

1 companies all of a sudden they are doing it already. I
2 don't know if anybody can address those.

3 MR. SALLET: In the Bell Atlantic/NYNEX order the
4 Commission noted that benchmarking allows it to "ensure just
5 and reasonable rates, constrain market power, establish and
6 enforce the pro-competition rules necessary to achieve
7 competition and deregulation." In a world that is still
8 dominated by monopoly providers we believe that benchmarking
9 is a very important tool for regulators in order to test the
10 otherwise untestable veracity of assertions about what is or
11 is not feasible.

12 Often times, Commissioner, in debates before state
13 commissions or in proceedings before this commission a new
14 entrant such as us will say, "We need an electronic
15 interface, we need performance in a certain time frame."
16 An incumbent will likely say, "Well, that's not possible to
17 do."

18 It is the experience of other companies that
19 helps, so long as there is enough to actually provide a
20 diverse set of experiences that helps the regulators decide
21 who is right in a debate about feasibility.

22 COMMISSIONER TRISTANI: Mr. Young.

23 MR. YOUNG: IF I could bring this down to
24 practice. If you assumed that the Bell companies were the
25 only ones who were knowledgeable about systems technology

1 maybe that argument would hold some water.

2 In the way the telecom marketplace has evolved, we
3 are not the only ones who come to the regulators with ideas.
4 If you look at how the collaborative process has worked out
5 in New York, the New York Commission has made a number of
6 decisions about detailed technical issues with MCI on one
7 side, AT&T on that side, Sprint -- lots of sophisticated
8 people.

9 That mix of sophistication is still at the table
10 for the state regulators and the federal regulators, even if
11 this merger goes through.

12 COMMISSIONER TRISTANI: In every state?

13 MR. YOUNG: Well, every state where people are
14 seeking interconnection, .

15 COMMISSIONER NESS: Mr. Young, you argued earlier
16 that look at the operating company level as a method for
17 benchmarking.

18 MR. YOUNG: Yes.

19 COMMISSIONER NESS: Would it be likely, in your
20 experience, that one Bell Atlantic operating company would
21 say that something is technically feasible, whereas another
22 Bell operating company would say that it is not feasible?

23 MR. YOUNG: Well, the truth is we have done that.

24 (Laughter.)

25 I don't mean to be flip with you. The point is --

1 COMMISSIONER NESS: I'm delighted to hear that
2 you've done that. That's fascinating.

3 MR. YOUNG: Well, we do a lot of things.

4 COMMISSIONER NESS: Was anyone reprimanded for
5 having said so?

6 MR. YOUNG: Not as much as those people at Sprint
7 are going to be reprimanded, I think.

8 (Laughter.)

9 But I think the important thing is that source of
10 technical information that is available to the Commission,
11 the real source of the diversity comes not from one Bell
12 company differing from another Bell company, it is somebody
13 else like an RCN or an MCI, somebody else coming to the
14 table saying, "We're sophisticated about these networks.
15 We're sophisticated about these systems. We think this can
16 be done." I think that is the real answer to the question.

17 CHAIRMAN KENNARD: Commissioner Ness, you had
18 something else?

19 COMMISSIONER NESS: You state in your joint
20 application that if you do not have the necessary 271
21 approval by the time the merger closes you'd request the
22 transitional relief, rather, from the Commission. What
23 transitional relief would you be requesting and what is the
24 legal basis for that?

25 MR. YOUNG: Let me be very clear about this. Our

1 principle approach here is to get 271 relief in our states
2 as quickly as possible. You will be seeing an application
3 for New York after we go through the Baldrige-level OSS
4 testing requirements that we have been through, the mother
5 of all OSS tests. You will be seeing that very promptly and
6 then you are going to be seeing us after that come in with
7 Pennsylvania, Massachusetts, applying that template in every
8 other state. We are the one Bell company that has been
9 committed to this process, as I think you know. And, we
10 remain very committed to it.

11 Now, the interim relief --

12 COMMISSIONER NESS: See, that's benchmarking
13 against other companies but go ahead.

14 (Laughter.)

15 COMMISSIONER NESS: I couldn't resist.

16 MR. YOUNG: I better shut up while I'm ahead. The
17 point is that -- let me give you a hypothetical. Let's say
18 we get to a point where we've got New York, we've got
19 Massachusetts but there are some states in New England that
20 we don't have. We may very well at that point be coming
21 back to you, under your 706 order where you indicated your
22 ability, your authority to create different data boundaries.
23 I think the sense was that that was going to be limited in
24 scope and also our sense would be that would be limited in
25 time because we are going to continue to push the 271

1 applications, that's what we have in mind. I apologize for
2 any lack of clarity.

3 COMMISSIONER NESS: Now, for example, in Virginia
4 and Pennsylvania, which are two states where GTE presently
5 operates, how would long distance or other 271 issues be
6 resolved there?

7 MR. YOUNG: Again, our principle approach,
8 Pennsylvania and Virginia are very high on our list for
9 getting 271 relief and one of the reasons is when you look
10 at GTE's internet working business, they have significant
11 numbers of customers in Pennsylvania and Virginia so you are
12 going to see those very very high on our list. I hope we
13 don't get to the situation where we are trying to close the
14 merger and not have 271 in Pennsylvania and Virginia
15 because, as I said, when you look at the list those are in
16 the top 5.

17 CHAIRMAN KENNARD: If there are no further
18 questions from the bench we will adjourn for 45 minutes
19 until 2:15 p.m. sharp. Commissioner Tristani, did you have
20 something else? Okay. I wanted to again express our
21 appreciation for this excellent panel of panelists. Thank
22 you very much.

23 (Whereupon, at 1:30 p.m., the proceeding was
24 recessed to reconvene at 2:15 p.m. this same day, Monday,
25 December 14, 1998.)

1 A F T E R N O O N S E S S I O N

2 Agenda Item: Session 2: AT&T-TCI

3 CHAIRMAN KENNARD: Good afternoon. This panel
4 will address another major merger that is pending before
5 this agency, the proposed merger of the largest long
6 distance carrier in the country, AT&T, and the nation's
7 largest cable television operator, TCI.

8 These companies have come before this agency and
9 proposed to marry. They have proposed some very attractive
10 features for the American public. They proposed a bundled
11 offering of services of local and long distance telephone
12 service, high speed internet access, multi-channel video,
13 things that every American would love to have in his or her
14 home for the right price.

15 It is a very attractive offering but it leaves a
16 number of questions unanswered, which we are here to explore
17 today. First and foremost again we must consider how will
18 average Americans benefit from this combination. Will all
19 Americans have the opportunity to get the benefits of these
20 wonderful services that are being proffered by these
21 companies or will only some Americans benefit? When AT&T
22 makes the investment to upgrade these cable networks in
23 order to roll out these services will they roll them out to
24 all Americans or just some Americans? Will the poorest and
25 underserved communities in our country get service?

1 We also have some important issues to consider
2 about the internet and whether this combination will help
3 advance competition for internet service or not.

4 We also need to know when these services will be
5 deployed. These companies have proffered this combination
6 as a way of accelerating facilities-based competition in the
7 telephone networks.

8 We all know that we desperately want all Americans
9 to have choice in local telephone service. We need to know
10 when Americans will get the benefit of local phone service
11 from this proposed combination, when will these networks be
12 up graded to provide that service?

13 Those are a lot of questions. We have a very
14 distinguished group of panelists here to address them.
15 Before we get to our visiting panelists I would like to turn
16 again to Tom Krattenmaker, our Director of Research, so he
17 can sort of set the stage. Although, before I do that, Tom,
18 I did want to ask if my colleagues on the Commission had any
19 comments. Tom.

20 MR. KRATTENMAKER: Mr. Chairman, there must be
21 some confusion, I think you just gave my talk.

22 CHAIRMAN KENNARD: I'm sorry.

23 (Laughter.)

24 MR. KRATTENMAKER: When your folks asked if they
25 could have a copy of my remarks I didn't realize it was

1 for... Well anyway.

2 (Laughter.)

3 CHAIRMAN KENNARD: I never saw them, Tom. Believe
4 me, I never saw them.

5 (Laughter.)

6 PROF. KRATTENMAKER: Since I just work here I need
7 to justify my salary. I will try to explain, although
8 really this does remarkably echo what the Chairman just
9 said, to try to set the parties and the issues as it has
10 been with respect to this merger.

11 I think maybe the key thing to note is that the
12 parties are different and the issues are different in this
13 merger than they were in the mergers that we discussed in
14 the morning. Here the parties are TCI and AT&T.

15 TCI is the largest cable operator in the country,
16 it serves about 25 to 30 percent of all cable subscribers.
17 It is a major investor in various cable networks. So, it is
18 also interested in cable programming. It is a 20 to 25
19 percent shareholder in the Sprint Cellular nationwide
20 cellular operation.

21 AT&T is the largest long distance provider in
22 America. It has some, but not many, local wired local
23 exchange telephone operations and it also operates a
24 nationwide wireless cellular network.

25 These two firms are proposing to merge. Those are

1 the parties. The standard is the same as we talked about
2 this morning, that is the standard is a public interest
3 standard that asks, "Will the merger on balance probably
4 further consumer welfare?"

5 The issues, however, are really quite different
6 from any of those that were explored this morning.

7 In support of the merger, as the Chairman has
8 reported, AT&T says that what it is going to do after the
9 merger is to upgrade TCI's cable plant and then AT&T will
10 use that cable plant for two important purposes.

11 One, is to provide local telephone service,
12 provide local telephone service over the cable, service that
13 would be in competition with whoever the local incumbent
14 telephone company is. Secondly, AT&T says will also upgrade
15 the TCI facilities in order to provide high speed internet
16 access for homes and for businesses.

17 The question with respect to these pro-merger
18 assertions is the same as we saw with respect to the ILECs,
19 that is how credible and how merger specific are these
20 claims. Will these benefits be realized and are these
21 benefits that require a merger between the firms?

22 With respect to questions that have been raised by
23 opponents of the merger I think it is best simply to say
24 that a number of legal questions have been raised. It is
25 hard to characterize them with a single slogan. Indeed, I

1 was going to say that the opponents have raised a congeries
2 of issues but then I realized I wasn't sure how to pronounce
3 congeries or what it meant so I am going to say they raise a
4 heap of issues. I'm pretty sure about that one.

5 Here are, I think, the four that recur most
6 frequently in the filings so far but I want to indicate that
7 that is not without prejudice to the ability of the people
8 here on the panel to raise other issues, perhaps issues that
9 are more significant or more to their concern.

10 One, wireless. The merged firm, if it were put
11 together today, would violate our rules regarding
12 aggregation of wireless licenses. The parties know that and
13 they will come in compliance with what we call our "spectrum
14 cap rules" but the question is how to remedy that, how to
15 avoid creating another problem, say, with respect to the
16 value of Sprint stock as a divestiture remedy is fashioned.

17 Second issue that is written about frequently in
18 the comments so far is the issue of program access. There
19 is a federal statute and our rules implementing that statute
20 that require that dominant cable firms not be allowed to
21 deny cable programming to their rivals, such as direct
22 broadcast satellites or fledgling cable upstarts.
23 Commentors have raised the question of how these rules will
24 be applied to a post-merger AT&T as it enters the cable
25 industry.

1 Third is what I call the "internet access service"
2 issue. TCI already provides an internet access service,
3 which is known as "At Home" which AT&T will acquire and
4 proposes to extend as part of this merger.

5 "At Home" is not an open ended pipeline to the
6 world, as is a telephone line, but it is rather a single
7 path pipeline to the internet, just as a cable channel is a
8 single path pipeline to ESPN or HBO or BET. "Would it be
9 lawful for AT&T to provide such a service?" is a question
10 that is being much debated in the comments.

11 Final one I would mention is the question of
12 service quality. A number of people have filed and asked
13 whether AT&T will upgrade TCI facilities and if that is an
14 issue whether it is an issue that is within our jurisdiction
15 or something that is left to the local franchising
16 authorities.

17 So, again, without meaning to be comprehensive
18 what I meant to indicate was how varied, how disparate these
19 issues are and how strictly legal they often seem to be.
20 But, we've got issues about wireless, about program access,
21 about internet access, and about service quality. Again, I
22 mean to say not that these are necessarily problems with the
23 merger. Again, AT&T and TCI intend to come into compliance
24 with our wireless rules, vigorously defend that they will
25 after this merger be compliant with the program access

1 purposes of federal rules, that their internet access
2 service is specifically permitted by the 1996 Communications
3 Act and that as a result of the purchase of TCI they will
4 substantially improve and upgrade the facilities of TCI.

5 So, these are the kinds of issues that so far have
6 been predominating in the staff's analysis of the merger to
7 date.

8 Agenda Item: AT&T-TCI Panel

9 CHAIRMAN KENNARD: Thank you very much, Tom. We
10 will now begin with our panelists. I will remind our
11 panelists to please keep your statements short and please
12 introduce yourself and also state your affiliation. Mr.
13 Gamboa.

14 Agenda Item: John C. Gamboa, Executive Director,
15 Greenlining Institute/Latino Issues Forum.

16 MR. GAMBOA: Thank you. My name is John Gamboa
17 and I'm the Director of the Greenlining Institute, a
18 coalition of 36 community organizations in California.
19 Membership includes the Chambers of Commerce of the
20 Hispanic, the Asian, and the African American Chambers of
21 Commerce. We also have the two largest business
22 associations, Latin Business Association and the Asian
23 Business Association, as well as the largest African
24 American church west of the Mississippi.

25 Before I begin I would like to state that if you

1 see me get up and run out of the room it is not a statement
2 of how I feel about how these hearings are going but simply
3 that I have an 11 year old daughter who has a piano recital
4 in San Francisco tonight.

5 (Laughter.)

6 With that, I hate to start my statement, but we
7 have a different opinion than your staff does. The
8 constituency that I represent are the most at risk
9 consumers, the limited English-speaking, the poor, the
10 recent immigrants, and the minority community.

11 This merger, we believe, should be looked at in
12 the context of all the mergers. The parties are different
13 but the issues, to us, are not so different.

14 Historically we have seen we have opposed mergers
15 because mergers have not produced for our constituency the
16 promises the competition was supposed to bring, better
17 services and new services at lower cost. On the contrary,
18 our communities have been victims, if you will, of the
19 mergers that have happened, in particular in California.

20 You had asked earlier, Mr. Kennard, this morning
21 to address what has happened in California and, Commissioner
22 Tristani, you had also asked what were the conditions that
23 should be imposed when a merger takes place. I'll try to
24 address those.

25 In California in the SBC/PacTel merger, since that

1 merger, telephone penetration of the poor has decreased
2 dramatically. We enjoyed at one time a penetration above 91
3 percent, we are now in some communities down to 85.7
4 percent. The Mung community, a 50,000 member community in
5 Fresno, less than half have telephone service, basic
6 telephone service.

7 In addition, our communities have been victims of
8 marketing fraud, in a large large way. Our communities,
9 even the few that stay on the system, have been targeted by
10 most of the Teleco companies on it. What seems like what is
11 happening is as mergers take place and the companies come
12 the regulatory oversight has lessened for our communities.
13 We are the victims of slamming and cramming.

14 In fact, there was one company here today, the
15 largest company in California, who is -- if you can believe
16 this -- on calls, inward calls, from poor people asking for
17 payment arrangements to keep on the service are met with,
18 "We can provide you those payment arrangements, however, I
19 also want to talk to you about Caller ID." Do you know the
20 impact that makes on that poor person? That says, "I feel I
21 have to buy Caller ID to make payment arrangements.

22 They have also targeted the limited English-
23 speaking communities, who we feel are marketing fraud. They
24 have what they call "basic services" that are not basic at
25 all. Every custom calling service available is on that.

1 That is what is marketed and promoted to below income and in
2 particular limited English-speaking communities in
3 California.

4 The other company in California is recently
5 settling a marketing abuse case to the Hispanic community
6 and to their credit they have set goals of increasing
7 penetration and in the last two years working with community
8 organizations they have increased penetration in their
9 particular area -- I'm talking about GTE -- to 95.7.

10 This is not to say that we believe all mergers are
11 bad. Mergers can be good if the right conditions are done.
12 There are two cases when mergers can be good. One is when a
13 corporation that has a positive record and a social
14 commitment to communities merges and is a dominant party
15 with another corporation, such as CTI, who has a poor record
16 and a poor social contract with the community, when that
17 merger comes it could have a positive impact to our
18 community but it can only have a positive impact on our
19 community if there are conditions. I think Commissioner
20 Tristani had earlier asked what kind of conditions should we
21 impose on mergers.

22 These are the conditions that we feel make a
23 merger positive to our community: first of all, a
24 commitment to universal service, that everybody in every
25 community will have equal access to basic telephone service;

1 second, a strong commitment to narrowing the digital divide
2 between the have and have nots. I have seen studies that
3 you have done, our community is falling further and further
4 behind.

5 A commitment to minority businesses, that is the
6 economic engine for our communities. Most critical for
7 absentee type mergers like the GTE/Bell Atlantic merger a
8 commitment of investment in our communities, a marketing
9 outreach to minority communities, the development of new
10 products and services that meet low income communities'
11 needs that also provide a profit for the companies, a
12 philanthropic contribution that at least matches the pre-tax
13 earnings of the five top executive's compensation packages -
14 - I don't think that is too much to ask, and a diversity
15 goal at all levels of management.

16 The three mergers in question today offer no
17 public benefits, instead they accelerate the concentration
18 that the Department of Justice sought to break at AT&T less
19 than two decades ago. Only a very strong public interest
20 commitment should tilt the balance in favor of a merger,
21 even then these commitments must be clear, dramatic and
22 enforceable. We feel the only way that can be done is if
23 they are filed with you. Thank you.

24 CHAIRMAN KENNARD: Thank you, Mr. Gamboa. Ms.
25 Inman.

1 Agenda Item: Joni Inman, Director, Citizen
2 Relations for the City of Lakewood, Colorado and President,
3 Greater Metro Telecommunications Consortium (Denver).

4 MS. INMAN: Thank you. I'm Joni Inman. I'm the
5 Director of Citizen Relations for the City of Lakewood,
6 Colorado and I am the President of the Greater Metro
7 Telecommunications Consortium, representing 25 franchising
8 authorities in the Denver Metro Area, 2.2 million people in
9 the Denver Metro Area.

10 I'd like to thank you for the opportunity to be
11 here today. With roughly 5,000 local franchising
12 authorities representing 12.5 million cable subscribers
13 affected by this merger it is critical that the local voice
14 be heard.

15 I'd like to address three issues that directly
16 impact citizens. The first being the possibility of cross-
17 subsidization of products offered by AT&T. The second being
18 the access to TCI's cable network by other internet
19 providers. Third, the preservation of local authority for
20 the protection of public property and quick responsiveness
21 and resolution to citizen problems.

22 The cross-subsidization issues are perhaps the
23 easiest to understand, yet the most difficult to address.
24 It is clear that AT&T is spending a great deal of money to
25 acquire the TCI system but how will AT&T recoup this

1 investment? It is also understood that AT&T wants to get
2 into the local phone market. How can this occur in a
3 competitively priced manner? One possibility could be
4 through increased cable rates.

5 As you are aware, regulation of all but basic
6 cable rates goes away in April 1999. This opens the door
7 for AT&T to increase individual cable rates in order to use
8 the revenue to subsidize below market rates on telephone
9 services, thus allowing AT&T to break into the local markets
10 using the extra revenue from the cable side.

11 TCI representatives have said that they won't do
12 this. They have questioned why they would do this. They
13 have told me that it would reduce their cable market share
14 but when we have a parent company offering many different
15 services it is the overall market share that really matters.
16 In addition to that I would like to point out that in my
17 community over the past weekend I just received information
18 that a provision that we were including in our transfer
19 resolution that would ensure no cross-subsidization was
20 rejected by TCI and AT&T. I have the document here. This
21 does give me great concern, by the way.

22 Let me talk briefly about open network provisions.
23 Cable broad band systems are an important part of the race
24 for speed and internet service providers. Many of them have
25 asked the local franchising authorities condition approval

1 of transfers on a requirement that AT&T offer access to
2 cable modem platforms.

3 There is not much debate about whether access to
4 the system by other providers is a good idea, it probably is
5 a good idea. There is not much debate about whether it is
6 in the best interest of competition, I believe that it is.
7 But different jurisdictions have varying views on whether
8 this is something that we should compel as part of our
9 transfer.

10 In markets where there is only one cable provider,
11 in fact, it could be anti-competitive not to require it.
12 Having no open network policy could be bad for customers,
13 causing unreasonably high rates for customers who want
14 higher speed broad band access.

15 On the other hand, the cable plant was costly to
16 build and acquiring it is costly. Perhaps some reasonable
17 price for use of that system is appropriate. This issue
18 deserves more debate. The local franchising authorities'
19 concerns about effective competition, protection of public's
20 interest in this area and the impact that it could have on
21 rates needs to be addressed and it needs to be addressed
22 after much more dialogue with a larger number of
23 communities, with the FCC and with the providers themselves.

24 Finally, let me address local authority. Our
25 primary concerns, as are yours I'm sure, are two-fold:

1 access to services by all of our citizens and continued
2 enforcement authority over customer service standards.

3 Cable customers and other citizens are comfortable
4 today calling the local franchising authority when there is
5 a problem and this can range from the very serious severing
6 of gas lines, which occurred in my community during a
7 rebuild, to just simply trampling over tulip gardens.

8 In order to address specific issues in individual
9 communities some of our communities have in fact enacted
10 stricter customer service standards than the FCC has issued.

11 The merger of a cable company and a
12 telecommunications company with merged services presents
13 some new challenges in this area. AT&T will, of course,
14 have ultimate legal authority to determine the management
15 structure and operational structure of the parent company
16 and its subsidiaries. We urge that local authority to
17 resolve issues at the local level not be lost in this
18 restructuring and that at a minimum existing levels of
19 technical and customer service employees be maintained.

20 We urge that any discussion of the definition of
21 cable versus telecommunications services be held in a way
22 that maximizes local authority to directly protect citizen
23 interests.

24 Finally, we ask the Commissioners and industry
25 leaders here today to keep in mind that what we are really

1 looking at is a for-profit company that wants to use public
2 property, paid for with your tax dollars and mine, and as
3 such we urge that all services be made available at a
4 reasonable cost to all of our citizens. We would oppose any
5 attempt to redline our communities. We have a
6 responsibility to the citizens that paid for this public
7 property to ensure that we are not allowing services to be
8 offered in only profitable areas, thereby creating a system
9 of telecommunications have and have nots that my colleague
10 addressed earlier.

11 With the proper public protections, the local
12 franchising authorities look forward to the opportunities
13 that this merger can present to us.

14 CHAIRMAN KENNARD: Thank you very much, Ms. Inman.
15 Mr. Brewer.

16 Agenda Item: Charles M. Brewer, Chairman and CEO,
17 Mindspring Enterprises.

18 MR. BREWER: Hi everyone. I am Charles Brewer. I
19 am the Founder, Chairman and CEO of Mindspring Enterprises.
20 Mindspring is, I think, the fifth largest internet service
21 provider, as measured by number of customers who operate
22 nationwide. Headquarters is in Atlanta. I want to thank
23 you very much for letting me participate today.

24 In late 1993 when I was trying to get started with
25 Mindspring there were essentially zero internet access

1 customers in the grand scheme of things. Now, 5 years
2 later, something over 25 million households use the internet
3 at home and it really is rapidly reshaping the way many of
4 us live our lives.

5 This phenomenon never could have happened if it
6 were not for one crucial fact and that is today's internet
7 access is a wonderfully open system. The last mile
8 connection in the narrow band world of today is a phone call
9 and because of regulatory supervision the local telephone
10 company can do nothing to block that call and, therefore, as
11 a result consumers in most American cities have a choice of
12 literally dozens, maybe even hundreds, of ISPs.

13 We ISPs do compete very fiercely on price,
14 customer service, ease of use, network performance,
15 reliability, and many other factors. Together we have
16 really driven the incredible growth of the net.

17 I'd like to ask a hypothetical question which is,
18 "What if local telephone companies had not allowed consumers
19 to connect to the ISP of their choice?" I think it is
20 pretty clear that the internet revolution that we are seeing
21 today would not have happened at all. Even now, which is
22 years after the critical importance of the internet has been
23 clear to all these last mile owner companies, the last mile
24 owners are essentially non-players in the internet access
25 field and of 25 million plus customers, residential

1 customers in the United States for internet access last mile
2 owner companies, both cable companies and local telephone
3 companies, have just over maybe 1 million of that 25 million
4 plus.

5 So, simply put, if we were waiting for the last
6 mile owners to bring us the internet revolution we would
7 still be waiting. It would not have happened. So, I would
8 like to repeat what I see is the crucial lesson from this,
9 that is if last mile owners did not allow consumers access
10 to the ISP of their choice the internet phenomenon that we
11 are seeing today would not be happening.

12 Now I'd like to shift attention to the future. I
13 think some things about the future are pretty clear. First,
14 it is clear to me that the core telecom offering of the
15 future will be connectivity to the broad band always on
16 packet switched internet. This is not a radical prediction.
17 I think it is shared by most of my telecom industry
18 colleagues.

19 Second, for the large majority of residential and
20 small business customers the only economically viable way to
21 deliver this connectivity for many years to come is going to
22 be through a wire and there are really only two realistic
23 choices, there is the telephone company wire and the cable
24 company wire.

25 Third, it does not make economic sense to

1 repetitively rip up neighborhoods to install a new wire for
2 each new competitor.

3 Fourth, I think is proven by the experience in the
4 ISP world, the benefits of having a competitive market for
5 the core telecom service of the future are just huge.

6 So, if you accept those four points, and I really
7 think that one must, there is only one conclusion and that
8 is if we are going to have a competitive residential market
9 for the core telecom service of the future then we must have
10 an effective way for competitive service providers to share
11 the broad band wires that lead to homes. For many homes the
12 cable company wire is likely to be the only one capable of
13 delivering this high band width two-way service for many
14 years to come.

15 Unfortunately, it is the expressed intention of
16 TCI and of most of the cable industry, to not offer access
17 to their last mile networks on any terms at all to
18 competitive service providers. So, I urge you to condition
19 approval of this merger on a commitment from AT&T and TCI to
20 make the underlying data transport service of their last
21 mile networks available to competitive service providers on
22 a non-discriminatory basis.

23 I would further urge you to promptly require other
24 cable operators to meet these same open system requirements.
25 There really are not significant technical issues that would

1 make this requirement overly difficult to implement. Open
2 networks would encourage investment, not retard it. There
3 are thousands of ISPs, both large and small, that stand
4 waiting to proactively drive our millions of subscribers to
5 broad band last mile connections. We can drive traffic,
6 revenue, and profit for the last mile owners.

7 The FCC does not need to regulate the internet and
8 please don't confuse what I'm saying to mean that. But the
9 country emphatically does need competitive open access to
10 last mile broad band facilities or we will not have the
11 vibrant thriving broad band internet that we all want.

12 Competitive access to the broad band last mile
13 connectivity is the single most important issue of the
14 telecom future for residential customers. This is the core
15 service of the future.

16 This merger provides a crucial opportunity for the
17 Commission to speak to this issue and I urge you to grab it.
18 Thank you very much for the opportunity to participate
19 today.

20 CHAIRMAN KENNARD: Thank you, Mr. Brewer. Mr.
21 Roellig.

22 Agenda Item: Mark Roellig, General Counsel and
23 Vice President for Law, Policy, and Human Resources,
24 U S West, Inc.

25 MR. ROELLIG: Good afternoon, Mr. Chairman and

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1 Commissioners. I appreciate the opportunity to present the
2 points of view of U S West at this en banc.

3 As you know, U S West has a significant interest
4 in this proceeding. U S West filed comments on the AT&T/TCI
5 merger, focusing most of its discussion on the public
6 interest benefits of requiring AT&T/TCI to provide capacity
7 on its local broad band transmission facilities to other
8 carriers at cost based rates. In addition, we have stated
9 that the merged entity should be required with Sections 251
10 A, B, and C of the Telecommunications Act for its broad band
11 services to the extent those provisions apply to the
12 incumbent local exchange carriers.

13 I think it is important that we put the proposed
14 merger into context. The combined entity will be the
15 largest domestic long distance wireless, cable and
16 competitive access provider in the world and one of the
17 largest internet service providers. The Commission has a
18 statutory obligation to examine the public interest and to
19 impose conditions on a merger, as is done in the past, that
20 are necessary to prevent anti-competitive harm and promote
21 competition.

22 The communications industry is in a state of
23 constant change. It is, therefore, critical that the
24 Commission focus on the whole pie and not just a small slice
25 of residential voice telephony. As this proposed merger and

1 the 706 proceeding made clear, broad band and data are the
2 technology and services of the future.

3 AT&T-TCI has acknowledged there are two primary
4 ways for a customer to get broad band access to the
5 internet, cable and DSL. AT&T-TCI wants regulators to treat
6 these modes of access differently. Why? Because it is a
7 lot easier to win in the marketplace if your competitors are
8 hamstrung with a lot of regulations and separate
9 subsidiaries while you are free to provide the same type of
10 services -- in this case high speed access - free of
11 regulation, integrated, proprietary, and unencumbered.

12 As I see it, the delivery of broad band services
13 to the customer can be divided into four simple parts,
14 access to the customer, co-location, choice of internet
15 services, and backbone network.

16 U S West recognizes that access to loops and co-
17 location are essential to getting new services to customers.
18 AT&T, however, wants to keep access to its high speed data
19 network closed while at the same time demanding that
20 U S West DSL network be unbundled.

21 AT&T-TCI argues that it will not be a monopoly
22 provider of broad band services. I disagree. Today there
23 are alternatives to wire line service and the Communications
24 Act specifically opens the local exchange to competition.
25 There are yet no realistic choices to cable.

1 There have been reports in the press that the
2 Commission will not consider placing conditions on the AT&T-
3 TCI merger. While I understand the Commission's desire to
4 examine these issues in a broader context the fact is that
5 the Commission now must statutorily address them, to not do
6 so will, from the very beginning, result in a lopsided
7 marketplace for high speed broad band services.

8 Once the merger is approved AT&T will invest in a
9 platform that is proprietary and argue in subsequent rule
10 making proceedings that it's too late, costly, or difficult
11 to mandate open access to the local broad band network.
12 And, in addition, and I would probably say "more
13 importantly," AT&T has made it clear that it believes this
14 commission has no legal authority to impose access
15 conditions over its broad band network, therefore, if the
16 Commission does want to consider delaying a decision on this
17 issue for a later rule making it should make absolutely sure
18 that AT&T agrees and will be bound by any decision in that
19 rule making.

20 The Commission should realize that government
21 imposed rules and regulations necessarily affect the
22 business incentives of companies and, hence, the
23 marketplace. Parity of regulation -- let me be really
24 clear, we're not talking about traditional voice telephony,
25 we are talking about the new competitive broad band services

1 that AT&T-TCI, others, including U S West are currently
2 providing -- it is absolutely essential to ensure rapid
3 broad deployment of those services and we need to have
4 parity of regulation in order to do so. Thank you very
5 much.

6 CHAIRMAN KENNARD: Thank you. Mr. Kimmelman.
7 Agenda Item: Gene Kimmelman, Codirector,
8 Consumers Union, Washington Office.

9 MR. KIMMELMAN: Thank you, Mr. Chairman,
10 Commissioners. On behalf of Consumers Union, publisher of
11 Consumer Reports Magazine, I truly appreciate the
12 opportunity to appear today.

13 I have been listening to my colleagues. I would
14 like to associate myself with the thrust of much of what
15 they are saying. It is one happy opportunity to say that I
16 probably actually would encourage you to do a little less
17 regulating than U S West but I think the general thrust of
18 all the comments are right on point. I don't want to repeat
19 them and I don't want to repeat what we have filed with you.

20 I want to take up the average consumer
21 perspective. I think, Mr. Chairman, you hit the nail right
22 on the head of what is a critical basis for looking at these
23 issues. Commissioner Furchtgott-Roth, I think you are
24 absolutely right, it is incumbent on the Commission to
25 develop a clear standard for license transfers and I think,

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1 looking at it from a consumer perspective, you can come up
2 with a standard for license transfers in highly concentrated
3 telecommunications markets that clearly distinguishes
4 certain transactions with licenses from others.

5 Here is how I would suggest you look at it. Think
6 about what happens if the Commission does nothing to these
7 mergers, nothing. What does it mean for the consumer? We
8 go from a world at the Telecom Act of eight almost equally
9 sized local exchange telephone companies, supposedly
10 entering new markets various to entry broken down. We end
11 up with six companies shrunk to two enormous monopolies, two
12 companies each with about a third of all access lines still
13 almost exclusively monopoly going into the home. This could
14 be the final nail in the coffin to local telephone
15 competition in a broad based consumer market, for the
16 average consumer.

17 AT&T-TCI comes along and promises a solution.
18 They promise to enter new markets but everyone of the Bells
19 promised to enter new markets. The promises aren't enough.
20 We urge you, from a consumer perspective, to look at the
21 market forces and the technology and the conditions to see
22 what will happen.

23 Here is what we fear. Based on the behavior of
24 these companies in the past and the model of the satellite
25 market where open entry satellite into cable has brought

1 entry at the high end of the market has not brought
2 competitive pricing.

3 The market forces indicate that AT&T and its own
4 behavior, state of Florida, has said local rates maybe
5 should double in order for them to come in and compete for
6 the residential consumer market. A \$10 increase is what
7 they suggested as a price point to enter to compete. That
8 is the form of local telephone competition for the
9 residential market.

10 AT&T will be inheriting cable systems, systems
11 with more than 20 percent rate increases since passage of
12 the Telecommunications Act, 3 to 4 times the rate of
13 inflation. With the opportunity to leverage substantial
14 ownership in some of the most popular programming, a network
15 where high speed data internet access can be controlled
16 without public responsibility to open access rules, as is
17 the case on telephone networks. It would give AT&T the
18 perfect opportunity to expand market, expand market at the
19 high end, expand market not for local telephone service but
20 for other very highly profitable telecommunications services
21 for consumers who want them, who at this point in time tend
22 to be 10, 20, 30 percent of the market, the most wealthy,
23 the high end of the market.

24 Importantly, in its own core market, AT&T has
25 recently begun pricing policies where almost half of their

1 consumers pay up to \$5 a month before they ever place a long
2 distance interexchange call. Small volume users getting hit
3 with substantial rate increases.

4 So, if you fail to assert a strong public interest
5 vision, a strong standard, identifiable for highly
6 concentrated telecommunications markets consistent with the
7 goals of the 1996 Telecommunications Act consumers are
8 likely to face entrenched monopolists, possibly expanding
9 monopolists into new markets like high speed internet
10 access, and higher prices without more choice except at the
11 high end of the market, not the market the average consumer
12 faces.

13 So, consumers want a very strong clear rejection
14 of the two Bell company mergers that expand local monopolies
15 and at least a significant conditioning of the AT&T-TCI deal
16 or we fear the Telecommunications Act will remain an abysmal
17 failure at meeting its goal of broad based competition for
18 the average consumer. Thank you.

19 CHAIRMAN KENNARD: Thank you, Mr. Kimmelman. Mr.
20 Cicconi.

21 Agenda Item: James W. Cicconi, Senior Vice
22 President for Government Affairs and Federal Policy, AT&T.

23 MR. CICCONI: Thank you, Commissioners. Jim
24 Cicconi, Senior Vice President with AT&T. I want to thank
25 the Commission for the opportunity to talk to you about our

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1 proposed merger with TCI today.

2 Simply put, this merger represents AT&T's
3 tremendous commitment to residential customers, and I would
4 emphasize the "residential", in its leadership in bringing
5 local phone competition and its benefits to them. This
6 merger is a big part of the future of AT&T. We believe it
7 will be a driving force behind some very important positive
8 changes in the telecommunications industry.

9 I would like to make two points about the merger
10 today. The first is that it will move us all much closer to
11 achieving one of the primary goals of the Telecommunications
12 Act, that is facilities-based local telephone competition
13 for residential customers. I know I emphasized that word
14 "residential". The Commission has heard a number of
15 statements by the Bell operating companies and others,
16 allegations that AT&T and other potential competitors are
17 only interested in business customers and skimming the
18 cream, things of that nature. This is a \$48 billion
19 statement of proof by AT&T that this allegation is false.

20 This merger represents the most widespread
21 significant effort being undertaken to get local competition
22 and broad band to residential customers. It is already
23 delivering significant benefits in the form of increased
24 investment and interest in the cable plant and other efforts
25 to deploy broad band. In fact, I would suggest that a good

1 part of the debate that we are having today about how
2 quickly to deploy broad band has been spurred in part by
3 this investment by AT&T.

4 As the upgrades to TCI's systems are made
5 consumers in the areas served by TCI will begin to see the
6 benefits of the merger more directly, first in the form of
7 new and faster internet services and in the form of a new
8 facilities-based alternative for local telephone service.

9 With this competition will come more, better, and
10 cheaper services for customers, consumers, just as the
11 authors of the Telecom Act had hoped.

12 The other point I want to make today is that after
13 this merger is approved consumers will have more choices
14 than they have today. They will have the choice of
15 obtaining local exchange services from a carrier that does
16 not use the facilities of the incumbent LEC. They will also
17 have access to broad band services and all of its advantages
18 in their home, not just at work.

19 The will be able to access the internet more
20 quickly, enjoy the benefits of At Home's always on, always
21 accessible services, and discover new content being
22 developed for broad band and much more.

23 AT&T's local telephone services, as well as the
24 other services that AT&T will offer over TCI's facilities
25 will have the quality and reliability that people have come

1 to expect from the name "AT&T".

2 Of course consumers will still have all of the
3 choices they have today when they subscribe to the local
4 services of an incumbent LEC and receive their cable
5 services from TCI. Any consumer who selects AT&T-TCI's
6 local telephone services will continue to be free to pre-
7 subscribe to MCI, Sprint, or any other long distance company
8 of his or her choice.

9 Any consumer will be free to use the AT&T-TCI
10 exchange to dial up any internet service provider or any
11 online service provider. Similarly, the merger will have no
12 effect on the provision of any service to any cable
13 subscriber. These consumers will continue to be able to
14 obtain content from providers of online services and video
15 programming in the same way as they do today. They will be
16 free to obtain these new local services, either by
17 themselves or in bundles and include other services as well.

18 In closing, I'd like to say that the AT&T-TCI
19 merger passes, we hope, with flying colors any test you
20 would apply. The merger will enhance competition and raises
21 no, we feel, contravailing concerns. More importantly,
22 consumers will be better off as a result of the merger.
23 Thank you and I look forward to hearing the statements of
24 the other panelists and answering your questions.

25 Agenda Item: Questions and Answers

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1 CHAIRMAN KENNARD: Thank you, Mr. Cicconi. Mr.
2 Cicconi, the other panelists have really piled the plate
3 high of issues that unfortunately you are the only person
4 here to respond to but I know you are able enough to handle
5 the situation.

6 Let me go back to some public statements that I
7 have been reading recently from the CEO of TCI, Mr. Hindery,
8 and also from you, Mr. Cicconi, where you have said that if
9 the FCC were to impose a condition on the AT&T-TCI merger
10 which would require you to provide non-discriminatory access
11 to ISPs you would just walk away from this transaction, you
12 would just throw in the towel.

13 On the other hand, I read statements by you and
14 others at your company that the Commission shouldn't be
15 concerned about open access because you are going to have
16 capacity for everyone and everybody is going to be happy,
17 basically, and you are going to negotiate deals with all the
18 ISPs. We should, basically, don't worry, be happy.

19 There is a contradiction there and I am hoping
20 that you will be able to resolve this issue for us a little
21 bit today.

22 MR. CICCONI: Well, I can certainly try, Mr.
23 Chairman. First of all, I think what we said or tried to
24 say is that this would seriously jeopardize the merger if
25 the Commission were to impose the type of unbundling and

1 other conditions that have been suggested in some of the
2 comments. We wanted to stress first of all that this is an
3 industry issue, not just an issue connected with this merger
4 and that it wouldn't be appropriate to consider things that
5 disadvantage one company in a competitive industry.

6 Secondly, in responding to some of the suggestions
7 about conditions, what we would emphasize is that these
8 things are really based on a series of hypotheticals. These
9 areas are very difficult to judge. First of all, they're
10 hypotheticals with regard to consumer demand for high speed
11 internet services.

12 I know what Mr. Brewer has said but I dare say if
13 five years ago when he started Mindspring he probably
14 couldn't have projected himself the growth of the internet
15 and I don't see how any of us can say with any degree of
16 reliability what consumer demand will be two to five years
17 from now. In fact, Steve Case of America On Line said
18 earlier this year that he fully expects that five years from
19 now that 75 percent of people accessing the internet will
20 still be doing through narrow band dial up method. So, even
21 within the industry there is a good bit of disagreement.

22 I would stress that in this area it is still in
23 its nascent stages. There are subscribers only in the
24 hundreds of thousands to the existing high speed broad band
25 offerings out there versus the tens of millions that are

1 using other forms of internet access.

2 There are hypotheticals in terms of the problems
3 and projections of bottlenecks and things of this nature.
4 These are all built upon each other, the projections based
5 on consumer demand and projections as to how we would
6 respond to that and if that creates a projected bottleneck
7 and we are supposed to, according to the conditions,
8 consider essentially rebuilding or redesigning a good part
9 of the cable system that is set up for this access in order
10 to accommodate a capacity that even the ISP industry doesn't
11 have today. By the time we finish that, who knows what
12 capacity they would have in fact needed at the end of that.

13 What I am trying to say, Mr. Chairman is that
14 there is a great deal of uncertainty in this area. We
15 haven't even made the investment yet. The capacity to
16 deliver these services, broadly speaking, is not yet there
17 and already we are being asked to consider additional
18 investments which could seriously jeopardize the calculus
19 that went into this particular one.

20 I dare say that if others come along and consider
21 investments in cable for the delivery of telephone service
22 which is -- remember what this is really all about -- they
23 would have to think twice if conditions had been imposed on
24 some merger to that point that would make that investment
25 less than economical.

1 CHAIRMAN KENNARD: I understand your point about
2 uncertainty but is it your testimony that there is no set of
3 conditions here, even incremental conditions, taking into
4 account some of the uncertainties of demand in the
5 marketplace, that would not cause you to abandon this
6 transaction? Is that what you are saying?

7 MR. CICCONI: I wouldn't use the word "abandon",
8 Mr. Chairman, but I'd like to stick with "seriously
9 jeopardize", which is -- I know it sounds close but I think
10 there is a judgement that goes in there in terms of any
11 conditions that the Commission would put on but I think
12 there is a risk there. There is a calculus in any
13 investment as to the dollars and the rate of return and in
14 many investments it is -- especially ones of this size and
15 magnitude -- that is a very close calculus and if conditions
16 are imposed that affect the way the revenue flows were
17 projected that could have a concern.

18 In terms of the Commission's authority in this
19 area I would argue that the Commission certainly is
20 justified in watching this very closely and exercising its
21 oversight, exercising its responsibility to watch out for
22 consumers and make certain the problems of this nature don't
23 arise, make certain that bottlenecks don't arise, and it
24 would certainly be able to act or attempt to act or seek
25 authority from the Congress to act if problems indeed arose

1 but to act based on projections on the part of some parties
2 that problems should arise and require additional
3 investments and expenditure of funds before any problems
4 have in fact arise strikes us as unjustified, Mr. Chairman.

5 CHAIRMAN KENNARD: Mr. Cicconi, I want to get a
6 response from you to Mr. Kimmelman's point about his concern
7 that you are really only interested in the high end
8 consumers, the 20 or 30 percent of the market that is
9 willing to pay for high speed internet access.

10 It is my view that the Communications Act -- and I
11 think it is one of our core responsibilities is that we
12 ensure that all Americans have access to technology and to
13 advanced technology in particular. Can you address Mr.
14 Kimmelman's concern about the way you are going to deploy
15 and market these new services?

16 MR. CICCONI: Sure. I have a great deal of
17 respect for Mr. Kimmelman but on this issue I think he is
18 just dead wrong. The entire transaction is geared at
19 volume of residential customers. When we go into a city and
20 build out this system the build out will be for the entire
21 city. It would be extremely foolish of us to leave out any
22 customer, just from an economic standpoint.

23 Keep in mind that this platform that we are
24 constructing there and we are investing and expanding is
25 designed, from our standpoint, to offer an array of new

1 services, particularly telephone service. We want to
2 attract as many people as possible to that platform. So,
3 there is really no incentive for us, in fact quite the
4 contrary, for us to simply go after one end of the market.

5 I think that when one looks at the broad reaches
6 of territory that TCI is currently servicing we are going to
7 building out in all of those areas over the coming years and
8 providing these services.

9 CHAIRMAN KENNARD: Mr. Kimmelman, would you like
10 to respond?

11 Mr. KIMMELMAN: I would just like to respond. I
12 am not raising a question about the motives of AT&T, and
13 certainly not Mr. Cicconi. I will accept at face value that
14 they would like to serve everyone. I am pleased that they
15 would.

16 I want you to look at the hard economics of these
17 markets and how competition unfolds and the nature of the
18 services. These network upgrades are enormously expensive.
19 AT&T itself has projected as much as \$750 per household.
20 The market has frowned on this. The market, not me, the
21 market has said, "We're not sure this is feasible, doable."
22 Possibly with the Bell mergers I don't know that it makes
23 sense but there certainly is a lot of money to be made at
24 the high end of the market. It's not just a build out, it's
25 a set top box. It is a variety of costs for consumers that,

1 from what I see today in usage patterns and demand, more
2 than half of the public isn't there, either not wanting or
3 can't afford. It is not a question of motive, it is a
4 question of what's the likely result of this transaction.

5 It is not in isolation whether they are offering
6 some potential benefits. If 10 or 15 years from now some of
7 this occurs it would be wonderful. In the foreseeable
8 future, though, there are substantial dangers to the
9 development of competition in core markets that are
10 extremely monopolistic, in emerging markets where -- I'm
11 totally confused by Mr. Cicconi's answer. If they are going
12 to be fair to everyone and open up to everyone and
13 conditions will drive the economics of the deal south and it
14 is gone then how can they voluntarily be fair and open to
15 everybody? It just doesn't make sense. There is something
16 missing here.

17 So, I just urge the Commission to set a standard
18 that truly is based, Mr. Chairman as you said, on the
19 average consumer and get a straight response about how these
20 services in the foreseeable future are there at a reasonable
21 price.

22 CHAIRMAN KENNARD: Anyone else on the panel like
23 to address that? Commissioner Ness.

24 COMMISSIONER NESS: Than you, Mr. Chairman. Just
25 following up on this line of questioning. I believe that

1 AT&T's proposal would include competition for telephony in
2 the local marketplace. I don't know what telephony would be
3 priced at but presumably it would not be well in excess of
4 what the local telephone company would be offering or you
5 wouldn't get very many subscribers. Certainly we have seen
6 a broad where there has been a combination of cable and
7 telephony that the telephony has been attractively priced.

8 Mr. Kimmelman, the question goes to you. Is this
9 a tangible benefit that the consumer would have based on the
10 development of that infrastructure?

11 MR. KIMMELMAN: If we really were talking about
12 that price I think it would be. The problem is AT&T told us
13 two years ago they could do this wireless. First they told
14 us they could do it through resale and they were going to
15 have a third of the market by 1999. This was about the time
16 of the Telecom Act. Then it was wireless. Then it was, "We
17 can't do it at all without acquiring a local exchange
18 carrier like, for example, an SBC." Now all of a sudden it
19 is TCI.

20 I'm sure there is a tremendous amount of
21 uncertainty in a very vibrant marketplace. Again, I'm not
22 questioning motive here. I just don't see the economics. I
23 think Wall Street's reaction indicates that the economics
24 aren't there. Again, I'm not making a statement that they
25 shouldn't be allowed to try, try under fair conditions so

1 there is not a cross-subsidy.

2 A number of years ago -- I'll finish this -- it
3 was the cable industry itself that came to this commission,
4 to the NCTA, and through member companies like TCI and said,
5 "You should not allow a telephone company to raise local
6 telephone prices one penny, one penny, to cross-subsidize
7 entry into the cable business, overcharging telephone
8 customers in order to provide what? Competition for video
9 services. The excitement of more competition." Why
10 shouldn't the same principle apply to the cable industry?

11 COMMISSIONER NESS: Mr. Cicconi, would you like to
12 respond?

13 MR. CICCONE: Certain, Commissioner. I respect
14 Gene, I think it is hard to have it both ways. On the one
15 hand you can't make the point about how much this
16 transaction costs and how difficult the economics are to
17 justify it. On the other hand, solve it by imposing
18 conditions that levy even more costs on the transaction. I
19 think that is really a non-sequitur and for us it is a non-
20 starter.

21 In terms of telephone service, which was really
22 the original premise for your question, Commissioner, you
23 really phrased it in a way that answers it. The fact is,
24 that is a competitive market and if we are going to hope to
25 break into that monopoly market, if we are hoping to take

1 away the 99 percent plus share, even a few percentage points
2 of U S West market share in their territory and local phone
3 service we are going to have to price it competitively with
4 theirs. That is just a simple fact and we're not going into
5 this transaction with our eyes shut in terms of that fact.
6 We are going to have to do that and we feel we can.

7 CHAIRMAN KENNARD: Please.

8 COMMISSIONER NESS: If I can continue. We have
9 talked extensively in the last go round about the unbundling
10 issue and I'd like to pursue that a little further.

11 The argument is that the unbundling of the access
12 to the internet and the provision of broad band service
13 would make it impossible for you to provide that service.

14 Now, can anyone on the panel address the -- would
15 anyone like, on the panel, to address the question as to the
16 availability of capital to be able to build out broad band
17 infrastructure in an unbundled basis? Then, I would also
18 like for Mr. Cicconi to answer the specific question, do you
19 feel that the same opportunity ought to be provided to
20 U S West to be able to bundle its ISP services as it rolls
21 out broad band?

22 So, first the question, Mr. Brewer.

23 MR. BREWER: Yes, I'd love to respond to that.

24 Mr. Cicconi mentioned some additional investment that would
25 be required or additional capacity that would be required to

1 support multiple ISPs for the broad band cable facilities.
2 I think the additional investment part is minimal, I mean
3 almost zero. We have a working arrangement with a
4 competitive cable company -- actually that is doing over
5 builds, frequently of TCI systems, oddly enough, in the
6 Southeast.

7 Here is the way it works: Mindspring plugs in its
8 network into a router in the cable company's head end -- the
9 company is called "Knowledge-E" -- transports the bits from
10 there to the customers residence, through their hybrid fiber
11 coax network, their cable network. We do the sales and
12 marketing. We do the service and support. We do the
13 installation. We do the billing. Mindspring does all that
14 and Knowledge-E provides us with that local data transport
15 service.

16 The cable modem infrastructure is at its heart an
17 ethernet. There are many different approaches that are very
18 workable for providing that basic data transport service and
19 there is in fact a -- there have been a couple of meetings
20 underway here at the FCC which your staff has been
21 participating in with representatives from At Home and
22 Mindspring and other companies, which I think has already
23 shown quite conclusively that the basic data transport's
24 function is eminently doable and is not difficult.

25 COMMISSIONER NESS: Let's go back to Mr. Cicconi's

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1 point in terms of the incentive to be able to provide the
2 internet service, including content, in fact, it looks at it
3 from a content perspective, as a content provider, and not
4 distinguishing that from internet service provider. Is
5 there incentive for it to be building out its plant if, in
6 fact, it would not get the benefits of a bundled product by
7 virtue of having others have access to the network?

8 MR.BREWER: We, and I don't think anyone else that
9 I'm familiar with in the proceeding, we are not saying AT&T
10 could not have a bundled product. What we are saying is
11 that we need to have access to the basic local transport
12 services ourselves.

13 It is very very clear that Mindspring and AOL and
14 all of the other thousands of ISPs have many many customers
15 who we could very successfully migrate to broad band
16 connectivity were it available to us. We don't want this
17 connectivity for free, we want to pay a fair price. I
18 personally very strongly believe that the cable industry in
19 particular has taken a risk in investing in the upgrades to
20 provide the two-way data transport functionality and they
21 deserve a good return on that investment.

22 They took a risk, they deserve the reward but the
23 form that reward should take cannot be the granting of a
24 monopoly or duopoly control of the core telecom service of
25 the future for residential subscribers. The cost of that

1 are just too great. The return needs to come in the form of
2 profitably carrying traffic for a variety of service
3 providers that will serve those end user customers.

4 COMMISSIONER NESS: Would anyone else like to
5 address that issue? Mr. Roellig.

6 MR. ROELLIG: Commissioner Ness, a couple of
7 comments. First of all, we are doing that today. We are
8 incented, we are providing what we call a "mega central
9 service" where an ISP can basically connect up directly with
10 a customer and not go through our At Home like they are
11 going to try to require all customers to do. We don't
12 require that you go through the USWest.net. You can choose
13 to use the DSL service and go to your provider of choice.

14 Second of all, I believe that if you look at the
15 comments that AT&T has made in the past, in the 706
16 proceeding these stated that advance services are more
17 likely to reach all Americans if incumbents are subject to
18 unbundling obligations to permit additional competitors to
19 provide service. So, what they have done in the 706
20 proceeding is say that it is appropriate to have everybody
21 be unbundled. They have also said in the 706 proceeding
22 that you ought to be in separate subsidiaries and frankly
23 somebody even ought to own a percentage of your separate
24 subsidiary, then when it comes to them coming before this
25 commission and talking about the public interest they say we

1 ought to have a closed system, we ought to have a
2 proprietary system from beginning to end.

3 In order ensure that we have true competition in
4 this marketplace we need parity of regulation. We need to
5 be able to compete with them effectively and we can't do it
6 if there are different rules for the various providers.

7 COMMISSIONER NESS: Mr. Cicconi, would you like to
8 respond to that?

9 MR. CICCONI: I'm pleased to hear U S West's
10 commitment to competition in their territory there because
11 we are going to be, hoping to take them on it when it comes
12 to local telephone service which is, again, what this is all
13 about.

14 If these investments are conditioned, if there are
15 restrictions placed on them people aren't going to make
16 them. There is a tremendous commitment of capital that is
17 required to bring about facilities-based competition to
18 these local monopolies. The reason it hasn't happened in
19 the scale that people had hoped over the past three years is
20 because it is darn difficult to do. The monopolies do not
21 yield easily, one would expect that, I would suppose. In
22 point of fact, they have resisted every step of the way,
23 U S West among them.

24 They have actually been fined in Iowa for failure
25 to comply with internet interconnection agreements between

1 AT&T and MCI. These are not isolated instances. I know I
2 am not telling the Commission anything it hasn't heard many
3 many times on a daily basis. The fact is that this
4 investment by AT&T is a \$48 billion commitment providing
5 that competition at all levels.

6 When it comes to the question about the unbundling
7 for internet access I would make a couple of points. Again,
8 I would stress that if there is an issue here it is an
9 industry wide issue and it is not something that should be
10 addressed just in the context of the merger or even
11 considered in the context of a merger just involving this
12 particular company. It really does affect the entire
13 industry.

14 In terms of Mindspring and other ISPs, I would
15 stress again that on this system any consumer will have all
16 of the internet access options they have today, plus more.
17 If they want to access Mindspring they are able to do so.
18 There will be dial up telephony connections possible with
19 any internet service provider. I would remind you again of
20 the projections that some people in the industry have made
21 that narrow band is going to persist for quite a long time
22 as a means of accessing the internet for the majority of
23 Americans, not only that but we fully expect that it will be
24 able to compete fairly well for their business with the
25 RBOCs.