Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Applications of	)	
AT&T Corporation,	)	
Transferee,	)	
and	)	CS Docket No. 98-178
Tele-Communications, Inc. (TCI),	)	
Transferor,	)	
	)	
For FCC Consent to Transfer of	)	
Control Pursuant to Section 310(d)	)	
of the Communications Act, as amended,	)	
of Licenses and Authorizations Controlled	)	
by TCI or its Affiliates or Subsidiaries	)	

To: The Commission and the Cable Services Bureau

REPLY COMMENTS OF AMERITECH

Ameritech respectfully submits these reply comments in the above-docketed proceeding seeking comment on the joint applications filed by AT&T Corporation ("AT&T") and Tele-Communications, Inc. ("TCI") for Commission approval of the transfer of control to AT&T of licenses and authorizations controlled by TCI or its affiliates or subsidiaries.[1]

Ameritech reiterates that it does not oppose AT&T's decision to acquire TCI, because the proposed transaction simply reflects the reality of today's changing communica-

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1 See Public Notice, "Cable Services Bureau Action; AT&T Corporation and Tele-Communications, Inc. Seek FCC Consent for a Proposed Transfer of Control," CS Dkt No. 98-178, DA 98-1969 (rel. Sept. 29, 1998).

tions industry. However, as noted in Ameritech's comments, Commission approval must be subject to the imposition of reasonable conditions to ensure an even and technologically neutral regulatory playing field. Ameritech notes, moreover, that certain events which have occurred since Ameritech filed comments in this proceeding underscore the policy justification, as well as the need, to condition approval of the proposed merger on the provision of open access to AT&T/TCI's facilities to the same extent required of other broadband facilities.[2]

I. CLEAR NEED AND AMPLE POLICY REASONS JUSTIFY IMPOSING MERGER CONDITIONS TO ENSURE AN EVEN REGULATORY PLAYING FIELD.

The comments filed in this proceeding uniformly demonstrate the potential competitive harms that may arise as a result of the merger of AT&T and TCI, absent certain conditions. These anti-competitive consequences are most acute in the new integrated advanced services market in those areas that are not served by a competing facilities-based cable operator. Nonetheless, the conditions described in Ameritech's comments would mitigate these potential adverse competitive effects. However, such conditions must be committed to by AT&T in writing and made an express condition of the Commission's approval. Only then would the AT&T/TCI proposed merger serve the public interest, convenience, and necessity.

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2 In addition, certain members of Congress have urged the Commission to ensure that the proposed merger of AT&T and TCI will not result in any negative impact on the availability of high quality video programming. *See* Letter dated October 29, 1998, from Senators DeWine and Kohl, to Chairman Kennard.

For example, the commenting parties overwhelmingly agree that the merged AT&T/TCI, which proposes to offer an integrated package of telephony, video, and advanced data services, should be required to provide access to the AT&T/TCI "last mile" facilities to the same extent as other facilities-based competitors, including incumbent LECs, that control "last mile" infrastructure.[3] The commenting parties simply vary on the policy justification pursuant to which the Commission should impose such conditions. Some commenters advocate that ample precedent exists under Title VI of the Communications Act of 1934, as amended (the "Communications Act"), to require unbundled access to the "last mile" AT&T/TCI facilities.[4] Other commenting parties argue that the post-merger AT&T/TCI will occupy a market position analogous to incumbent LECs and thus the merger should be conditioned upon interconnection, unbundling, and resale requirements similar to those imposed on incumbent LECs pursuant to Section 251(c) of the Communications Act.[5] Still

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3 *See, e.g.*, MCI/WorldCom Comments at 4-13; Comments in Opposition of GTE at 6-11; Petition of US West To Deny Applications or To Condition Any Grant at 20-41; Comments of SBC Communications Inc. at 11-16; Comments of Ameritech at 13-24; Comments of Qwest Communications Corp. at 9, 15-16; Comments of Sprint Corp. at 19-21; Comments of America Online, Inc. at 3-8; Comments of MindSpring Enterprises, Inc. at 17-20; Comments of EchoStar Communications Corp. at 2-8.

4 *See, e.g.*, Comments in Opposition of GTE at 46-48 (asserting that well-established Title VI policies, such as leased access, must carry, and limits on channel capacity devoted to affiliated programming, provide a sound rationale for requiring open access to the TCI broadband network infrastructure).

5 *See, e.g.*, Comments of MCI WorldCom, Inc. at 13 (because of dominance and monopoly position in marketplace AT&T/TCI should be "subject to unbundling requirements for its platform that are akin to those set forth in section 251(c)"); Comments of Qwest Communications Corp. at 9, 15-16 (post-merger AT&T/TCI (continued...)

other commenters, like Ameritech, maintain consistent with the intent of Section 706 of the 1996 Act that AT&T/TCI, as a facilities-based provider of advanced telecommunications capability, including high-speed broadband services, should be required to offer unbundled access to its broadband network as a condition to its merger approval.[6] Taken together, all of these comments demonstrate that the Commission has ample justification to require the combined AT&T/TCI – which represents the union of the largest long distance carrier/CLEC and the largest cable system operator in the United States – to provide unbundled access to its "last mile" infrastructure to the same extent required of other facilities-based providers.

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5 (...continued) would certainly qualify as a "comparable carrier" to incumbent LECs under Section 251(h)(2)); Comments of Sprint Corp. at 21 (to ensure that the merger is in the public interest, the FCC must require AT&T to provide reasonable and nondiscriminatory access at reasonable points of interconnection to the cable facilities acquired or used by AT&T to provide common carrier services); Petition of US West To Deny Applications or To Condition Any Grant at 20-21 ("given the merged entity's status as a dominant incumbent provider of high-speed data services in TCI's regions [AT&T/TCI] also would qualify as an incumbent local exchange carrier in the broadband market . . . subject to section 251(c)"); Comments in Opposition of GTE at 7-11 (without regulatory safeguards such as equal access, resale, and unbundling obligations merger will produce anti-competitive effects in the emerging bundled services market); Comments of SBC Communications Inc. at 11-16 (MVPD market conditions present the same issues that led the FCC to impose unbundling and resale obligations in other contexts); *see also* Petition to Deny of Consumers Union, Consumers Federation of America, and Office of Communication, Inc. of the United Church of Christ at 11-14 (noting that AT&T/TCI merger risks producing monopolistic, content-controlled Internet access).

6 *See* Comments of Ameritech at 17-20; *see also* Comments of EchoStar Communications Corp. at 4-8 (arguing that AT&T/TCI should be required to make its MVPD, advanced, and phone services available on a separate, unbundled basis).

In addition, the Commission's recent pronouncement regarding GTE's ADSL Service confirms that the AT&T/TCI high-speed data offering is an interstate access service that should be offered on a nondiscriminatory basis.[7] In the *GTE ADSL Decision*, the Commission concluded that an offering that permits Internet service providers ("ISPs") to provide end-user customers with high-speed access to the Internet is an interstate access service.[8] Indeed, as noted in the *GTE ADSL Decision*, the Commission traditionally has characterized the link from an end user customer to an enhanced services provider, including an ISP, as an interstate access service.[9]

As explained in the Commission's *Universal Service Report to Congress*, whether a transmission service constitutes a telecommunications service does not depend on the type of facilities used to provide the service.[10] Accordingly, it is irrelevant that AT&T's high-speed broadband service would be provided using, in part, the TCI cable system facilities. Moreover, as the Commission recently concluded, "more than a *de minimis*

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7 *See GTE Tel. Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148*, CC Dkt No. 98-79, Memorandum Opinion and Order, FCC 98-292 (rel. Oct. 30, 1998) ("*GTE ADSL Decision*").

8 *Id.*, paras. 1-2, 24-25.

9 *See id.*, para. 21 & n.79 (citing *MTS/WATS Market Structure Order*, 97 F.C.C.2d at 711; *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 2 FCC Rcd 4305 (1987)).

10 *See Federal-State Joint Bd. on Universal Serv.*, CC Dkt No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11530, para. 59 (rel. Apr. 10, 1998) ("A telecommunications service is a telecommunications service regardless of whether it is provided using wireline, wireless, cable, satellite, or some other infrastructure.") ("*Universal Service Report to Congress*").

amount of Internet traffic is destined for websites in other states or other countries, even though it may not be possible to ascertain the destination of any particular transmission."[11] Thus AT&T/TCI's proposed high-speed broadband access to its affiliated ISP @Home is by definition an interstate access service.[12]

Indeed, the proposed AT&T/TCI high-speed data offering over the upgraded TCI cable network appears functionally equivalent to the GTE DSL Solutions - ADSL Service.[13] Specifically, according to AT&T's own presentation made to investors, AT&T proposes that the end user cable modem will be connected to a Network Interface Unit ("NIU") on the side of a user's home or in the basement of the home. This NIU will then connect via the existing TCI cable facilities to cable modem termination equipment, which AT&T refers to as a "router/proxy server," installed at the cable headend, which in turn connects to a packet-switched network, and thus to the @Home network. Hence, the proposed AT&T/TCI offering of high-speed access to @Home clearly falls within the holding of the *GTE ADSL Decision* and thus constitutes an interstate access service.

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11 *GTE ADSL Decision*, para. 26.

12 This conclusion is consistent with the *Universal Service Report to Congress* in which the Commission concluded that the provision of leased lines to ISPs constitutes the provision of interstate telecommunications. The same conclusion must hold if AT&T is deemed to be providing the underlying high-speed transmission to itself. *See Universal Service Report to Congress*, paras. 67, 69, & n.138.

13 *Compare* "Transformation of a Traditional Cable TV System to a Full Service, Consumer Communication Network," AT&T Investor Presentation, dated June, 1998, at 3, attached hereto, *with GTE ADSL Decision*, para. 8.

AT&T's Chairman has represented that after the merger its "broad band facilities would be an open gateway to the [I]nternet . . . ."[14] Such an offer by a telecommunications carrier is certainly a garden variety common carrier offering.[15] Therefore, to the extent that AT&T/TCI provide this interstate access service to @Home, AT&T should commit to offer the same interstate access service on nondiscriminatory basis to other ISPs upon reasonable request, as a condition to approval of the merger.

In short, given its post-merger market position, AT&T must be required to provide access to its "last mile" infrastructure to the same extent as other advanced broadband competitors, including incumbent LECs.[16] Unless the Commission reverses its position that incumbent LECs must unbundle loops used to provide advanced services,[17] there is no reason to treat the post-merger AT&T/TCI "last mile" facilities any differently.

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14 Remarks of C. Michael Armstrong, Chairman & CEO, AT&T Corp., before the En Banc Hearing of the Commission on Telecommunications Mergers (Oct. 22, 1998) *in* Official Transcript of FCC Merger En Banc, Oct. 22, 1998, at 28-29.

15 *See* 47 U.S.C. § 153(10) (defining "common carrier"); 47 U.S.C. § 153(46) (defining "telecommunications service").

16 As Ameritech has consistently argued in the ongoing Section 706 proceedings, and as the Commission itself has recognized, both the Communications Act and the 1996 Act are provider and technology neutral with respect to advanced services capability. *See generally* § 706 of the 1996 Act. Therefore, Ameritech supports Commission efforts to deregulate advanced telecommunications capability on a technologically neutral basis so long as the deregulation is for *all* providers.

17 *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt No. 98-147, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188, paras. 11, 52-56 (rel. Aug. 7, 1998).

II. AT&T IS BACKTRACKING ON ITS VERBAL COMMITMENT TO PROVIDE OPEN ACCESS TO ITS BROADBAND INFRASTRUCTURE.

Recent statements by AT&T demonstrate that AT&T cannot be trusted to abide by so-called commitments to "an open broad band strategy."[18] Less than one month ago AT&T's Chairman/CEO testified before this Commission that "access to the broad band infrastructure . . . it's the right thing to do."[19] Yet less than two weeks later, AT&T's Chairman/CEO was singing a different tune regarding access to the AT&T/TCI broadband facilities. Before the Washington Metropolitan Cable Club, AT&T's Chairman/CEO stated in no uncertain terms that he opposed open access to AT&T/TCI's broadband infrastructure:

> Now some narrowband Internet service providers want the government to give them a free ride on those broadband pipes. Their idea is to allow these narrowband companies to provide broadband access service to their customers over facilities that someone else built. If those companies want to move up into broadband, terrific. But getting a free ride on someone else's investment and risk is not the way to do it. That's just not fair. It's not right. Worse, it would inhibit industry growth and competition. No company will invest billions of dollars to become a facilities-based broadband services provider if competitors who have not invested a penny of capital nor taken an ounce of risk can come along and get a free ride on the investments and risks of others.[20]

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[18] Remarks of C. Michael Armstrong, Chairman & CEO, AT&T Corp., before the En Banc Hearing of the Commission on Telecommunications Mergers (Oct. 22, 1998) *in* Official Transcript of FCC Merger En Banc, Oct. 22, 1998, at 27.

[19] *Id.*

[20] Remarks of C. Michael Armstrong, Chairman and Chief Executive Officer, AT&T, "Telecom and Cable TV: Shared Prospects for the Communications Future," delivered to Washington Metropolitan Cable Club, Washington, D.C. (Nov. 2, 1998).

These most recent statements by AT&T's Chairman become even more outrageous when contrasted to the extensive unbundling and open access that AT&T has advocated for the incumbent LECs' emerging broadband networks in the context of the Section 706 proceedings (let alone an incumbent LEC's circuit switched network in Section 251 proceedings).[21] The only way to reconcile AT&T's self-serving and seemingly inconsistent statements is to conclude that AT&T really believes that economic principles that discourage infrastructure investment should be considered when AT&T's broadband facilities might be subject to regulation, but should not be considered when AT&T is urging regulation of its competitors.

As the Commission well knows, however, the lopsided regulatory treatment advocated by AT&T distorts competitive markets and harms the public interest. As envisioned by Congress in the 1996 Act, emerging broadband services and facilities – regardless of who constructs those facilities – must be treated similarly by regulators. Accordingly, to the extent that the Commission requires interconnection and unbundled access to incumbent LEC facilities used to provide advanced broadband services, the Commission must condition its approval of the AT&T/TCI merger on compliance with requirements to provide nondiscriminatory interconnection and unbundled access to the AT&T/TCI facilities. As a matter of regulatory parity, any obligations imposed on incumbent LECs also should apply to the

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[21] *See, e.g.*, Reply Comments of AT&T Corp, CC Dkt No. 98-146, filed late on Oct. 9, 1998, at 11 (AT&T asserting that the Commission "should squarely reject the ILECs' claims that they should be permitted to provide advanced services on an unregulated basis, and thereby be freed from the Act's resale, unbundling and interconnection obligations").

post-merger AT&T/TCI and any other cable system with which this post-merger entity affiliates.[22] AT&T's recent behavior underscores that post-merger AT&T/TCI simply cannot be trusted to abide by a voluntary commitment to an open broadband strategy.

III. CONCLUSION

As the various comments and petitions to deny demonstrate, the proposed merger of AT&T and TCI raises serious competitive concerns. The comments also demonstrate that there is ample policy justification, to ensure regulatory parity and technological neutrality, to require as a condition to approval of the merger that AT&T/TCI – together with all other cable systems with which the merged entity affiliates – provide unbundled access to its "last mile" facilities.

Respectfully submitted,

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Dated: November 13, 1998

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22 *See* Rebecca Blumenstein, *AT&T's Internet-Technology Plans Call for Spending 'Billions and Billions,'* Wall St. J., Oct. 9, 1998, at B6 (reporting that AT&T is seeking more cable partners to broaden the reach of its pending merger with TCI).

ATTACHMENT

AT&T

Transformation of a Traditional Cable TV System to a Full Service, Consumer Communications Network

June 1998

"Safe Harbor" Disclosure

The following contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, possibly including but not limited to statements concerning future operating performance, AT&T's share of new and existing markets, AT&T's short- and long-term revenue and earnings growth rates, and general industry growth rates and AT&T's performance relative thereto. The forward-looking statements are based on management's beliefs as well as on a number of assumptions concerning future events. Readers are cautioned not to put undue reliance on such forward-looking statements, which are not a guarantee of performance and are subject to a number of uncertainties and other factors, many of which are outside AT&T's control, that could cause actual results to differ materially from such statements. Among other things, such uncertainties and other factors include competitive pressures, including the timing and level of RBOC entry into long-distance; and the ability to offer, and the success and market acceptance of, new products and services, including local service. For a more detailed description of the factors that could cause such a difference, please see AT&T's filings with the Securities and Exchange Commission. AT&T disclaims any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise

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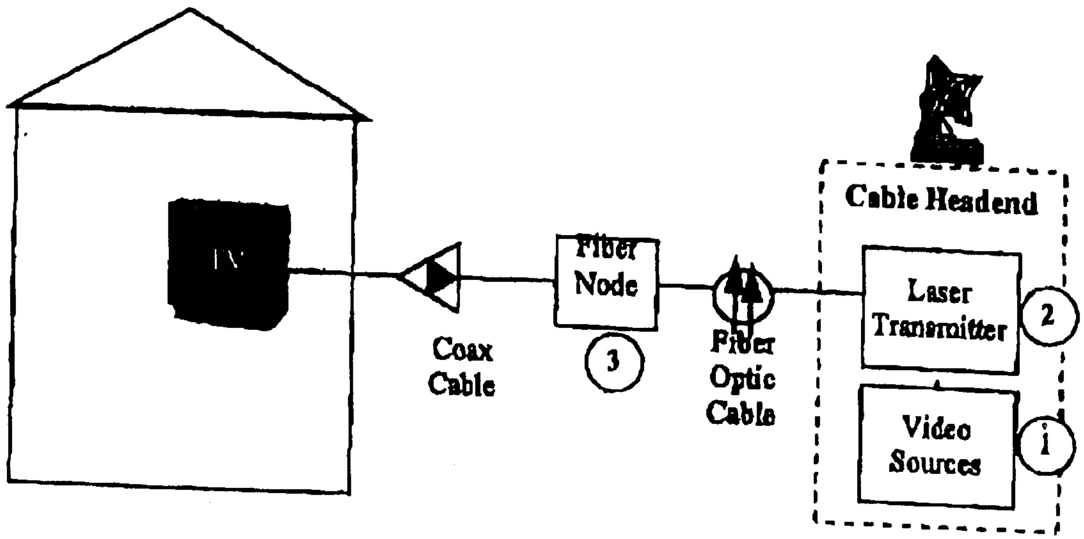
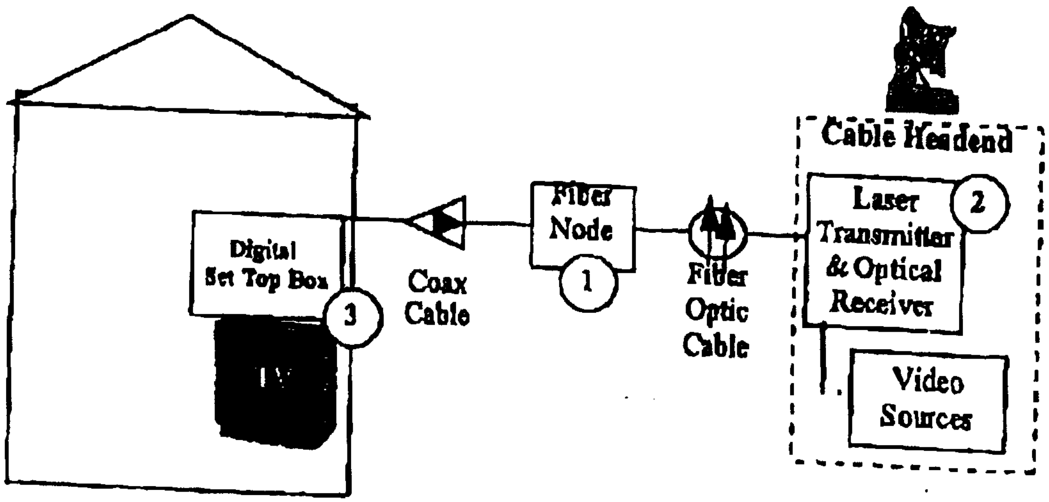
Traditional One-Way Cable TV System



1. Various Sources of Programming Including Satellite Services, Local Programming, etc. are Consolidated for Distribution
2. Lasers Transmit Signals from the Video Sources One-Way, Downstream to the Home
3. Fiber Nodes Connect the High Capacity Fiber Optic Cable from the Cable Headend to the Lower Capacity Coax Cable that Runs into the House. Each Fiber Node Serves from 2,000 to 10,000 Homes

Services Provided
- 40-80 Channels of Analog Video Entertainment

Upgrade of Cable System to Increase Capacity and Create Two-Way Capabilities



(1) The Higher Capacity Fiber Optic Cable is Brought Closer to the Customer – Each Fiber Node Now Serves an Average of 600 Homes

(2) Optical Receivers are Added to the Cable Headend to Create a Two-Way Transmission Path Between the Home and Headend

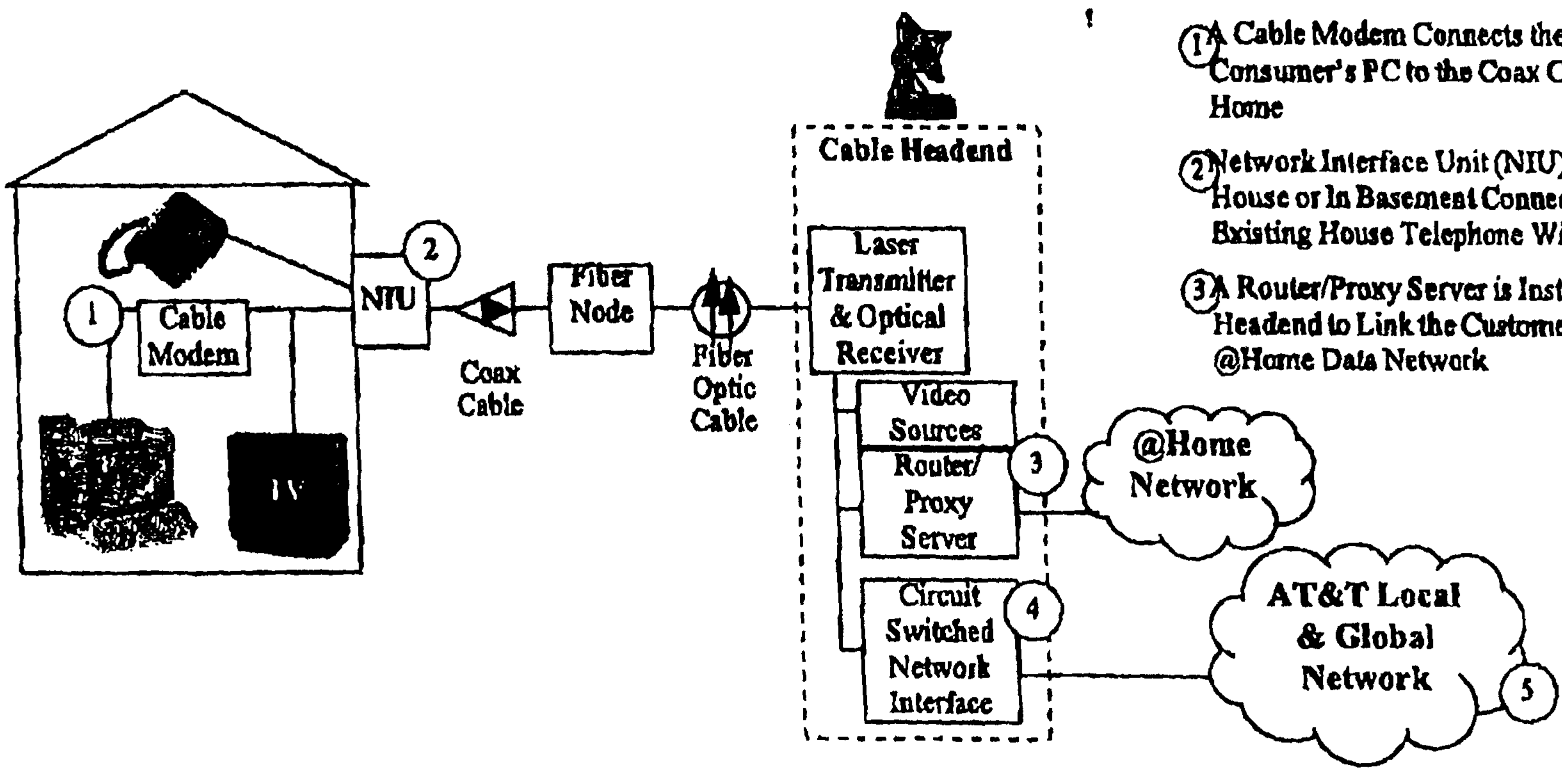
(3) First Generation Digital Set Top Box Installed to Support Expanded Entertainment Offers

Additional Customer Benefits

- Capacity for 300+ Channels of Video Entertainment, Including Interactive Video Services
- 59% of TCI Households Upgraded by Year End 1999; 90% Upgraded by Year End 2000

Traditional Telephone Service and High Speed Data Over Upgraded Cable System Using Off-the-Shelf Equipment

AT&T



(1) A Cable Modem Connects the Consumer's PC to the Coax Cable in the Home

(2) Network Interface Unit (NIU) on Side of House or In Basement Connects to Existing House Telephone Wiring

(3) A Router/Proxy Server is Installed in the Headend to Link the Customer's PC to the @Home Data Network

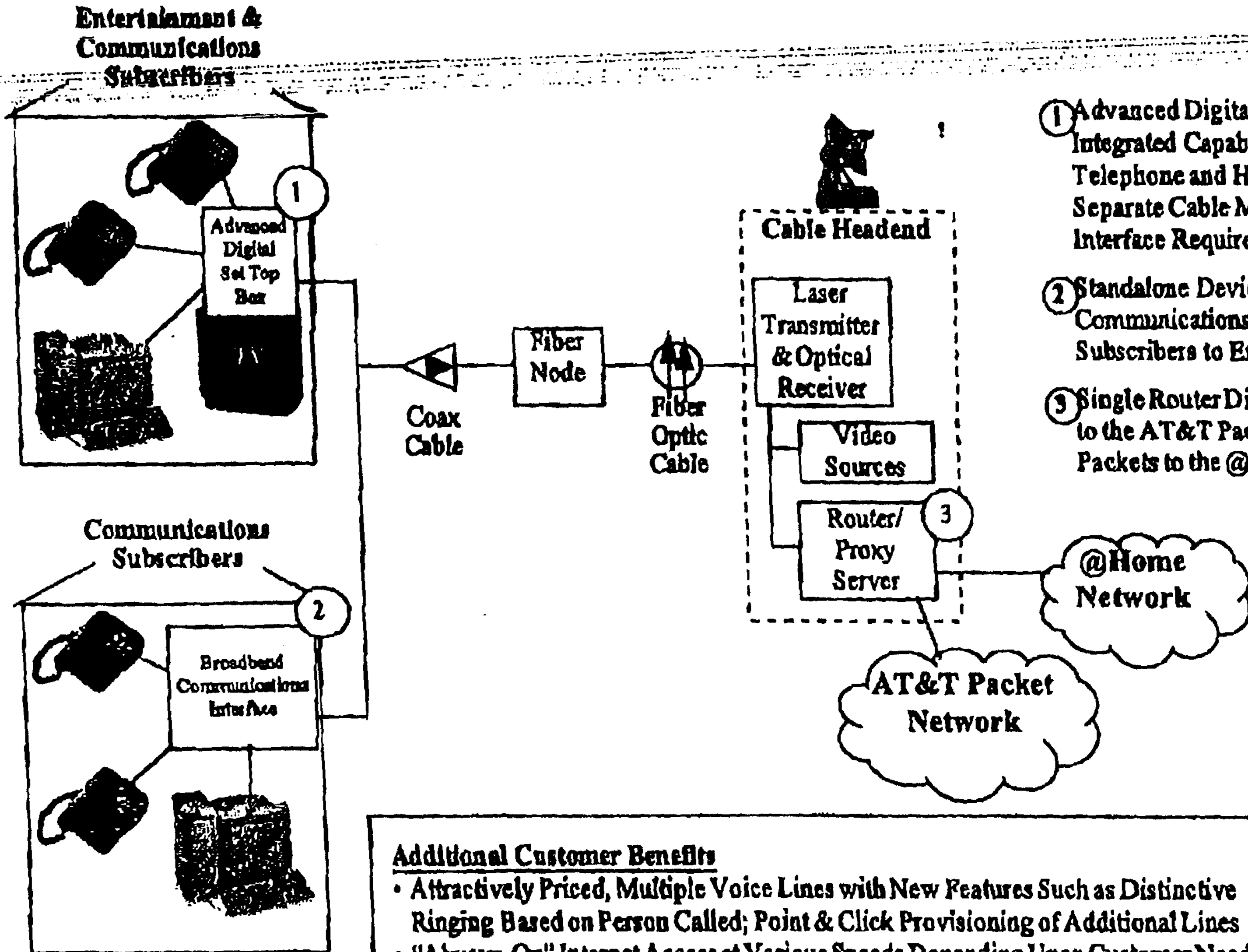
(4) Interface to Circuit Switched Telephone Network Added to Cable Headend

(5) Existing & Planned TCG Local Switches Are Used to Provide Local Service and Long Distance Access to AT&T Global Network

Additional Customer Benefits

- High Quality, Full-Featured Telephone Service
- Access to the Unique Content of the @Home Service and to the Internet at Speeds of 300 Times the Traditional Telephone Lines
- Rapid Rollout Possible in Selected TCI Markets Based on Off-the-Shelf Premises and Headend Equipment

Fully Integrated Packet Data Solution



1. Advanced Digital Set Top Box Provides Integrated Capability for Entertainment, Telephone and High Speed Data: No Separate Cable Modem or Telephone Interface Required

2. Standalone Device will Provide Communications Functionality for Non-Subscribers to Entertainment Services

3. Single Router Directs Telephony Packets to the AT&T Packet Network and Data Packets to the @Home Data Network

Additional Customer Benefits
- Attractively Priced, Multiple Voice Lines with New Features Such as Distinctive Ringing Based on Person Called; Point & Click Provisioning of Additional Lines
- "Always-On" Internet Access at Various Speeds Depending Upon Customer Needs
- Rollout Begins Before Year End 2000

Summary of Estimated Capital by Category

AT&T

		Notes
Upgrade for Capacity and Two-Way (1998 - 2000)	$1.8B	Post Close Capital = $1.3B
Maintenance and Line Extensions (1999 -2002)	$1.3B	$35/Year/Video Sub = $350M Annually ☆ 4 yrs
Digital Devices (10.5MDevices Deployed)	$1.8B	$175 Net/Video Sub
Telephony Capability (30% Penetration of 17M HP = 5M HP)	Subject to Demand	$400 - $500/IP Telephony Sub (for Non-Video Customers)
	Subject to Demand	$300 - $400/IP Telephony Sub (for Video Customers)

CERTIFICATE OF SERVICE

This is to certify that the attached document has been served by first-class mail, postage prepaid, on this 13th day of November, 1998, on the following:

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