

THE CORD-CUTTING CRUSADE



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The Evolving Rise of OTT
NATOA Annual Conference
September 21, 2021

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Let's Start Simple: What Is Over The Top?

- ▶ An over-the-top media service is a media service offered directly to viewers via the Internet. OTT bypasses cable, broadcast, and satellite television platforms – the types of companies that traditionally are controllers or distributors of this content.

https://en.wikipedia.org/wiki/Over-the-top_media_service

What Is Over The Top?



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- The acronym OTT stands for Over-the-Top. This means streaming across different devices whenever we want is possible because of “over-the-top,” a convenient little term that explains the new delivery method of film and TV content over the internet without the need for traditional broadcast, cable or satellite pay-TV providers. In simple terms, we’re talking about people paying an internet provider, like Xfinity, for internet access to watch Netflix, without paying for cable TV.

<https://www.endavomedia.com/what-is-ott/>



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What Is Over The Top?

- OTT (over-the-top) is a means of providing television and film content over the internet at the request and to suit the requirements of the individual consumer. The term itself stands for “over-the-top”, which implies that a content provider is going over the top of existing internet services.

<https://www.telestream.net/video/solutions/what-is-ott.htm>



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So ...

- You have an internet connection
- You get an account with an OTT provider
- You get your video content sent from that provider and delivered via your internet connection
- So ... you don't need cable!
- But what if you have a cable video subscription and/or internet through your cable provider and they offer OTT services in your package as well as traditional cable service (or even *without* a traditional cable subscription)?
 - Is that OTT service a cable service?
 - Is it regulated under the cable franchise?

What Is “Cable Service”?



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► 47 USC Sec. 522(6)

the term “cable service” means —

(A) the one-way transmission to subscribers of

(i) video programming, or

(ii) other programming service, and

(B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service



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Is OTT Video Programming a “Cable Service?”

- It seems to be a one-way transmission of programming to subscribers, so...
- Maybe, but ...
- If it is a cable service, can you regulate it in a cable franchise, and charge franchise fees on revenues from OTT programming?
- We need to consider a few more statutory provisions

What Is A “Cable System?”



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► 47 USC Sec. 522 (7)

the term “cable system” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming, and which is provided to multiple subscribers within a community

And ...

What Is A “Cable Operator”?



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- ▶ 47 USC Sec. 522 (5)

the term “cable operator” means any person or group of persons

(A) who provides **cable service** over a **cable system** and directly or through one or more affiliates **owns** a significant interest in such cable system, or

(B) who otherwise **controls** or is responsible for, through any arrangement, the management and operation of such a cable system

- ▶ So who can be required to get a cable franchise where OTT may or may not be regulated?

Cable Franchise Requirement




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- ▶ 47 USC Sec. 541 (b) NO CABLE SERVICE WITHOUT FRANCHISE; EXCEPTION UNDER PRIOR LAW
 - (1) Except to the extent provided in paragraph (2) and subsection (f), a cable operator may not provide cable service without a franchise
- ▶ An OTT content provider that does not own or control a cable system is not a cable operator – so it does not fall under the cable franchise requirement
- ▶ But a traditional cable operator that also provides internet over a system it owns or controls, and offers packages of video programming subscribers can access through their OTT accounts with other content providers, may indeed be providing cable services subject to franchise obligations



So Can We Argue That A Cable Operator's Revenues from OTT Accessed Over The Cable System Are Gross Revenues Subject To Franchise Fees?

- There are good faith arguments to support this
- The cable industry does not have a unified, public position
- Some LFAs are starting to deal with this through pending audits – outcome not yet known