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ONE HUNDRED NINTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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March 29, 2006

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Mr. Edward E. Whitacre, Jr.
Chairman and Chief Executive Officer
AT&T Inc.
175 E. Houston Street
San Antonio, Texas 78205

Dear Mr. Whitacre:

On March 27, 2006, the Chairman and other Members of the Committee on Energy and Commerce released draft legislation of the Communications Opportunity, Promotion, and Enhancement Act of 2006. The draft legislation seeks to federalize cable franchising, which has been a major legislative goal of your company, and I have found our discussions on this matter very helpful. But serious questions remain in my mind as to whether AT&T will be able to receive the benefits of such sought-after legislation.

As you are aware, the national franchise set forth in the draft legislation is available only to eligible cable operators. The term "cable operator" is defined under the Communications Act as someone who provides cable service over a cable system. Given AT&T's previous statements that the IP video service it plans will not be a cable service, I seek your assistance in helping the Committee determine whether AT&T thinks it will qualify for the anticipated national franchise.

In particular, in briefings filed this month before the State of Connecticut Department of Public Utility Control, a subsidiary of AT&T claimed that it will not be a cable operator under Federal law when it offers an IP video service. Even though Southern New England Telephone Company (SNET) admits that it will use public rights of way to provide video services, it claims that it is not subject to cable franchising requirements. SNET relies upon the assertion that it does not provide one-way transmission of video programming to subscribers. According to SNET, the two-way interactive nature of its planned IP video service places it outside of the definition of cable service. In fact, SNET claims that in the existing statutory structure Congress distinguished between cable service and other services based on the technological manner in which programming is delivered.

AT&T has taken a similar position at the Federal Communications Commission (FCC). In February, AT&T filed comments at the FCC reiterating its position that “AT&T will not be providing ‘cable service’ over ‘cable systems’ as those terms are defined by the Communications Act.”

AT&T has also been making this claim before municipalities. For example, SBC filed a letter last December with the Director of Public Works for the City of San Jose, California, indicating that its “IP video service is not a ‘cable service’ providing video programming over a ‘cable system.’” The letter specifically advises that SBC “is not building a ‘cable system’ that is ‘designed to provide cable service.’”

It is unclear why it makes sense for the Committee on Energy and Commerce to consider legislation to streamline the cable franchise process when companies can define themselves out of the process. The Committee clearly needs to receive information sufficient to evaluate whether the Communications Act definitions should be updated so that companies who offer IP video services can benefit from the national cable franchising.

I ask you to answer the following questions:

1. Will AT&T’s planned IP video service (provided over Project Lightspeed or any similar advanced wireline infrastructure) fall within the definition of “cable service” under Federal law? Please state in technical detail the reasons why AT&T believes the service will or will not be covered, including whether any part of AT&T’s service will involve the one-way transmission to subscribers of video programming (irrespective of any subscriber interaction that may be required for the selection or use of such programming).
2. Would AT&T’s planned IP video service be eligible for national franchising under the Committee Print of the Communications Opportunity, Promotion, and Enhancement Act of 2006? If not, do you propose changes to that legislation?
3. Will AT&T’s planned IP video service be delivered over a “cable system” as such term is defined under Federal law? Please provide, in legal and technical detail, the reasons why AT&T believes the service will or will not be delivered over a cable system.
4. Will AT&T and/or its subsidiaries that offer IP video service be a “cable operator” as that term is defined under Federal law? Please provide, in legal and technical detail, the reasons why AT&T believes it will or will not be a cable operator.
5. Does AT&T plan to use public rights of way in delivering its IP video service to subscribers?

Mr. Edward E. Whitacre, Jr.
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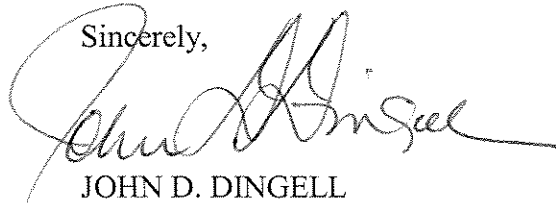
6. Does AT&T believe that it is appropriate for Congress to distinguish among services based on the technological manner in which programming is delivered?

It would also be very helpful if you could provide a list of filings, with a copy of related documentation in any Federal, State or local legislative, regulatory, or judicial proceeding in the United States in the past two years in which AT&T (or any precursor entity) claims that its IP video service will not be a cable service and/or that AT&T will not be a cable operator under Federal law.

As this bill appears to be moving on a fast track, I ask that you provide written responses to each of these questions at your earliest convenience, preferably by close of business Monday, April 3, 2006, so that the Committee can properly evaluate your responses prior to Subcommittee markup of this legislation.

If you have any questions regarding my request, please contact me or have your staff contact Johanna Shelton or Pete Filon, Minority Counsels to the Committee on Energy and Commerce, at (202) 226-3400. Thank you for your attention to this matter.

Sincerely,



JOHN D. DINGELL
RANKING MEMBER

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Fred Upton, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Edward J. Markey, Ranking Member
Subcommittee on Telecommunications and the Internet