Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of **Section 109 Report to Congress**	)	**Docket No. 2007-1**

WRITTEN STATEMENT AND
EXECUTIVE SUMMARY OF COMMENTS
OF AT&T SERVICES INC.

AT&T Services Inc. ("AT&T") is pleased to be able to participate as a panelist on the Section 109 hearing regarding the statutory licensing copyright regime applicable to the retransmission of broadcast signals. In the Notice of Inquiry, the Copyright Office seeks comment on, among other things, whether the Section 111 statutory license regime should be retained and, if so, whether new types of video services are eligible for the license.

It is unlikely that consumers would enjoy today's diversity of platforms for viewing broadcast television but for the statutory license. By striking a careful balance between the legitimate interests of copyright owners to be compensated for their works and those of distributors to have a practical means of obtaining licenses and paying royalties, the statutory license has enabled programmers and distributors alike to meet growing public demand for varied content and competitive choices. Indeed, in recognition of this unquestioned success, Congress has both renewed and expanded the statutory licenses several time since 1976.

The statutory license is as relevant and necessary today as it was when enacted over 30 years ago. The transaction costs and logistical barriers associated with obtaining licenses

through hundreds or even thousands of separate negotiations with the multitude of copyright owners whose programs are shown on broadcast television would be enormous and insurmountable. That was true in 1976 and is true—perhaps even more so—today. In the absence of the statutory license, incumbent distributors would surely have to reconsider their commitment to offering broadcast programming and nascent competition from AT&T, Verizon and others would be squelched. The benefits of the statutory license have been enduring: in its various iterations, it has applied to many distinct technologies, including cable television, MMDS, satellite and SMATV providers. And, now, the license will support the deployment of a new generation of distribution technologies, including AT&T's U-Verse TV video service. Against this backdrop, maintaining the statutory license is an easy, obvious choice.

All of the practical and economic imperatives that led to the creation of the license are present and undiluted today. The NOI seeks comment on whether the statutory license has "served its purpose and is no longer necessary" because "the cable industry has grown significantly since 1976, in terms of horizontal ownership as well as subscribership, and generally has the market power to negotiate favorable program carriage agreements." The market power of the cable industry is not, however, a relevant analytical touchstone because there is no evidence that the size or bargaining power of cable operators would resolve the underlying problems that led Congress to enact the statutory license. Even if there was any such evidence, there certainly is nothing to suggest that the increased size of a few incumbent MVPDs would have any impact on the ability of new entrants to the video marketplace to surmount the exceedingly high hurdle of seeking, in advance, a separate license for each copyrighted work embedded in each broadcast signal.

In sum, there is no question that the statutory copyright license scheme is the best solution to a difficult copyright problem. Indeed, Congress found that "it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system." Because those seeking an end of the statutory licensing scheme consistently fail to offer a better solution, Congress' continued reliance on statutory licensing is well justified.

In the NOI, the Copyright Office recognized that recent technological advances have allowed "video programming distribution systems that use Internet Protocol technology ('IPTV') to deliver video content through a closed system available only to subscribers for a monthly fee." The Office specifically referenced the AT&T "U-Verse TV" service, which "currently uses IPTV to provide multichannel video service in competition with incumbent cable operators and satellite carriers." The Office has asked whether "new types of video retransmission services, such as IPTV–based services offered by AT&T, may avail themselves of any of the existing statutory licenses."

AT&T offers video to subscribers through an enhancement of the broadband capabilities of AT&T's existing communications network. This IP-based service, branded AT&T U-Verse TV, provides a menu of video and interactive functionalities to subscribing customers. The AT&T IP data network involves Fiber-to-the-Node (FTTN) and Fiber-to-the-Premises (FTTP) technologies that employ a switched, two-way architecture designed to send each subscriber only the programming the subscriber chooses to view at a particular time.

The video delivery system has three major architectural components: a super hub office (SHO); multiple video hub offices (VHOs), currently located in 12 designated market areas across AT&T's service territory; and dedicated terrestrial transport facilities and

associated equipment. Under this structure, national video content is acquired, processed, encoded and encrypted at the SHO and then distributed via a national, managed IP data network to the VHO. Local broadcast signals are acquired, processed, encoded and encrypted at the VHOs. Transmissions from a VHO to a subscriber's premises are routed through intermediate offices to a local IP serving office. From there, video content and other IP-based services are delivered to subscribers via dedicated facilities. Transmissions from the subscriber premises to a VHO or the SHO travel via the same closed network. When a subscriber sends a request for a specific channel, the content is delivered to the subscriber through the FTTP/FTTN closed transmission system.

It is clear that AT&T's U-Verse TV service is eligible for the statutory license because U-Verse TV fully meets the Section 111(f) definition of "cable system." For purposes of the statutory license, a "cable system" is defined as: "a facility located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the FCC, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service."

The Copyright Office has previously found it useful to divide the definition of "cable system" into five elements: the retransmission system must (1) be a facility; (2) that is located in any State, Territory, Trust Territory or Possession; (3) that receives the signals or programs from an FCC licensed broadcast station; (4) and then makes retransmissions of those signals via wires, cables, microwaves, or other communications channels; (5) to subscribing members of the public who pay for such service. U-Verse TV fits easily within this definition.

First, AT&T uses "facilities" to retransmit its IP-based video service. As explained above, AT&T uses a SHO and a number of VHOs in its service territory. From the VHOs, the video content is distributed to intermediate offices, then to the subscriber's local central office, and ultimately to subscribers over "wires" and "cables" owned or controlled by AT&T.

Second, and relatedly, AT&T's IP data facilities are "located in any State." Indeed, like other video services eligible for the Section 111 license, AT&T's facilities are terrestrial and closed. The fact that AT&T's systems, like other systems eligible for the statutory license, may cross state lines does not change this result. As one court explained, if "'located in any State' means located entirely within a single state" then "many of the concededly traditional local systems serving communities that cross a state border would lose their cable system status."

Third, AT&T "receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the FCC." Fourth, through its FTTN/FTTP plant, AT&T makes "secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels." And, finally, AT&T offers its product "to subscribing members of the public who pay for [the] service." Accordingly, for the reasons outlined above, AT&T's U-Verse TV service meets the Section 111(f) "cable system" definition and therefore is eligible for the Section 111(c) statutory license.

For the reasons discussed above, AT&T respectfully urges the Copyright Office to recommend that Congress maintain the statutory license scheme.