices are electronic devices that have software enabling them to stream Defendants' video programming, including smart televisions, streaming media players like Roku or Apple TV, smartphones, tablets, video game consoles, set-top boxes from cable and satellite providers, Blu-ray players, and personal computers.

ANSWER: The allegations in Paragraph 10 regarding “video programming” state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 10 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix admits that its subscribers can view on-demand video content using their own electronic devices that have software enabling them to stream content via an Internet connection. Netflix affirmatively states that it is a producer and distributor of on-demand video content but that it is not an Internet service provider or a cable service provider and does not own or operate any network, infrastructure, or wireline facilities in the public right-of-way. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 10.

11. When a subscriber wants to watch Netflix or Hulu video programming, he or she uses an Internet-connected device to send a request to the Internet-service provider. The Internet-

service provider then forwards that request to Netflix's and Hulu's dedicated Internet servers, which, in turn, provide a response. This response is then relayed back to the subscriber's device, and Netflix and Hulu deliver the video programming via Internet protocol technology (*i.e.*, broadband wireline facilities located at least in part in public rights-of-way).

ANSWER: The allegations in Paragraph 11 regarding "video programming" state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 11 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix admits that when a Netflix subscriber wants to view Netflix content on an Internet-connected electronic device, the subscriber's separate third-party Internet service provider will connect the subscriber to a Netflix server using a broadband Internet connection. Netflix admits that on-demand video content can then be transmitted from a Netflix server over the Internet service provider's infrastructure to the subscriber's Internet-connected electronic device. Netflix content is also available to subscribers using mobile devices, in which case they also must supply their own Internet connection (*i.e.*, from their cellular provider). Netflix denies that it "delivers" any "video programming." Netflix affirmatively states that it is a producer and distributor of on-demand video content but that it is not an Internet service provider or a cable service provider and does not own or operate any network, infrastructure, or wireline facilities in the public right-of-way. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 11.

12. During the relevant time period, Netflix has used a content delivery network called Netflix Open Connect to deliver 100% of its video traffic to its subscribers. When a Netflix subscriber wants to view Netflix programming, the subscriber's Internet service provider will connect the subscriber to the closest Netflix Open Connect server offering the fastest speeds and best video quality.

ANSWER: Netflix affirmatively states that at certain times and in certain locations it has used a content delivery network called Netflix Open Connect to cache data closer to a

subscriber's geographical location. Netflix states that it began using Open Connect in 2011 and that its use of Open Connect has adjusted, evolved, and changed over time. Netflix admits that it seeks to provide consistently high-quality video experience to its customers and that its goal is to localize Netflix traffic as close as possible to customers. Netflix denies that subscribers connect directly to Open Connect servers, and affirmatively states when a Netflix subscriber wants to view Netflix content, the subscriber connects to a network controlled by an ISP, which connects to a Netflix server. Except as expressly admitted, Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 12.

13. According to Netflix, that means that most of its subscribers receive Netflix's video programming from servers either inside of, or directly connected to, the subscriber's Internet service provider's network within their local region. Netflix has "end-to-end" control of its entire Open Connect system, including any servers located in Maple Heights and other Ohio municipalities.

ANSWER: The allegations in Paragraph 13 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. To the extent that a response is required, Netflix denies that it has "end-to-end" control of its entire Open Connect system. Netflix affirmatively states that it is a producer and distributor of on-demand video content but that it is not an Internet service provider or a cable service provider and does not own or operate any network, infrastructure, or wireline facilities in the public right-of-way. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 13.

14. Similar to Netflix, when a Hulu subscriber wants to view Hulu's video programming, the subscriber's Internet service provider will connect the subscriber to the Hulu server. Hulu receives the directive and checks the subscriber's entitlement, the location, and the content availability. It then delivers the program through the Internet to the subscriber's Internet-connected device.

ANSWER: The allegations in Paragraph 14 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations.

Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 14 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 14.

15. Defendants' subscribers typically use a broadband Internet connection, such as DSL or fiber optic cable to receive Defendants' programming. In Maple Heights, common providers include AT&T and Spectrum Broadband. These broadband Internet connections rely upon wireline facilities located in whole or in part in the public right(s)-of-way to deliver Internet service to subscribers. That means that Defendants operate and provide their video service to Defendants' subscribers through wireline facilities located at least in part in the public right-of-way.

ANSWER: The allegations in Paragraph 15 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 15 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix admits that Netflix subscribers must use a broadband Internet connection, such as DSL or fiber optic cable to receive Netflix's programming on an Internet-connected electronic device, such as a computer or smart television. Netflix affirmatively states that Netflix content is also available to subscribers using mobile devices, in which case they also must supply their own Internet connection (*i.e.*, from their cellular provider). Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding common Internet service providers in Maple Heights and on that basis, denies those allegations and demands strict proof thereof. Netflix affirmatively states that it is a producer and distributor of on-demand video content but that it is not an Internet service provider or a cable service provider and does not own or operate any network, infrastructure, or wireline facilities in the public right-of-way. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 15.

16. As video service providers, Defendants were required to apply for and obtain prior authorization from the director of commerce of Ohio and provide ten days' advance, written notice to Plaintiff and other Ohio municipalities before it started providing its video service in those jurisdictions. *See* O.R.C. § 1332.23(A), O.R.C. § 1332.24(A)(1), and O.R.C. § 1332.27(A).

ANSWER: The allegations in Paragraph 16 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 16 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix denies that it is a video service provider and further denies that it was required to apply for and obtain prior authorization from the Ohio Director of Commerce and provide ten days' advance, written notice to Plaintiff and other Ohio municipalities. Netflix affirmatively states that it is a producer and distributor of on-demand video content but that it is not an Internet service provider or a cable service provider and does not own or operate any network, infrastructure, or wireline facilities in the public right-of-way. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 16.

17. Defendants failed to apply for, and therefore never received, authorization from the Ohio director of commerce, and Defendants failed to provide ten days' advance, written notice to Plaintiff and other Ohio municipalities, and, therefore, have been and continue to provide video service throughout Ohio without legal authorization, and in contravention of the Ohio Revised Code.

ANSWER: The allegations in Paragraph 17 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 17 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix denies that it was required to apply for or receive authorization from the Ohio Director of Commerce and further denies that it was required to

provide ten days' advance, written notice to Plaintiff and other Ohio municipalities prior to providing content to subscribers. Netflix denies that it provides video service and further denies that it is currently or ever has been in contravention of the Ohio Law. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 17.

18. Had Defendants provided the statutorily required ten days' advance, written notice, then Plaintiff and other Ohio municipalities would have been provided an opportunity, as set forth in the Ohio Revised Code, to notify Defendants of the percentage of gross revenues required to be paid for providing video service in those jurisdictions (i.e. the video service provider fee). *See* O.R.C. 1332.32(C)(1).⁴

ANSWER: The allegations in Paragraph 18 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 18 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix denies that it is or has ever been required to notify Plaintiff or any Ohio municipality prior to providing its content to subscribers. Netflix denies that it is currently or ever has been required to pay any video service provider fee under the Ohio Law to Plaintiff or any other Ohio municipality. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 18.

19. Many Ohio municipalities, including Maple Heights, have enacted local ordinances that impose a video service provider fee of 5% on all video service providers.

ANSWER: Netflix lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 19 and on that basis, denies those allegations and demands strict proof thereof. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 19.

⁴ *See also* Ohio Department of Commerce, FAQs for Local Governments, *available at* https://www.com.state.oh.us/documents/vsa_LocalGovernmentFAQs.pdf.

20. The Ohio director of commerce would have authorized video service providers such as Defendants to use public rights-of-way, as long as said video service provider makes a quarterly video service provider payment to each city in which it provides video service. The required video service provider payment is up to 5% of gross revenues,⁵ received by the video service provider from the provision of video services in that city. *See* O.R.C. § 1332.32.

ANSWER: Netflix lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 20 and on that basis, denies those allegations and demands strict proof thereof. The allegations in Paragraph 20 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 20 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix denies that it is a video service provider and that it currently is required or ever has been required to pay any video service provider fee to Plaintiff or any other Ohio municipality under the Ohio Law. Netflix affirmatively states that it is a producer and distributor of on-demand video content but that it is not an Internet service provider or a cable service provider and does not own or operate any network, infrastructure, or wireline facilities in the public right-of-way. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 20.

21. Defendants were required to receive authorization from the Ohio director of commerce and provide ten days' advance, written notice before providing video service in Maple Heights and the other Ohio municipalities in which they provide their video services. Defendants' failure to receive authorization and provide advance, written notice, however, did not relieve Defendants of the obligation to pay a video service provider fee of up to 5% of their gross revenues derived from providing such video service in those municipalities. *See* O.R.C. § 1332.32.

ANSWER: The allegations in Paragraph 21 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations.

⁵ "Gross revenue" shall be computed in accordance with generally accepted accounting principles. *See* O.R.C. § 1332.32(B).

Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 21 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 21.

22. Defendants have failed to comply with § 1332.32 because they have failed to receive authorization and provide ten days' advance, written notice, directly resulting in the failure to pay Plaintiff and the other Class members the required video service provider fee of up to 5% of gross revenues.

ANSWER: The allegations in Paragraph 22 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 22 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 22.

23. Plaintiff, individually and on behalf of other Ohio municipalities, seeks to require Defendants to abide by the Ohio Revised Code, and pay what they owe to these municipalities

ANSWER: The allegations in Paragraph 23 are Plaintiff's characterization of this matter and therefore require no answer. To the extent a response is required, Netflix admits that Plaintiff purports to make allegations and request relief under the Ohio Law. Netflix denies that Plaintiff or any putative class member is entitled to any relief whatsoever. Netflix denies that it is or ever has been in violation of the Ohio Law. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 23.

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action as a class action pursuant to Rules 23(a) and 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of a class defined as:

All Ohio municipalities in which one or more of the Defendants has provided video service (the "Class").

ANSWER: The allegations in Paragraph 24 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. To the extent that a response is required, Netflix admits that Plaintiff purports to bring this action as a class action pursuant to Rules 23(a) and 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the class defined in Paragraph 24. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 24 and expressly denies that Plaintiff's claims are amenable to class treatment.

25. Excluded from the Class are Defendants and any of their members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; and the Court staff assigned to this case and their immediate family members. Plaintiff reserves the right to modify or amend the Class definition, as appropriate, during the course of this litigation.

ANSWER: The allegations in Paragraph 25 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 25 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix denies that this case may be properly maintained as a class action under the criteria of Rule 23 of the Federal Rules of Civil Procedure. Netflix admits that Plaintiff purports to exclude the individuals and entities listed in Paragraph 25 from the proposed class and purports to reserve the right to modify or amend the definition of the proposed class. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 25 and expressly denies that Plaintiff's claims are amenable to class treatment.

26. This action has been brought and may properly be maintained on behalf of the Class proposed herein under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

ANSWER: The allegations in Paragraph 26 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. To

the extent that a response is required, Netflix admits that Plaintiff purports to bring this case on behalf of a proposed class under the criteria of Rule 23 of the Federal Rules of Civil Procedure. Netflix denies that this case may be properly maintained as a class action under the criteria of Rule 23 of the Federal Rules of Civil Procedure. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 26 and expressly denies that Plaintiff's claims are amenable to class treatment.

27. **Numerosity—Federal Rule of Civil Procedure 23(a)(1)**. The proposed Class is sufficiently numerous that individual joinder of all Class members is impracticable. Indeed, the Class size is believed to be hundreds of municipalities. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

ANSWER: Netflix lacks knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 27 and on that basis, denies those allegations and demands strict proof thereof. The allegations in Paragraph 27 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 27 and expressly denies that Plaintiff's claims are amenable to class treatment.

28. **Commonality and Predominance—Federal Rules of Civil Procedure 23(a)(2) and 23(b)(3)**. This action involves common questions of law and fact, which predominate over any questions affecting only individual Class members, including, without limitation:

- a. Whether Defendants provide video service, as defined by O.R.C. § 1332.21(J), within Plaintiff's and the other Class members' geographic areas;
- b. Whether Defendants are video service providers, as defined by O.R.C. § 1332.21(M)
- c. Whether Defendants were required to receive authorization from the Ohio director of commerce and provide ten days' advance, written notice to Plaintiff and other Ohio municipalities of such service;
- d. Whether Defendants' failure to apply and obtain authorization and failure to provide ten days' advance, written notice to Plaintiff and other Ohio municipalities of such video service has relieved Defendants of their

obligation to pay video service provider fees pursuant to O.R.C. § 1332.32;

- e. The appropriate measure of damages to award Plaintiff and the other Class members; and
- f. The appropriate declaratory relief to which Plaintiff and the other Class members are entitled.

ANSWER: The allegations in Paragraph 28 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 28 and expressly denies that Plaintiff's claims are amenable to class treatment.

29. **Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of the other Class members' claims because Plaintiff and each of the other Class members is entitled to video service provider fee payments from Defendants pursuant to O.R.C. § 1332.32, and Defendants have failed to pay Plaintiff and each of the other Class members those video service provider fees. Plaintiff is asserting the same claims and legal theories individually and on behalf of the other Class members.

ANSWER: The allegations in Paragraph 29 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix denies that Plaintiff or any putative class member is entitled to video service provider fee payments from Netflix. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 29 and expressly denies that Plaintiff's claims are amenable to class treatment.

30. **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4).** Plaintiff is an adequate Class representative because its interests do not conflict with the interests of the other Class members who it seeks to represent, Plaintiff has retained counsel competent and experienced in complex class action litigation, including successfully litigating class action cases similar to this one, where defendants breached statutory obligations, and Plaintiff intends to prosecute this action vigorously. Class members' interests will be fairly and adequately protected by Plaintiff and its counsel.

ANSWER: The allegations in Paragraph 30 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations.

Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 30 and expressly denies that Plaintiff's claims are amenable to class treatment.

31. **Declaratory and Injunctive Relief—Federal Rule of Civil Procedure 23(b)(2).**

Defendants acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and/or declaratory relief, as described below, with respect to the Class members.

ANSWER: The allegations in Paragraph 31 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 31 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 31 and expressly denies that Plaintiff's claims are amenable to class treatment.

32. **Superiority—Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

ANSWER: The allegations in Paragraph 32 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 32 and expressly denies that Plaintiff's claims are amenable to class treatment.

CLAIMS ALLEGED

COUNT I

VIOLATION OF OHIO REVISED CODE § 1332.32

33. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1-32, as if fully set forth herein.

ANSWER: Netflix incorporates its answers to Paragraphs 1 through 32 as and for its answer to the allegations in Paragraph 33.

34. Defendants provide video service, and are video service providers, in Maple Heights and each municipality comprising the Class. *See* O.R.C. § 1332.21(M). Defendants derive gross revenues from providing these video services.

ANSWER: The allegations in Paragraph 34 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 34 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix affirmatively states that it is a producer and distributor of on-demand video content but that it is not an Internet service provider or a cable service provider and does not own or operate any network, infrastructure, or wireline facilities in the public right-of-way. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 34.

35. Defendants are thus required, by statute, to pay each municipality in which they provide video service, a video service provider fee of up to 5% of their gross revenues derived from their operations in that municipality. *See* O.R.C. § 1332.32. Failure to receive the required authorization from the Ohio director of commerce does not excuse Defendants' obligation to make these payments.

ANSWER: The allegations in Paragraph 35 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of

the allegations in Paragraph 35 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix affirmatively states that it is a producer and distributor of on-demand video content but that it is not an Internet service provider or a cable service provider and does not own or operate any network, infrastructure, or wireline facilities in the public right-of-way. To the extent that a response is required, Netflix denies any and all allegations and/or legal conclusions contained in Paragraph 35.

36. Defendants have failed to comply with § 1332.32 because they have failed to pay Plaintiff and the other Class members up to 5% of gross revenues, as required.

ANSWER: The allegations in Paragraph 36 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 36 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 36.

37. Plaintiff and the other Class members are, therefore, entitled to damages as a result of Defendants' violations of O.R.C § 1332.32, along with pre- and post-judgment interest, in an amount to be determined at trial.

ANSWER: The allegations in Paragraph 37 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 37 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 37.

COUNT II

DECLARATORY JUDGMENT ACT

38. Plaintiff repeats, realleges, and incorporates by reference Paragraphs 1-32, as if fully set forth herein.

ANSWER: Netflix incorporates its answers to Paragraphs 1 through 32 as and for its answer to the allegations in Paragraph 38.

39. This case involves an actual controversy of sufficient immediacy, which is substantial and concrete, touches upon the legal relations of parties with adverse interests, and is subject to specific relief through a decree of conclusive character.

ANSWER: The allegations in Paragraph 39 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 39.

40. Pursuant to 28 U.S.C. §§ 2201-2202, Plaintiff seeks a declaration, and resulting order, from the Court that:

- a. Each Defendant provides “video service,” as that term is defined in the Ohio Revised Code. *See* O.R.C. § 1332.32(J);
- b. Each Defendant is a “video service provider,” as that term is defined in the Ohio Revised Code. *See* O.R.C. § 1332.32(M);
- c. Defendants provide video service, and are video service providers, in Maple Heights and each municipality in the Class. *See* O.R.C. § 1332.32(J)-(M);
- d. Defendants were required to receive authorization from the Ohio director of commerce and provide ten days’ advance, written notice to Plaintiff and other Ohio municipalities of such service. *See* O.R.C. § 1332.23(A), O.R.C. § 1332.24(A)(1), and O.R.C. § 1332.27(A)
- e. Defendants are required to pay Plaintiff and each of the other Class members a video service provider fee of up to 5% of their gross revenues derived from their operations in each such municipality, pursuant to O.R.C. § 1332.32; and
- f. Defendants have failed to comply with O.R.C. § 1332.32, because they

have each failed to pay to Plaintiff and each of the other Class members the required fee of up to 5% of gross revenues.

ANSWER: The allegations in Paragraph 40 state legal conclusions to which no response is required, but to the extent a response is required, Netflix denies those allegations. Netflix is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 40 that relate to Hulu and on that basis, denies those allegations and demands strict proof thereof. Netflix affirmatively states that it is a producer and distributor of on-demand video content but that it is not an Internet service provider or a cable service provider and does not own or operate any network, infrastructure, or wireline facilities in the public right-of-way. Netflix denies any and all remaining allegations and/or legal conclusions contained in Paragraph 40.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the other Class members, respectfully requests that the Court enter judgment in their favor and against Defendants as follows:

- a. Enter an Order certifying the above-defined Class and designating Plaintiff as Class Representative, and Plaintiff's counsel as Class Counsel;
- b. Award all monetary relief to which Plaintiff and the other Class members are entitled, including as set forth in Count I above;
- c. Grant declaratory relief as set forth in Count II above, including ordering Defendants to cure their noncompliance with O.R.C. § 1332.32;
- d. Award pre- and post-judgment interest;
- e. Award reasonable attorneys' fees and costs to Plaintiff's counsel; and
- f. Grant such further and other relief as this Court deems appropriate.

ANSWER: Netflix denies that Plaintiff and the putative class are entitled to any relief whatsoever, including but not limited to the relief requested in Plaintiff's Complaint. Netflix expressly denies that class certification is appropriate and further denies that Plaintiff's claims

are appropriate for class treatment. Netflix denies any and all remaining allegations in the Paragraph entitled “Request For Relief.”

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all causes of action so triable.

ANSWER: To the extent that an answer may be required to the Jury Demand in Plaintiff’s Complaint, Netflix denies each and every allegation therein.

AFFIRMATIVE DEFENSES

Netflix’s affirmative defenses to Plaintiff’s Complaint are set forth below. By setting forth the following defenses, however, Netflix does not assume the burden of proof on matters and issues other than those on which Netflix bears the burden of proof as a matter of law. Moreover, nothing stated herein is intended or shall be construed as an acknowledgment that any particular issue or subject matter is relevant to Plaintiff’s allegations.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state any claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The claims of Plaintiff and/or one or more members of the proposed class are barred, in whole or in part, to the extent that Plaintiff and/or one or more members of the proposed class did not suffer any legally cognizable injury under applicable law.

THIRD AFFIRMATIVE DEFENSE

The claims in Plaintiff’s Complaint are not properly maintained as a class action, because, inter alia, Plaintiff is not an adequate representative, Plaintiff’s claims are not common or typical of claims of members of the proposed class, the claims of Plaintiff and members of the proposed class are subject to unique facts and defenses, common questions of law and fact do not predominate over any common issues, class treatment is not superior to other available methods

of determining the controversy, and a class action would be unmanageable. Moreover, certification of the proposed class would result in the denial of due process to Netflix as well as members of the proposed class.

FOURTH AFFIRMATIVE DEFENSE

The claims of Plaintiff and/or one or more members of the proposed class are time-barred under the applicable statutes of limitations or statutes of repose.

FIFTH AFFIRMATIVE DEFENSE

If Plaintiff and/or persons claiming to be members of the proposed class have delayed in bringing their claims, they may be barred from recovery, in whole or in part, by the doctrines of estoppel, waiver, or laches.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff and its counsel have failed to join as parties to this action all persons and entities who would be necessary and/or indispensable parties for the adjudication of the claims of Plaintiff and/or members of the proposed class.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint and the causes of action alleged therein are barred to the extent that Plaintiff and/or members of the proposed class lack standing.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint and the causes of action alleged therein are barred to the extent that Plaintiff and/or members of the proposed class failed to exhaust administrative remedies.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint and the causes of action alleged therein are barred by the doctrine of unclean hands.

TENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff and/or one or more members of the proposed class are barred, in whole or in part, by the doctrine of primary jurisdiction. Ohio law vests in the Director of Commerce the exclusive discretionary authority to decide whether to issue a video service authorization and whether to take enforcement action for any failure to do so. Plaintiff's claims invade that discretionary authority.

ELEVENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff and/or one or more members of the proposed class are barred in whole or in part, because Plaintiff's application of the video service provider fee to Netflix is preempted by the Internet Tax Freedom Act's prohibition against discriminatory taxation of electronic commerce, 47 U.S.C. § 151 note § 1101(2), and the Communications Act's prohibition on local governments applying franchise fees only to cable operators and providers of cable services. 47 U.S.C. §§ 541, 542, 556(c).

TWELFTH AFFIRMATIVE DEFENSE

The claims of Plaintiff and/or one or more members of the proposed class are barred in whole or in part, because Plaintiff's application of the video service provider fee to Netflix violates the First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment.

THIRTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff and/or one or more members of the proposed class are barred in whole or in part, because the application of the video service provider fee on Netflix violates the Dormant Commerce Clause of the United States Constitution.

FOURTEENTH AFFIRMATIVE DEFENSE

Netflix has insufficient knowledge or information upon which to form a belief as to whether it may have additional affirmative defenses that govern the claims asserted by Plaintiff and on behalf of the entities claimed to be members of the proposed class. Netflix, therefore, reserves the right to raise additional defenses as appropriate.

WHEREFORE, Netflix prays:

- (a) That the Complaint be dismissed with prejudice and judgment be entered in favor of Netflix;
- (b) That Plaintiff and all members of the proposed class take nothing by reason of this suit;
- (c) For attorneys' fees and costs;
- (d) That the certification of the proposed class herein be denied; and
- (e) For any other and further relief as the Court deems just and proper.

* * * * *

NETFLIX'S COUNTERCLAIM

Under Federal Rule of Civil Procedure 13, Defendant/Counterclaim Plaintiff Netflix, by and through its undersigned attorneys, hereby asserts the following counterclaim against Plaintiff/Counterclaim Defendant Maple Heights.

PARTIES

- 1. Netflix is a Delaware corporation headquartered in Los Gatos, California.
- 2. Maple Heights alleges in this action that it is a lawfully existing Ohio municipal corporation located in Cuyahoga County, Ohio entitled to fees from Netflix under Ohio Rev. Code § 1332.32 *et seq.*

3. Maple Heights purports to bring this action on behalf of all similarly-situated municipalities in Ohio. If this class is certified, Netflix reserves the right to amend this pleading to allege the Counterclaim against other members of the purported class.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over Maple Heights because Maple Heights is located in the state of Ohio. Further, Maple Heights commenced and continues to maintain this action in this judicial district.

5. This Court has subject matter jurisdiction over this counterclaim under 28 U.S.C. § 1331 because it arises under federal law, including 42 U.S.C. § 1983, the Communications Act of 1934, as amended (“Communications Act”), the Internet Tax Freedom Act, and the Supremacy and Commerce Clauses of, and First Amendment to, the United States Constitution. This Court has equitable jurisdiction to enjoin unconstitutional action. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015). In addition, the counterclaim arises out of the same nucleus of operative facts as the claims Maple Heights commenced and continues to maintain in this judicial district.

6. Venue is proper in this Court under 28 U.S.C. § 1391.

INTRODUCTION

7. This action by Maple Heights seeks for the first time to apply Ohio’s franchise provisions that permit the taxation of cable operators that place wires and cables under streets and on poles in public rights-of-way, to also include video *content* providers like Hulu and Netflix that do not. By doing so, Maple Heights is not only twisting Ohio law in ways that were not only never contemplated, but that are also plainly unconstitutional under the First Amendment, Supremacy Clause, and Dormant Commerce Clause.

8. As the Supreme Court has repeatedly held, the First Amendment broadly protects all forms of expression—be it political, educational, inspirational or simply entertaining. While the “Free Speech Clause exists principally to protect discourse on public matters,” the Supreme Court has “long recognized that it is difficult to distinguish politics from entertainment, and dangerous to try.” *Brown v. Entertainment Merchants Assoc.*, 564 U.S. 786, 790 (2011). This right extends not only to the right to speak, but the right to watch and hear, and the right to distribute.

9. Maple Heights is targeting the distribution of video content—such as *When They See Us*, *The Social Dilemma*, and *The Crown*—that is clearly protected by the First Amendment. Maple Heights claims that Netflix is not permitted to distribute such programs to anyone in Ohio without first obtaining permission from the state—permission that the Ohio Director of Commerce “may,” but is not required, to provide. Maple Heights seeks to impose a “fee” on such distribution, which not only burdens the distribution of First Amendment works, but burdens its affordability to residents who want to access them. And, while Maple Heights has not yet publicly taken such a position, it presumably also seeks to compel speech by requiring Netflix to carry public, educational, and governmental channels.⁶

10. Such licensing, taxation, and compulsion have always been limited to companies that need permission to use public rights-of-way as part of their business operations. Those companies are required to seek authorization not because they needed permission to speak, but because they needed access to public property. Compensation was a “tax” not on expression, but for that access. And carriage requirements were not the result of any governmental audacity to

⁶ “A video service provider shall accept PEG channel content and programming under this section that, at the least, meets the transmission standards of the national television standards committee in effect on the effective date of this section.” Ohio Rev. Code § 1332.30(D) (emphasis added).

dictate speech, but was a benefit the government extracted in return for giving permission to use public rights-of-way to construct and operate wireline and cable facilities.

11. Maple Heights's decision to target Netflix, even though Netflix does not construct or operate any system on public rights-of-way, creates a host of First Amendment problems. It not only purports to require state authorization before Netflix is permitted to speak in the state, but imposes an ad hoc taxation regime that discriminates based on the speaker and the type of speech. Maple Heights has singled out Hulu and Netflix for this treatment. The result is a licensing, taxation, and compulsion scheme that clearly violates the Constitution.

12. Maple Heights's unprecedented and discriminatory action also violates the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, as it conflicts with, and is preempted by, the Communications Act and Federal Communications Commission ("FCC") determinations implementing that Act, as well as the Internet Tax Freedom Act.

13. Maple Heights's action also violates the Dormant Commerce Clause of the United States Constitution, U.S. Const. art. I, § 8, cl. 3, by imposing burdensome requirements on inherently interstate services, far in excess of any putative local benefits.

14. Netflix willingly pays all properly assessed state and municipal taxes and fees. But Maple Heights demands a fee that does not apply to Netflix, and that violates the Constitution. Netflix therefore seeks to enjoin this unconstitutional action by Maple Heights.

FACTUAL ALLEGATIONS

15. Netflix is a producer and distributor of on-demand video content. Netflix offers its subscribers, including subscribers in Maple Heights, online streaming access to a library of documentaries, feature films, and television series across a variety of genres and languages to viewers via the public Internet. Netflix does not provide live programming, such as sports, news,

and award shows, nor does it provide “linear programming” by offering content on any set schedule. Rather, Netflix subscribers can watch as much as they want, anytime, anywhere, on any Internet-connected screen, all without commercials. As of 2019, Netflix had more than 167 million paid streaming subscribers in more than 190 countries.

16. Ohio law provides that “no person shall provide video service in this state . . . except pursuant to a video service authorization issued under section 1332.24 of the Revised Code.” Ohio Rev. Code § 1332.23(A). “Video service” means “the provision of video programming over wires or cables located at least in part in public rights-of-way.” Ohio Rev. Code § 1332.21(J). A “person granted a video service authorization” is required to pay a fee (up to 5% of gross revenues) to “each municipal corporation and each township in which it offers video service.” *Id.* §§ 1332.21(M); 1332.32(A). This fee in turn can be passed on to resident subscribers. *Id.* § 1332.32(D).

17. A person operating pursuant to a video service authorization under Ohio law is subject to various obligations. *See, e.g., id.* § 1332.31 (obligation to carry “national, state, and local emergency interrupt service announcements”). Among other things, such video service providers are required to provide local public, educational, or governmental programming content. *See id.* § 1332.30(A).

18. Netflix has never sought authorization from the Director of Commerce. Netflix has never paid “video service provider fees” to Ohio municipalities. Netflix has also never collected “video service provider fees” from the residents of Maple Heights.

19. The Ohio Director of Commerce has never alleged that Netflix was required to receive video service authorization, has never contacted Netflix about auditing Netflix’s services

to determine whether Netflix should receive video service authorization, and has never initiated administrative proceedings or imposed a civil penalty on Netflix as a result.

20. Before this action, no Ohio municipality has ever contended that Netflix owed “video service provider fees” or was subject to Ohio’s video service authorization statutory scheme.

21. Maple Heights now contends that Netflix was required to obtain an “authorization” from the Ohio Director of Commerce before it provided on-demand video content over the public Internet to anyone in Ohio, is subject to the video service authorization statutory scheme, and should be required to pay fees (5% of gross revenues)—which presumably it expects Netflix to collect from its residents.

22. Maple Heights justifies its “fee” by alleging that Netflix provides video programming similar to the video programming provided by traditional over-the-air broadcasters. Netflix does not. But even if it did, Maple Heights does not impose the same fee on those broadcasters.

23. Indeed, video services provided via wireless commercial mobile service providers are expressly exempt from any fee. *See* Ohio Rev. Code § 1332.21(J). Video providers that distribute content solely over mobile broadband connections are thus given preferential treatment over Netflix, which distributes content over fixed and mobile connections, even though these speakers are similarly situated in that neither provides any facilities in the public rights-of-way. *See also* Final Analysis, Ohio Legislative Service Commission, *Am. Sub. S.B. 117* at 6 (Sept. 24, 2007) (analyzing Ohio Act enacting video service authorization laws and concluding that the act “excludes satellite service, because that service does not use wires or cables for transmission”) (citing Ohio Rev. Code § 1332.21(J)).

24. Maple Heights’s attempt to collect taxes from Netflix under a statutory scheme that does not apply to broadcasters or mobile service providers or satellite service providers plainly discriminates against Netflix as a speaker and based on the nature of its speech, for which Maple Heights provides no justification.

25. Maple Heights’s attempt to collect taxes from Netflix, while it has not attempted to do so for others who distribute video content to its residents, is also discriminatory, for which Maple Heights provides no justification. Any leeway ordinarily given to government officials has no role when applied to First Amendment activity, which does not tolerate *ad hoc* decisions.

26. Maple Heights’s attempt to impose such fees on Netflix also conflicts with the Communications Act, FCC Orders, and the Internet Tax Freedom Act, and therefore violates the Supremacy Clause.

27. Maple Heights’s attempt to collect these taxes from Netflix impermissibly exceeds the authority that federal law provides state and local governments to impose franchise fees. *See* 47 U.S.C. §§ 541, 542, 556(c).

28. Ohio law provides that a “video service authorization shall constitute a franchise” under the Communications Act. Ohio Rev. Code § 1332.24(A)(2). But the Communications Act’s franchise provisions permit state and local governments to impose fees *only* on cable operators and services. *See, e.g.*, 47 U.S.C. §§ 542(g) (defining “franchise fee” as limited to “cable operator[s]”); 541(a)(2) (awarding a franchise “authorize[s] the construction of a cable system”). In the Telecommunications Act of 1996, Congress eliminated any ambiguity as to the limitations on local franchise fee authority, amending 47 U.S.C. § 542(b) to clarify that such revenues could be included only if they came from “the operation of the cable system *to provide cable services.*” Pub. L. 104-104, § 303(b), 110 Stat. 56, 125 (emphasis added).

29. State and local attempts to impose franchise fees (or “video service provider” fees) on on-demand content providers like Netflix violate the Communications Act and binding FCC Orders, which preempt “[l]ocal regulations that *attempt to regulate any non-cable services offered by video providers.*” Report and Order, *In the Matter of Implementation of Section 621(a)(1) of the Cable Commc’ns Policy Act of 1984 As Amended by the Cable Television Consumer Prot. & Competition Act of 1992*, 22 FCC Rcd. 5101, ¶ 122 (2007) (emphasis added).

30. Maple Heights’s attempt to impose the fees at issue also violates the Internet Tax Freedom Act. 47 U.S.C. § 151 (note), § 1101(a)(2) (the “ITFA”).

31. The ITFA prohibits states and municipalities from enacting certain taxes on “electronic commerce,” which includes the delivery of services over the Internet or through Internet access, whether or not for consideration. 47 U.S.C. § 151 (note), § 1105(3).

32. Netflix is protected by the ITFA, as it provides online video content to subscribers using third-party Internet service providers’ Internet access service.

33. The franchise “fees” imposed by the Ohio Act are taxes under the ITFA, as they are not imposed or collected by any regulatory agency, but are instead imposed by an act of the state legislature and collected by municipalities for their general purposes. *See Chattanooga Gas Co. v. City of Chattanooga*, No. 1:04-cv-00214, 2007 WL 1387505, *9 (E.D. Tenn. May 7, 2007) (citing *Hedgepeth v. Tennessee*, 215 F.3d 608, 612 (6th Cir. 2000)). Netflix, which does not operate any facilities in the public rights-of-way, would not receive any privilege, service, or benefit from the tax. *See id.*

34. The tax also violates the ITFA’s prohibition on “discriminatory taxes” because it discriminates based on how the video content was delivered without justification, as discussed. 47 U.S.C. § 151 (note), § 1105(2)(A).

35. Maple Heights's action also violates the Dormant Commerce Clause, because the tax at issue imposes excessive burdens on interstate commerce that outweigh any purported local benefit.

36. Under the Dormant Commerce Clause, a state may not “discriminate against or burden the interstate flow of articles of commerce.” *Or. Waste Sys., Inc., v. Dep't of Env'tl. Quality of Or.*, 511 U.S. 93, 98 (1994). Courts have long recognized that the Commerce Clause prevents states from “imped[ing] . . . the free flow of commerce” where there exists a “need of national uniformity.” *S. Pac. Co. v. State of Ariz ex rel. Sullivan*, 325 U.S. 761, 767 (1945). These principles apply with greater force to Internet activities like streaming, as courts have recognized that “it is difficult, if not impossible, for a state to regulate Internet activities without projecting its legislation into other States.” *Publius v. Boyer-Vine*, 237 F. Supp. 3d 997, 1024 (E.D. Cal. 2017) (quoting *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 103 (2d Cir. 2003)).

37. The Dormant Commerce Clause does not tolerate burdens on interstate commerce where, as here, such burdens are “excessive in relation to the putative local benefits.” *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). In the context of the Internet, compliance with a patchwork of inconsistent state laws is inherently burdensome. Because Netflix does not operate any facilities in the public rights-of-way, the justification for imposing a tax under Ohio law is absent. Maple Heights did not, and cannot, identify any specific local benefit its action will provide.

38. Each of these constitutional violations independently requires enjoining Maple Heights's action.

CLAIMS FOR RELIEF

39. Netflix incorporates by reference the preceding paragraphs 1 through 38 as if set forth here in their entirety.

40. Section 1983 of Title 42 of the United States Code provides that “[e]very person who, under color of any statute . . . of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law [or] suit in equity.” The Supreme Court has long held that courts have equitable jurisdiction to enjoin unconstitutional action. *Armstrong*, 575 U.S. at 327.

41. Maple Heights is a person within the meaning of Section 1983 without any qualified or absolute immunity in this instance.

42. Maple Heights acts under color of state law, particularly as it seeks to collect video service authorization taxes under Ohio Rev. Code §§ 1332.21-1332.34.

FIRST CLAIM FOR RELIEF

Maple Heights’s Action Violates the First Amendment

43. Netflix incorporates by reference the preceding paragraphs 1 through 42 as if set forth here in their entirety.

44. Netflix’s distribution of on-demand video content over the public Internet to the residents of Maple Heights is protected under the First Amendment of the United States Constitution.

45. Maple Heights’ actions against Netflix violate the First Amendment, including without limitation: (a) imposing a standard-less licensing requirement before Netflix can speak to the residents of Maple Heights; (b) imposing a tax that discriminates based on the nature of

the video content at issue; (c) imposing a tax that discriminates based on the identity of the speaker; (d) subjecting Netflix to various requirements—*e.g.*, providing PEG content and programming—that constitute unconstitutionally compelled speech; and (e) singling out Hulu and Netflix (and their subscribers) for this unfair treatment.

46. If the tax is imposed against Netflix, as Maple Heights asks this Court to do, Netflix will be harmed in the form of actual damages by paying an unconstitutional tax for the services it provides. The threat of this harm is concrete, imminent, and certainly impending since Maple Heights has already taken adverse actions against Netflix in the form of this action.

SECOND CLAIM FOR RELIEF

Maple Heights's Action Violates, and Is Preempted by, the Communications Act and Binding FCC Determinations

47. Netflix incorporates by reference the preceding paragraphs 1 through 46 as if set forth here in their entirety.

48. Maple Heights' actions conflict with the Communications Act and long-standing FCC determinations and therefore violate the Supremacy Clause, including without limitation, imposing franchise fees on Netflix in violation of federal law limiting application of franchise fees to video providers that deliver video programming via their own facilities deployed in the public rights-of-way (namely, cable operators).

THIRD CLAIM FOR RELIEF

Maple Heights's Action Violates, and Is Preempted by, the Internet Tax Freedom Act

49. Netflix incorporates by reference the preceding paragraphs 1 through 48 as if set forth here in their entirety.

50. Maple Heights's Action directly conflicts with the ITFA and therefore violates the Supremacy Clause, including without limitation, by imposing a discriminatory tax on electronic commerce.

FOURTH CLAIM FOR RELIEF

Maple Heights's Action Violates the Dormant Commerce Clause

51. Netflix incorporates by reference the preceding paragraphs 1 through 50 as if set forth here in their entirety.

52. Maple Heights's action violates the Commerce Clause of the United States Constitution, Art. I, § 8, cl. 3, including without limitation, by imposing excessive burdens on interstate commerce that far outweigh any purported local benefit.

PRAYER FOR RELIEF

WHEREFORE, Netflix respectfully requests the Court enter judgment in its favor and against Maple Heights as follows:

- (a) Dismissing all claims against Netflix in Maple Height's Complaint with prejudice;
- (b) Declaring that the state video service authorization provisions do not apply to Netflix's distribution of online video content over the public Internet to the residents of Maple Heights;
- (c) Permanently enjoining Maple Heights from attempting to collect video service authorization taxes from Netflix;
- (d) Awarding reasonable attorneys' fees under 42 U.S.C. § 1988; and
- (e) Granting Netflix any further relief as this Court may deem just, proper or equitable.

Dated: October 19, 2020

Respectfully submitted,

/s/ Amanda Martinsek

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Counsel for Defendant Netflix, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on October 19, 2020, a copy of the foregoing was filed electronically and sent to all counsel of record by operation of the Court's CM/ECF System.

/s/ Amanda Martinsek _____
Counsel for Defendant Netflix, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CITY OF MAPLE HEIGHTS, OHIO,

Plaintiff,

v.

NETFLIX, INC. and HULU, LLC,

Defendants.

Case No.: 1:20-CV-01872

Judge James S. Gwin

**ANSWER TO CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Defendant Hulu, LLC (“Hulu”) hereby answers the allegations in Plaintiff City of Maple Heights, Ohio’s (“Plaintiff”) Class Action Complaint for (1) Violation of Ohio Revised Code §1332.32 and (2) Declaratory Judgment Act (“Complaint”) filed August 21, 2020. Except as explicitly admitted herein, each and every allegation of the Complaint is denied. Hulu answers the numbered paragraphs of the Complaint as follows:

ANSWER

1. Hulu denies the allegations in paragraph 1 of the Complaint.
2. Hulu denies the allegations in paragraph 2 of the Complaint.
3. Hulu denies the allegations in paragraph 3 of the Complaint.
4. Hulu lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4, and on that basis, denies them.
5. Hulu lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 5, and on that basis, denies them.
6. Hulu admits it is a limited liability company organized under the laws of Delaware and headquartered in Santa Monica, California. Hulu admits it is a premium streaming service offering live and on-demand television and film to over 35 million subscribers, including

subscribers in Ohio. Hulu admits that it provides access to over 80,000 television episodes and films as well as 65 channels of live television. Hulu denies the remaining allegations in paragraph 6 of the Complaint.

7. Hulu admits this Court has jurisdiction over this action. Hulu admits that it is a limited liability company organized under the laws of Delaware and headquartered in Santa Monica, California. Hulu also admits that the putative class size and amount in controversy satisfy the requirements for CAFA jurisdiction. Hulu denies the remaining allegations in paragraph 7 of the Complaint.

8. Hulu admits that venue is proper in this District under 28 U.S.C. § 1391(b). Hulu denies the remaining allegations in paragraph 8 of the Complaint.

9. Hulu admits it is a premium streaming service offering live and on-demand television and film to over 35 million subscribers, including subscribers in Ohio. Hulu admits that it provides access to over 80,000 television episodes and films as well as 65 channels of live television. Hulu denies the remaining allegations in paragraph 9 of the Complaint.

10. Hulu admits its subscribers access Hulu's content through internet-connected devices. Hulu admits the internet-connected devices used include computers, mobile devices, video game consoles, and televisions. Hulu denies the remaining allegations in paragraph 10 of the Complaint.

11. Hulu admits that a subscriber with the Hulu application or a supported web browser can watch Hulu content anywhere as long as their device is connected to the public internet. Hulu lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 11 regarding Netflix and on that basis denies them. Hulu denies the remaining allegations in paragraph 11 of the Complaint.

12. Hulu lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 12, and on that basis, denies them.

13. Hulu lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13, and on that basis, denies them.

14. Hulu admits that a subscriber with the Hulu application or a supported web browser can watch Hulu content anywhere as long as their device is connected to the public internet. Hulu denies the remaining allegations in paragraph 14 of the Complaint

15. Hulu admits that a subscriber with the Hulu application or a supported web browser can watch Hulu content anywhere as long as their device is connected to the public internet. Hulu lacks knowledge or information sufficient to form a belief about the truth of the common internet providers in Maple Heights, and on that basis denies that allegation. Hulu denies the remaining allegations in paragraph 15 of the Complaint.

16. Hulu denies the allegations in paragraph 16 of the Complaint.

17. Hulu denies the allegations in paragraph 17 of the Complaint.

18. Hulu denies the allegations in paragraph 18 of the Complaint.

19. Hulu denies the allegations in paragraph 19 of the Complaint.

20. Hulu denies the allegations in paragraph 20 of the Complaint.

21. Hulu denies the allegations in paragraph 21 of the Complaint.

22. Hulu denies the allegations in paragraph 22 of the Complaint.

23. Hulu denies the allegations in paragraph 23 of the Complaint.

24. Hulu admits that Plaintiff purports to bring this action as a class action. Hulu denies the remaining allegations in paragraph 24 of the Complaint.

25. Hulu denies the allegations in paragraph 25 of the Complaint.

26. Hulu denies the allegations in paragraph 26 of the Complaint.

27. Hulu denies the allegations in paragraph 27 of the Complaint.

28. Hulu denies the allegations in paragraph 28 of the Complaint.

29. Hulu denies the allegations in paragraph 29 of the Complaint.

30. Hulu denies the allegations in paragraph 30 of the Complaint.

31. Hulu denies the allegations in paragraph 31 of the Complaint.

32. Hulu denies the allegations in paragraph 32 of the Complaint.

33. Hulu incorporates by reference all preceding paragraphs as though fully set forth herein.

34. Hulu denies the allegations in paragraph 34 of the Complaint.

35. Hulu denies the allegations in paragraph 35 of the Complaint.

36. Hulu denies the allegations in paragraph 36 of the Complaint.

37. Hulu denies the allegations in paragraph 37 of the Complaint.

38. Hulu incorporates by reference all preceding paragraphs as though fully set forth herein.

39. Hulu denies the allegations in paragraph 39 of the Complaint.

40. Hulu admits that Plaintiff purports to seek a declaration from this Court. Hulu denies the remaining allegations in paragraph 40 of the Complaint.

AFFIRMATIVE DEFENSES

41. Hulu asserts the following affirmative defenses, without assuming the burden of proof as to any such defenses or portions thereof which would otherwise rest with Plaintiff.

Hulu expressly reserves the right to supplement, amend, or delete any or all of the following defenses, as warranted by discovery or other investigation, or as justice may require.

First Affirmative Defense

42. Plaintiff's claims, and any potential recovery thereunder, are barred by the statute of limitations.

Second Affirmative Defense

43. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, and laches.

Third Affirmative Defense

44. Plaintiff's claims are barred, in whole or in part, by the doctrine of primary jurisdiction. Ohio law vests in the Director of Commerce the exclusive discretionary authority to decide whether to issue a video service authorization and whether to take enforcement action for any failure to do so. Plaintiff's claims invade that discretionary authority.

Fourth Affirmative Defense

45. Plaintiff's claims are barred, in whole or in part, for failing to exhaust administrative remedies before bringing this action.

Fifth Affirmative Defense

46. Plaintiff's claims are barred, in whole or in part, because Plaintiff's application of the video service provider fee to Hulu is preempted by the Internet Tax Freedom Act's prohibition against discriminatory taxation of electronic commerce, 47 U.S.C. § 151 note § 1101(2), and the Communications Act's prohibition on local governments applying franchise fees to non-cable services. 47 U.S.C. §§ 541, 542, 556(c).

Sixth Affirmative Defense

47. Plaintiff's claims are barred, in whole or in part, because Plaintiff's application of the video service provider fee to Hulu violates the First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment.

Seventh Affirmative Defense

48. Plaintiff's claims are barred, in whole or in part, because the application of the video service provider fee on Hulu violates the Dormant Commerce Clause of the United States Constitution.

Eighth Affirmative Defense

49. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

Ninth Affirmative Defense

50. Plaintiff and its counsel have failed to join as parties to this action all persons and entities who would be necessary and/or indispensable parties for the adjudication of the claims of Plaintiff and/or the members of the proposed class.

Tenth Affirmative Defense

51. Hulu has insufficient knowledge or information upon which to form a belief as to whether it may have additional affirmative defenses that govern the claims asserted by Plaintiff and on behalf of the entities claimed to be members of the proposed class. Hulu, therefore, reserves the right to raise additional defenses as appropriate.

PRAYER FOR RELIEF

WHEREFORE, Hulu respectfully requests the Court enter judgment in its favor and against Maple Heights as follows:

- a. Dismissing all claims against Hulu in Maple Height's Complaint with prejudice;

- b. Entering judgment in favor of Hulu; and
- c. Granting Hulu any further relief as this Court may deem just, proper, or equitable.

October 19, 2020

Respectfully submitted,

/s/ Kerri L. Keller

Kerri L. Keller (Ohio Bar No. 0075075)

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Counsel for Defendant Hulu, LLC

CERTIFICATE OF SERVICE

I hereby certify that, on October 19, 2020, a copy of the foregoing was filed electronically and sent to all counsel of record by operation of the Northern District of Ohio's CM/ECF System.

/s/ Kerri L. Keller
Kerri L. Keller



Rhonda Johnson
President-AT&T California

Appendix - A1

Corporate External Affairs
State External, Regulatory & Legislative Affairs
San Francisco, CA 94108

att.com

April 15, 2021

Mr. Michael Pierce
Video Franchising and Broadband Deployment Group
Communications Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: AT&T California's Application To Transfer California State Video Franchise 0002

Dear Mr. Pierce:

Pacific Bell Telephone Company d/b/a AT&T California ("AT&T California"), pursuant to Section 5840(l) of the Public Utilities Code and General Order 169, hereby files this application to transfer state video franchise 0002. AT&T California will transfer the franchise to an affiliate, DIRECTV, LLC. This transfer will occur in connection with a transaction whereby AT&T's multichannel video distribution businesses, including the U-verse IP-enabled video service, will be provided by a new affiliate in which AT&T will retain a 70% common economic interest, with TPG Capital ("TPG") holding a 30% common economic interest.

Enclosed please find a completed application form, a check in the amount of \$2,000 for the application fee, and the following appendices:

- Appendix A -- Officers
- Appendix B -- Affidavit
- Appendix C -- Collective Bargaining Affidavit
- Appendix D -- Sample Local Letter
- Appendix E -- Completed Templates (on CD)

AT&T California has in place a \$500,000 bond from Rosenberg & Parker Surety (No. 106593228) and will seek to transfer the bond to DIRECTV, LLC along with the franchise.

AT&T California and DIRECTV, LLC request that the effective date of the Commission's approval of the transfer be deferred until the closing date of the AT&T/TPG transaction, which is expected to occur in the second half of 2021.

Please contact Brian M. Regan at (310) 964-3982 or br363m@att.com with any questions.

Sincerely,

A handwritten signature in black ink that reads "Rhonda J. Johnson". The signature is written in a cursive style with a long, sweeping tail on the "n".

Rhonda Johnson
President, AT&T California

cc: Mr. Michael Morris
Video Franchising and Broadband Deployment Group
Communications Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102



**APPLICATION FOR A NEW, AMENDED OR RENEWAL
CALIFORNIA STATE VIDEO FRANCHISE
CALIFORNIA PUBLIC UTILITIES COMMISSION**

Definitions for the purposes of this Application:

A. "Access" means that the holder is capable of providing video service at the household address using any technology, other than direct-to-home satellite service, providing two-way broadband Internet capability and video programming, content, and functionality, regardless of whether any customer has ordered service or whether the owner or landlord or other responsible person has granted access to the household. If more than one technology is utilized, the technologies shall provide similar two-way broad band Internet accessibility and similar video programming.

B. "Affiliate" means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.

C. "Applicant" means any person or entity that files an application seeking to provide Video Service in the state pursuant to a State Video Franchise.

D. "Application" means the form prescribed by the Commission through which an Applicant may apply for a State Video Franchise, ~~or amend its Video Service Area,~~ or apply for a State Video Franchise renewal.

E. "Application Fee" means any fee that the Commission imposes to recover its actual and reasonable costs of processing an Application.¹

F. "Area" means a set of contiguous (i) collections of census block groups or (ii) regions that are mapped using geographic information system technology.

G. "Broadband" or "Broadband Service" means any service defined as Broadband, or having advanced telecommunications capability, in the most recent Federal Communications Commission inquiry pursuant to Section 706 of the Telecommunications Act of 1996 (P.L. 104-104).²

H. "Census Block Group" has the same meaning as used by the U.S. Census Bureau. I. "Census Tract" has the same meaning as used by the U.S. Census Bureau.³

J. "Census Tract Basis" means pursuant to the reporting standards articulated in Appendix D and Appendix E, Section II of D.07-03-014.

K. "Commission" means the Public Utilities Commission.

L. "Company" means the Applicant and its Affiliates.

¹ CAL. PUB. UTIL. CODE § 5840(c). This fee is not levied for general revenue purposes, consistent with Public Utilities Code § 5840(c).

² *Id.* at § 5830(a). The Federal Communications Commission currently uses the term "broadband" and "advanced telecommunications capability" to describe services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kilobits per second. FEDERAL COMMUNICATIONS COMMISSION, AVAILABILITY OF ADVANCED TELECOMMUNICATIONS CAPABILITY IN THE UNITED STATES, FOURTH REPORT TO CONGRESS, FCC 04-208, 10 (Sept. 9, 2004). This definition, however, is under review by the Commission, and it may evolve in response to rapid technological changes in the marketplace. *Id.*

³ CAL. PUB. UTIL. CODE at § 5960(a).

M. “Consultant” means the third party source of census household projections including low income household projections.

N. “DIVCA” means Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (Ch. 700, Stats. 2006).

O. “Household” means, consistent with the U.S. Census Bureau, a house, apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters.⁴ Separate living quarters are those in which the occupants live and eat separately from any other persons in building and which have direct access from the outside of the building or through a common hall.⁵

P. “Local Entity” means any city, county, city and county, or joint powers authority within the state within whose jurisdiction a State Video Franchise Holder may provide Video Service.⁶

Q. “Low-Income Household” means a residential Household where the average annual Household income is less than \$35,000, as based on U.S. Census Bureau estimates adjusted annually to reflect rates of change and distribution through January 1, 2007.⁷

R. “State Video Franchise” means a franchise issued by the Commission pursuant to DIVCA.⁸

S. “State Video Franchise Holder” means a person or group of persons that has been issued a State Video Franchise from the Commission pursuant to Division 2.5 of DIVCA.⁹

T. “Telephone Service Area” means the area where the Commission has granted an entity a Certificate of Public Convenience and Necessity to provide telephone service.

U. “Telephone Corporation” means a telephone corporation as defined in Public Utilities Code § 234.

V. “Video Service” means video programming services, cable service, or open-video system service provided through facilities located at least in part in public rights-of-way without regard to delivery technology, including Internet protocol or other technology. This definition does not include (1) any video programming provided by a commercial mobile service provider defined in Section 322(d) of Title 47 of the United States Code, or (2) video programming provided as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.¹⁰

W. “Video Service Area” means the area proposed to be served under a State Video Franchise. X.

“Video Service Provider” means any entity providing Video Service.¹¹

⁴ *Id.* at § 5890(j)(1).

⁵ *Id.*

⁶ *Id.* at § 5830(k).

⁷ *Id.* at § 5890(j)(2) (defining “low-income households” for the purposes of imposing build-out requirements).

⁸ *Id.* at § 5830(p).

⁹ *Id.* at § 5830(i).

¹⁰ *Id.* at § 5830(s).

¹¹ *Id.* at § 5830(t).

Video Service Area Information

Renewal Applicants: If the Applicant has already reported socioeconomic data as part of the yearly DIVCA data collection, this data does not need to be submitted again.

14. a. Utilizing the template (as applicable) provided on the Communications Division's section of the CPUC's web site at www.cpuc.ca.gov provide a geographic description of the Video Service Area and input the expected date for the deployment of each Area in the Video Service Area. Please select the method by which the geographic description shall be detailed:

A collection of U.S. Census Bureau Census Block Groups, or

○ *If Applicant chooses "a," then download and complete the electronic template available on the Communications Division's section of the CPUC's web site at www.cpuc.ca.gov*

A geographic information system digital boundary meeting or exceeding national map accuracy standards.

○ *If Applicant chooses "b," then submit the geographic information system digital boundary as a polygon shapefile (.shp), in State Plane coordinate system in digital format electronically to the Commission*

b. If a consultant was used to compile the geographic description data, please provide the following:

Consultant Company's Full Legal Name: _____

Address: _____

Phone: _____

15. Socioeconomic status information of residents within the Video Service Area

○ *If applicable, the Applicant shall provide this information utilizing the templates available on the Communications Division's section of the CPUC's web site at www.cpuc.ca.gov*

a. Provide the following baseline description of residents in the Video Service Area:

i. *Number of Households:* The number of Households in each Census Tract included in the Video Service Area. Utilize the most recent U.S. Census projections of households available as of January 1 of the year the Application is submitted to determine the number of Households.

ii. *Number of Low-Income Households:* The number of Low-Income Households in each Census Tract included in the Video Service Area. Utilize the most recent U.S. Census projections of low-income households available as of January 1, 2007 to determine the number of Low-Income Households.

b. Provide or attest in the attached Affidavit that Applicant shall provide, no later than 90 calendar days after the date of the Commission's issuance of a State Video Franchise to the Applicant, the following description of residents in the Video Service Area on a Census Tract Basis:

i. *Wireline Broadband:*

1. The number of Households in each Census Tract to which the Company makes wireline Broadband available.
2. The number of Households in each Census Tract that subscribe to wireline Broadband that the Company makes available.

ii. *Non-Wireline Broadband:*

1. If the Company uses non-wireline technology to provide Broadband, specify the type(s) of technology used in each Census Tract.
2. The number of customers in each Census Tract that subscribe to non-wireline Broadband that the Company makes available.
3. Using geographic information system digital boundaries that meet or exceed national map accuracy standards, provide maps that delineate (i) Census Tract boundaries and (ii) where the Company typically makes non-wireline Broadband available.

iii. *Video service:* The number of Households in each Census Tract that are offered Access by the Company.

iv. *Low-Income* (Utilize the most recent U.S. Census projections of low-income households available as of January 1, 2007 to determine the number of Low-Income Households): The number of Low-Income Households that are offered Access by the Company.

16. Socioeconomic status information of residents within the Telephone Service Area

○ *If applicable, the Applicant shall provide this information utilizing the templates available on the Communications Division's section of the CPUC's web site at www.cpuc.ca.gov.*

a. If the Applicant or any of its Affiliates is a Telephone Corporation, provide the following baseline description of residents in the Telephone Service Area:

i. *Number of Households:* The number of Households in each Census Tract included in the Telephone Service Area. Utilize the most recent U.S. Census projections of households available as of January 1 of the year the Application is submitted to determine the number of Households.

ii. *Number of Low-Income Households:* The number of Low-Income Households

in each Census Tract included in the Telephone Service Area. Utilize the most recent U.S. Census projections of low-income households available as of January 1, 2007 to determine the number of Low-Income Households.

b. If the Applicant or any of its Affiliates is a Telephone Corporation, provide or attest in the attached Affidavit that Applicant shall provide, no later than 90 calendar days after the date of the Commission's issuance of a State Video Franchise to the Applicant, the following description of residents in the Telephone Service Area:

i. *Wireline Broadband:*

1. The number of Households in each Census Tract to which the Company makes wireline Broadband available.
2. The number of Households in each Census Tract that subscribe to wireline Broadband that the Company makes available.

ii. *Non-Wireline Broadband:*

1. If the Company uses non-wireline technology to provide Broadband, specify the type(s) of technology used in each Census Tract.
2. The number of customers in each Census Tract that subscribe to non-wireline Broadband that the Company makes available.
3. Using geographic information system digital boundaries that meet or exceed national map accuracy standards provide maps that delineate (i) Census Tract boundaries and (ii) where the Company typically makes non-wireline Broadband available.

iii. *Video service:* The number of Households in each Census Tract that are offered Access by the Company.

iv. *Low-Income* (Utilize the most recent U.S. Census projections of low-income households available as of January 1, 2007 to determine the number of Low-Income Households): The number of Low-Income Households that are offered Access by the Company.

17. If a consultant was used to compile the geographic description data, please provide the following:

Consultant Company's Full Legal Name: _____

Address: _____

Phone: _____

Financial, Legal, and Technical Qualifications

18. a. New Applicants must provide or attest in the attached Affidavit that Applicant shall provide a copy of a fully executed bond in the amount of \$100,000 per 20,000 households in the Video Service Area, with a \$100,000 minimum and a \$500,000

maximum per State Video Franchise Holder, to the Executive Director prior to initiating video service and no later than 5 business days after the date of the Commission’s issuance of a State Video Franchise to the Applicant. The bond must list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California.

b. Renewal Applicants must have already provided to the Commission a copy of a fully executed bond in the required amount or else this Application will be considered incomplete.

Local Entity Contact Information

19. Utilizing the template provided on the Video Franchise main page of the CPUC website, the Applicant shall provide the contact name and information for a representative from each Local Entity within the Video Service Area.

Application Fee

20. Attach to this Application a check in the amount of \$2,000 made payable to the “California Public Utilities Commission.”

Affidavit

21. Complete and submit the affidavit attached as Appendix B to this Application.

A COMPLETE APPLICATION MUST INCLUDE:

- | |
|--|
| <p>Completed Application form
CD(s) containing completed templates available on the Commission website
Appendix A: Applicant’s Principal Officers
Appendix B: Affidavit
Check in the amount of \$2,000</p> |
|--|

APPLICANT’S PRINCIPAL OFFICERS
NAME **TITLE**

APPENDIX A**DIRECTV, LLC PRINCIPAL OFFICERS**

Name	Title
Bill Morrow	President and Chief Executive Officer
Michael Hartman	General Counsel
Robert Thun	Executive Vice President and Chief Content Officer
Ray Carpenter	Chief Financial Officer
Henry Derovanessian	Senior Vice President, Technology and Operations
Jennifer Tillson	Chief Information Officer
Devin B Merrill	Senior Vice President, Strategy & Business Development
Scott Seth Smith	Chief Human Resources Officer
Emma L. Brackett	Vice President - Content and Programming
Linda K. Burakoff	Vice President - Content and Programming
Vincent Torres	Senior Vice President, Product
James C. Crittenden	Vice President - Sports Production
Rebecca B. Nelson	Vice President - Content and Programming
Michael J. Wittrock,	Senior Vice President, Sales and Services
Timothy A. Whitley	Vice President - Associate General Counsel
Justin M. Monaghan	Vice President - Associate General Counsel
Brooke E. Mallette	Vice President - Associate General Counsel
Brian M. Regan	Vice President - Associate General Counsel and Secretary



California Affidavit_US_169554500_4.PDF

DocVerify ID: 8F80B23D-8BE5-45CD-B7FE-F97097C1B967
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E-Signature Summary

E-Signature 1: Brian M. Regan (BMR)

April 12, 2021 14:53:11 -8:00 [43713EAAED70] [104.174.234.194]
br363m@att.com (Principal) (Personally Known)

E-Signature Notary: Hazel A. Lavarn-Walker (HLW)

April 12, 2021 14:53:11 -8:00 [6CD263396DAF] [192.203.255.19]
hlavarnwalker@gmail.com
I, Hazel A. Lavarn-Walker, did witness the participants named above electronically sign this document.



AFFIDAVIT

STATE OF California

COUNTY OF Los Angeles

My name is Brian M. Regan. I am Vice President - Associate General Counsel and Secretary (Title)
of DIRECTV, LLC (Company).

My personal knowledge of the facts stated herein has been derived from my employment with DIRECTV, LLC (Company).

I swear or affirm that I have personal knowledge of the facts stated in this Application for a California State Video Franchise to provide Video Service, I am competent to testify to them, and I have the authority to make this Application on behalf of and to bind the Company.

New, Transfer and Renewal Applicants:

I further swear or affirm that DIRECTV, LLC [Name of Applicant] is not in violation of any final non-appealable order relating to either the Cable Television and Video Providers Customer Service and Information Act (California Public Utilities Code Article 3.5 (commencing with § 53054) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code) or the Video Customer Service Act (California Public Utilities Code Article 4.5 (commencing with § 53088) of Chapter 1 or Part 1 of Division 2 of Title 5 of the Government Code) or the Digital Infrastructure and Video Competition Act of 2006 (California Public Utilities Code §§ 5800 et seq.).

I further swear or affirm that a court of competent jurisdiction has / has not [circle one] found DIRECTV, LLC [Name of Applicant] in violation of that order.

I further swear or affirm that a court of competent jurisdiction has / has not [circle one] given DIRECTV, LLC [Name of Applicant] formal notice containing allegations that it is in violation of a final non-appealable court order.

If a court of competent jurisdiction finds that the Applicant is in violation of a non-appealable court order, it must provide, with this Application, a further court order or ruling demonstrating that the violation has been cured, if one exists. If no such order exists, the Applicant must attest to the following:

I further swear or affirm that DIRECTV, LLC [Name of Applicant] has cured the violation of a non-appealable court order.

All Applicants:

I further swear or affirm that DIRECTV, LLC
[Name of Applicant] shall fulfill the following requirements:

8F80B23D-8BE5-45CD-B7FE-F97097C1B967 --- 2021/04/12 14:43:52 -8:00 --- Remote Notary



1. Applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering Video Service in this state.
2. Applicant agrees to comply with all lawful city, county, or city and county regulations regarding the time, place, and manner of using the public rights-of-way, including but not limited to, payment of applicable encroachment, permit, and inspection fees.
3. Applicant will concurrently deliver a copy of this Application to any Local Entity in the Video Service Area.
4. Applicant possesses the financial, legal, and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public rights-of-way caused by Applicant.
5. If it has not done so in the Application, or has not submitted socioeconomic data during this year, Applicant shall provide the Commission, no later than 90 calendar days after the date of the Commission's issuance of a State Video Franchise to the Applicant, a complete description of residents' socioeconomic status information, as required by and detailed in Questions 14 and 15 of the Application.
6. If it has not done so in the Application, Applicant shall provide a copy of a fully executed bond In the amount of \$500,000 to the Executive Director prior to initiating video service and no later than 5 business days after the date of Commission issuance of a State Video Franchise to the Applicant,. The bond shall list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California.

I further swear or affirm that DIRECTV, LLC

[Name of Company] agrees to comply with all federal and state statutes, rules, and regulations, including, but not limited to, the following:

1. As provided in Public Utilities Code § 5890, Applicant will not discriminate in the provision of Video Service.
2. Applicant will abide by all applicable consumer protection laws and rules as provided in Public Utilities Code § 5900.
3. Applicant will remit the fee required by California Public Utilities Code § 5860(a) to the Local Entity.
4. Applicant will provide public, educational, and governmental access channels and the required funding as required by Public Utilities Code § 5870.
5. Applicant and any and all of its Affiliates' operations in California now and in the future shall be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940. Applicant specifically attests to the following:
 - a. Reporting Requirements: Either (i) Applicant or (ii) the parent company of Applicant shall produce Commission-mandated reports for and on behalf of Applicant and any and all of its Affiliates that operate in California. Only one report required pursuant to Public Utilities Code §5960 shall be filed annually, such report to include all pertinent data for the Company.



b. Antidiscrimination:

i. If Applicant and its Affiliates together have more than 1,000,000 telephone customers in California, Applicant shall satisfy the build-out requirements set forth in Public Utilities Code § 5890(b) & (e).

ii. If Applicant and its Affiliates together have less than 1,000,000 telephone customers in California, Applicant shall satisfy any build-out requirements established pursuant in Public Utilities Code § 5890(c).

c. Cross-subsidization: If Applicant or its Affiliates provide stand-alone, residential, primary-line basic telephone service, Applicant shall refrain from using any increase of the rate of this service to finance the cost of deploying a network to provide video service.

d. "Affiliate," as referenced herein, means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.

6. Applicant shall fulfill all other requirements imposed by the Digital Infrastructure and Video Competition Act.

7. DIRECTV, LLC [Name of Applicant] is a single identifiable entity that is qualified to do business in California and has verifiable assets. This entity shall accept service of process, either directly or through an agent, and submit to the jurisdiction of California courts.

I swear or affirm that all of the statements and representations made in this Application are true and correct.

Signature and title

Brian M. Regan
Signed on 2021/04/12 14:53:11 -8:00

Typed or printed name and title Brian M. Regan, Vice President - Associate General Counsel and Secretary



AFFIDAVIT

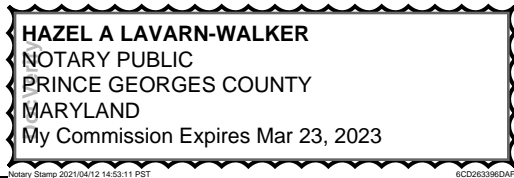
State of Maryland

County of Prince George's

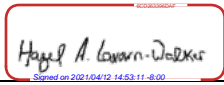
Subscribed and sworn to (or affirmed) before me on this 12th day of April 2021,

by, Brian M. Regan personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal



Signature



(END OF ATTACHMENT B)





App. C - California Labor Affidavit.pdf

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E-Signature Summary

E-Signature 1: Brian M. Regan (BMR)

April 12, 2021 14:53:10 -8:00 [98F33595AA39] [104.174.234.194]
 br363m@att.com (Principal) (Personally Known)

E-Signature Notary: Hazel A. Lavarn-Walker (HLW)

April 12, 2021 14:53:10 -8:00 [83D303871236] [192.203.255.19]
 hlavarnwalker@gmail.com
 I, Hazel A. Lavarn-Walker, did witness the participants named above electronically sign this document.



APPENDIX C

COLLECTIVE BARGAINING AFFIDAVIT

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

My name is Brian M. Regan. I am Vice President - Associate General Counsel and Secretary of DIRECTV, LLC.

My personal knowledge of the facts stated herein has been derived from my employment with DIRECTV, LLC.

I swear or affirm that I have personal knowledge of the facts stated herein, I am competent to testify to them, and I have the authority to make them on behalf of and to bind DIRECTV, LLC,

DIRECTV, LLC agrees that any collective bargaining agreement entered into by the predecessor-in-interest State Video Franchise Holder shall continue to be honored, paid, or performed to the same extent as would be required if the predecessor-in-interest State Video Franchise Holder continued to operate for the duration of the State Video Franchise, unless the duration of the collective bargaining agreement is limited by its own terms or by state or federal law.

I swear or affirm that all of the statements and representations made in this Affidavit are true and correct.

Signature and title:

 Brian M. Regan
Signed on 2021/04/12 14:53:10 -8:00

Brian M. Regan

Vice President - Associate General Counsel and Secretary

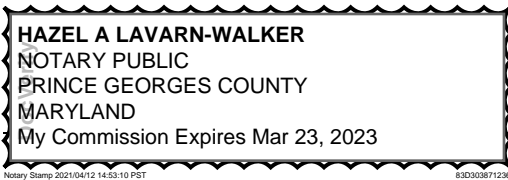


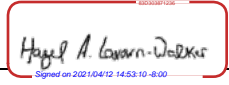
AFFIDAVIT

State of Maryland

County of Prince George's

Subscribed and sworn to (or affirmed) before me on this 12th day of April, 2021,
by Brian M. Regan personally known to me or proved to me on the basis of satisfactory evidence
to be the person who appeared before me.

Seal 

Signature 

5B58FF8D-588D-4896-ADE7-1AA2CB2A4D43 --- 2021/04/12 14:43:52 -8:00 --- Remote Notary





Rhonda Johnson
President-AT&T California

Appendix - A1

Corporate External Affairs
State External, Regulatory & Legislative Affairs
San Francisco, CA 94108

att.com

By First Class Mail

April 15, 2021

[Name]
[Community]
[Address]
[City]

Re: **Notice of Availability of Application for a California State Video Franchise**

Dear [Name]:

This letter is to notify you, in accordance with Section 5840(l) of the Public Utilities Code and California Public Utilities Commission (“CPUC”) General Order 169, that Pacific Bell Telephone Company d/b/a AT&T California (“AT&T California”) will be transferring its state-issued franchise to provide video service to its affiliate, DIRECTV, LLC. This transfer will occur in connection with a transaction whereby AT&T will transfer its multichannel video distribution businesses, including the U-verse IP-enabled video service, into a new affiliate in which AT&T will retain a 70% common economic interest, with TPG Capital holding a 30% common economic interest. The transaction is expected to close in the second half of 2021.

You do not need to take any action in response to this notice. DIRECTV, LLC has filed the required application with the CPUC, and a copy of that application has been available at <https://pacificregion.att.com/dtv-california/> since April 15, 2021. When the transfer is complete, DIRECTV, LLC will continue to provide the U-verse IP-enabled video service where currently available pursuant to, and be bound by, the requirements of the franchise. Our customers will continue to receive the same high-quality service that they enjoy today without need for any additional action on their part.

I expect my team to remain as your local U-verse representative. If you have any questions regarding this matter, or if you would like us to send you a paper copy of the application, please contact Ross Johnson, Director-AT&T Regulatory, rj2397@att.com, (415) 417-5028.

Sincerely,

Rhonda Johnson
President, AT&T California

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Bell Telephone Company, LLC)
d/b/a AT&T Illinois, AT&T Wholesale)
and)
DIRECTV, LLC)
) **Docket No.** _____
Notice of Transfer and)
Application for State-Issued Authorization to)
Provide Video Service Pursuant to Section 401)
of the Cable and Video Competition Law of 2007)

**NOTICE OF TRANSFER AND APPLICATION FOR STATE-ISSUED
AUTHORIZATION TO PROVIDE VIDEO SERVICE**

Pursuant to Section 401 of the Cable and Video Competition Law of 2007, 220 ILCS 5/21-401 (“Section 401”), Illinois Bell Telephone Company, LLC d/b/a AT&T Illinois, AT&T Wholesale (“AT&T Illinois”), which is a wholly-owned subsidiary of AT&T Inc. (“AT&T”), and DIRECTV, LLC (AT&T Illinois and DIRECTV, LLC collectively, the “Parties”) respectfully submit this Notice of Transfer to the Illinois Commerce Commission (“Commission”) to transfer the Service Authorization currently held by AT&T Illinois to DIRECTV, LLC. As required under Section 401(f), DIRECTV, LLC also submits an Application containing the information required by Section 401(b) for state-issued authority to provide video service in the service area footprint served by AT&T Illinois in the State of Illinois. In support of this Notice of Transfer and Application, the Parties state as follows:

Notice of Transfer

1. On October 24, 2007, the Commission approved the “Application for State-issued Authorization to Provide Video Service,” filed by AT&T Illinois and granted it authority to provide video service in the requested video service area footprint (“Authorization”).

Attached as Exhibit 1 is the description of AT&T Illinois' video service area footprint ("Video Service Area").

2. In accordance with Section 401(f), AT&T Illinois will transfer its Authorization to its affiliate, DIRECTV, LLC. This transfer will occur in connection with a transaction whereby AT&T will transfer its multichannel video distribution businesses, including the U-verse Internet Protocol ("IP")-enabled video service ("U-verse TV"), into a new affiliate in which AT&T will retain a majority economic interest, with TPG Capital ("TPG") holding a minority economic interest. The transaction is expected to close in the second half of 2021.
3. When the transfer is complete, DIRECTV, LLC will continue to provide the U-verse IP-enabled video service pursuant to, and be bound by, the terms of the Authorization. The residents of Illinois will continue to receive the same high quality service that they enjoy today without need for any additional action on their part.
4. Pursuant to Section 401(f), AT&T Illinois's existing Authorization may be transferred to any successor-in-interest without further Commission action if the successor-in-interest (i) submits an application and the information required by Section 401(b) for the successor-in-interest and (ii) is not in violation of the Cable and Video Competition Law of 2007 or of any federal, state, or local law, ordinance, rule, or regulation. DIRECTV, LLC provides the application and information required by Section 401(b) below, and affirms that it is not in violation of the Cable and Video Competition Law of 2007 or of any federal, state, or local law, ordinance, rule, or regulation as reflected in the attached Affidavit of Brian M. Regan, Vice President - Associate General Counsel and Secretary of DIRECTV, LLC ("Affidavit").

Application for State-Issued Authority

5. DIRECTV, LLC seeks to provide video service, as that term is defined in 220 ILCS 5/21-201, in the Video Service Area, as the successor-in-interest to its affiliate AT&T Illinois pursuant to Section 401(f).
6. As shown herein and in the attached Affidavit, DIRECTV, LLC satisfies the requirements of Section 401(b) and is eligible for the transfer of the Authorization consistent with the terms and scope of this Application, which is to be issued by the Commission within 30 days of submission. If the Commission does not notify DIRECTV, LLC regarding the completeness of the Application and Affidavit or issue the authorization within the time periods required by Section 401(b), the Application and Affidavit shall be considered complete and authorization issued upon the expiration of the 30th day.
7. DIRECTV, LLC provides the following information as required by Section 401(b), which is affirmed in the attached Affidavit:
 - a. DIRECTV, LLC is not required to file any forms with the Federal Communications Commission in advance of offering video service in the State of Illinois. (220 ILCS 5/21-401(b)(1)). *See* Affidavit ¶ 7.
 - b. DIRECTV, LLC agrees to comply with all applicable federal and state statutes and regulations. (220 ILCS 5/21-401(b)(2)). *See* Affidavit ¶ 8.
 - c. DIRECTV, LLC agrees to comply with all applicable local unit of government regulations. (220 ILCS 5/21-401(b)(3)). *See* Affidavit ¶ 9.
 - d. An exact description of the video service area where DIRECTV, LLC will offer video service upon transfer of the Authorization identified in terms of exchanges,

as defined in Section 13-206 of the Public Utilities Act (220 ILCS 5/ 13-206), is provided in Exhibit 1 to this Application.

- e. The number of low income households in the service area pursuant to 220 ILCS 5/21-1101 is detailed by AT&T Illinois in Exhibit 2, AT&T Illinois' latest Annual Video Service Access Report. (220 ILCS 5/21-401(b)(4)). *See* Affidavit ¶ 10 and Exhibit 2.
- f. The location of DIRECTV, LLC's principal place of business within Illinois is 225 West Randolph Street, Chicago, Illinois 60606. The current telephone number for DIRECTV, LLC's principal place of business in Illinois is (312) 727-4000. Brian M. Regan, Vice President - Associate General Counsel and Secretary of DIRECTV, LLC is responsible for communications concerning this Application and the services to be offered pursuant to this Application. Applicant's legal name is DIRECTV, LLC. The brand name under which Applicant will provide IP-enabled video service in Illinois is U-verse. *See* Affidavit ¶ 12.
- g. As indicated in the attached Certificate of Service, DIRECTV, LLC has, concurrent with the filing of this Application, caused a copy of the Application to be delivered to every local unit of government that includes all or any part of the video service area identified in Exhibit 1 within that local unit of government's jurisdictional boundaries. (220 ILCS 5/21-401(b)(6)). *See* Affidavit ¶ 13.
- h. In connection with the transaction described in the above Notice of Transfer, DIRECTV, LLC expects to offer IP-enabled video service in the Video Service Area in the second half of 2021 when the transaction closes. AT&T Illinois is

currently providing service in the Video Service Area, and there will be no interruption of service as a result of the transaction. (220 ILCS 5/21-401(b)(7)).

See Affidavit ¶ 14 .

- i. DIRECTV, LLC possesses and has access to the financial, managerial, technical, and legal qualifications necessary to construct and operate the proposed system for providing video service, to promptly repair any damages to the public right-of-way caused by DIRECTV, LLC, and to pay for removal of its facilities. (220 ILCS 5/21-401(b)). *See* Affidavit ¶ 15 and Exhibit 3 and 4. DIRECTV, LLC understands that it may, at the time it seeks to use the public rights-of-way in a certain jurisdiction, be required to post a bond, produce a certificate of insurance, or otherwise demonstrate its financial responsibility. (220 ILCS 5/21-401(b)).

See Affidavit ¶ 15.

- i. DIRECTV, LLC plans to offer the same IP-enabled video service that is currently being provided by AT&T Illinois. DIRECTV, LLC will deliver that service over the same wireline telecommunications network that AT&T Illinois currently uses to deliver the U-verse TV service. AT&T Illinois will retain ownership and control over its wireline network, including the portions of the wireline network over which the U-verse TV service currently is delivered, and will be providing DIRECTV, LLC with access to that network to deliver the U-verse TV service. *See* Affidavit ¶ 16(a).

- ii. Exhibit 3 contains biographical information for key personnel responsible for management of DIRECTV, LLC, as evidence of DIRECTV, LLC's management and technical qualifications. *See* Affidavit ¶ 16(b).
 - iii. DIRECTV, LLC has the financial qualifications to provide video service in Illinois. Upon closing the transaction, a majority common economic interest in DIRECTV, LLC will be held by AT&T, which is a diversified, global leader in telecommunications, media and entertainment, and technology. AT&T is a publicly traded company (NYSE: T), and financial information regarding AT&T can be found in its most recent Securities and Exchange Commission filings, which are available at: <https://investors.att.com/financial-reports/sec-filings>. The remaining common economic interest in DIRECTV, LLC will be held by TPG, which is a leading global alternative asset firm with more than \$91 billion under management and investments across a wide range of asset classes, including private equity, growth equity, impact investing, real estate, secondaries, and public equity. More information on TPG is available at: <https://www.tpg.com/>. *See* Affidavit ¶ 16(c).
 - iv. DIRECTV, LLC is authorized to transact business in Illinois, as reflected in Exhibit 4, which is a Certificate of Good Standing for DIRECTV, LLC issued by the Illinois Secretary of State and is submitted as evidence of DIRECTV, LLC's legal qualifications. *See* Affidavit ¶ 16(d).
8. DIRECTV, LLC will adhere to all customer service standards required by 220 ILCS 5/21-401(b) and 220 ILCS 5/22-501 to the extent consistent with federal law, and will comply

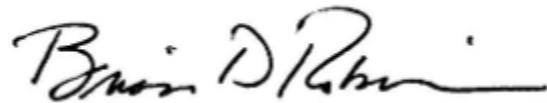
with all applicable customer service standards under FCC rules. Attached as Exhibit 5 are the Parties' general standards related to customer service, as required by 220 ILCS 5/22-501. (220 ILCS 5/21-401(b)). See Affidavit ¶ 17 and Exhibit 5.

WHEREFORE, the Parties respectfully request that pursuant to Section 401(f) the Commission acknowledge the transfer of the Authorization to DIRECTV, LLC and that the transferred Authorization include all of the following:

- a. A grant of authority to provide video service in the Video Service Area as requested herein, subject to the laws of this state and the ordinances, rules, and regulations of the local government units;
- b. A grant of authority to use, occupy, and construct facilities in the public rights-of-way for the delivery of video services in the Video Service Area, subject to the laws of this state and the ordinances, rules, and regulations of the local government units; and
- c. A statement that the transfer of the Authorization is subject to lawful operation of the video service by DIRECTV, LLC, its affiliated entities, or its successors-in-interests.

DATED: June 2, 2021

Respectfully submitted,



Brian D. Robinson
*Assistant Vice President - Senior Legal
Counsel*

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Bell Telephone Company, LLC)
d/b/a AT&T Illinois, AT&T Wholesale)
and)
DIRECTV, LLC)
) **Docket No.** _____
Notice of Transfer and)
Application for State-Issued Authorization to)
Provide Video Service Pursuant to Section 401)
of the Cable and Video Competition Law of 2007)

AFFIDAVIT OF BRIAN M. REGAN

I, Brian M. Regan, being placed under affirmation, declare and affirm the following:

1. I am currently the Vice President - Associate General Counsel and Secretary of DIRECTV, LLC. In this capacity, I will serve as an officer of DIRECTV, LLC in Illinois.
2. The purpose of this Affidavit is to provide support for DIRECTV, LLC's Application for the transfer of state-issued authorization to provide video services, which is being filed in conjunction with a Notice of Transfer. This Affidavit and the Exhibits to the Application provide the affirmations and information required by Section 401 of the Cable and Video Competition Law of 2007 ("Section 401").
3. I have knowledge of the facts stated in this Affidavit and the Exhibits to the Application. I am competent to testify to them and I have authority to make this Affidavit on behalf of and to bind DIRECTV, LLC.
4. Illinois Bell Telephone Company, LLC d/b/a AT&T Illinois, AT&T Wholesale ("AT&T Illinois"), which is a wholly-owned subsidiary of AT&T Inc. ("AT&T"), will transfer its

Authorization to its affiliate, DIRECTV, LLC. This transfer will occur in connection with a transaction whereby AT&T will transfer its multichannel video distribution businesses, including the U-verse Internet Protocol (“IP”)-enabled video service (“U-verse TV”), into a new affiliate in which AT&T will retain a majority economic interest, with TPG Capital (“TPG”) holding a minority economic interest. The transaction is expected to close in the second half of 2021.

5. When the transfer is complete, DIRECTV, LLC will continue to provide the U-verse IP-enabled video service pursuant to, and be bound by, the terms of the Authorization. The residents of Illinois will continue to receive the same high quality service that they enjoy today without need for any additional action on their part.
6. DIRECTV, LLC affirms it is not in violation of the Cable and Video Competition Law of 2007 or of any federal, state, or local law, ordinance, rule, or regulation.
7. DIRECTV, LLC is not required to file any forms with the Federal Communications Commission in advance of offering video service in the State of Illinois.
8. DIRECTV, LLC agrees to comply with all applicable federal and state statutes and regulations.
9. DIRECTV, LLC agrees to comply with all applicable local unit of government regulations.
10. An exact description of the video service area where DIRECTV, LLC will offer video service upon transfer of the Authorization identified in terms of exchanges, as defined in Section 13-206 of the Public Utilities Act (220 ILCS 5/ 13-206), is provided in Exhibit 1 to this Application. The number of low income households in the service area pursuant

to 220 ILCS 5/21-1101 is detailed by AT&T Illinois in Exhibit 2, AT&T Illinois' latest Annual Video Service Access Report.

11. The location of DIRECTV, LLC's principal place of business within Illinois is 225 West Randolph Street, Chicago, Illinois 60606. The current telephone number for DIRECTV, LLC's principal place of business in Illinois is (312) 727-4000. I am responsible for communications concerning this Application and the services to be offered pursuant to this Application.
12. Applicant's legal name is DIRECTV, LLC. The brand name under which Applicant will provide IP-enabled video service in Illinois is U-verse.
13. As indicated in the attached Certificate of Service, DIRECTV, LLC has, concurrent with the filing of this Application, caused a copy of the Application to be delivered to every local unit of government that includes all or any part of the video service area identified in Exhibit 1 within that local unit of government's jurisdictional boundaries.
14. In connection with the transaction described in the above Notice of Transfer, DIRECTV, LLC expects to offer IP-enabled video service in the Video Service Area in the second half of 2021 when the transaction closes. AT&T Illinois is currently providing service in the Video Service Area, and there will be no interruption of service as a result of the transaction.
15. DIRECTV, LLC possesses and has access to the financial, managerial, technical, and legal qualifications necessary to construct and operate the proposed system for providing video service, to promptly repair any damages to the public right-of-way caused by DIRECTV, LLC, and to pay for removal of its facilities. DIRECTV, LLC understands that it may, at the time it seeks to use the public rights-of-way in a certain jurisdiction, be

required to post a bond, produce a certificate of insurance, or otherwise demonstrate its financial responsibility.

16. In support of its financial, managerial, technical, and legal qualifications, DIRECTV, LLC provides the following information:

- a. DIRECTV, LLC plans to offer the same IP-enabled video service that is currently being provided by AT&T Illinois. DIRECTV, LLC will deliver that service over the same wireline telecommunications network that AT&T Illinois currently uses to deliver the U-verse TV service. AT&T Illinois will retain ownership and control over its wireline network, including the portions of the wireline network that currently are used to deliver the U-verse TV service, and will be providing access to that network to DIRECTV, LLC to deliver the U-verse TV service.
- b. Exhibit 3 contains biographical information for key personnel responsible for management of DIRECTV, LLC, as evidence of DIRECTV, LLC's management and technical qualifications.
- c. DIRECTV, LLC has the financial qualifications to provide video service in Illinois. Upon closing the transaction, a majority common economic interest in DIRECTV, LLC will be held by AT&T, which is a diversified, global leader in telecommunications, media and entertainment, and technology. AT&T is a publicly traded company (NYSE: T), and financial information regarding AT&T can be found in its most recent Securities and Exchange Commission filings, which are available at: <https://investors.att.com/financial-reports/sec-filings>. The remaining common economic interest in DIRECTV, LLC will be held by TPG, which is a leading global alternative asset firm with more than \$91 billion under

management and investments across a wide range of asset classes, including private equity, growth equity, impact investing, real estate, secondaries, and public equity. More information on TPG is available at: <https://www.tpg.com/>.

- d. DIRECTV, LLC is authorized to transact business in Illinois as reflected in Exhibit 4, which is a Certificate of Good Standing for DIRECTV, LLC issued by the Illinois Secretary of State and is submitted as evidence of DIRECTV, LLC's legal qualifications.

17. DIRECTV, LLC will adhere to all customer service standards required by 220 ILCS 5/21-401(b) and 220 ILCS 5/22-501 to the extent consistent with federal law, and will comply with all applicable customer service standards under FCC rules. Attached as Exhibit 5 are the Parties' general standards related to customer service, as required by 220 ILCS 5/22-501.

I hereby certify pursuant to 735 ILCS 5/1-109 that the foregoing statements and representations made in this Affidavit and the accompanying Application are true and correct, and as to matters based upon the information provided to me and reasonable inquiry made with respect to the same, I verily believe those to be true.



Brian M. Regan
*Vice President - Associate General Counsel
and Secretary of DIRECTV, LLC*


CERTIFICATE OF SERVICE

The undersigned hereby certifies that I am causing a copy of the foregoing Notice of Transfer and Application to be delivered via certified first class mail to the following local government units:

Addison	Algonquin	Alsip	Alton
Arlington Heights	Aroma Park	Aurora	Bannockburn
Barrington Hills	Barrington	Bartlett	Batavia
Beach Park	Bedford Park	Belleville	Bellwood
Benld	Bensenville	Berkeley	Berwyn
Bloomington	Blue Island	Bolingbrook	Bourbonnais
Bradley	Bridgeview	Broadview	Brookfield
Brooklyn	Buffalo Grove	Bull Valley	Burbank
Burnham	Burr Ridge	Calumet City	Calumet Park
Campton Hills	Carol Stream	Carpentersville	Cary
Caseyville	Champaign	Channahon	Chicago Heights
Chicago Ridge	Chicago	Cicero	Clarendon Hills
Collinsville	Cook County	Country Club Hills	Countryside
Crest Hill	Crestwood	Crystal Lake	Danville
Darien	Decatur	Deer Park	Deerfield
Des Plaines	Dixmoor	Dolton	Downers Grove
DuPage County	East Dundee	East Hazel Crest	East Saint Louis
Edwardsville	Elburn	Elgin	Elk Grove Village
Elmhurst	Elmwood Park	Evanston	Evergreen Park
Fairview Heights	Flossmoor	Forest Park	Forest View
Fox Lake	Fox River Grove	Frankfort	Franklin Park
Freeburg Village	Geneva	Gilberts	Glen Carbon
Glen Ellyn	Glencoe	Glendale Heights	Glenview
Glenwood	Godfrey	Golf	Grandvw/Sangmn
Granite City	Grayslake	Green Oaks	Grundy County
Gurnee	Hainesville	Hampshire	Hanover Park
Harristown	Harvey	Harwood Heights	Hawthorn Woods
Hazel Crest	Hickory Hills	Highland Park	Highwood
Hillside	Hinsdale	Hodgkins	Hoffman Estates
Holiday Hills	Homer Glen	Hometown	Homewood

Huntley	Indian Creek	Indian Head Park	Inverness
Island Lake	Itasca	Jerome	Jersey County
Johnsburg	Joliet	Justice	Kane County
Kankakee County	Kankakee	Kendall County	Kenilworth
Kildeer	La Grange Park	La Grange	Lake Barrington
Lake Bluff	Lake County	Lake Forest	Lake In The Hills
Lake Villa	Lake Zurich	Lakemoor	Lakewood
Lansing	Leland Grove	Lemont	Libertyville
Limestone	Lincolnshire	Lincolnwood	Lindenhurst
Lisle	Lockport	Lombard	Long Grove
Lynwood	Lyons	Macon County	Madison County
Manhattan	Marengo	Markham	Maryville
Matteson	Maywood	Mc Henry	McCullom Lake
McHenry County	Melrose Park	Merrionette Pk	Mettawa
Midlothian	Minooka	Mokena	Montgomery
Morris	Morton Grove	Mount Prospect	Mount Zion
Mundelein	Naperville	New Lenox	Niles
Norridge	North Aurora	North Barrington	North Chicago
North Riverside	Northbrook	Northfield	Northlake
Oak Brook	Oak Forest	Oak Lawn	Oak Park
Oakbrook Terrace	Oakwood Hills	O'Fallon	Olympia Fields
Orland Hills	Orland Park	Oswego	Palatine
Palos Heights	Palos Hills	Palos Park	Park City
Park Forest	Park Ridge	Phoenix	Pingree Grove
Plainfield	Plano	Pontoon Beach	Port Barrington
Posen	Prairie Grove	Prospect Heights	Richton Park
Ringwood	River Forest	River Grove	Riverdale
Riverside	Riverwoods	Robbins	Rockdale
Rockford	Rolling Meadows	Romeoville	Roselle
Rosemont	Round Lake Beach	Round Lake Hts	Round Lake Park
Round Lake	Roxana	S. Chicago Hts	Sangamon County
Savoy	Schaumburg	Schiller Park	Sherman
Shiloh	Shorewood	Skokie	Sleepy Hollow
Smithton	South Barrington	South Elgin	South Holland
Southern View	Springfield	St. Charles	St. Clair County

Steger	Stickney	Stone Park	Streamwood
Sugar Grove	Summit	Swansea	Third Lake
Thornton	Tilton	Tinley Park	Tower Lakes
Trout Valley	Troy	Urbana	Vermilion County
Vernon Hills	Villa Park	Volo	Wadsworth
Warrenville	Wauconda	Waukegan	Wayne
West Chicago	West Dundee	Westchester	Western Springs
Westmont (Village Of)	Wheaton	Wheeling	Will County
Willow Springs	Willowbrook	Wilmette	Wilmington
Winfield	Winnetka	Winthrop Harbor	Wood Dale
Wood River	Woodridge	Woodstock	Worth
Yorkville	Zion	Braidwood	Centreville
Coal City	Monee	Alorton	Bethalto
Bonfield	Burlington	Cahokia	Cantrall
Clear Lake	Diamond	Alton	Elwood
Ford Heights	Forsyth	Hartford	Irwin
Crete			



Martha Flaherty, Senior Legal Assistant II
Arnold & Porter

EXHIBIT 1 - Video Service Area

TELEPHONE EXCHANGES IN VIDEO SERVICE AREA
Exchanges in AT&T Illinois' Original Application
Algonquin
Alton
Arlington Heights
Aurora
Barrington
Bartlett
Batavia
Belleville
Bellwood
Bensenville
Berwyn
Blue Island
Brookfield
Calumet City
Cary
Champaign Urbana
Chicago
Chicago Heights
Cicero
Collinsville
Crystal Lake
Danville
Decatur
Deerfield
Des Plaines
Downers Grove
Dundee
East St Louis
Elburn
Elgin
Elk Grove
Elmhurst
Evanston
Forest (Cook)
Fox Lake
Frankfort
Franklin Park
Geneva
Glen Ellyn
Glencoe

Glenview
Grays Lake
Half Day
Harvey
Highland Park
Hinsdale
Homewood
Huntley
Itasca
Joliet
Kankakee
La Grange
Lake Forest
Lake Villa
Lake Zurich
Lansing
Lemont
Libertyville
Lockport
Lombard
Maywood
McHenry
Minooka
Mundelein
Naperville
Northbrook
O Fallon
Oak Forest South
Oak Lawn
Oak Park
Orland
Palatine
Palos Park
Park Ridge
Pistakee Highlands
Plainfield
River Grove
Riverdale
Riverside
Roselle
Round Lake
Skokie
Springfield
St Charles
Summit
Thornton
Tinley Park

Wauconda
Waukegan
West Chicago
Western Springs
Wheaton
Wheeling
Willow Springs
Wilmette
Winnetka
Woodstock
Zion
Exchanges added in 2008 Notice of Modification
Elwood
Hampshire
Manhattan
Marengo
Oswego
Plano
Plato Center
Sugar Grove
Yorkville
Exchanges added in 2013 Notice of Modification
Antioch
Coal City
Crete
Edwardsville
Glen Carbon
Granite City
Monee
Morris
Wilmington



Deno Perdiou
Director
External & Regulatory Affairs

AT&T Illinois
555 East Cook St.
Floor 1E
Springfield, IL 62703

T: 217.789.5174
F: 217.789.5223
dp2953@att.com
www.att.com

March 31, 2021

Ms. Elizabeth A. Rolando
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62794

Re: Docket 07-0493 AT&T Illinois Twelfth Annual Video Service Access Report

Dear Ms. Rolando:

This Thirteenth Annual Video Service Access Report issued by Illinois Bell Telephone Company (AT&T Illinois) is transmitted to you for filing.

This filing complies with the annual report requirement in Section 1101(j-5) of the Cable and Video Competition Law of 2013 (the "Act") (220 ILCS 5/21-100. et seq.).

On October 24, 2007, the Illinois Commerce Commission (the "Commission") approved the "Application for State-issued Authorization to Provide Video Service," filed by AT&T Illinois and granted it authority to provide video service in the requested video service area footprint. As a holder of that State-issued authorization, AT&T Illinois is subject to the video service access requirements in Section 21-1101(c) of the Act, and is required to file with the Commission video services access reports no later than April 1 annually. This annual report provides to the Commission the service access information and low-income information required by Section 21-1101(j-5) of the Act.

As demonstrated with the Fifth Annual Video Service Access Report, AT&T Illinois fully satisfied all requirements in subsection (c) as of its filing on March 22, 2013. As such only the subsection (j-5) reporting requirements continue to apply. To satisfy the subsection (j-5) reporting requirement, AT&T Illinois submits Attachment 1.

We respectfully request Commission acceptance of this Report.

Any questions and correspondence regarding this filing should be directed to Deno Perdiou, Director-External & Regulatory Affairs, who may be reached at:

AT&T Illinois
555 East Cook St., Floor 1E
Springfield, IL 62703
Tel. No.: (217) 789-5174

Please acknowledge receipt of this Report by returning the extra copy of this letter.

Sincerely,

A handwritten signature in blue ink that reads "Deno Perdiou (sb)". The signature is written in a cursive style.

Deno Perdiou
Director – External & Regulatory Affairs

Enclosure

AT&T Illinois Thirteenth Annual Video Service Access Report

Data as of December 31, 2020

Definitions and Descriptions

Attachment 1 – Statewide and Designated Market Areas

Definitions and Descriptions for Attachments 1

“Access” means that AT&T Illinois is capable of providing video services at the household address using any technology, other than direct-to-home satellite service, which provides two-way broadband internet capability and video programming, content and functionality, regardless of whether any customer has ordered service or whether the owner or landlord or other responsible person has granted access to the household.

“HH” or “Household” means a house, an apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.

“LI” or “Low-income household” means those residential households located within the AT&T Illinois’ existing telecommunications service area where the average annual household income is less than \$35,000 based on the United States Census Bureau estimates adjusted annually to reflect rate of change and distribution.

“Designated Market Area” or “DMA” means a designated market area, as determined by Nielsen Media Research and published in the 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication. For any designated market area that crosses State lines, only households in the portion of the designated market area that is located within AT&T Illinois’ telecommunications service area where access to video service will be offered is included.

“Telco Footprint” shows the number of households in AT&T Illinois’ telecommunications service area at statewide and DMA levels.

“Current Build Footprint” and “Current Build Coverage %” shows the number and percent of households with access to video service in areas within AT&T Illinois’ State-issued authorization at statewide and DMA levels.

“Footprint LI” and “Footprint LI %” shows the number and percent of low-income households in AT&T Illinois’ Telecommunications service area at statewide and DMA levels.

“Current Build LI” and “Current Build LI %” shows the number and percent of low-income households with access to video service in areas within AT&T Illinois’ State-issued authorization at statewide and DMA levels.

Attachment 1

AT&T Illinois Annual Video Service Access Report

State	Telco HH Footprint	Current Build Footprint	Current Build Coverage %	Footprint LI	Current Build LI	Footprint LI%	Current Build LI%
Illinois	4,929,488	3,045,943	62%	1,417,705	882,308	29%	29%

Designated Market Area (DMA)	Telco HH Footprint	Current Build Footprint	Current Build Coverage %	Footprint LI	Current Build LI	Footprint LI%	Current Build LI%
Champaign & Springfield-Decatur	248,330	116,787	47%	95,919	51,609	39%	44%
Chicago	4,111,355	2,833,055	69%	1,124,183	797,641	27%	28%
St. Louis	252,238	96,101	38%	86,501	33,058	34%	34%

Video Service added in 2020
None

Note: Total state households differ from DMA households because DMAs with no video build were removed from this list to improve readability.

Data as of December 31, 2020

DIRECTV, LLC Executive Bios**BILL MORROW****CEO - DIRECTV**

Bill Morrow is the CEO of DIRECTV, which distributes DIRECTV, AT&T TV and U-verse TV. Previously, Bill served as the Special Advisor and Managing Director of AT&T Inc., reporting directly into John Stankey, CEO. He was responsible for the transformation and cost reduction program across AT&T. Bill joined AT&T in October of 2019. Bill is well known for his global experience in leading complex turnarounds and capital-intensive start-ups. His industry experience includes Telecommunication and Energy Utilities. His international and multi-culture experience has been built over many years in five different countries. For the last 18 years, Bill has served as the CEO of both publicly traded, government owned, and privately held companies. Prior to joining AT&T, he served as the CEO of many companies including NBN Co in Sydney, Vodafone Hutchison in Australia, Clearwire in Seattle, PG&E in San Francisco, Vodafone KK in Tokyo, Vodafone UK in London, and Japan Telecom in Tokyo. Bill has served as a non-executive director of both publicly listed and non-profit boards including Broadcom, Openwave, and California Academy of Sciences. He is currently a non-executive director of publicly listed IkeGPS and a start-up Daisee Inc. Bill holds degrees in Electrical Engineering and Business Administration.

VINCE TORRES**SVP | Video Product Management & Marketing - DIRECTV**

Vince Torres is Senior Vice President of Product Management & Marketing for DIRECTV. In his role he supports over \$25B in revenue and 17M subscribers associated with DIRECTV, AT&T TV, & U-verse TV across the residential and business segments. Vince's responsibilities include the management of subscriber trends, pricing & acquisition investments, retention marketing & operations, customer lifecycle management, digital sales, advertising, and the product & capital roadmap. Vince has 25 years of experience working for or advising companies in the technology, media and telecommunications (TMT) industries. Over the last six years, Vince held various marketing leadership roles at AT&T across the video, broadband, and postpaid wireless businesses. Vince joined AT&T in 2015 through the acquisition of DIRECTV, where he was responsible for revenue strategy, planning and marketing analytics. Prior to joining DIRECTV, Vince worked for PwC LLP for 14 years where he was well known for his pricing, profitability improvement and new business model advisory services across the TMT sector for B2B and B2C clients. Vince currently serves on the board of directors for Ronald McDonald House Charities of Southern California and the American Heart Association of Los Angeles. Vince holds a bachelor's degree in Economics and an MBA from Duke University, where he was designated a Fuqua Scholar at the Fuqua School of Business. Vince lives in the Los Angeles area with his wife, Yaile, and their children, Sophia and Vincent.

SCOTT S. SMITH**Chief Human Resources Officers - DIRECTV**

Scott was appointed in February of 2021 to lead all HR functions for DIRECTV, the content distribution company for DIRECTV satellite, U-Verse and AT&T TV. Scott's career at AT&T has spanned over 30 years. Prior to his current role, Scott served as Chief Human Resources Officer of AT&T Communications. He and his team implemented and supported human resource programs including labor relations, talent acquisition, training, compensation, business partners and operations. In addition to HR, Scott has also held a variety of positions over his career in finance, billing, auditing, and information technology. Originally from Oklahoma, Scott attended high school in Waco, Texas, and then graduated from Baylor University with a Bachelor of Business Administration in Finance and a Master of Business Administration. Scott is married with two children, Travis and Julia. Scott has been a member of several professional advisory boards during his career – including Enactus and Dallas Workforce Solutions. Scott currently serves on advisory boards for the National Academy Foundation, Institute for Corporate Productivity (i4cp)/CHRO, Evanta as well as the Hankamer School of Business at Baylor University. Scott is an avid sports fan and bleeds green and gold for his Baylor Bears. He is active in his church and in his free time enjoys running, skiing, tennis, basketball and reading.

ROB THUN**EXECUTIVE VICE PRESIDENT AND CHIEF CONTENT OFFICER**

Rob Thun is Executive Vice President and Chief Content Officer for DIRECTV. He is responsible for leading the programming and content teams and for all relationships with content providers, including Fox, NBCU, NFL, Turner and Viacom. Prior to his 2020 promotion to Chief Content Officer, Thun was Senior Vice President – Content & Programming. Prior to joining the AT&T/DIRECTV, Thun was Executive Vice President of Business Operations for Univision Communications, Inc. where he led the company's deal team in developing and executing the distribution strategies for Univision's broadcast and cable television network portfolio. Previously, Thun was Associate Vice President of Content for AT&T Operations, Inc. where he was a founding team member and a key contributor to the launch of AT&T U-verse. Prior to AT&T, Thun worked at Fox Cable Networks serving as Vice President of National Accounts, Sales Strategy and Business Development and at Arthur Andersen LLP as a senior consultant in their Economic and Financial Consulting division. Thun holds a bachelor's degree in Business Administration from the University of Georgia, a master's degree in Accounting from the University of Southern California and an MBA from the University of California, Los Angeles Anderson School of Management. Thun serves as a board member of the Los Angeles Sports Council and the Echo Horizon School. He is in El Segundo, Calif.

Henry Derovanessian**Senior Vice President, DIRECTV**

Henry Derovanessian is the Senior Vice President of Technology & Operations at DIRECTV. He is responsible for overseeing technology and product development, and operational support of DIRECTV's premium video entertainment portfolio for Streaming, Broadcast and IPTV platforms including AT&T TV, DIRECTV, U-verse, and Live Sport Video Services. Derovanessian joined DIRECTV in 2008 as Vice President for Consumer Premise Engineering. Prior to joining

DIRECTV, Derovanessian has held various leadership positions in Engineering and Product Marketing at Sony Electronics, General Instrument, Science Application International Corporation (SAIC) and Conexant Systems. Derovanessian holds a bachelors and graduate degree in Electrical Engineering with focus on digital design and software programming from San Diego State University.

JENNIFER D. TILLSON

Chief Information Officer, DIRECTV

Jennifer Tillson is the Chief Information Officer for DIRECTV, she is responsible for video technology strategy & systems serving the front line representatives and end customers. This includes sales and service platforms for retail, digital, and call center technologies. Her organization is also responsible for cybersecurity, corporate systems and operational support. Tillson has spent the majority of her career at AT&T, where she served as the Vice President of Technology Security Optimization Programs & Services. She works across the technology organization to operationalize security controls and proactive identification of risk in the software & application space. She and her team started the global implementation of locally developed best security practices to all AT&T affiliates. She has lead numerous integrations of disparate systems into single platforms, driving simplified experiences across all business units. Also, she led AT&T's exclusive IT implementation of the first iPhone in 2007 and five years following. As Chief Information Officer for Cricket Wireless and Vice President of Information Technology for AT&T Mobility from 2012 to 2017, Jennifer led all aspects of the enterprise technology vision, strategy, and operations. Jennifer also holds a successful background leading the development and delivery of large-scale software solutions, retail capacity, and performance planning supporting more than 90 million customers and 85,000+ front line representatives for retailers across the U.S. In addition to a Bachelor's Degree from Florida State University, she has received numerous awards throughout her career, including Atlanta Mobility Stars Award, Best Woman Professional of the Year, and Atlanta Technology Professional of the Year Nominee.

MIKE WITTROCK

Senior Vice President, Sales & Service - DIRECTV

Mike is responsible for all sales & service touchpoints, residential and commercial, from Sales to Field Services to all Customer Service interactions. In additional to those operations, Mike directly manages Customer Experience and Supply Chain for our video business. In this role, Mike leads 8,600 employees, over 1,700 dealers, and 24K vendors accountable for our video customer base. Prior to this role, Mike managed customer acquisition execution of AT&T's broadband and video overseeing their indirect channels and responsible for AT&T's connected communities' portfolio, delivering fiber to multi-dwelling unit properties, and driving penetration while leveraging new technologies. Mike was previously president of the AT&T Southeast Region, overseeing sales & distribution in 12 states, Puerto Rico, and the U.S. Virgin Islands, and has served as Senior Vice President of Customer Care for AT&T Entertainment Group where he was responsible for leading the Tier 1 and 2 Technical Care functions for consumer video, IP broadband and wireless services. Mike joined AT&T in 2015 as part of the DIRECTV acquisition, where he previously served as a Senior Vice President of Sales &

Distribution. From 1989 to 2005, Mike served in United States Marine Corps Reserve and earned multiple awards and decorations, including one Navy and Marine Corps Commendation medal, four Navy and Marine Corps Achievement medals and two Combat Action ribbons. He is actively involved in community efforts and volunteers with multiple non-profit organizations. Mike and his wife, Jennifer, reside in Rockwall, TX.

MICHAEL HARTMAN

General Counsel and Chief External Affairs Officer

Michael Hartman is the General Counsel and Chief External Affairs Officer – Video at DIRECTV. He is responsible for overseeing all of the legal, external affairs and compliance matters of the company's US video businesses. Previously, he was Senior Vice President, Assistant General Counsel of AT&T and responsible for overseeing legal affairs of the company's Latin American pay television business. Michael has a BA from the University of Michigan, an MA from the University of California at Berkeley and a JD from the Columbia University School of Law. He is a fluent speaker of Spanish and Portuguese.

EMMA BRACKET

VICE PRESIDENT – CONTENT & PROGRAMMING

Emma Brackett is Vice President of Content & Programming for DIRECTV. In this role, she is responsible for leading programming and negotiation efforts for several major network groups as well as the company's Spanish-language, international and public interest content offerings across DIRECTV's video platforms. Before joining DIRECTV in 2013, Brackett was Vice President of Consumer Video at Globecast Americas where she managed international content licensing and distribution, business development and consumer video product deployments. Prior to Globecast, Brackett spent six years at AT&T U-verse primarily leading Spanish-language, international, home shopping and faith-based content acquisitions, in addition to operational and legal roles. Brackett holds a bachelor's degree in Cultural Anthropology from Antioch College in Ohio, a Juris Doctor from Southwestern Law School in Los Angeles and is a member of the State Bar of California.

JAMES CRITTENDEN

VICE PRESIDENT – SPORTS PRODUCTION

James Crittenden is the Vice President of Production for DIRECTV. He is responsible for overseeing all production activities for the Red Zone and Fantasy Zone Channels for NFL Sunday Ticket, as well as production, and scheduling duties related to the company's 4K live sports and curated channels. Crittenden joined the company in 2007 as Senior Director of Sports Production and Development. He was promoted to Vice President of Sports Production in 2011. Prior to joining the company from Fox Sports, he was coordinating producer in charge of development on variety projects. James also served as senior producer multiple projects, including Super Bowls, World Series and Stanley Cup Finals. Crittenden holds a Bachelor of Arts degree in Journalism from San Diego State University.

REBECCA NELSON**VICE PRESIDENT, CONTENT & PROGRAMMING**

Rebecca Nelson is Vice President, Content & Programming for DIRECTV. She is responsible for leading content rights, including negotiations of programming agreements and relationship management with national cable networks, big 4 broadcasters, sports leagues, RSNs, premiums and studios to support content offerings across all of DIRECTV's video distribution platforms. She also oversees negotiating and securing agreements in all content categories for advanced digital rights. Nelson joined DIRECTV in 2006 as Director, Business Development and Programming Acquisitions. She was promoted to Senior Director, Programming Acquisitions in 2010 and was named Vice President for DIRECTV in 2013. Prior to joining DIRECTV, Nelson was with Fox Entertainment Group, DreamWorks Records and DreamWorks SKG, where she served in various finance, corporate development and strategic planning positions. A native of Seattle, Washington, Nelson holds a bachelor's degree in Business Administration from the Marshall School at the University of Southern California and an MBA from the Anderson School at the University of California, Los Angeles.

LINDA BURAKOFF**VICE PRESIDENT – CONTENT & PROGRAMMING**

Linda Burakoff is vice president of Content & Programming for DIRECTV. She is responsible for acquiring content for all of AT&T's video platforms (DIRECTV, U-verse, AT&T TV), including the negotiation and implementation of national channel agreements (e.g., Viacom, Fox, Turner, NBCUniversal), and local carriage agreements for broadcast stations across the country. Burakoff has been a member of the Content team since 2007 and before that was in the Business Affairs department at DIRECTV. Prior to joining DIRECTV in 1996, Burakoff was Corporate Counsel for L.A. Gear, Inc. Previously, Burakoff was a corporate attorney at the law firm of Pillsbury Winthrop (f/k/a Pillsbury, Madison & Sutro). Burakoff holds a bachelor's degree in Journalism and Psychology from the University of Wisconsin-Madison and a juris doctorate from the University of Michigan.

BROOKE MALLETT**VICE PRESIDENT – ASSOCIATE GENERAL COUNSEL**

Brooke Mallette is Vice President, Associate General Counsel for DIRECTV. Mallette is responsible for overseeing the legal side of all content acquisitions for each of DIRECTV's video platforms (DIRECTV, U-verse, AT&T TV) and for the legal issues associated with product pricing, strategy and implementation for each of DIRECTV's video platforms. Mallette joined DIRECTV in 2013 prior to its acquisition by AT&T. She was promoted from AVP, Senior Legal Counsel in 2018. Prior to joining DIRECTV, Mallette was Corporate Counsel for DISH Network and, prior to that, was an associate at Jacobs, Chase, Frick, Klienkopf and Kelley focusing on real estate. A native of Telluride, Colorado, Mallette holds joint bachelor degrees in Economics and International Affairs from the University of Colorado and a Juris Doctorate from the University of Colorado School of Law.

JUSTIN M. MONAGHAN**VICE PRESIDENT & ASSOCIATE GENERAL COUNSEL**

Justin Monaghan is a Vice President & Associate General Counsel in the DIRECTV Legal Department. He is responsible for providing legal support to the Finance & Transactions Group and the Sales and Services organization. Monaghan joined the legal department of the AT&T companies in 2004, and has supported numerous client groups in the ensuing years, including Wireless and Wireline Networks, Sales Operations, Enterprise Sales, Global marketing, Chief Data Office and Privacy. Monaghan holds a bachelor's degree in History from Vanderbilt University, and a Juris Doctorate from Seton Hall University Law School. He is licensed to practice law in New Jersey, New York and the District of Columbia. He is a member of the NYSBA, NJSBA, ABA, and the International Association of Privacy Professionals.

TIMOTHY A. WHITLEY**VICE-PRESIDENT & ASSOCIATE GENERAL COUNSEL**

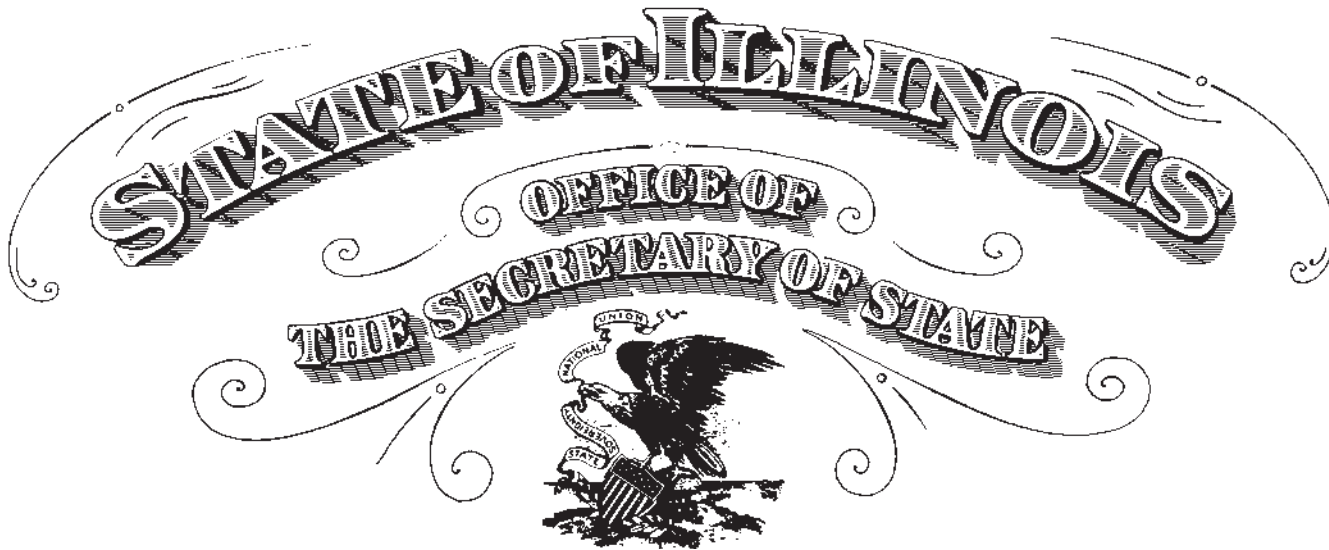
Tim Whitley is Head of Litigation for DIRECTV. He is responsible for all active & anticipated litigation involving DIRECTV. Whitley joined AT&T in 2000 as an Attorney in the litigation group. Whitley has been a Vice President of AT&T since 2016. He was named Vice President & Associate General Counsel in 2016 and led the East litigation region where he was responsible for litigation involving AT&T in 36 states & territories. Tim is originally from Arlington, Texas and holds a bachelor's degree in Social Science from Southwestern Adventist University and a Juris Doctor degree from Southern Methodist University.

BRIAN REGAN**VICE PRESIDENT – ASSOCIATE GENERAL COUNSEL, SECRETARY**

Brian Regan is Vice President, Associate General Counsel and Secretary for DIRECTV. Regan is responsible for overseeing the legal work relating to DIRECTV's technology, operations and intellectual property groups. Regan joined DIRECTV in 2001 prior to its acquisition by AT&T. Prior to joining DIRECTV, Regan was Legal Counsel for Hughes Space and Communications where he was responsible for negotiating satellite construction contracts with customers around the world. Before joining Hughes, Regan was an associate at McKenna and Cuneo's Los Angeles office where he focused on government contract litigation. Regan has a bachelor of science degree in Business Finance from California State University, Long Beach, and a Juris Doctorate from Loyola Law School, Los Angeles.

File Number

0493003-7



To all to whom these Presents Shall Come, Greeting:

I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that I am the keeper of the records of the Department of Business Services. I certify that

DIRECTV, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY HAVING OBTAINED ADMISSION TO TRANSACT BUSINESS IN ILLINOIS ON SEPTEMBER 26, 2014, APPEARS TO HAVE COMPLIED WITH ALL PROVISIONS OF THE LIMITED LIABILITY COMPANY ACT OF THIS STATE, AND AS OF THIS DATE IS IN GOOD STANDING AS A FOREIGN LIMITED LIABILITY COMPANY ADMITTED TO TRANSACT BUSINESS IN THE STATE OF ILLINOIS.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 9TH day of APRIL A.D. 2021 .



Jesse White

SECRETARY OF STATE

Authentication #: 2109901128 verifiable until 04/09/2022

Authenticate at: <http://www.cyberdriveillinois.com>



AT&T U-verse® TV and
AT&T Phone
Legal Guide
Midwest

Please retain for your records

Terms of Service

Privacy Policy

U-verse® TV Standard Rates

911 Acknowledgement

Illinois Customer Service Standards

Michigan Dispute Resolution

Get answers 24/7

att.com/uversesupport

or talk live 800.288.2020

AT&T U-verse® TV and
AT&T Phone

Legal Guide

Midwest

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AT&T U-VERSE® TV AND AT&T PHONE GENERAL TERMS OF SERVICE

Effective January 2019

1. GENERAL AGREEMENT

The following Terms of Service, including any schedules hereto and any terms incorporated herein by reference (referred to as "TOS" or "Agreement") are between you, the customer, and one of the following AT&T companies, depending upon your service address: Southwestern Bell Telephone Company; Pacific Bell Telephone Company; Illinois Bell Telephone Company, LLC; Indiana Bell Telephone Company, Incorporated; Michigan Bell Telephone Company; Nevada Bell Telephone Company; The Ohio Bell Telephone Company; Wisconsin Bell, Inc.; or BellSouth Telecommunications, LLC (each individually and collectively referred to as "AT&T"). The TOS constitute a legal document that details your rights and obligations as a purchaser of AT&T Phone service (f/k/a AT&T U-verse Voice) and/or AT&T U-verse TV service (individually and collectively referred to as "Services").

If you purchase AT&T Phone service, your TOS include the General Terms of Service set forth herein, and the attached Schedule 1. If you purchase AT&T U-verse TV service, your TOS include the General Terms of Service set forth herein and the attached Schedule 2. Your TOS also include the Acceptance Form for Terms of Service for Purchase and Use of AT&T Phone service and/or AT&T U-verse TV provided to you when Services are installed. Your TOS will continue to apply to your Services when they are transferred from one location to another.

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

You must accept these TOS as a condition of receiving the Services. For purposes of these TOS, "you" and "your" refer to the person purchasing the Services. "We," "our," "us," refer to AT&T.

AT&T will comply with all applicable federal, state and local laws, to the extent that such laws apply to AT&T and its obligations under the TOS. If there is any conflict between the TOS and such applicable law, such applicable law controls. These conflicts could include, but are not limited to, fees and charges for service, billing and payments, notices, and your rights and remedies.

Legal Authority. You must be an adult over the applicable age of majority (e.g., eighteen (18) years of age in most U.S. states and territories; nineteen (19) in Alabama and Nebraska; and twenty-one (21) in Mississippi and Puerto Rico – an "Adult") to purchase the Services as an individual or to accept these TOS as an authorized representative for the person or entity who purchases the Services. By accepting these TOS, you confirm you are an Adult. If you are an entity, by accepting these TOS, you confirm (through your duly authorized representative) that you are a corporation, partnership, or other legal entity duly formed (and incorporated if applicable) in good standing where required to do business with all legal authority and power to accept these TOS; and you are also confirming that these TOS constitute a valid and binding obligation of yours. All use of the Services, whether or not authorized by you, shall be deemed for your use. You are responsible for ensuring that all use of the Services complies with these TOS.

By enrolling in, activating, using, or paying for the Services, you agree to the terms and conditions in these TOS, including but not limited to the prices, charges, and terms and conditions provided to you in marketing and informational materials associated with the Services and on the AT&T U-verse website, all of which are incorporated herein by reference. If you do not agree to all of the aforementioned terms and conditions, do not use the Services, and cancel the Services immediately by calling AT&T at 800.288.2020.

Updates. These TOS may be updated or changed from time to time. You can review the most current version of these TOS at any time at: att.com/uvversetermsofservice. If AT&T makes a change to these TOS and that change has a material impact on the Services, you will be provided notice of that change, and such notice will be provided consistent with Notice provisions of this TOS. Your continued use of the Services following such notice constitutes your acceptance of those changes.

Special Arrangements. Some customers may receive the Services through a special arrangement with their property owner or manager. If you have such an arrangement, these TOS shall apply to the Services, except that AT&T may not directly charge you for Services (including Equipment) provided to you as part of the special arrangement, and the Equipment return provisions may not apply to you even though Equipment remains AT&T-owned. You will be responsible for fees and charges associated with additional Service orders. You may have an additional agreement or contract with your property owner or manager that covers any applicable special arrangement. Any such additional agreement or contract is outside these TOS and AT&T is not responsible for

nor bound by the terms of any agreement you may have with your property owner or manager. If the special arrangement with your property owner or manager terminates, you will continue receiving Service under standard billing terms and these TOS unless you notify AT&T.

2. ACCEPTABLE USE AND PRIVACY POLICIES

Use of the Services is subject to the AT&T Acceptable Use Policy (available at <http://www.corp.att.com/aup>), which is incorporated herein by reference. Once you have purchased the Services you will have an account with AT&T ("AT&T Account"). Your AT&T Account will include information applicable to the Services including but not limited to billing information and charges related to the Services (whether recurring or one-time). If you have, or later obtain, a user ID, you are subject to the user ID Terms and Conditions (available at <http://www.att.com/accessidterms>), which are incorporated herein by reference. The AT&T Privacy Policy, which is incorporated herein by reference and is available online at <http://www.att.com/privacy>, addresses AT&T's use of account information and other information specific to your use of AT&T Services.

AT&T U-verse Services are provided for your non-commercial personal use only, and for your enjoyment in a private residential dwelling/office unit. You agree not to reproduce, duplicate, copy, sell, transfer, trade, resell or exploit for any commercial purposes any portion of the Services, use of the Services, or access to the Services. Further, you agree that the AT&T U-verse TV service will not be viewed in areas open to the public or in commercial establishments and that your AT&T U-verse TV service may not be rebroadcast, nor performed, nor may admission be charged for listening to or viewing AT&T U-verse TV service.

3. INSTALLATION/SERVICE

You will be responsible for payment of service charges for visits by AT&T or its subcontractors to your premises when a service request results from causes not attributable to AT&T or its subcontractors, including, but not limited to, when you are unwilling to complete troubleshooting steps requested by AT&T. You will provide AT&T and its subcontractors with reasonable access to your premises in order to install, maintain, and repair the Service and you authorize any other Adult resident or guest at your residence to grant access to your premises for these purposes. You understand and agree that by authorizing an Adult resident or guest to grant access to your premises you authorize any such Adult to act on your behalf, including accepting this TOS and any related agreements required in connection with the completion of the installation and/or the activation of the Service and approving any changes to the Services. You further understand and agree that AT&T may drill, cut, and otherwise alter improvements on the premises (including walls, flooring, and/or other surfaces) in order to install, maintain, or repair the Service. If you do not own your premises or your unit is part of a multi-tenant environment (e.g., apartment building, condominium, private subdivision), you warrant that you have obtained permission from any necessary party, including but not limited to the owner, landlord, or building manager, to allow AT&T and its subcontractors reasonable access to install, maintain, and repair the Service and to make any alterations AT&T deems appropriate for the work to be performed.

You acknowledge that AT&T may use existing wiring, including altering the wiring and removing accessories, located within your unit ("Inside Wiring"). You warrant that you own or control the Inside Wiring, and give AT&T permission to use, alter, and remove equipment from, such wiring. Without limiting any other provisions of this TOS, you agree to indemnify AT&T from and against all claims by an owner, landlord, building manager, or other party in connection with installation, maintenance, repair, or provision of the Services.

4. FEES AND CHARGES

Agreement to Pay. You agree to pay all fees and charges for the Services associated with your AT&T Account, including recurring and nonrecurring charges, taxes, fees, surcharges, and assessments applicable to the Services, associated equipment, installation and maintenance, and including all usage and other charges associated with your account. For a list of additional charges and fees that could apply to the Service, please see www.att.com/VoiceUverseTVFees ("Fee Schedule"). The Fee Schedule is incorporated into this TOS by this reference. AT&T reserves the right to change fees and charges, increase or decrease fees and charges, or impose additional fees or charges without notice. In order to provide you with the Services, AT&T may pay taxes, fees, and surcharges to municipalities and other governmental entities, which AT&T may pass on to you.

Late Payment Charge and Dishonored Check or Other Instrument Fee. You agree that for each bill not paid in full by the payment due date, a Late Payment Charge of no more than \$10 per bill will be assessed (subject to applicable law and except as may otherwise have been expressly agreed in writing). Please see the Fee Schedule to determine the Late Payment Charge amount applicable to your particular Service(s). For any check or other instrument (including credit card charge backs) returned unpaid for any reason, you will be charged a NSF/Returned Check Fee of no more than \$30 (subject to applicable law and except as may otherwise have been expressly agreed in writing). Please see the Fee Schedule to determine the NSF/Returned Check Fee amount applicable to your particular Service(s).

Unpaid Past Due Charges and Consent to Contact. In the event you fail to pay AT&T or AT&T is unable to bill charges to your credit card, AT&T may assign unpaid late balances to a collections agency. You expressly authorize, and specifically consent to allowing, AT&T and/or its outside collection agencies, outside counsel, or any other agents acting by or on behalf of AT&T to contact you with informational messages regarding your account, including but not limited to contact in connection with any and all matters relating to unpaid past due charges billed by AT&T to you. You agree that such contact may be made to any mailing address, telephone number, cellular phone number, e-mail address, or any other electronic address that you have provided, or may in the future provide, to AT&T and to any and all telephone numbers billed on your account. You expressly consent and agree that such contact may be made using, among other methods, pre-recorded or artificial voice messages delivered by an automatic telephone dialing system, text messages delivered by an automated system, pre-set e-mail messages delivered by an automatic e-mailing system, or any other pre-set electronic messages delivered by any other automatic electronic messaging system. You agree to provide true, accurate, current and complete contact information to AT&T and its authorized agents and to promptly update your contact information to keep it true, accurate and complete.

Changes to Fees & Charges. If you signed up for Services for a specified term, you agree that if you cancel your plan before the end of the term, you will pay any applicable Early Termination Fee. At the conclusion of your term, AT&T will automatically begin charging the applicable month-to-month fee. If you purchased the Services as part of a bundled offering with one or more other products and are receiving a discount based upon that bundled offering, your discount may cease and you may be billed the standard monthly rate for the Services if you change or disconnect one or more of the services in the applicable bundle. AT&T may, upon notice required by applicable laws, at any time change the amount of or basis for determining any fee or charge or institute new fees or charges.

Data Usage. Use of certain services, including but not limited to AT&T U-verse TV features and apps, AT&T Digital Life, home security, home automation and medical alarm systems, will count towards your internet usage allotment. For more information about the use of your residential High Speed Internet Service and the data plans that may apply to your service, how much data you use, and management of your data usage, please refer to www.att.com/internet-usage.

5. BILLING AND PAYMENTS

Credit Card Authorization. You may be asked to provide us with a valid email address and a credit card number from a card issuer that we accept in order to activate your Services. You hereby authorize AT&T to charge and/or place a hold on your credit card with respect to any unpaid charges related to the Services. You authorize the issuer of the credit card to pay any amounts described herein without requiring a signed receipt, and you agree that these TOS are to be accepted as authorization to the issuer of the credit card to pay all such amounts. You authorize AT&T and/or any other company who bills products or services, or acts as billing agent for AT&T to continue to attempt to charge and/or place holds with respect to all sums described herein, or any portion thereof, to your credit card until such amounts are paid in full.

You agree to provide AT&T with updated credit card information upon AT&T's request and any time the information you previously provided is no longer valid. You are solely responsible for maintaining and updating the credit card information. Without limiting the applicability of any other provisions of this TOS, you acknowledge and agree that neither AT&T nor any AT&T affiliated company will have any liability whatsoever for any non-sufficient funds or other charges incurred by you as a result of such attempts to charge, and/or place holds on, your credit card. If you mistakenly provide a debit card number, instead of a credit card number, you authorize all charges described herein to be applied to such debit card unless and until you provide a credit card number. In the event you are enrolled, or later enroll, in an automatic payment or electronic funds transfer plan, you authorize AT&T to charge the account number provided for such automatic payment or electronic funds transfer plan. To cancel your authorization for automatic payment or electronic funds transfer, you must call 800.288.2020. You should also contact your card issuer or financial institution to advise that you have cancelled your enrollment. Also, if you opt out of automatic payment or electronic funds transfer, you may lose the benefits of any promotion(s) that requires such payments or transfers pursuant to the terms of the applicable promotion(s) and subject to applicable law.

Deposits, Fees and Limits. We may require you to make deposits for Services, which we may use to satisfy your initial bill for Services, to offset against any unpaid balance on your account, or as otherwise set forth in these TOS or permitted by law. Interest will not be paid on deposits unless required by law. We may require additional deposits if we determine that the initial payment was inadequate. Upon determination solely by AT&T of satisfactory payment history or as required by law, AT&T may begin refunding of the deposit through bill credits, cash payments, or as otherwise determined solely by AT&T.

Based on your creditworthiness, a non-refundable fee may be required to establish service and we may require

you to enroll, and remain enrolled, in an automatic payment or electronic funds transfer plan. We may establish additional limits and restrict service or features as we deem appropriate. If your account balance goes beyond the limit we set for you, we may immediately interrupt or suspend service until your balance is brought below the limit. Any charges you incur in excess of your limit become immediately due.

Payment Cycle and Cancellation. Billing for the Services commences when AT&T has provisioned the Services. Recurring charges for each month's Services will be billed one month in advance. Billing is based on a 30-day cycle. Non-recurring and usage-based charges for the Services generally will be billed in the billing cycle following the transaction. Your first bill for Services may include pro-rated charges for a partial monthly period prior to the beginning of your first monthly billing cycle. Upon termination, subject to applicable law, your effective date of cancellation will be the last day of your current billing cycle and you will receive Service until the end of your billing cycle (exceptions may apply to certain promotional periods and must be in writing). You will not receive a prorated credit or refund for any remaining days of Service in your billing cycle after termination. Your Service will continue until the end of the bill cycle. A downgrade fee may apply if you make changes to your Service within thirty (30) days of Service provisioning or later programming orders.

Method of Billing/Payment. Fees and charges for the Services will be billed to your AT&T Account. **You will receive an online bill for the Service, unless you specifically notify us that you want to receive a paper bill for the Services (at 800.288.2020).** You must register online to establish a personal AT&T My Account and provide a billing email address. You will then be able to view and pay your bill online by logging on to your personal AT&T My Account (username and password required). You understand that you have sole responsibility for the security of your password and you are solely responsible for notifying AT&T if your password is lost or stolen. AT&T is not liable for any claims, costs, damages, or expenses arising from a lost, misplaced, or stolen password. If you forgot your password or want to change your password for any reason, you may request to reset your password online. It is your responsibility to notify AT&T immediately if your contact information changes.

Bill Inquiries and Refunds. If you believe you have been billed in error for the Services, please notify us within 60 days of the billing date by contacting Customer Service (800.288.2020). AT&T will not issue refunds or credits after the expiration of this 60-day period, except where required by law or regulation. Any amounts refunded in the form of bill credits, cash payments or any other form shall be inclusive of all applicable taxes, fees and surcharges that were originally paid on such amounts. Credit amounts, such as customer loyalty rewards, that do not represent a refund of, or a discount to, the price paid for any good or service will not result in the refund of any tax, fee, or surcharge previously paid by the customer.

Refunds. You authorize AT&T to use outside payment processing agencies or other companies for purposes of paying any refund owed to you, and you further authorize AT&T to sell, assign or otherwise transfer its refund rights and obligations under this Agreement to outside payment processing agencies or other companies. You agree that we or the outside payment processing agency or other company that is responsible for your refund may determine in our or, if applicable, their sole and absolute discretion the form of any refund that we issue to you under this Agreement, and such form may include a credit on your next statement, a check, or a prepaid debit card that may be subject to monthly service fees not to exceed \$2.95 per month and that are deducted from the amount of the refund.

Promotions and Contingent Benefits. You may receive or be eligible for certain discounts, features, promotions, and other benefits associated with your purchase of the Services as offered to you in marketing and informational materials, on the AT&T U-verse website, or in other materials ("Benefits"). Any and all such Benefits are provided to you so long as you continue to meet qualification requirements; provided, however, such Benefits may be modified or terminated at any time as set forth in these TOS or if you change your Services after installation. Unless otherwise set forth in Benefits materials, standard monthly rates will be charged at the conclusion of the Benefits period or when you no longer qualify for the Benefits.

6. EQUIPMENT

Equipment provided by AT&T may be new or fully inspected and tested. Any equipment or software that was not provided to you by AT&T, including batteries, is not the responsibility of AT&T, and AT&T will not provide support, or be responsible for ongoing maintenance of such equipment. Depending on your service address, your Services will include one of the following Equipment configurations:

- a. A Wi-Fi® Gateway ("WG") located inside your premises, and certain service-specific equipment set forth in Schedule 1 and/or Schedule 2 that is required for the Services to function (the WG and service-specific equipment herein collectively referred to as "Equipment"). If you do not purchase the Equipment from AT&T, you agree to pay a monthly equipment fee for the Equipment as part of your purchase of the Services for the duration of your receipt of the Services. Equipment fees may be included in your monthly charge for the Services or be charged separately (different taxes and surcharges may apply to the equipment fees, Service fees, and/or the equipment fee portion of the Service fees). Equipment fee/purchase options

depend on the AT&T U-verse Services you order and installation options you choose. The Equipment requires electrical power from your premises to operate, which you are responsible for providing.

b. If you have an WG inside your premises, you may also have an Optical Network Terminal (“ONT”), which is a box that may be located inside your premises, on the outside of your premises, in a central location in a multi-tenant building, or in your garage, where AT&T’s fiber network terminates. The ONT also requires electrical power from your home to operate, which you are responsible for providing. AT&T will install your ONT device. The ONT power supply box converts the AC power in your home to the DC power required by the ONT.

c. If you do not have an WG located inside your premises, your service is provided by an Intelligent Network Interface Device (“iNID”) and certain service specific equipment set forth in Schedule 1 and/or Schedule 2 that is required for the Services to function (the iNID and certain service-specific equipment therein collectively referred to as “Equipment”). If you do not purchase the Equipment from AT&T, you agree to pay a monthly equipment fee for the Equipment as part of your purchase of the Services for the duration of your receipt of the Services. Equipment fees may be included in your monthly charge for the Services or be charged separately. Equipment fee/purchase options depend on the AT&T U-verse Services you order and the installation options you choose. The iNID includes three components: (1) a unit typically located on the outside of your premises or in your garage where the AT&T network terminates (the outside unit); (2) a home networking hub, which provides wireless networking capability and is located inside your premises, (the inside unit); and, (3) a power supply unit, typically located in a sheltered area either inside your premises or in an attached structure. You are responsible for providing the electrical power for the iNID.

Battery Backup for WG. It is your responsibility to provide your own battery backup. You may choose to purchase battery backup for your WG from third party manufacturers or retailers. For more information and minimum specifications visit att.com/batterybackup also see Schedule 1, section IV, for more information on Power Outages and No Battery Backup.

Battery Backup for ONT. It is your responsibility to provide for your own battery backup. You may choose to purchase battery backup for your ONT from third party manufacturers or retailers. You agree to read and follow all manufacturer or vendor directions for the replacement and recycling of battery backup. For more information and minimum specifications visit att.com/batterybackup.

Battery Backup for iNID. If there is an iNID at your premises AT&T provided the initial battery backup. All subsequent battery backups are the responsibility of the customer at the premises. For more information and minimum specifications visit att.com/batterybackup also see Schedule 1, section IV, for more information on Power Outages and No Battery Backup.

AT&T reserves the right to manage the AT&T Equipment during the time you are an AT&T customer and retains exclusive rights to data generated by the Equipment. Neither you nor a third party may change, interfere with, or block access to the Equipment data or settings. AT&T will repair or replace damaged Equipment as AT&T deems necessary. You understand that repair or replacement of the Equipment may delete stored content, reset personal settings, or otherwise alter the Equipment. If the Equipment was damaged due to your intentional acts, negligence, or use inconsistent with the TOS as determined by AT&T, you will be responsible for the price of repair or replacement. Any tampering with the Equipment, including, for example, opening and attempting to modify the Equipment, or attempting to connect the Equipment to other hardware, will be treated as damage due to your intentional acts or negligence. You agree that you will use the Equipment only for its intended residential use, and not for any other purpose (such as on another AT&T network, or on another provider’s (non-AT&T) network). You agree to use appropriate and reasonable care in using any and all Equipment.

AT&T will not provide support for, or be responsible for, ongoing maintenance or management of, customer-owned equipment, including the battery backup equipment used by AT&T customers. For more information and minimum specifications visit att.com/batterybackup.

Return of Equipment. Upon termination of the Services for whatever reason, you must return the Equipment, undamaged, within 21 calendar days to AT&T. If the Equipment is not returned within 21 calendar days, or is returned damaged, you will be charged for the value of the Equipment. We may retain any advance payment or deposit, or portion thereof that previously had not been refunded, if you fail to return the Equipment within this time period. If the Equipment is returned within 90 days of termination, any fees charged for the Equipment will be refunded (other than fees for damages). No refunds will be made for any Equipment returned more than 90 days after termination. In addition to termination of service, these return of equipment provisions apply if your existing equipment is replaced or upgraded for any reason.

7. INDEMNITY

You agree to indemnify and hold AT&T and its subsidiaries, affiliates, directors, officers, agents, and employees harmless from any claim, demand, action, citation, or legal proceeding, including, but not limited to, those arising

out of or resulting from the death or bodily injury of any person, or the damage, loss, or destruction of any real or tangible personal property, or for reasonable attorneys' fees (except as provided in paragraph 11(e) below), made by any party against AT&T, its subsidiaries, affiliates, directors, officers, agents, and employees arising out of or related to your use of or inability to use the Services, your connection to the Services, the provisioning or alleged failure to provision the Services, a violation of any provision of this TOS, or your violation of any rights of another.

8. INTERRUPTIONS, LIMITATIONS, AND MODIFICATIONS TO SERVICE

Service may be temporarily interrupted or otherwise limited for a variety of reasons; some beyond the control of AT&T. AT&T reserves the right to refuse credit allowances for interruptions of Service. AT&T also reserves the right to modify or discontinue, temporarily or permanently, at any time and from time to time, the Services (or any function or feature of the Services or any part thereof) without liability. You acknowledge that AT&T may establish general practices and limits concerning use of the Services, including without limitation, the limits set forth in the attached Schedule 1 and Schedule 2.

IP Network Interruptions. You acknowledge and understand that the Services will not function in the event of an IP network interruption.

9. ACCOUNT SECURITY

Customer Duty. You agree to keep confidential all passwords, user IDs, IP addresses, and other account identifiers and are solely responsible for any liability or damages resulting from your failure to maintain that confidentiality. You are solely and fully responsible and liable for all activities that occur under your AT&T Account, password, user ID, or IP address. You agree to: (a) immediately notify AT&T if you suspect any breach of security such as loss, theft, public use (unrestricted, open, communal or shared use by third parties unrelated and/or not affiliated with the Customer either for profit or not for profit) or unauthorized disclosure or use of your AT&T Account, password, user ID, or any credit or charge card number provided to AT&T by calling 800.288.2020; (b) ensure you exit from your account as applicable at the end of each session; and (c) periodically change your password.

Account Access. You authorize AT&T to provide information about and to make changes to your AT&T Account, including adding new service, upon the direction of any person able to provide information we deem sufficient to identify you.

Assumption of Risk. There is a risk that other users may attempt to access your Services, such as through the Internet or connected networks. You acknowledge this risk as inherent to the shared nature of the Services and you agree to take full responsibility for taking adequate security precautions and safeguarding your data.

Theft of AT&T Equipment or Service. You agree to notify AT&T immediately, in writing or by calling the AT&T customer support line, if the Equipment is stolen or if you become aware at any time that Services are being stolen or fraudulently used. When you call or write, you must provide your AT&T Account number and a detailed description of the circumstances of the Equipment theft, including documentation of theft (e.g., a copy of a police report) or stolen or fraudulent use of the Services. You will be responsible for all charges incurred on your AT&T Account until you report the theft or fraudulent use of the Services. You will be responsible for stolen Equipment, however, AT&T may in its sole discretion waive or reduce charges for stolen Equipment upon submission of documentation of theft or other circumstances. Failure to provide notice to AT&T of theft in a timely manner may result in the termination of your Services and additional charges to you. Unless notified otherwise by AT&T, after you report the theft or fraudulent use of the Services, you will remain responsible for paying your monthly fees for Services not stolen or fraudulently used.

10. SUSPENSION AND TERMINATION

Reduction/Suspension/Termination by AT&T. Your Services may be reduced, suspended or terminated if your payment is past due. AT&T may also reduce, suspend or terminate your Services if it is determined that there is previously unpaid, undisputed and outstanding debt for Service(s). Such reduction, suspension or termination may continue until satisfactory arrangements have been made for the payment of all past unpaid charges. While your Service(s) are suspended you will not receive automatic credit balances (if any are due) and billing will continue for your monthly charges, and any applicable promotional offers may be discontinued and revoked as determined solely by AT&T.

Minimum Service Fee. When your U-verse TV Service is suspended for non-payment, you will be placed in a minimum service package with reduced programming, for a one-time flat fee of \$9.99 ("Minimum Service Charge") subject to applicable law and except as may otherwise have been expressly agreed in writing. If AT&T reduces or suspends your Service for non-payment, you must pay all past due amounts in order to resume your U-verse TV Service at any level above the minimum service package.

Restoral Fee. In addition, to resume your Service at any level above the minimum service package you must also

pay an account Restoral Fee of \$35 (subject to applicable law and except as may otherwise have been expressly agreed in writing). The Restoral Fee will be assessed on the next monthly bill you receive following the resumption of Service from the minimum service package.

AT&T may immediately terminate all or a portion of your Service or reduce or suspend Service, without notice, for conduct that AT&T believes (a) is illegal, fraudulent, harassing, abusive, or intended to intimidate or threaten; (b) constitutes a violation of any law, regulation, or tariff (including, without applicable policies or guidelines (including the Acceptable Use Policy), and AT&T may refer such use to law enforcement authorities without notice to you. Termination of suspension or reduction by AT&T of the Services also constitutes termination or suspension (as applicable) of your license to use any Software, if applicable.

Contacts to Terminate Service. You may terminate the Services at any time by calling 800.288.2020. You must pay service fees and other charges incurred through the termination date, including any Early Termination Fees that apply. If you lease your Equipment, you may also be charged the value of any Equipment that is not returned in accordance with Section 6.

11. DISPUTE RESOLUTION WITH AT&T BY BINDING ARBITRATION PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.

Most customer concerns can be resolved quickly and to the customer's satisfaction by calling AT&T at 800.288.2020. **In the unlikely event that AT&T's customer service department is unable to resolve a complaint you may have to your satisfaction (or if AT&T has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction.** Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted. For any nonfrivolous claim that does not exceed \$75,000, AT&T will pay all costs of the arbitration. Moreover, in arbitration you are entitled to recover attorneys' fees from AT&T to at least the same extent as you would be in court.

In addition, under certain circumstances (as explained below), AT&T will pay you more than the amount of the arbitrator's award and will pay your attorney (if any) twice his or her reasonable attorneys' fees if the arbitrator awards you an amount that is greater than what AT&T has offered you to settle the dispute.

Arbitration Agreement:

- a. AT&T and you agree to arbitrate all disputes and claims between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:
- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
 - claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising);
 - claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
 - claims that may arise after the termination of this Agreement.

References to "AT&T," "you," and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of Services under this or prior Agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies. Such agencies can, if the law allows, seek relief against us on your behalf. **YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND AT&T ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.** This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

b. A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to AT&T should be addressed to: Office for Dispute Resolution, AT&T, 1025 Lenox Park Blvd., Atlanta, GA 30319 ("Notice Address"). The Notice must (1) describe the nature and basis of the claim or dispute; and (2) set forth the specific relief sought ("Demand"). If AT&T and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or AT&T may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by AT&T or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or AT&T is entitled.

**You may download or copy a form Notice and a form to initiate arbitration from here:
www.att.com/arbitration-forms.**

c. After AT&T receives notice at the Notice Address that you have commenced arbitration, it will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than \$75,000. (The filing fee currently is \$200 but is subject to change by the arbitration provider. If you are unable to pay this fee, AT&T will pay it directly upon receiving a written request at the Notice Address.) The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at <https://www.adr.org>, by calling the AAA at 800.778.7879, or by writing to the Notice Address. (You may obtain information that is designed for non-lawyers about the arbitration process at att.com/arbitration-information.) The arbitrator is bound by the terms of this agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. Unless AT&T and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as otherwise provided for herein, AT&T will pay all AAA filing, administration and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse AT&T for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. In addition, if you initiate an arbitration in which you seek more than \$75,000 in damages, the payment of these fees will be governed by the AAA rules.

d. If, after finding in your favor in any respect on the merits of your claim, the arbitrator issues you an award that is greater than the value of AT&T's last written settlement offer made before an arbitrator was selected, then AT&T will:

- pay you the amount of the award or \$10,000 ("the alternative payment"), whichever is greater; and
- pay your attorney, if any, twice the amount of attorneys' fees, and reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration ("the attorney premium").

If AT&T did not make a written offer to settle the dispute before an arbitrator was selected, you and your attorney will be entitled to receive the alternative payment and the attorney premium, respectively, if the arbitrator awards you any relief on the merits. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the alternative payment and the attorney premium at any time during the proceeding and upon request from either party made within fourteen (14) days of the arbitrator's ruling on the merits.

e. The right to attorneys' fees and expenses discussed in paragraph (d) supplements any right to attorneys' fees and expenses you may have under applicable law. Thus, if you would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding you that amount. However, you may not recover duplicative awards of attorneys' fees or costs. Although under some laws AT&T may have a right to an award of attorneys' fees and expenses if it prevails in an arbitration, AT&T agrees that it will not seek such an award.

f. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **YOU AND AT&T AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and AT&T agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

g. Notwithstanding any provision in this Agreement to the contrary, we agree that if AT&T makes any

future change to this arbitration provision (other than a change to the Notice Address) during the period of time that you are receiving Services, you may reject any such change by sending us written notice within 30 days of the change to the Arbitration Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision.

12. SOFTWARE

The Services use and include certain software and/or firmware (the "Software"). Some Software resides on the Equipment.

End User License Agreement. If you downloaded or installed Software, your use of that Software is subject to the End User License Agreement that accompanied that Software. With regard to any Software (including Software upgrades, changes, or supplements) which is not accompanied by an End User License Agreement, AT&T, or its applicable third party licensors, grants you a limited, personal, nontransferable, and nonexclusive right and license to use the object code of its Software on the Equipment; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble, or otherwise attempt to discover any source code or structure, sequence and organization of, sell, assign, sublicense, distribute, rent, lease, grant a security interest in, or otherwise transfer any right in the Software. You acknowledge that this license is not a sale of intellectual property and that AT&T or its third-party licensors, providers, or suppliers continue to own all right, title, and interest to the Software and related documentation. The Software is protected by the copyright laws of the United States and international copyright treaties.

Export Limits. You shall comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control ("OFAC"), or other United States or foreign agency or authority, and shall not export, or allow the export or re-export of the Software in violation of any such restrictions, laws or regulations. By downloading or using the Software, you agree to the foregoing and represent and warrant that you are not located in, under the control of, or a national or resident of any restricted country or on any such list.

Restricted Rights. The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraphs (a) through (d) of the Commercial Computer Restricted Rights clause at 48 CFR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause of DFARS 252.227-7013 and in similar clauses in the NASA FAR Supplement.

Non-AT&T Software, Services or Applications. Your use of the Services may also include access to and use of software, services and/or applications which interact with the Services and which are provided by non-AT&T third parties, and, when applicable, those third-parties terms and conditions apply to your access to and use of such non-AT&T software, services and/or applications. AT&T is not liable to you for any loss or injury arising out of or caused, in whole or in part, by your use of any such software, services, and/or applications accessed through, or in conjunction with, the Service.

NOTICE ABOUT AUTOMATIC SOFTWARE UPGRADES. AT&T, or its applicable third-party licensors may provide Software upgrades, updates, or supplements (such as, but not limited to, adding or removing features or updating security components). You understand and agree that AT&T, or the applicable third-party licensor, have the unrestricted right, but not the obligation, to upgrade, update, or supplement the Software on the Equipment at any time. Although unlikely, Software upgrades, updates, or supplements could reset your Equipment and erase saved preferences and stored content.

13. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

1. YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. AT&T EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
2. AT&T MAKES NO WARRANTY THAT (i) THE SERVICES WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS, OR (v) THE SERVICES WILL NOT CONFLICT OR INTERFERE WITH OTHER SERVICES FROM AT&T OR THIRD PARTIES THAT YOU RECEIVE AT YOUR PREMISES.
3. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM AT&T OR THROUGH OR FROM THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TOS.

14. LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT, UNLESS PROHIBITED BY LAW, AT&T SHALL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR PERSONAL INJURY, PROPERTY DAMAGE, LOSS OF REVENUE OR PROFITS, BUSINESS OR GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF AT&T HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) USE OF THE SERVICES (WHICH INCLUDES EQUIPMENT, SOFTWARE, AND INSIDE OR OUTSIDE WIRING), (b) THE PERFORMANCE OR NONPERFORMANCE OF THE SERVICES, (c) THE INSTALLATION, MAINTENANCE, REMOVAL, OR TECHNICAL SUPPORT OF THE SERVICES, EVEN IF SUCH DAMAGE RESULTS FROM THE NEGLIGENCE OR GROSS NEGLIGENCE OF AN AT&T INSTALLER, TECHNICIAN, OR OTHER REPRESENTATIVE, (d) ANY INABILITY TO REACH 911 EMERGENCY SERVICES, ANY ALLEGED INTERFERENCE WITH ALARM OR MEDICAL MONITORING SIGNALS, OR ANY FAILURE OF ALARM OR MEDICAL MONITORING SIGNALS TO REACH THEIR INTENDED MONITORING STATIONS ALLEGEDLY AS A RESULT OF THE SERVICES AND/OR (e) BATTERY BACKUP.

IN ANY EVENT, YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH AT&T IN CONNECTION WITH THE SERVICE IS A REFUND NOT TO EXCEED THE TOTAL AMOUNT OF SERVICE FEES PAID DURING THE IMMEDIATELY PRECEDING TWELVE MONTH PERIOD.

15. EXCLUSIONS AND LIMITATIONS

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF SECTIONS 13 AND 14 MAY NOT APPLY TO YOU.

16. NOTICE

Unless otherwise specified in these TOS, notices to you may be made via email, regular mail, posting online at att.com/legal/terms.uverseAttTermsOfService.html, recorded announcement, bill message, bill insert, newspaper ad, postcard, letter, or call to your billed telephone number. In addition, if you purchase AT&T U-verse TV service, AT&T may also provide notices of changes to these TOS or other matters by displaying notices on AT&T U-verse TV. It is your responsibility to check for such notices.

Unless otherwise specified in these TOS or required by applicable law, notices by you to AT&T must be given by calling 800.288.2020 and such notices are effective as of the date that our records show we received your call.

17. INTELLECTUAL PROPERTY

All portions of the Services and Equipment and any firmware or software used to provide the Services or provided to you in conjunction with providing the Services, or embedded in the Equipment, and all Services, information, documents, and materials on related website(s) are the property of AT&T or third-party providers and are protected by trademark, copyright, or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "Marks") of AT&T or third-party providers are and shall remain the exclusive property of AT&T or third-party providers, and nothing in this Agreement shall grant you the right or license to use such Marks.

18. CREDIT REPORTING AUTHORIZATION

As permitted under applicable laws and without limitation to other rights provided in these TOS or other applicable policies, you authorize AT&T to (a) disclose your account information, including your payment history and confidential information, to credit reporting agencies or private credit reporting associations, and (b) periodically obtain and use your credit report and other credit information from any source in connection with AT&T's offering of the Services and other services. You understand that if you fail to fulfill the terms of your obligations under these TOS, AT&T may report your failure to a credit reporting agency.

19. ASSIGNMENT

AT&T may assign these TOS and its rights and obligations pertaining to the provision of the Services, or parts thereof, to a parent or affiliated company without notice to you. You may not assign these TOS or your rights or obligations pertaining to the Services or any parts thereof without the written consent of AT&T.

20. MISCELLANEOUS PROVISIONS

1. These TOS do not provide any third party with a remedy, claim, or right of reimbursement.
2. These TOS, any policies, guidelines, or other documents referenced herein, the provisions set forth in any marketing and informational materials or promotional offers for the Services, and the terms and conditions posted on the AT&T U-verse website constitute the entire agreement between AT&T and you and supersede any prior agreements between you or AT&T with respect to the subject matter of these TOS.
3. These TOS and the relationship between you and AT&T will be governed by the law of the state of your billing address except to the extent such law is preempted by or inconsistent with applicable federal law. In the event of a dispute between us, the law of the state of your billing address at the time the dispute

- is commenced, whether in litigation or arbitration, shall govern except to the extent that such law is preempted by or inconsistent with applicable federal law.
4. The failure of AT&T to exercise or enforce any right or provision of these TOS will not constitute a waiver of such right or provision.
 5. If any provision of these TOS is found by a court or agency of competent jurisdiction to be unenforceable, the parties nevertheless agree that the remaining provisions of these TOS shall remain in full force and effect. The foregoing does not apply to the prohibition against class or representative actions that is part of the arbitration clause; if that provision is found to be unenforceable, the arbitration clause (but only the arbitration clause) shall be null and void.
 6. To the fullest extent permitted by law, you and AT&T agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or these TOS must be filed within one (1) year after such claim or cause of action arose or be forever barred.
 7. The section titles and paragraph headings in these TOS are for convenience only and have no legal or contractual effect.

SCHEDULE 1 AT&T PHONE

I. Service Description

AT&T Phone is a residential enhanced voice communication service that converts voice communications into Internet Protocol (IP) packets that are carried over AT&T's IP network. It may be generically referred to as "voice over IP" or "VoIP." The Service includes direct-dialed calling and certain calling and call management features or advanced features associated with the Service, including additional features or advanced features which may be offered at additional costs, all of which AT&T, in its sole discretion, may add, modify, or delete from time to time. The Service also includes a telephone number or numbers that will be included in printed directories and/or directory assistance databases, and options, available at additional costs, to have numbers withheld from printed directories and/or directory assistance databases. The Service is not available for business use. It is not mobile or nomadic and will function only in your home.

When you accept these TOS, you become the main account holder for each telephone number assigned to the AT&T Phone service and all plans, features, and functionalities associated with each telephone number, whether those telephone numbers, plans, features, and functionalities are purchased initially or are added subsequently. These TOS apply to all such telephone numbers, and to the Service and the plans, features, and functionalities associated with the Service, for both the main account and all sub accounts. You will be asked to choose a unique name for the main account (your main account ID).

Subaccounts. You may create up to ten subaccounts under your main account, for others in your household (each subaccount will have a separate password and ID). Main account holders are responsible for all activity on their main account and on any and all subaccounts. Violations of these TOS in a main account or in a subaccount can result in suspension or termination of the main account and all associated subaccounts. Call histories (call logs for outgoing, answered, and missed calls) for each telephone number are accessible in the main account and in each subaccount created under the telephone number. Main account holders can reset subaccount passwords and IDs by contacting Customer Service and can delete and recreate subaccounts. You agree to advise all subaccount holders that the main account holder can have access to all aspects of their subaccount, including, but not limited to, feature settings, voicemail messages, and address books. All subaccount holders can therefore have no expectation of privacy vis-à-vis the main account holder with regard to any aspect of the subaccount.

II. Billing And Payments

For AT&T Phone service, nonrecurring and usage-based charges generally billed in the billing cycle following the transaction include, but are not limited to, international calling (including surcharges for international termination to a wireless phone number), Operator Services, Directory Assistance (411 or xxx.555.1212), call trace, and overage minutes associated with defined minutes-of-use plans (e.g. Phone200 plan). Partial minutes are rounded up for per-minute usage charges.

III. Service-Specific Equipment

AT&T Phone service requires a regular touchtone landline telephone, which you must supply and which must be connected to the WG or iNID, either directly or through your home's inside wiring. (Rotary and pulse phones will not work). The WG or iNID will support up to two AT&T Phone lines (telephone numbers used for inbound and outbound calling).

You agree that neither you nor a third party will move Equipment used for AT&T Phone service within your premises or to any other physical location outside of the premises where it was installed by AT&T. AT&T Phone service is not designed to be nomadic and will not function properly if the WG is moved or altered by a non-AT&T

employee. If you require the WG to be moved, you must contact AT&T. Failure to do so may result in a failure of the Service and/or in AT&T's termination of your Service.

IV. Interruptions, Limitations, And Modifications to Service

Since voice over IP is dependent on the IP network, the availability of an adequate power source, and correct Equipment configuration, AT&T does not guarantee that AT&T Phone service will be continuous or error-free. You acknowledge and understand that AT&T cannot guarantee that voice over IP communication is completely secure.

You also acknowledge that AT&T may establish general practices and limits concerning use of the AT&T Phone service, including without limiting other limitations set forth in these TOS or otherwise, AT&T Phone service cannot be used to make operator-assisted collect or third-party billing calls (Note: a AT&T Phone customer can make a Collect call through a third party Collect Call company that separately handles and bills for the Collect call), nor can AT&T Phone service be used to make 900/976 calls; area code 500, 700, and 710 calls; 10-10-XXX dial-around calls; or international operator or directory assistance calls. Also, the ability to call certain N11 services (211, 311, 511) may not be available.

AT&T also limits the maximum number of days that messages will be retained; the maximum number messages that will be retained by the Service; the maximum size of any message; and the maximum disk space that will be allotted on AT&T's servers on your behalf. You agree that AT&T will have no responsibility or liability for the deletion, for failure to store or to deliver any messages and other communications, for the modification or malfunction of communications over the AT&T Phone service, or for other content maintained or transmitted by AT&T Phone service. You acknowledge that AT&T reserves the right to log off accounts or disconnect sessions that are inactive for an extended period of time. You further acknowledge that AT&T reserves the right to change these general practices and limits at any time without advance notice.

If you also purchase AT&T U-verse TV call history, information for all missed and answered calls can be displayed on your TV screen and cannot be PIN protected. Call history for dialed calls cannot be displayed on your TV screen. Also, Caller ID information may be displayed on your TV screen at the time you purchase AT&T Phone and AT&T U-verse TV or in later iterations of the Services.

Power Outages and No Battery Backup. YOU ACKNOWLEDGE AND UNDERSTAND THAT AT&T PHONE REQUIRES ELECTRICAL POWER TO FUNCTION. AT&T DOES NOT PROVIDE BATTERY BACK UP FOR YOUR SERVICE. YOU MAY CHOOSE TO PURCHASE BATTERY BACKUP FOR YOUR INID, WG, IAD* AND YOUR ONT (IF YOU HAVE ONE) FROM THIRD PARTY MANUFACTURERS OR RETAILERS. YOU ACKNOWLEDGE AND UNDERSTAND THAT IT WILL TAKE TIME TO CHARGE AN INITIAL BATTERY BACKUP AFTER AT&T PHONE IS INSTALLED AND/OR AFTER A REPLACEMENT BATTERY IS INSTALLED. YOU ACKNOWLEDGE AND UNDERSTAND THAT TO CONSERVE BATTERY POWER DURING A POWER OUTAGE, YOU SHOULD NOT ATTEMPT TO USE THE BATTERY BACKUP FOR ANY PURPOSE OTHER THAN TO POWER YOUR AT&T PHONE SERVICE (OR TO POWER YOUR INTERNET CONNECTION, FOR THE PURPOSE OF POWERING YOUR PREMISES ALARM, IF YOU HAVE AN IP-BASED PREMISES ALARM THAT USES AT&T INTERNET). YOU ACKNOWLEDGE AND UNDERSTAND THAT THE BATTERY BACKUP DOES NOT PROVIDE POWER FOR CORDLESS PHONES AND THAT, IF YOU ARE USING A CORDLESS PHONE WITH YOUR AT&T PHONE SERVICE, A SEPARATE BATTERY BACKUP OR OTHER POWER SOURCE MAY BE REQUIRED IF THERE IS A POWER OUTAGE. YOU ACKNOWLEDGE AND UNDERSTAND THAT YOU ARE SOLELY RESPONSIBLE FOR DETERMINING WHEN THE INID, WG, IAD* AND ONT BATTERY BACKUP REQUIRES REPLACEMENT AND FOR REPLACING AND RECYCLING USED BATTERIES IN ACCORDANCE WITH MANUFACTURER OR VENDOR DIRECTIONS. YOU ALSO ACKNOWLEDGE AND UNDERSTAND THAT YOU ARE SOLELY RESPONSIBLE FOR OBTAINING AND MAINTAINING BATTERY BACKUP OR OTHER SOURCES OF POWER FOR ANY CORDLESS PHONES YOU USE WITH YOUR PHONE SERVICE. FOR MORE INFORMATION AND MINIMUM SPECIFICATIONS VISIT ATT.COM/BATTERYBACKUP.

*IAD applies only in the AT&T U-verse TV and AT&T Phone Terms of Service for Business.

V. AT&T Phone 911 Limitations

YOU HEREBY ACKNOWLEDGE AND AGREE TO ALL OF THE INFORMATION BELOW REGARDING THE LIMITATIONS OF 911 SERVICE OVER AT&T PHONE SERVICE AND THE DISTINCTIONS BETWEEN 911 SERVICE OVER AT&T PHONE SERVICE AND 911 SERVICE OVER TRADITIONAL WIRELINE TELEPHONE SERVICE. YOU AGREE TO ADVISE ALL INDIVIDUALS WHO MAY PLACE CALLS OVER AT&T PHONE SERVICE OF THE 911 LIMITATIONS DESCRIBED BELOW. AT&T MAKES NO WARRANTY THAT AT&T PHONE SERVICE FOR ACCESS TO 911 WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR BATTERY BACKUP POWER WILL BE SUFFICIENT TO MAINTAIN THE SERVICE THROUGHOUT ANY AND/OR ALL POWER OUTAGES.

911 SERVICE OVER AT&T PHONE SERVICE IS ONLY AVAILABLE AT YOUR SERVICE ADDRESS, WHILE CONNECTED TO A PROPERLY POWERED INID, OR WG (AND A PROPERLY POWERED ONT, IF APPLICABLE) AND AFTER AT&T PHONE HAS BEEN ACTIVATED.

911 SERVICE OVER AT&T PHONE SERVICE WILL NOT FUNCTION IF YOUR INID OR WG FAILS OR IS NOT CONFIGURED CORRECTLY OR IF YOUR AT&T PHONE SERVICE IS INTERRUPTED OR NOT FUNCTIONING FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, IN THE EVENT OF A POWER OUTAGE (UNLESS YOU HAVE WORKING BATTERY BACKUP POWER), NETWORK OUTAGE, BROADBAND CONNECTION FAILURE, OR DISCONNECTION OF YOUR SERVICE BECAUSE OF BILLING ISSUES. IF THERE IS A POWER OUTAGE, YOU MAY BE REQUIRED TO RESET OR RECONFIGURE THE EQUIPMENT PRIOR TO BEING ABLE TO USE YOUR SERVICES, INCLUDING USE FOR 911 CALLING. YOU ACKNOWLEDGE THAT AT&T STRONGLY RECOMMENDS YOU MAINTAIN AT ALL TIMES AN ALTERNATIVE MEANS OF ACCESSING 911 SERVICES, SUCH AS VIA CELLULAR TELEPHONE SERVICE.

YOU ACKNOWLEDGE AND UNDERSTAND THAT AT&T WILL NOT BE LIABLE FOR ANY LOSSES INCURRED DIRECTLY OR INDIRECTLY AS A RESULT OF SERVICE OUTAGE AND/OR INABILITY TO DIAL 911 USING YOUR AT&T PHONE SERVICE OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL FOR ANY REASON, INCLUDING BUT NOT LIMITED TO THE 911 CHARACTERISTICS AND LIMITATIONS SET FORTH IN THIS DOCUMENT AND/OR THE CHARACTERISTICS, LIMITATIONS, AND/OR FAILURE OF THE 911 NETWORK ITSELF.

WITHOUT LIMITING ANY PROVISIONS OF THE TOS, YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS AT&T, ITS SUBSIDIARIES, AFFILIATES, OFFICERS, AGENTS, DIRECTORS, EMPLOYEES, AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THE AT&T PHONE SERVICE, FROM ANY AND ALL CLAIMS, LOSSES (INCLUDING LOSS OF PROFITS OR REVENUE), LIABILITIES, DAMAGES, FINES, PENALTIES, DEMANDS, ACTIONS, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF YOU OR ANY THIRD PARTY OR USER OF THE AT&T PHONE SERVICE, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING WITHOUT LIMITATION CLAIMS RELATED TO 911 DIALING, ARISING FROM OR IN CONNECTION WITH ANY FAILURE OR OUTAGE OF AT&T PHONE SERVICE OR ANY FAILURE OR OUTAGE OF THE 911 NETWORK ITSELF.

VI. Premise Alarm Systems and Other Device Compatibility

AT&T MAKES NO WARRANTY THAT (i) AT&T PHONE SERVICE USED AS A COMMUNICATIONS PATHWAY FOR MONITORED BURGLAR ALARMS, MONITORED FIRE ALARMS, AND/OR MEDICAL MONITORING SYSTEMS OR DEVICES, WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (ii) THE SERVICE WILL BE COMPATIBLE WITH ANY PARTICULAR OR ALL MONITORED BURGLAR ALARM(S), MONITORED FIRE ALARM(S), OR MEDICAL MONITORING SYSTEM(S) OR DEVICE(S) OR (iii) ANY BATTERY BACKUP POWER EQUIPMENT YOU MAY PURCHASE WILL BE SUFFICIENT TO MAINTAIN YOUR AT&T PHONE SERVICE THROUGHOUT ANY AND/OR ALL POWER OUTAGES. SEE MANUFACTURER INFORMATION FOR BATTERY LIFE DURING A POWER OUTAGE. YOU ARE RESPONSIBLE FOR PURCHASING AND MAINTAINING ANY DESIRED BATTERY BACKUP EQUIPMENT.

Potential Incompatibility with Monitored Fire Burglar Alarm, Monitored Fire Alarm, and Medical Monitoring Systems, and Other Devices. MONITORED FIRE ALARM AND BURGLAR ALARM SYSTEMS AND MEDICAL MONITORING DEVICES MAY NOT BE COMPATIBLE WITH AT&T PHONE SERVICE.

IF YOU HAVE OR PURCHASE A MONITORED FIRE ALARM OR BURGLAR ALARM SYSTEM OR A MEDICAL MONITORING DEVICE THAT YOU INTEND TO USE WITH AT&T PHONE AS THE COMMUNICATIONS PATHWAY, YOU AGREE TO CONTACT YOUR PROVIDER FOR THOSE SYSTEMS/DEVICES TO DETERMINE COMPATIBILITY WITH AT&T PHONE SERVICE AND TO ARRANGE FOR YOUR PROVIDER TO TEST SUCH SYSTEMS/DEVICES AFTER INSTALLATION OF AT&T PHONE SERVICE. YOU ALSO ACKNOWLEDGE AND UNDERSTAND THAT EVEN IF SUCH SYSTEMS AND DEVICES ARE COMPATIBLE WITH AT&T PHONE SERVICE, THEY WILL NOT BE ABLE TO COMMUNICATE WITH MONITORING STATIONS DURING A POWER OUTAGE UNLESS YOU MAINTAIN BATTERY BACKUP POWER FOR AT&T PHONE AS DESCRIBED IN THIS TOS. IF YOU PURCHASE A MONITORED BURGLAR ALARM OR MONITORED FIRE ALARM SYSTEM AFTER AT&T PHONE SERVICE HAS BEEN INSTALLED, YOU ALSO AGREE TO CALL AT&T PRIOR TO INSTALLATION OF ANY SUCH SYSTEM. SUBSEQUENT INSTALLATION OF THESE SYSTEMS MAY REQUIRE RE-WIRING OF AT&T PHONE SERVICE, WHICH MAY ALSO RESULT IN TIME AND MATERIAL CHARGES. (AT&T DOES NOT PROVIDE SUPPORT FOR, OR RE-WIRING OF AT&T PHONE IN SUPPORT OF, MEDICAL MONITORING SYSTEMS OR DEVICES).

ONCE AT&T PHONE SERVICE HAS BEEN INSTALLED FOR USE WITH A MONITORED FIRE ALARM OR MONITORED BURGLAR ALARM SYSTEM, YOU AGREE THAT YOU WILL NOT CHANGE OR MODIFY THE INSIDE WIRING OF YOUR HOME OR MOVE OR RECONFIGURE YOUR WG IN ANY WAY WITHOUT CONTACTING AT&T AND YOUR ALARM SERVICE PROVIDER. YOU ALSO AGREE THAT YOU WILL NOT PLUG ANY TELEPHONE EQUIPMENT INTO THE BACK OF THE WG. YOU ACKNOWLEDGE AND UNDERSTAND THAT IF YOU CHANGE OR MODIFY YOUR INSIDE WIRING, MOVE OR RECONFIGURE YOUR WG IN ANY WAY, OR PLUG ANY TELEPHONE EQUIPMENT INTO THE BACK OF THE WG IT COULD RESULT IN A FAILURE OF YOUR MONITORED BURGLAR ALARM OR MONITORED FIRE ALARM SYSTEM.

BY ACCEPTING THESE TOS, YOU USE AT&T PHONE SERVICE AT YOUR OWN RISK AND WAIVE ANY CLAIM AGAINST AT&T FOR INTERFERENCE WITH OR DISRUPTION OF A MONITORED FIRE ALARM OR BURGLAR ALARM SYSTEM, A MEDICAL MONITORING DEVICE, OR OTHER SUCH SYSTEMS OR DEVICES DUE TO THE AT&T PHONE SERVICE.

VII. Local Number Portability

In the event you are transferring an existing phone number for your AT&T Phone service (i.e., porting a number to AT&T Phone service), you hereby authorize AT&T to process your order for AT&T Phone and to notify your existing provider of your decision to switch your local, local toll, and long distance services to AT&T Phone service, and you represent that you are authorized to take this action. Not all telephone numbers are eligible for porting to AT&T Phone service.

VIII. Voicemail

AT&T Phone service includes Voicemail, a full-featured voicemail service. If you access your Voicemail voice mailbox from outside your local calling area, you may incur applicable local toll or long distance charges.

In addition, the Voicemail service allows you the option to integrate your AT&T wireless service voice mailbox with your AT&T Phone Voicemail mailbox. (Wireless service from AT&T must be separately purchased.) Calls forwarded to your Voicemail voice mailbox from your wireless phone will not incur airtime charges. However, airtime charges may apply when using your wireless handset to retrieve messages. Pager notification allows your pager to notify you when a message is received in your Voicemail voice mailbox. Your pager can have either an email address or your pager can have a telephone number associated with it and must be set up through the Voicemail mailbox. Paging service and equipment must be purchased separately. Other restrictions may apply.

Voicemail may include a Voicemail-to-Text (VMTT) feature that provides automated transcription of your voicemail. AT&T is not responsible nor liable for: 1) errors in the conversion of or its inability to transcribe voicemail messages to text/email; 2) lost or misdirected messages; or 3) content that is unlawful, harmful, threatening, abusive, obscene, tortious, or otherwise objectionable. We do not filter, edit or control voice, text, or email messages, or guarantee the security of messages. We can interrupt, restrict or terminate VMTT without notice, if your use of VMTT adversely impacts AT&T's network, for example that could occur from abnormal calling patterns or an unusually large number of repeated calls and messages; or if your use is otherwise abusive, fraudulent, or does not comply with the law.

You are solely responsible for and will comply with all applicable laws as to the content of any text messages or emails you receive from VMTT that you forward or include in a reply to any other person. You authorize AT&T or a third party working on AT&T's behalf to listen to, and transcribe all or part of a voicemail message and to convert such voicemail message into text/email, and to use voicemail messages and transcriptions to enhance, train and improve AT&T's speech recognition and transcription services, software and equipment. You agree that the results of benchmarking VMTT against competing products or services is AT&T confidential information requiring AT&T written consent to disclose in accordance with the BSA or RSA as may be applicable to you. Additional charges may apply to receiving email on your wireless device from VMTT, as well as, replying to or forwarding VMTT messages via SMS (text) or email, depending on your plan. Transcription times cannot be guaranteed. You are responsible for providing a correct email address and updating the email address when changes to the email account are made.

IX. Prohibited Uses of AT&T Phone Service

You agree that you will NOT use AT&T Phone service:

1. As a business service or for a business purpose.
2. To engage in auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, or for uses that result in excessive usage inconsistent with normal residential usage patterns. In addition, connection of your AT&T Phone service to a device which converts use of the Service to an outbound trunk line by more than one individual is prohibited. If AT&T determines, in its sole discretion, that you are reselling or transferring AT&T Phone service or that you are using AT&T Phone service for any of the aforementioned activities, AT&T reserves the right, without advance notice, immediately to terminate or modify the Service, or to change your call plan to a different offer on a prospective basis, and in addition, to assess additional charges for each month in which excessive usage occurred. If you subscribe to a calling plan which includes unlimited calling of any type, unless otherwise specified by your specific plan in marketing materials associated herewith, consistent monthly use in excess of 5,000 aggregate minutes per month, taking into account all types of calling in your plan which are provided on an unlimited basis, shall be presumed to be inconsistent with these restrictions and shall be subject to the conditions above.
3. As an announcement service, particularly with regard to Voicemail, which is provided as an integral component of AT&T Phone service and is designed as a voicemail, not an announcement, service. Use of Voicemail service as an announcement service and/or other improper or excessive use may impair AT&T's ability to provide reasonable service to other customers. AT&T reserves the right to cancel your AT&T Phone service at any time, with or without notice, if as determined solely by AT&T based on its network/service design and usage experience, your messaging service is (1) being used in an improper manner including, but not limited to, using it as an announcement service or for unlawful purposes, (2) consistently generating excessive usage, (3) affecting AT&T's ability to provide reasonable service to other customers, or (4) being used to interfere with another's use of the voicemail system.

X. Suspension/Termination

Without limiting other rights set forth in these TOS, AT&T may either terminate your AT&T Phone service or transfer your AT&T Phone service to a different telephone number without penalty, upon reasonable notice, if AT&T stops providing AT&T Phone service either generally or in your area, if at any time 911 service over AT&T Phone service is not available, or for other reasons associated with the provisioning of 911 service to your premises. AT&T also may terminate your order for Service if you do not activate the Service or if you do not formally acknowledge information about 911 service limitations in accordance with directives from AT&T.

Service suspension may, and cancellation will, result in your loss of the number associated with the AT&T Phone service. Suspension (but not termination) of AT&T Phone service still allows (assuming working battery backup during power outage) for the following dialing privileges: outbound calling to 911, outbound calling to Operator Services (for emergency assistance only), and inbound calling (intended to maintain a call back path for emergency service providers). AT&T has no responsibility for retaining or delivering messages that are located in any voice mailbox at the time of the suspension or termination, or that are addressed to any main account holder or subaccount holder thereafter.

XI. What Terms Only Apply To Specific States?

North Carolina. If you reside in Durham or Concord, your Service may not include a telephone number or numbers in printed directories and/or directory assistance databases, and you may not have the option to have numbers withheld from printed directories and/or directory assistance databases.

SCHEDULE 2 AT&T U-VERSE TV SPECIFIC TERMS OF SERVICE

I. Service Description

AT&T U-verse TV includes content available via AT&T U-verse TV, Equipment (see Section 6 of the General Terms of Service), Software (see Section 12 of the General Terms of Service), accessories, and tools (including a "remote access" tool which allows you to access portions of your AT&T U-verse TV service from a website or other medium).

II. Billing And Payments

For AT&T U-verse TV service, nonrecurring and usage-based charges generally billed in the billing cycle following the transaction include, but are not limited to, Video on Demand and Pay Per View. As long as payments are current, you will have a limit (up to a maximum of \$150) per bill cycle on such one-time orders billed to your account. This limit will vary based on creditworthiness or for other reasons. A downgrade fee may apply if you make changes to your Service within 30 days of Service provisioning or later programming orders.

III. Service-Specific Equipment

Equipment for AT&T U-verse TV service includes an AT&T U-verse TV Receiver ("Receiver"), which is valued at \$10 per month and included in the service fee on your monthly invoice, and, if applicable, a Wireless Access Point ("WAP") to provide connection for a wireless Receiver. You may request additional Receivers and limits on the number of available Receivers for a household may apply. Additional equipment fees or other fees may apply to all AT&T U-verse TV equipment, including, but not limited to, the Receiver(s). Receivers are subject to all applicable taxes, fees and surcharges.

IV. Interruptions, Limitations, And Modifications To Service

Some programming may not be available in certain areas due to legal, regulatory, and contractual prohibitions, including restrictions of the Federal Communications Commission and sports blackouts. If you also purchase AT&T Phone service, Caller ID information for AT&T Phone calls can be displayed on your TV screen. In addition, call history information for all missed and answered calls can be displayed on your TV screen and cannot be PIN protected. Call history for dialed calls cannot be displayed on your TV screen.

As permitted under applicable law, in addition to other rights provided for in this TOS, in the event a payment is past due, AT&T may restrict your account to prevent access to Video on Demand, Pay Per View, and other usage-based services and content.

V. Disclaimer of Warranties

YOU EXPRESSLY UNDERSTAND AND AGREE THAT AT&T MAKES NO WARRANTY THAT THE SERVICE WILL ALLOW YOU TO RECORD, VIEW, OR TRANSFER ANY PARTICULAR PROGRAM OR CONTENT.

VI. Intellectual Property

AT&T U-verse TV is provided for your non-commercial personal viewing, use, and enjoyment in a private residential dwelling/office unit. You agree that the AT&T U-verse TV service will not be viewed in areas open to the public or in commercial establishments, and that admission will not be charged for listening to or viewing the Service. Your AT&T U-verse TV Service may not be copied, transmitted, reproduced, published, broadcast, rewritten, redistributed, or performed except as permitted by the "fair use" provisions of the U.S. copyright laws formed except as permitted by the "fair use" provisions of the U.S. copyright laws.

AT&T PRIVACY POLICY

Effective March 16, 2020

(Please consult att.com/privacy for the most up to date version of our Privacy Policy.)

Your information and your privacy are important – to you and to us. This policy explains how we use your information and how we keep it safe. Most importantly, it explains the choices you can make at any time about how your information is used.

When this Policy applies

This Privacy Policy (“Policy”) covers the information generated when you use or subscribe to AT&T products, services, apps, websites or networks to which this policy is linked. In the policy, we call them “Products or Services” for short. They include voice, data, video, entertainment, advertising, internet and other products, services and apps.

This Policy applies to you and anyone who uses our Products or Services under your account, except where we identify for you that separate AT&T privacy policies or terms and conditions apply. You are responsible for making sure all users under your account understand and agree to this Policy.

Here are special circumstances where this Policy may not apply, or may apply in addition to other policies:

- Some of our Products or Services – for example the AT&T TV app and our FirstNet service – may be covered by their own privacy policies or additional privacy terms and conditions.
- Some of our affiliates – such as WarnerMedia companies and Cricket – have their own privacy policies that apply to data they collect from products, services and apps they provide. Any data collected subject to this Policy that is shared with those affiliates will still be protected consistent with this Policy.
- Some areas both inside and outside of the United States - for example California and the European Union - require us to adopt different policy terms and commitments in accordance with local laws.
- In certain cases, when you’re using your AT&T Products or Services, other companies may be collecting information, so that your information may be covered by this Policy and other privacy policies at the same time. Here are some examples: if you purchase one of our Products or Services from a retailer; if you use our services to connect to a social networking service or another company’s Wi-Fi network; or if you provide your information to another company through a co-branded website, app or service controlled by the other company. In those cases, any information you provide to those companies may be subject to just their policy, or subject to both their policy and ours.
- If you are an AT&T business customer, we may have written Product or Service agreements that contain specific provisions about confidentiality, security or handling of information. When one of those agreements differs from or conflicts with this Policy, the terms of those agreements will apply instead.

The information we collect

We collect information about you and how you’re using our Products or Services along with information about your devices and equipment. This may include performance information, along with web browsing, location and TV viewing information.

Here are detailed examples of types of information we collect from our Products or Services:

- **Account information** includes things like contact and billing information, service-related details and history and similar information, including Customer Proprietary Network Information. It also includes technical, equipment and usage information that relate to the services, products, websites and networks we provide you.
- **Web browsing and app information** includes things like the websites you visit or mobile apps you use, on or off our networks. It includes internet protocol addresses and URLs, pixels, cookies and similar technologies, and identifiers such as advertising IDs and device IDs. It can also include information about the time you spend on websites or apps, the links or advertisements you see, search terms you enter, items identified in your online shopping carts and other similar information.
- **Equipment Information** includes information that identifies or relates to equipment on our networks, such as type, identifier, status, settings, configuration, software or use.
- **Network performance and usage information** includes information about our networks, including your use of Products or Services or equipment on the networks, and how they are performing.
- **Location information** includes your street address, your ZIP code and where your device is located. Location information is generated when the devices, Products or Services you use interact with cell towers, Wi-Fi routers, Bluetooth services, access points, other devices, beacons and/or with other technologies, including GPS satellites.
- **TV and video viewing information** is generated when you use our video services, such as apps, satellite or internet protocol television services or a streaming service. We get information from the

technologies you use to watch TV or video. These services may also include video on demand, pay per view, streaming service, interactive services and games, DVR services, TV apps for a tablet or smartphone and similar services and products. If you are watching TV or video through a web browser or app, we may also collect information as described above in the web browsing and app information section. We also collect information related to your use and interaction with the equipment in your home, including the TV receivers, set top boxes, remotes and other devices you may use to access our services.

How we collect your information

We collect your information in 3 ways:

- **You give it to us** when you make a purchase, set up an account or otherwise directly communicate with us.
- **We automatically get it** when you use, or your device uses, our Products or Services. For example, we use network tools to collect information like call and text records and the web browsing information we describe in this Policy.
- **We get it from outside sources** like credit reports, marketing mailing lists, and commercially available geographic and demographic information, along with other available information, such as public posts to social networking sites.

How we use your information

We use your information to power our services and to improve your experiences. We use your information to provide, support, improve, protect, analyze and bill for our products, service and network; to communicate with you about your service, products or apps; to market our services; to detect and avoid fraud; for advertising; and for research purposes.

Here are examples of ways we use your information:

- Providing our Products and Services.
- Contacting you.
- Improving your experience and protecting the Products and Services we offer. This includes things like customer care, network security, verifying or authenticating your identity, detecting fraud, billing and collection, protecting your financial accounts, authorizing transactions and the development of future Products and Services.
- Helping us plan, deploy, improve, protect and defend our network infrastructure, detecting and preventing fraud, and protecting our property and legal rights.
- Understanding the Products, Services and offers that you, and other AT&T customers with whom you call and text and interact, might enjoy the most. We do not use the content of your texts, emails or calls for marketing or advertising.
- Creating engaging and customized experiences and offering new or improved Products and Services or offers. This is based on things like the information we've collected and our research, development and analysis.
- Supporting and providing location services.
- Designing and delivering advertising and marketing campaigns to you and others and measuring their effectiveness. See Privacy Choices and Controls at att.com/yourchoices for more information about how your information is used for advertising and marketing programs and your choices and controls for such use.
- Delivering or customizing products and the content you see, including advertisements, articles, videos, and marketing materials.
- Creating aggregate business and marketing insights, and helping companies develop aggregate insights to improve their business (for instance, to market their products and services).
- Preventing and investigating illegal activities and violations of our Terms, Use Policies and other service conditions or restrictions.

How we share your information

- **We share it with your permission.**
- **We share it across AT&T companies.**
- **We share it with non-AT&T companies or entities as explained in this Policy.** For more details about how your information may be shared for advertising and marketing see Privacy Choices and Controls at att.com/yourchoices.

Sharing information across the AT&T affiliates: Like many large companies, AT&T is made up of many affiliates. Our Products and Services are developed, managed, marketed and sold by a variety of our affiliates. We share information that may identify you personally internally among our affiliates, such as Xandr, the WarnerMedia family of companies and Cricket. A list of AT&T affiliates is found at att.com/WMAffiliate. You can learn more about AT&T affiliates by going to att.com. For information collected under this Policy, we require the affiliate to protect the information consistent with this Policy. We may also combine information that identifies you personally with data that comes from an app or affiliate that has a different privacy policy. When we do that, our Policy applies to the combined data set.

Sharing information with non-AT&T companies that provide services for us or for you: We share information that identifies you personally with vendors that perform services for us or that support Products or Services provided to you, including marketing or ad delivery services. We do not require consent for sharing with our vendors for these purposes. We do not allow those vendors to use your information for any purpose other than to perform those services, and we require them to protect the confidentiality and security of data they get from us in a way that's consistent with this Policy.

Sharing information with non-AT&T companies to enable third party services to you: We may share information with non-AT&T companies for their purposes to provide you services such as verifying or authenticating your identity, detecting fraud, protecting your financial accounts, and authorizing transactions. We require proof of your explicit consent before sharing your information that identifies you personally for this purpose. We do not allow those non-AT&T companies to use it for any purpose other than to perform those services, and we require them to protect the confidentiality and security of data they get from us in a way that's consistent with this Policy. In some cases, to facilitate these programs, we will use or share identifiers such as your phone or account number. These identifiers are only used for network authentication, to detect fraud, for identity verification, or for the linking of devices you own to authenticate you.

Sharing information with other non-AT&T companies or entities: There are also times when we provide information that identifies you personally to other companies and entities, such as government agencies, credit bureaus and collection agencies, without your explicit consent, but where authorized or required by law. Reasons to share include:

- Complying with court orders, subpoenas, lawful discovery requests and as otherwise authorized or required by law. Like all companies, we are required by law to provide information to government and law enforcement agencies, as well as parties to civil lawsuits. You can find out more about this in our Transparency Report available at att.com/transparency.
- Detecting fraud.
- Providing or obtaining payment for your service.
- Routing your calls or other communications.
- Ensuring network operations and security.
- Notifying, responding or providing information (including location information) to a responsible governmental entity in emergency circumstances or in situations involving immediate danger of death or serious physical injury.
- Alerting the National Center for Missing and Exploited Children to information concerning child pornography of which we become aware through the provision of our services.
- Enforcing our legal rights, protecting our network and property or defending against legal claims.
- Complying with legal requirements to share the names, addresses and telephone numbers of non-mobile phone customers with phone directory publishers and directory assistance services. We honor your request for non-published or non-listed numbers.
- Providing name and number information for wireline and wireless CallerID and related services, like Call Trace. This means a person receiving a call can see the name and number of the caller.

Sharing Metrics Reports with non-AT&T companies: Sometimes the services you enjoy from us directly involve other businesses. We may pay a network for the rights to broadcast a sporting event or your favorite show on our television service. We may be paid by an advertiser to deliver an advertisement or by a business customer to provide its employee with a service. In such cases, we may use or share information that doesn't identify you personally to provide metrics reports to our business customers and service suppliers. We may also share it with advertising and other companies to deliver or assess the effectiveness of advertising and marketing campaigns.

Sharing information for research: We may share information that doesn't identify you personally with other companies and entities for research. When we share this information, we require companies and entities to agree not to attempt or to allow others to use it to identify individuals. Our agreements will also prevent businesses from reusing or reselling the information, and require that they will handle it in a secure manner, consistent with this Policy.

Sharing information for aggregate media research reports: We share TV and video viewing information, tied to identifiers that do not identify you personally, with media research companies. They combine this data with other information to provide audience analysis services about what shows certain audience segments are watching. We require that they only use it to compile aggregate reports, and for no other purpose. We also require businesses to agree they will not attempt to identify any person using this information, and that they will handle it in a secure manner, consistent with this Policy.

Sharing information with AT&T affiliates and non-AT&T companies for advertising and marketing programs: We may share information with AT&T affiliates and with non-AT&T companies to deliver or assess effectiveness of advertising and marketing campaigns as described in Privacy Choices and Controls.

Sharing information to support location services: Location services rely on, use or incorporate the location of a device to provide or enhance the service. Location services may collect and use or share location information to power applications on your device (those that are pre-loaded or those that you chose to download), such as mapping and traffic apps, or other location services you subscribe to. AT&T will not share your location information for location services without your consent (to us or a company providing you service), except as required by law. If you purchase location services from another company, such as a medical alerting device, the use or disclosure of location information is governed by the agreement between you and the service provider, including any applicable privacy policy of the service provider, and is not governed by this privacy policy. In other cases – for example parental controls services - the account holder for the location services, instead of a user, may initiate or subscribe to the location services and provide the required consent.

Disclosing personally identifiable information collected from satellite and internet protocol television subscribers in response to a court order: When a non-governmental entity obtains a court order, we're authorized to disclose personally identifiable information collected from TV subscribers as a result of the subscriber's use of TV service, but only after we let the subscriber know what's going on. When a governmental entity obtains a court order, we're authorized to disclose personally identifiable information collected from a TV subscriber as a result of the subscriber's use of TV service, but only if the following conditions are met:

- A judge decides that the governmental entity has offered clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and
- The subject of the information has an opportunity to appear and contest the governmental entity's claim; and
- We have provided notice to the subscriber as required by applicable state law.

Your Privacy Choices and Controls

You can Manage Your Privacy Choices about how we contact you and how we use or share your information. You also have choices about how certain third parties and advertisers use your information, including how we use and share your information for advertising, marketing and analytics.

Communication preferences

Sometimes we have offers or programs that may interest you. We'd like to be able to tell you about these. You can manage how we do it. You can opt-out of marketing and advertising programs, but we still may contact you with service and non-marketing messages.


- **Email:** You can opt-out of marketing emails at att.com/remove.
- **Text messages:** Opt-out of our marketing text messages by replying "stop" to any message.
- **Consumer telemarketing:** Ask to be removed from our consumer telemarketing lists by contacting us at one of the numbers listed at the end of this policy, or by sending an e-mail to privacypolicy@att.com. You also can ask the AT&T representative to remove you from our telemarketing lists when you receive a marketing or promotional call from us.
- **Business telemarketing:** Where required by local laws and/or regulations, we'll remove your business information from our telemarketing lists at your request.
- **National Do Not Call Registry:** The FTC maintains a National Do Not Call Registry at donotcall.gov, and some states in the United States may maintain their own Do Not Call Registry. Putting your number on these registries also may limit our telemarketing calls.
- **Automated messages:** In some cases, we will ask for your permission to send you automated calls or messages to your mobile phone. To opt-out of these calls or messages from us, go to Manage Your Privacy Choices at att.com/cmpchoice. As required or allowed by law, even if you opt-out, we may continue to contact you with automated calls or messages at the telephone number issued by us for certain important informational messages about your service. For example, we may need to let you know about a problem with your wireless service.
- **Postal mail:** You can review our Residential Do Not Mail Policy Statement and limit postal mail solicitations by visiting att.com/donotmail. You'll still receive billing statements, legal notices, product

updates and other similar correspondence, and you may still receive some promotional mailings.

Choices about how we use and share your information for advertising, marketing and analytics

You have choices about whether your information is used or shared in our programs that provide you with marketing and advertising tailored to your interests and for aggregate analytics. As your provider of communications and internet services, our collection and use of information operates independently in many cases from the user controls and settings on your device, through your operating system, or on third-party websites or apps.

Online behavioral advertising: Online behavioral advertising is automated, customized advertising that you see when using online services, like ads in mobile apps or on websites. Those ads are served to you based on inferences about your interests. Those interests are determined from data collected about you, whether by AT&T or other parties.

- We work with ad companies that may serve ads for us, and for others, across your use of online services. These companies may use cookies, mobile advertising identifiers, and other technologies to collect information about your use of our websites and other websites. This information may be used to, among other things, analyze and track online activities and deliver ads and content tailored to your interests as part of our advertising programs, such as Relevant Advertising.
- You can opt-out of online behavioral advertising from companies who participate in the Digital Advertising Alliance by going to their Consumer Choice Page at www.aboutads.info/choices or selecting this icon  when you see it on an online ad.

Relevant Advertising and Enhanced Relevant Advertising: Relevant Advertising and Enhanced Relevant Advertising both use information to deliver ads that we think you might be interested in on websites, TV and video programming, apps and other properties, sites or services.



- **Relevant Advertising:** This program is used to tailor the ads you see to match your interests. It doesn't give you more advertising — it just makes the ads you see more likely to be relevant to you. If you don't want to receive Relevant Advertising, you may opt-out by going to Manage Your Privacy Choices at att.com/cmpchoice.
 - **Information we use for Relevant Advertising:** In this program, we use information about your use of our Products and Services, information we get from companies like our advertising partners, and demographic information like ZIP code and age range to deliver or assess effectiveness of advertising and marketing campaigns. We use the information we collect about you, like your TV viewing, your location, or information about the apps you use or the websites you visit to place you into demographic or interest categories like "sports enthusiast" or "coffee lover." We do not use sensitive information such as medical conditions or diagnosis or financial account records to target ads. We don't use or share the content of your texts, emails or calls for marketing and advertising. Nor do we use or share information you provide to encrypted websites.
 - **Information we share in Relevant Advertising:** We may share non-sensitive information, such as your device information, information from companies like our advertising partners, and demographic information like your age range, gender and ZIP code. We may share this information with third parties, such as advertisers, programmers and networks, social media networks, analytics firms, ad networks, and other similar companies that are involved in creating and delivering advertisements. When we share that information, we combine it with an identifier like a device or ad ID (such as Apple or Android Ad ID).
 - **Information we don't share in Relevant Advertising:** We don't share information about your individual web browsing or TV viewing. Nor will we share the precise location of your device, Customer Proprietary Network Information, Social Security number, full date of birth, credit card information or driver's license number. When we share information with third parties, we won't share your name or identify you by anything other than an identifier, like a device or ad ID.
- **Enhanced Relevant Advertising:** This opt-in program further personalizes the ads you see. With your prior explicit consent, this program lets us use and share additional information for advertising and marketing purposes. Please see the Enhanced Relevant Advertising Terms and Conditions at att.com/legal/terms.enhancedRelevantAdvertising for more details. If you'd like to participate in Enhanced Relevant Advertising or change your previous choice, you can go to Manage Your Privacy Choices at att.com/cmpchoice.

External Marketing and Analytics: We may use or share information that does not identify you personally to help our business customers develop aggregate insights that improve their businesses. This information may be combined with other information, such as demographic information or an identifier like a device ID or ad ID. We require that your information be used only to develop aggregate insights that will improve products and services. In addition, we require anyone who receives this data

to agree they will only use it for aggregate insights, won't attempt to identify any person or device using this information, and will handle it in a secure manner, consistent with this Policy.

If you don't want your information included in External Marketing and Analytics, you can opt out by going to Manage Your Privacy Choices at att.com/cmpchoice.

Other Choices

- **Customer Proprietary Network Information:** You can opt-out or go to att.com/cpni/optout for more information about Customer Proprietary Network Information and your choices about our use of that information for marketing purposes.
- **DIRECTV Puerto Rico:** If you're a DIRECTV customer in Puerto Rico, you can exercise and manage your choices by visiting directvpr.com/Midirectv/ingresar or by calling 787.776.5252.
- **Advertising on AT&T's web portal for consumers (Currently):** Opt-out of receiving interest-based advertising when using our Currently portal services from companies who participate in the Digital Advertising Alliance by going to its Consumer Choice Page or selecting this icon  when you see it on an online ad. This covers att.net email and also the Currently portal.
- **Online behavioral advertising by Industry Participants:** In accordance with industry self-regulatory principles, you can opt-out of online behavioral advertising from companies who participate in the Digital Advertising Alliance by going to its Consumer Choice Page at www.aboutads.info/choices or selecting this icon  when you see it on an online ad. To limit collection of data on websites that may be used for advertising, you can manage cookies and other similar technologies on your computer at att.com/cookieotechnology. If you change computers, devices, web browsers or you delete cookies, you will need to opt out again. Please note that our collection of web browsing information works independently of your web browser's privacy settings with respect to cookies and private browsing. In addition, we don't currently respond to Do Not Track and similar signals. You can manage AT&T's use of web browsing information at Manage Your Privacy Choices (att.com/cmpchoice).
- **Domain Name System Error Assist:** A description of the program and your choices about how we use your information can be found at Manage Your Privacy Choices (att.com/cmpchoice).
- **Third Party Services:** A description of the program and your choices about how we use your information can be found at Manage Your Privacy Choices (att.com/cmpchoice).
- **AT&T Call Protect:** You can also sign up for AT&T Call Protect to automatically block potential fraud calls, see warnings of suspected spam calls, add unwanted callers to your personal block list and help protect your phone from malware, viruses and system threats.

Security

We work hard to safeguard your data using a range of technological and organizational security controls.

We maintain and protect the security of computer storage and network equipment, and we use security procedures that require employees to authenticate themselves to access sensitive data. We also limit access to personal information only to those with jobs requiring such access. We require callers and online users to authenticate themselves before providing account information.

No security measures are perfect, however. We can't guarantee that your information will never be disclosed in a manner inconsistent with this Policy. If a breach were to occur, we will notify you as required by applicable law.

Data storage, transfer, retention and accuracy

We take steps to ensure that data is processed according to this Policy and to the requirements of applicable law of your country and of the additional countries where the data is subsequently processed.

Data we collect may be processed and stored in the United States or in other countries where we or our affiliates or service providers process data.

When we transfer personal data from the European Economic Area to other countries, we use a variety of legal mechanisms to help ensure all applicable laws, rights and regulations continue to protect your data.

We keep your information as long as we need it for business, tax or legal purposes. After that, we destroy it by making it unreadable or indecipherable.

Need to update your information? We're happy to help you review and correct the information we have on your account and billing records. For more information, please see the Contact Us section of this Policy.

Other privacy information

Changes in ownership or to the Policy

Information about our customers and users, including information that identifies you personally, may be shared and transferred as part of any merger, acquisition, sale of company assets or transition of service to

another provider. This also applies in the unlikely event of an insolvency, bankruptcy or receivership.

We may update this Policy as necessary to reflect changes we make and to satisfy legal requirements. We'll post a prominent notice of material changes on our websites. We'll give you reasonable notice before any material changes take effect.

Information specific to children

We don't knowingly collect personally identifying information from anyone under the age of 13 unless we first get permission from the child's parent or legal guardian. Unless we have parental consent, we will not contact a child under the age of 13 for marketing purposes. Information about our collection, use or sharing of, and your choices and controls with respect to such information, is found in Learn more.

If you create an AT&T e-mail sub-account for a child under the age of 13, then with your explicit permission, we collect your child's name, "nicknames and aliases," alternative e-mail address, birth date, gender and ZIP code. We use the information collected on sub-accounts to create and maintain those accounts, for research, to customize the advertising and content seen on our pages, and for other marketing purposes. Your child can use their AT&T e-mail address and password to log onto websites and online services provided by us, like uverse.com. We and our advertising partners may collect, use or share information about customers who log onto those sites as described in the Information we collect, how we collect your information, how we use your information and how we share your information sections of this Policy. The option to opt out of online behavioral advertising by advertising partners who collect information from our sites and participate in the Digital Advertising Alliance is available at www.aboutads.info/choices

You or your child can review, edit, update and delete information relating to your child's sub-account and, if you no longer wish your child to have such an account, you can revoke your consent at any time, by logging on to manage your account att.com/myatt.

You may e-mail us at privacypolicy@att.com, call us at 800.495.1547 or write to us at AT&T Privacy Policy, Chief Privacy Office, 208 S. Akard, Room 2100, Dallas, TX 75202 with any questions or concerns you may have about our privacy policy as it relates to children.

Information collected from devices or services purchased by adult subscribers that are used by children without our knowledge will be treated as the adult's information under this Policy.

We have developed safety and control tools, expert resources and tips designed to help you manage technology choices and address online safety concerns. Please go to AT&T Secure Family at att.com/features/secure-family-app for more information.

Your California Privacy Rights and other Information for our California customers

We comply with special legal requirements for California residents associated with access, deletion and sale or sharing of residents' data and application of do not track notices.

Website data collection: We don't knowingly allow other parties to collect personally identifiable information about your online activities over time and across third party websites for their own use when you use our websites and services, unless we have your consent.

Do Not Track notice: We don't currently respond to Do Not Track and similar signals. Please go to All About Do Not Track at www.allaboutdnt.com for more information.

California customers have the right, in certain circumstances, to request information about whether a business has disclosed personal information to any third parties for their direct marketing purposes. You have the right to opt-out of our disclosing your information to third parties for their marketing purposes. To find out more, go to https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1798.83.&lawCode=CV Manage Your Privacy Choices (att.com/cmpchoice).

California Consumer Privacy Act (CCPA)

Effective January 1, 2020

CCPA Personal Information (CCPA PI) is defined by California law as information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with California consumers or households.

The Information We Collect And Share

We want to provide you with the information about how to exercise rights involving CCPA PI. Here is information about the CCPA PI we have collected from and shared about consumers over the past year.

Information We Collected From Consumers

The CCPA identifies a number of categories of CCPA PI. In the year before the date this policy was issued, we collected these categories of CCPA PI:

- Address and other identifiers – such as name, postal address, email address, account name, Social Security number, driver's license number, passport number, or other similar identifiers.
- Unique and online identifiers associated with personal information – IP address, device IDs, or other similar identifiers.
- Commercial information – such as records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.
- Internet, gaming or other electronic network activity information – such as browsing history, search history and information regarding an individual's interaction with an internet website, application, or advertisement.
- Professional or Educational Information.
- Video Footage (e.g., CCTV); Audio Recordings; Photographs; Calendar Information.
- Location Information (see above).
- In Game or Online Viewing Activities (e.g., videos viewed, pages viewed).
- Inferences drawn from CCPA PI, such as individual profiles, preferences, characteristics, behaviors.

We collected these categories of CCPA PI for the following purposes:

- Performing services on behalf of the business, such as customer service, processing or fulfilling orders, and processing payments.
- Auditing customer transactions.
- Fraud and crime prevention.
- Debugging errors in systems.
- Marketing and advertising.
- Internal research, analytics and development – e.g., user-preference analytics.
- Developing, maintaining, provisioning or upgrading networks, services or devices.

Information We Shared About Consumers

In the year before the date this policy was issued, we shared these categories of CCPA PI with entities that provide services for us, like processing your bill:

- Address and other identifiers – such as name, postal address, email address, account name, Social Security number, driver's license number, passport number, or other similar identifiers.
- Unique and online identifiers – IP address, device IDs, or other similar identifiers.
- Commercial information – such as records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.
- Internet, gaming or other electronic network activity information – such as browsing history, search history, and information regarding an individual's interaction with an internet website, application, or advertisement.
- Professional or Educational Information.
- Video Footage (e.g., CCTV); Audio Recordings; Photographs; Calendar Information.
- Location Information (see above).
- In Game or Online Viewing Activities (e.g., videos viewed, pages viewed).
- Inferences drawn from CCPA PI, such as individual profiles, preferences, characteristics, behaviors.

The CCPA defines “sale” very broadly and includes the sharing of CCPA PI for anything of value. According to this broad definition, in the year before the date this policy was issued, a ‘sale’ of the following categories of CCPA PI may have occurred:

- Address and other identifiers – such as name, postal address, email address, account name, or other similar identifiers.
- Unique and online identifiers – IP address, device IDs associated with television viewing, or other similar identifiers.
- Commercial information – such as records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.
- Internet, gaming or other electronic network activity information – such as browsing history, search history, and information regarding an individual's interaction with an internet website, application, or advertisement.
- Location Information.
- Inferences drawn from CCPA PI, such as individual profiles, preferences, characteristics, behaviors.

Your Right To Request Disclosure Of Information We Collect And Share About You

We are committed to ensuring that you know what information we collect. You can ask us for the following information:

- The categories and specific pieces of your CCPA PI that we've collected.
- The categories of sources from which your CCPA PI was collected.
- The business purposes for collecting or selling your CCPA PI.
- The categories of third parties with whom we shared your CCPA PI.

We are also committed to ensuring that you know what information we share about you. You can submit a request to us for the following additional information:

- The categories of CCPA PI we've sold about you, the categories of third parties to whom we've sold that CCPA PI, and the category or categories of CCPA PI sold to each third party.
- The categories of CCPA PI that we've shared with service providers who provide services for us, like processing your bill.

To exercise your right to request the disclosure of your CCPA PI that we collect or share, either visit www.about.att.com/csr/privacy/stateprivacylaws/ccpa or contact us at 866.385.3193. These requests for disclosure are generally free.

Your Right To Request The Deletion Of CCPA PI

Upon your request, we will delete the CCPA PI we have collected about you, except for situations when that information is necessary for us to: provide you with a good or service that you requested; perform a contract we entered into with you; maintain the functionality or security of our systems; comply with or exercise rights provided by the law; or use the information internally in ways that are compatible with the context in which you provided the information to us, or that are reasonably aligned with your expectations based on your relationship with us.

To exercise your right to request the deletion of your CCPA PI, either visit www.about.att.com/csr/privacy/stateprivacylaws/ccpa or contact us at 866.385.3193. Requests for deletion of your CCPA PI are generally free.

Your Right To Ask Us Not To Sell Your CCPA PI

You can always tell us not to sell your CCPA PI by visiting www.about.att.com/csr/privacy/stateprivacylaws/ccpa.

Once we receive and verify your request, we will not sell your CCPA PI unless you later allow us to do so. We may ask for your permission to resume sale of your CCPA PI at a later date, but we will wait at least 12 months before doing so.

We Don't Mind If You Exercise Your Data Rights

We are committed to providing you control over your CCPA PI. If you exercise any of these rights explained in this section of the Privacy Policy, we will not disadvantage you. You will not be denied or charged different prices or rates for goods or services or provided a different level or quality of goods or services.

Consumers Under 16 Years Old

If we collect CCPA PI that we know is from a child under 16 years old, we will not sell that information unless we receive affirmative permission to do so. If a child is between 13 and 16 years of age, the child may provide that permission.

Any customer who wishes to request further information about our compliance with these requirements, or who has questions or concerns about our privacy practices and policies, can email us at privacypolicy@att.com, or write to us at AT&T Privacy Policy, Chief Privacy Office, 208 S. Akard, Room 2100, Dallas, TX 75202.

Customer Proprietary Network Information (CPNI)

CPNI is information about your telecommunications and VoIP (internet phone) services from us, including what plans you subscribe to, how you use these services and billing information. (Your telephone number, name and address are not considered CPNI.) We use CPNI internally and share it outside AT&T only when conforming with applicable regulations and orders of the Federal Communications Commission.

We do not share CPNI with anyone outside of the AT&T affiliates defined above or our authorized agents or vendors without your consent, with the following authorized exceptions: Court orders; as authorized by law; fraud detection; to provide your service and route your calls; for network operations and security; aggregate (grouped) information and information that doesn't identify you personally.

We do use your CPNI internally. We may share information about our customers among the AT&T affiliates and our agents to offer new or enhanced services or promotions. We can also use your CPNI for the purpose of turning it into aggregate data or information that does not personally identify you.

It is your right and our duty under federal law to protect the confidentiality of your CPNI.

If you don't want us to use your CPNI internally for things like offers, here is what you can do:

- Opt-out at att.com/cpni/optout.
- Call us at 800.315.8303, any time of day, and follow the prompts.
- Chat with a service representative at 800.288.2020 (consumer) or 800.321.2000 (business).

If you choose to restrict our use of your CPNI, it won't affect your ability to use any of your services. You can change your mind at any time about letting us use or not use your CPNI. If you restrict your CPNI use, you may still get marketing from us, but it won't be based on using your CPNI.

How to contact us about this Policy

Contact us at either of these addresses for any questions about this Policy.

- Email us at privacypolicy@att.com.
- Write to us at AT&T Privacy Policy, Chief Privacy Office, 208 S. Akard, Room 2100, Dallas, TX 75202.

For questions not related to privacy, go to the "Contact Us" link at the bottom of any att.com page. You also can access your online account from the upper right-hand corner of our home page at att.com for additional service options.

If you have an unresolved privacy or data use concern that we have not addressed satisfactorily, please contact our U.S.-based third party dispute resolution provider (free of charge) at <https://feedback-form.truste.com/watchdog/request>. If you are not satisfied with our resolution of any dispute, including with respect to privacy or data-use concerns, please review a description of our dispute resolution procedures at <http://www.att.com/disputeresolution>.

You also have the option of filing a complaint with the FTC Bureau of Consumer Protection, using an online form at www.ftccomplaintassistant.gov, or by calling toll-free 877.FTC.HELP (877.328.4357; TTY: 866.653.4261). Other rights and remedies also may be available to you under federal or other applicable laws.

If you're a satellite TV subscriber, you also have certain rights under Section 338(i) of the Federal Communications Act.

Customer Service Contact Numbers

Wireless – 800.331.0500

Business – 800.321.2000

Residential – 800.288.2020

Spanish Language – 800.870.5855

For assistance in other languages, please visit world.att.com.

Legacy AT&T Consumer – 800.222.0300

Additional customer service contact numbers can be found at att.com/support/contact-us

Effective January 17, 2021

AT&T U-verse® TV Rates

Packages

	U450 Latino	U450	U300 Latino	U300
Channels (including music and locals) ¹	Over 565	Over 550	Over 530	Over 480
Genre/premium packages included	The Movie Package, HBO/Cinemax, The Sports Package, HD Technology Service, and Paquete Español	The Movie Package, HBO/Cinemax, The Sports Package, and HD Technology Service	The Movie Package and Paquete Español	The Movie Package
Equipment included	1 HD-ready receiver with DVR	1 HD-ready receiver with DVR	1 HD-ready receiver with DVR	1 HD-ready receiver with DVR
Additional equipment fees	Receiver \$10/mo (Up to 7 additional)	Receiver \$10/mo (Up to 7 additional)	Receiver \$10/mo (Up to 7 additional)	Receiver \$10/mo (Up to 7 additional)
Professional standard installation	Included	Included	Included	Included
One-time service activation fee	\$35	\$35	\$35	\$35
Monthly price	\$180	\$170	\$138	\$128

ALL IN Package²: Additional Features	HD Technology Fee			
ALL IN Package: Monthly Price	\$180	\$170	\$148	\$138

Optional AT&T U-verse® TV Services

High Definition

HD Technology Fee	✓	✓	\$10	\$10
HD Premium Tier (HD Technology Fee Required)	\$7	\$7	\$7	\$7
Fox Soccer Plus HD (HD Technology Fee Required)	\$15	\$15	\$15	\$15

✓ = Included * = Included for credit qualified customers only. Non-credit qualified customers will qualify for service upon payment of a \$449 non-refundable Credit Management Fee.

¹Specific channel lineups vary by market (ZIP code) and package and over time. Channel counts include HD channels. Current list of included channels are available at att.com/u-verse.

²ALL IN Packages include additional features at a discounted price. Available only in Retail Stores and Online.

Premium Packages

	U450 Latino	U450	U300 Latino	U300
The Movie Package (Starz, Encore, Showtime, The Movie Channel & Flix)	✓	✓	✓	✓
Showtime	✓	✓	✓	✓
Starz/Encore Package	✓	✓	✓	✓
The Movie Channel (TMC)	✓	✓	✓	✓
Flix	✓	✓	✓	✓
Showtime Unlimited (Showtime, The Movie Channel & Flix)	✓	✓	✓	✓
The Sports Package	✓	✓	\$10	\$10
HBO Max & Cinemax Package	✓	✓	\$25	\$25
HBO Max	✓	✓	\$14.99	\$14.99
Cinemax	✓	✓	\$14	\$14
EPIX	\$8	\$8	\$8	\$8
The Playboy Channel	\$15	\$15	\$15	\$15

Packages

	U200 Latino	U200	U-family	U-basic
Channels (including music and locals) ¹	Over 420	Over 360	Over 190	Local channels only (dependent on market)
Genre/premium packages included	Paquete Español	None	None	None
Equipment included	1 HD-ready receiver with DVR	1 HD-ready receiver with DVR	1 HD-ready receiver with DVR	1 HD-ready receiver (non-DVR)
Additional equipment fees	Receiver \$10/mo (Up to 7 additional)	Receiver \$10/mo (Up to 7 additional)	Receiver \$10/mo (Up to 7 additional)	1 DVR \$15/mo; Receiver \$10/mo (Up to 7 additional)
Professional standard installation	Included	Included	Included	\$199*
One-time service activation fee	\$35	\$35	\$35	\$35
Monthly price	\$120	\$110	\$82	\$19

ALL IN Package²: Additional Features	HD Technology Fee			
ALL IN Package: Monthly Price	\$130	\$120	\$92	

(Prices are monthly recurring charges in addition to AT&T U-verse TV & Internet package price or AT&T U-verse TV-only price.)

✓ = Included * = Included for credit qualified customers only. Non-credit qualified customers will qualify for service upon payment of a \$449 non-refundable Credit Management Fee.

¹Specific channel lineups vary by market (ZIP code) and package and over time. Channel counts include HD channels. Current list of included channels are available at att.com/u-verse.

²ALL IN Packages include additional features at a discounted price. Available only in Retail Stores and Online.

High Definition

	U200 Latino	U200	U-family	U-basic
HD Technology Fee	\$10	\$10	\$10	\$10
HD Premium Tier (HD Technology Fee Required)	\$7	\$7	Not Available	Not Available
Fox Soccer Plus HD (HD Technology Fee Required)	\$15	\$15	\$15	\$15

Premium Packages

The Movie Package (Starz, Encore, Showtime, The Movie Channel & Flix)	\$20	\$20	\$20	\$20
Showtime	\$14	\$14	\$14	\$14
Starz/Encore Package	\$14	\$14	\$14	\$14
The Movie Channel (TMC)	\$14	\$14	\$14	\$14
Flix	\$14	\$14	\$14	\$14
Showtime Unlimited (Showtime, The Movie Channel & Flix)	\$14	\$14	\$14	\$14
The Sports Package	\$10	\$10	Not Available	Not Available
HBO Max & Cinemax Package	\$25	\$25	\$25	\$25
HBO Max	\$14.99	\$14.99	\$14.99	\$14.99
Cinemax	\$14	\$14	\$14	\$14
EPIX	\$8	\$8	\$8	\$8
The Playboy Channel	\$15	\$15	\$15	\$15

†Specific channel lineups vary by market (ZIP code) and package and over time. Channel counts include HD channels. Current list of included channels are available at att.com/u-verse.

Geographic and service restrictions apply to AT&T U-verse services. Promotional pricing applies to service rates only and excludes taxes, equipment fees and other charges including a \$35 service activation fee, a federal regulatory video cost recovery charge, city video cost recovery fees, where applicable, and a Broadcast TV Fee of up to \$9.99/mo. Residential customers only. Pricing, programming, features and offers subject to change at any time without notice. Credit restrictions may apply. Channels not available in all areas and some programming excluded as subject to blackouts. Services provided by your local AT&T telephone company and available in limited areas. Effective 1/17/2021.

Optional AT&T U-verse® TV Services

(Prices are monthly recurring charges in addition to AT&T U-verse TV & Internet package price or AT&T U-verse TV-only price.)

International channels and packages	U450	U300	U450/U300 U200/Latino	U200	U-family/ U-basic
Paquete Español	\$15	\$15	Included	\$15	\$15
TV JAPAN	\$25	\$25	\$25	\$25	\$25
Filipino TV Package (The Filipino Channel, GMA Pinoy TV, VivaTV Plus & Filipino On Demand)	\$25	\$25	\$25	\$25	\$25
The Filipino Channel	\$12	\$12	\$12	\$12	\$12
GMA Pinoy TV	\$12	\$12	\$12	\$12	\$12
South Asian Package (Aapka Colors, SET Asia, Zee TV, & MTV India)	\$35	\$35	\$35	\$35	\$35
TV Asia	\$15	\$15	\$15	\$15	\$15
SET Asia	\$15	\$15	\$15	\$15	\$15
Zee TV	\$15	\$15	\$15	\$15	\$15
Aapka Colors	\$15	\$15	\$15	\$15	\$15
Vietnamese Package (SBTN & TVBV)	\$20	\$20	\$20	\$20	\$20
SBTN	\$15	\$15	\$15	\$15	\$15
TVBV	\$10	\$10	\$10	\$10	\$10
MBC America	\$13	\$13	\$13	\$13	\$13
Mandarin TV Package (CCTV-4, CTI-Zhong Tian, Phoenix North America Chinese Channel, Phoenix InfoNews, ET News & ET Global)	\$25	\$25	\$25	\$25	\$25
CCTV-4	\$10	\$10	\$10	\$10	\$10
CTI-Zhong Tian	\$12	\$12	\$12	\$12	\$12
Phoenix North America Chinese Channel	\$10	\$10	\$10	\$10	\$10
Phoenix InfoNews	\$10	\$10	\$10	\$10	\$10
ET News	\$10	\$10	\$10	\$10	\$10
ET Global	\$10	\$10	\$10	\$10	\$10
TV Polonia	\$20	\$20	\$20	\$20	\$20
Channel One Russia	\$15	\$15	\$15	\$15	\$15
TV5MONDE	\$10	\$10	\$10	\$10	\$10
Arabic Radio & Television	\$13	\$13	\$13	\$13	\$13
Rai Italia	\$13	\$13	\$13	\$13	\$13
TVBe	\$17	\$17	\$17	\$17	\$17
SVOD and Apps Packages	U450	U300	U450/U300 U200/Latino	U200	U-family/ U-basic
Anime on Demand	\$7	\$7	\$7	\$7	\$7
Disney Channel On Demand	\$7	\$7	\$7	\$7	\$7
here!	\$7	\$7	\$7	\$7	\$7
Too Much for TV	\$15	\$15	\$15	\$15	\$15
Stingray Karaoke App	\$7	\$7	\$7	\$7	\$7

911 Acknowledgement

Limitations of 911 Service. AT&T U-verse Phone Service, which is provided via voice over IP, is not the same as traditional wireline telephone service, and may be provided to your device over a wired broadband or Wi-Fi connection rather than the wireless connection used by cellular telephones. The 911 service doesn't work the same as with traditional wireline telephones. You agree to tell anyone who may use your U-verse Phone Service of the limitations of 911 service. AT&T makes no warranty that access to 911 will be uninterrupted, timely, secure, or error-free. 911 service is available only at your service address, while connected to a properly powered and configured iNID, or WG (and a properly powered and configured ONT, if applicable) and after U-verse Phone Service has been properly activated. 911 service will not function if your U-verse Phone Service isn't functioning or was not configured correctly or if there is a power or network outage, broadband connection failure, if your service has been disconnected or suspended, your underlying data service plan has lapsed or has been disrupted or impaired. Following an outage, you may be required to reset or reconfigure your Equipment before 911 service will work. AT&T strongly recommends that you maintain an alternative means of accessing 911 services, such as a cellular phone, at all times. AT&T is not responsible for any losses incurred because of an inability to dial 911 or to access emergency service personnel for any reason. And you agree to defend, indemnify, and hold harmless AT&T and its subsidiaries, affiliates, officers, agents, directors, employees, and service providers for any claim by you or anyone else relating in any way to 911 service.

Aceptación del servicio 911

Limitaciones del servicio 911. El servicio AT&T U-verse Phone, que se proporciona a través de voz sobre IP, no es lo mismo que el servicio de telefonía fija tradicional, y puede brindarse a su dispositivo a través de una conexión cableada de banda ancha o Wi-Fi en lugar de la conexión inalámbrica utilizada por los teléfonos celulares. El servicio 911 no funciona igual que con los teléfonos fijos tradicionales. Usted acepta informar a toda persona que pueda usar su servicio U-verse Phone acerca de las limitaciones del servicio 911. AT&T no ofrece ninguna garantía de que el acceso al 911 será ininterrumpido, oportuno, seguro o sin errores. El servicio 911 está disponible solo en su dirección de servicio mientras esté conectado a un iNID o WG configurado (y a un ONT correctamente activado y configurado, si corresponde) y después de que el servicio U-verse Phone se haya activado correctamente. El servicio 911 no funcionará si su servicio U-verse Phone no funciona o si no se configuró correctamente o si hay un corte de energía o de red, falla de conexión de banda ancha, si su servicio ha sido desconectado o suspendido, su plan de servicio de datos subyacente ha caducado o ha sido alterado o afectado. Después de un corte de energía, es posible que deba reiniciar o reconfigurar su Equipo para que el servicio 911 funcione. AT&T le recomienda encarecidamente que mantenga, en todo momento, un medio alternativo para tener acceso al servicio 911, como un teléfono celular. AT&T no es responsable de ninguna pérdida incurrida debido a la incapacidad de marcar el 911 o de acceder al personal del servicio de emergencia por cualquier motivo. Y acepta defender, indemnizar y eximir de responsabilidad a AT&T y sus subsidiarias, filiales, directivos, agentes, directores, empleados y proveedores de servicios por cualquier reclamo de usted o de cualquier otra persona relacionado de alguna manera con el servicio 911.

NOTICE TO AT&T U-VERSE TV CUSTOMERS IN ILLINOIS CONCERNING GENERAL CUSTOMER SERVICE STANDARDS

Why is AT&T Providing this Notice to Me?

As an AT&T U-verse TV customer, you are entitled under Illinois Law to receive a description of our general customer service standards for U-verse TV when your service is first activated and then upon request. Our general customer service standards are described below. Thank you for choosing AT&T for your video and entertainment needs.

Customer Service Telephone Numbers and Hours

You can call our customer service office, 24 hours a day, seven days a week, at 800.288.2020. Our trained, knowledgeable and qualified service representatives will be available to respond to your inquiries regarding installation, disconnection, billing, and complaints Monday through Saturday from 7 a.m. to 9 p.m. and Sundays from 8 a.m. to 5 p.m. We will generally connect you with a service representative within 30 seconds. Outside of these times, your call will be answered by a Company representative or an automated response system. Our service representatives will respond on the next business day to inquiries received by telephone or e-mail through our website (att.com/u-verse) after the above hours. We will respond to a written billing inquiry within 10 days of receipt of your inquiry. To check the status of an order regarding your service, please visit att.com/uverseorderstatus.

You can call our repair office 24 hours a day, seven days a week, also at 800.288.2020.

AT&T Employee Identification

All of our service representatives or others who contact customers in person on our behalf will have a visible identification card with their name and photograph and will orally identify themselves upon first contact with you. Our service representatives will identify themselves immediately following the greeting during each telephone contact with you.

Appointment Hours for Installations and Service Calls

The "appointment window" alternatives for installations, service calls, and other installation activities that we provide will be, at a maximum, a four-hour time block during normal business hours. We strive to provide you a two-hour "technician arrival window". If the technician misses that two hour window by more than two hours, we will provide you an automatic credit of \$25. We may schedule service calls and other installation activities outside of normal business hours for your express convenience. We will not cancel an appointment with you after the close of business on the business day before the scheduled appointment. If our representative is running late for an appointment with you and will not be able to keep the appointment as scheduled, we will try to contact you. We will reschedule the appointment, as necessary, at an available time which is convenient for you, even if the rescheduled appointment is not within normal business hours.

Estimated Costs for Installations and Service

Our service representatives or others who contact customers on our behalf will state the estimated cost of service or repair orally, before delivery of the service or before work is performed. We will also provide you with an oral statement of the total charges before terminating a telephone call or other contact in which you order service, whether in-person or electronically if you order on the Internet, and we will provide a written statement of the total charges before leaving the location at which the work was performed. If the charge for the service is a promotional price or is for a limited period of time, we also will disclose the charge for the service at the end of the promotion or limited period of time.

Installation Intervals

We will be able to perform standard installations within 7 business days after the order has been placed.

Service and Repair Intervals

We will provide reasonably efficient service, promptly make repairs, and interrupt service only as necessary for good cause, during periods of minimum use of the system and for no more than 24 hours. We will provide clear visual and audio reception that meets or exceeds applicable Federal Communications Commission technical standards. If you experience poor video or audio reception due to our equipment, we will promptly repair the problem at our expense.

Excluding conditions beyond our control, we will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption is reported by you or becomes known to us. "Service interruption" means the loss of picture or sound on one or more service or channel. We will begin to correct other service problems the next business day after learning of the service problem.

If we receive notice that an unsafe condition exists with respect to our equipment, we will investigate such conditions immediately, and will take necessary measures to remove or eliminate the unsafe condition. We will also notify your local unit of government promptly, but no later than two hours after notification of an unsafe condition that we have not remedied.

U-verse TV Use Instructions, Services, Programming, and Rates

Your Welcome Kit includes a features guide that explains how to use U-verse TV. Additional copies of the features guide are available online or upon request.

This guide also includes a list of the services that we offer today and a description of the programming and rates for those services for all levels of service. We suggest that you also check our website at att.com/u-verse to learn more about U-verse TV and the services available.

Our rate structure for video service is uniform throughout the local unit of government in which you live. We offer our lowest-cost basic video service on a stand-alone basis and do not require the subscription to any other service.

Our rates for each level of service we offer, our terms of service, and our policies related to U-verse TV are available to the public, upon request, and are displayed clearly and conspicuously on our website at att.com/u-verse, att.com/uversetermsofservice.

Use and Availability of Parental Control or Lock-Out Device

As part of U-verse TV service and at no additional cost, you can block any program or channel carrying programming that you do not deem appropriate for all members of your household. Instructions for use are available in the features guide.

Services for Customers with Disabilities

We will not discriminate in providing services to the hearing or visually impaired and will comply with the accessibility requirements of 47 U.S.C. 613. We will provide use of a converter or remote control unit to mobility impaired customers. We will also deliver converters and other necessary equipment to the homes of customers with disabilities and provide a pre-paid shipping label and packaging for return of equipment upon cancellation of service.

Notice of Deletion or Changes of Programming Service, or Changes or Increases in Rates

We will provide you with a minimum of 30 days' written notice before increasing our rates or eliminating transmission of programming. We will also submit notice of a rate change to your local unit of government before distributing that notice to you. However, if the elimination of transmission of programming was outside our control, we will use reasonable efforts to provide as much notice as possible. Any rate decrease related to the elimination of transmission or programming will be applied as of the date of the change.

Other Charges

We will not charge you for any service or equipment that you have not affirmatively requested. Any charges we impose for changes in your selection of services or equipment will be based on the cost of such changes and shall not exceed nominal amounts when our system's configuration permits changes in service tier selection to be made solely by coded entry on a computer terminal or by other similarly simple methods.

Deposits

We may require you to make deposits or advance payments for U-verse TV service, which we may use to satisfy your initial bill for service, to offset against any unpaid balance on your account, or as otherwise permitted by law. We will not pay interest on advance payments or deposits unless required by law. We may require additional advance payments or deposits if we determine that your initial payment was inadequate. Based on your creditworthiness or for other reasons, we may establish limits and restrict service or features as we deem appropriate. As required by law or if we determine that you have a satisfactory payment history, we may begin refunding of the deposit or advance payment through bill credits or cash payments.

Customer Credits

Under the Illinois Law you are entitled to receive credits if we fail to meet certain customer service standards. You are under no obligation to request the credit. Such credits will appear on the bill issued to you in the billing cycle following the discovery of our failure to meet the service standard. If you are no longer a customer at that time, we will provide you with a check for the credit amount within 30 days after your service has terminated. Here is a list of the possible service standard violations and the credit associated with each violation:

- Failure to keep an appointment or to notify the customer prior to the close of business on the business day prior to the scheduled appointment: \$25.00.
- Violation of customer service and billing standards: \$25.00 per occurrence.
- Violation of the service bundling rules: \$25.00 per month.

Paying Your Bill

We will send you a bill for your service each month that is clear, accurate and understandable. To pay your bill you should send payment to the address indicated on your bill. If you submit a billing question to us in writing, we will respond to that request within 10 days after we receive it.

You have 28 days from the date of the bill to make payment. If you send your payment to us by U.S. mail, the payment must be postmarked by the 28th day to be timely.

If you don't pay your bill on time, we may assess a late payment charge as of the 29th day after the date of the bill. If you pay your bill by check and the check is returned by the bank because of insufficient funds, we will impose a charge for each returned check. If you pay only part of your bill on time, we may assess a late payment charge on the unpaid amount.

Cancellation of Service

You have 30 days after you subscribe to U-verse TV service, or after you upgrade your service plan, to cancel that service (or upgrade) without penalty. You will receive a pro-rata credit in an amount equal to the pro-rata charge for the remaining days of service being cancelled. You will be liable for the charges incurred for the portion of the 30-day period before you cancelled the service (or upgrade), including any Pay Per View or premium service charges. You also may be charged a fee to offset any rebate or credit you received when you subscribed to the service or upgrade.

At any time, if you ask us to cancel your service, we will stop charging you for the service within one business day after receiving your request or, if you give us at least five days' notice, we will stop charging you as of the cancellation date that you specify. You will be liable, however, for any charges, including Pay Per View or premium service charges, incurred during the period before you cancelled the service.

No U-verse TV service contract will be for a term longer than two years. If your video service plan includes an early termination fee, and you cancel that service more than 30 days after subscribing, we may charge you a termination fee of no more than the value of any additional goods or services provided with your service, the amount of the discount reflected in the price you received for the service while you were a subscriber, or a fee that goes down over the term of your contract.

You must return our equipment to us upon cancellation or disconnection of service. We will provide you a pre-paid shipping label and packaging for return of equipment upon cancellation.

If you cancel your service, we will issue any credit we owe you, or return any deposit you provided, promptly after you return your U-verse TV equipment, and no later than 30 days or the close of the billing cycle following resolution of your cancellation request, whichever is earlier.

Involuntary Service Disconnection

We may disconnect your service if you do not pay your bill by the date specified in a disconnection notice, if you pay with a check for which there are insufficient funds, if you have abused our equipment or personnel, if you have stolen service, or if you engage in other similar actions.

We will disconnect your service for nonpayment of charges only after sending you, via U.S. mail, a notice of the impending termination at least 15 days in advance. Notice of proposed termination will not be mailed until at least the 29th day after the date of the bill for services. If your service is disconnected for non-payment, it will be reconnected only after you pay the full amount owed, plus a reconnection charge. If your service is disconnected without good cause, your service will be restored without payment of a reconnection charge.

The disconnection notice will include your name and address, the amount your account is past due, and the date by which you must pay that amount to avoid disconnection of your service. The notice also will include a telephone number you can use to make payment arrangements and to learn about charges you will incur, once your service is disconnected, if you fail to return our equipment or if you want your service reconnected.

We can only disconnect your service on days when you can contact our service representatives at the telephone number provided in the disconnection notice.

Informal Complaints and Bill Dispute Resolution

If you have a complaint regarding your bill, service quality, privacy protections, or other issues involving your U-verse TV, please contact our customer service office at 800.288.2020.

Our customer service representatives are able to provide credit, waive fees, schedule appointments, and change billing cycles. Any difficulties that cannot be resolved by the customer service representatives will be referred to a supervisor, who will make best efforts to resolve the issue immediately. If the supervisor does not resolve the issue to your satisfaction, the supervisor will provide you with information about our written informal complaint procedures and other rights and remedies available to you. If this informal process does not resolve your issue, you or your local unit of government may request nonbinding mediation with us, with each party to bear its own costs of such mediation. Selection of the mediator will be by mutual agreement, and preference will be given to mediation services that do not charge you for their services.

Rights and Remedies if AT&T Materially Fails to Meet These Customer Standards

If you do not believe the informal complaint process produces a satisfactory result or if you believe that we have substantially failed to meet these customer service standards, you may ask either the local unit of government in which you reside and receive video service, or the Illinois Attorney General, to investigate and bring an enforcement action against us, if appropriate. You may also pursue alleged violations of these general customer service standards in a court of competent jurisdiction.

ANNUAL NOTICE TO MICHIGAN AT&T U-VERSE TV SERVICE CUSTOMERS REGARDING VIDEO DISPUTES AND THE AT&T PRIVACY POLICY

October 2019

VIDEO DISPUTES

You are a valued AT&T U-verse member, and we're committed to providing you with the best service possible. Should you have any problems or concerns with your service, we will do our best to resolve them to your satisfaction. Under the Dispute Resolution process established in the Michigan Video Act, a customer must first try to resolve disputes with AT&T. If unresolved, the customer may file complaint with the MI Public Service Commission (MPSC). The MPSC will attempt to resolve informally. If unsuccessful, customers may file a formal complaint in writing with MPSC. Complaints for \$5,000 or less will first be mediated. For the full process, please see below.

The Michigan dispute resolution process per Sections 10(4) and 10(5) of the 2006 PA 480, as amended, is as follows:

- 10(4)** Before a customer can file a complaint with the commission under subsection (5), the customer shall first attempt to resolve the dispute through the dispute resolution process established by the provider under subsection (2). If the dispute cannot be resolved by the provider's dispute resolution process, the customer may file a complaint with the commission under subsection (5). The provider shall provide the customer with the commission's toll-free customer service number and website address.
- 10(5)** A complaint filed under this section involving a dispute between a customer and a provider shall be handled by the commission in the following manner:
- (a)** An attempt to resolve the dispute shall first be made through an informal resolution process. Upon receiving a complaint, the commission shall forward the complaint to the provider and attempt to informally mediate a resolution. The provider shall have 10 business days to respond and offer a resolution. If the dispute cannot be resolved through the informal process, the customer can file a formal complaint under subdivision (b).
 - (b)** A formal complaint filed under this subdivision shall be in writing and shall state the section or sections of this act that the customer alleges the provider has violated, sufficient facts to support the allegations, and the exact relief sought from the provider. The formal complaint shall comply with the same requirements of a written complaint filed under section 203 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2203. The complaint shall be resolved by 1 of the following:
 - (i)** If the dispute involves an amount of \$5,000.00 or less, the commission shall appoint a mediator within 7 business days of the date the complaint is filed. The mediator shall make recommendations for resolution within 30 days from the date of appointment. Within 10 days of the date of the mediator's recommendations, any named party in the complaint may request a contested case as provided under subparagraph (ii).
 - (ii)** If the dispute involves an amount greater than \$5,000.00, a contested case hearing in the same manner as provided under section 203 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2203.



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