

## IS “IPTV” A “CABLE SERVICE”? YES. WHY:

1. The IPTV provider determines the content (movies, programs, etc.) available to the subscriber, and the subscriber views the content available via an on-screen menu guide. The subscriber selects the content to watch via a remote control, which relays information to the set top box connected to the television set, which then retrieves the content from a node, server, or headend, and sends it back to the box for viewing on the set. Content is delivered via IP instead of the traditional QAM (quadrature amplitude modulation) cable delivery mechanism. This is simply cable television delivered over internet transport protocol instead of delivered over a traditional cable plant.<sup>i</sup>
2. IPTV is not the unregulated information service of video streaming over the internet, such as watching video content from <http://video.google.com>, [www.youtube.com](http://www.youtube.com), [www.movielink.com](http://www.movielink.com), [www.cinemanow.com](http://www.cinemanow.com), or video clips from the websites of CNN, Fox News, MSNBC, etc. Those providers do not own the transmission facilities; thus they are not “cable operators”.
3. The IPTV provider buys content wholesale from programmers and distributors pursuant to the protections of the Copyright Act that allow retransmission by broadcasters and cable television (including satellite) operators. Otherwise, the IPTV provider would have to negotiate with each owner of each show for redistribution rights, or simply ignore the law.
4. The IPTV subscriber receives a monthly bill for the service, just like a cable or satellite subscriber, and must call the IPTV provider for service outages or equipment installation. The IPTV subscriber must call the IPTV provider’s customer service for a credit or refund for poor or no quality video on demand or pay per view events.
5. The IPTV subscriber cannot navigate to another cable operator’s content, such as how an internet access user can view any website from any provider. Limiting the subscriber to the IPTV provider’s system also prevents the defense that the IPTV provider is an “Open Video System” operator.<sup>ii</sup>
6. “IPTV Basic Cable Service is equivalent to today’s broadcast and premium cable services that deliver between 25 – 100 cable channels.” David Reed, CableLabs IPTV Presentation, July 9, 2004. “It does not appear to matter, under the statutory definition of “cable service,” whether the video programming or other programming service is transmitted in an analog, digital or Internet Protocol format. Rather, the key determinant is that the “video programming” be “generally considered comparable to the programming provided by a television broadcast station.” Barbara Esbin, FCC Associate Bureau Chief, Media Bureau, January 25, 2005.
7. There is nothing so far that justifiably distinguishes the IPTV offerings from any other regulated cable operator’s offerings; only the distribution plumbing is different. Thus, traditional local franchising authorities should apply the same rules to IPTV providers, or if less rules (or no rules) apply, than cable operators should benefit from the same relaxed regulatory treatment.

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<sup>i</sup> The question assumes some background knowledge of the issue. Here is a brief primer:

**IPTV is the delivery of video programming services over a broadband network** (such as DSL or cable modem service) using Internet Protocol (“IP”). IP is a data transfer protocol containing addressing and control information so that a data file, such as a video program, can be broken up into packets and routed from one computer to another over a local area network or the internet. IP video involves the transfer of video content by data packets instead of specific channels on a cable network. Unlike the linear methods of using a six MHz channel to transmit analog video programming in NTSC format, or digital compression and transmission technologies using segments of a six MHz channel, the IP video programming is broken into distinct data packets of ones and zeros like a word file, song, email, or even voice as in Voice Over Internet Protocol, sent over the internet, and reconstituted at the subscriber’s set top box. See, Cisco Internetworking Technology Overview, Chapter 30, p.1 (1999); <http://www.multichannel.com/article/CA6317335.html?display=Special+Report> and <http://www.ctpaa.org/briefs.shtml>.

**An IPTV provider’s service will have the look and feel of regular basic and on-demand cable services. The customer will have a television set and a set top box.** The television set will display video programming from a library of choices from which the customer may make selections. Verizon has stated that it plans to offer 300 digital and 20 HDTV channels, local broadcasting channels, and 45 digital music channels, and already operates pursuant to new cable franchise agreements in many communities. <http://newscenter.verizon.com/http://www22.verizon.com/FiosForHome/Channels/FiosTV/FiosTVHome.aspx> Though Verizon is obtaining local franchises in its operating communities, it is simultaneously arguing for regulatory exemptions from those franchises on the state and federal levels. <http://www.multichannel.com/article/CA6314469.html?display=Breaking+News> <http://www.multichannel.com/article/CA6315044.html> <http://www.multichannel.com/article/CA6302347.html>

AT&T has similar plans, and both will have video-on-demand options as well. AT&T and other IPTV providers simply claim that the traditional cable regulations do not apply because they are utilizing an IP delivery platform instead of a traditional cable system. <http://att.sbc.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=22127> On March 7, 2006, the City of Anaheim, California agreed and granted the first local IPTV-type franchise agreement. [http://www.anaheim.net/docs\\_agend/ag\\_3vers/35.PDF](http://www.anaheim.net/docs_agend/ag_3vers/35.PDF)

**An expanded version of the question would thus read** “Are the IP video programming services offered (or contemplated) by Verizon, AT&T, various overbuilders, etc. classified as regular “cable services” under the Cable Act – and if they are, are said services provided over a “cable system”? If the answer under both of these definitions is “yes”, then the IP provider must be considered a “cable operator” subject to the full panoply of Title VI’s cable franchise regulatory system in the Telecommunications Act of 1996 ( “Act”, 47 U.S.C. 521 *et. seq.*). That section amended the original federal cable franchise regulatory system from the Cable Communications Policy Act of 1984. The term “video programming” means “programming provided by, or generally considered comparable to programming provided by, a television broadcast station” (Section 602(20)).

<sup>ii</sup> Under Section 653 of the Act, OVS operators are subject to very little regulation, but can offer cable services, in exchange for relinquishing up to one-third of activated channel capacity to other providers. This lack of control over their system is the apparent reason Verizon and AT&T have not opted for OVS licenses.