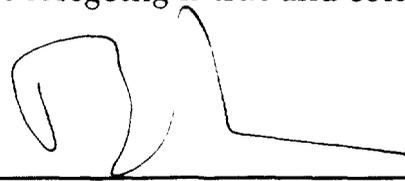


*presumption* in economics that such linkages, and corresponding effects on incentives, have any adverse effects on consumers, even where perfect competition is absent.

10. Finally, the dominant firm model hypothesized by DOJ leads it to speculate that independent DBS operators may be induced by the hypothesized behavior of a cable-operator-owned DBS system to increase their prices for DBS service, or otherwise compete less vigorously. First, as noted above, there may be a number of such firms, not just two or three. But even in the context of the DOJ model, which assumes there will be only a small number of MVPD competitors, fringe independent providers would recognize that a cable-operator-owned DBS firm would be less likely to respond to their setting lower prices for DBS service. This would *increase* the incentives of independent DBS firms to lower prices or otherwise compete vigorously with cable operators.
11. Indeed, there is some evidence on the expectations of independent DBS operators. The opposition of TEMPO's DBS competitors to cable operators' provision of DBS service is telling evidence of the likely future competition for DBS services if cable operators are allowed to participate. If DOJ were right that participation in DBS service by a cable-affiliated DBS operator would diminish competition and facilitate above-competitive pricing by all DBS operators, we would not be observing the aggressive opposition in these proceedings by independent DBS providers to such participation.
12. DOJ also recommends regulation of "wholesale" DBS providers that are affiliated with other MVPDs or programming vendors. Not only does this recommendation ignore existing and potential competition for "wholesale" DBS service, it would be extremely poor competition policy to saddle new innovative services with regulations that would diminish the incentives to develop such innovations in the first place.
13. DOJ in its comments has hypothesized a new market—wholesale DBS service—and is concerned that the first provider of that service, presumably TCI with its planned "Headend in the Sky" or "HITS" service, will obtain monopoly power on account of a "first mover advantage."

14. Several points need to be made. First, DOJ's view of the "wholesale" market for these services appears to encompass functions (aggregation, digitization, compression, and transmission of video signals to local resellers such as cable systems) that are now performed, and presumably will continue to be performed, by C-band satellite operators. C-band satellite service is highly competitive. DOJ's "wholesale" market, as described, is one that already exists and is unlikely to be monopolized by TCI's planned entry.
15. Second, as pointed out in my earlier declaration in this proceeding, TCI has no essential facility with which it could discriminate or inhibit competition in the provision of such service. TCI will have to compete with alternative methods of performing the same services, and any DBS provider (or, indeed, C-band provider) can offer such service. Indeed, TVN has announced plans to launch a digital delivery system in 1996 to provide digitally compressed video programs to cable headends (*Broadcasting and Cable*, (Nov. 27, 1995) at 94). There simply is no basis to expect that TCI would be able to obtain monopoly power in the provision of HITS.
16. Finally, and most significantly, prophylactic regulations aimed at preventing "first mover advantages" in innovative services do not make economic sense. Indeed, such regulations are extremely anti-competitive, just as were the Department's infamous former policies to treat intellectual property rights as antitrust violations. In this case there is no evidence of any anti-competitive behavior nor is any likely for the reasons given. But even assuming the HITS service were unique and did not face competition, regulatory policies that restrict innovators before any competitive problems arise and even before new services have shown any market acceptance can only serve to restrain competition in the search for and development of new communications innovations. Such a policy would be a step backwards into the dark ages of communication regulation and antitrust policy.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Bruce M. Owen", written over a horizontal line.

Bruce M. Owen

November 30, 1995

*E C O N O M I S T S I N C O R P O R A T E D*