more "choice among video- and content- enriched high-speed Internet access services"[165] for consumers, it is demonstrably in the public interest.

1. The Internet Access Services Marketplace is Highly Competitive, and AT&T's Investment in Cable Systems will Make it More So

Internet access service is a product comprised of inputs, each of which is available from a wide range of firms. As a threshold matter, consumers need both "connectivity" with the Internet and "transport" between their premises and the connectivity provider.[166] Consumers then use the Internet to access "content" made available on servers connected to the Internet.[167] Companies may offer these three components individually or in a variety of bundles, but to the consumer they are all part of one service: access to the Internet.[168] With respect to any given set of Internet consumers, the relevant geographic markets are local. However, because the same

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[165] *AT&T-TCI* ¶ 147.

[166] The Commission has described Internet access as a combination of "computer processing, information storage, protocol conversion, and routing, with transmission," which allows users to access Internet content and services. Universal Service Report to Congress, *Federal-State Joint Board on Universal Service*, 13 FCC Rcd. 11501, ¶ 63 (1998) ("*Universal Service Report to Congress*"). For purposes of this statement, this component will be referred to as "connectivity."

[167] Content can include traditional text and graphic images, video, audio, and interactive services such as email and "chat."

[168] The Commission has identified various "categories" of Internet services, yet noted that many companies fall into more than one of these categories. *See Universal Service Report to Congress* ¶ 62 (distinguishing between access providers, application providers, content providers, and backbone providers); B. Esbin, *Internet over Cable: Defining the Future in Terms of the Past* at 17 (FCC OPP Working Paper Series No. 30, 1998) (explaining that it "is still possible to differentiate 'online service providers' from 'Internet service providers' or 'ISPs,' although the distinctions have grown blurred in practice.") ("*Internet Over Cable*").

competitive conditions apply nationally, there is no need for separate analysis of any individual market.[169]

The relevant market includes Internet access services available to consumers over both broadband and narrowband facilities.[170] Regardless of whether they rely on broadband or narrowband facilities, firms compete with each other to provide the combination of price, service, speed, and convenience best suited for each consumer. Broadband and narrowband services are priced competitively, each costing about forty dollars per month when a second phone line for dial-up access is factored in. The main advantage of broadband facilities over narrowband facilities is faster speeds. However, the array of applications tailored to the broadband environment is currently quite limited. Moreover, traditional dial-up services may also provide unique email or "chat" features that make them particularly attractive to consumers who value these capabilities.[171] Consumers who use Internet services primarily for such email and "chat" functions have no need for faster download speeds. Moreover, narrowband access is "portable" – it can be used from any location accessible by a normal phone line – while broadband access is not.

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[169] *Accord AT&T-TCI* (declining to analyze any specific local markets for Internet access services).

[170] Even if the Commission finds that broadband and narrowband services are in separate markets, it still should conclude there are no anticompetitive concerns. There is substantial competition and ongoing entry to provide broadband access services. *Accord, AT&T-TCI* ¶ 92 (finding no need to determine whether broadband and narrowband Internet access services are the same or two distinct product markets, because in either case the merger was unlikely to adversely affect the public interest).

[171] Consumers who value such features will tend to "stick" to the service for a longer period of time before switching to an otherwise acceptable substitute.

Competitors themselves view narrowband and broadband services as substitutes for the foreseeable future. Many industry experts agree that Internet access over traditional phone lines shows no signs of diminishing in appeal. Even AOL's chief executive officer, Steve Case, has predicted that five years from now "seventy-five percent of the market will be narrowband because people want it to be as easy and inexpensive as possible."[172] Other AOL executives have explained that the company is "technology agnostic"[173] and believes that broadband services will appeal primarily to consumers who are already online and want to upgrade to a faster connection.[174] AOL does not believe its millions of customers need access speeds much greater than 28.8 kpbs.[175] Prodigy Communications Corp. apparently has reached a similar conclusion, as demonstrated by its recent announcement that it would purchase Cable & Wireless's dial-up Internet access service in a deal worth up to $75 million.[176]

Clearly, the availability of narrowband alternatives will continue to discipline the price of services available over broadband facilities until those services can offer something beyond "faster" downloads. Because narrowband alternatives provide millions of consumers with the basic services they need, it is highly unlikely that even a "monopoly" provider of

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[172] *See Power Lunch*, Television Interview with Steve Case (CNBC broadcast, September 28, 1998).

[173] Ashley Dunn, *AT&T's Bold Move*, Los Angeles Times at C4 (May 6, 1999).

[174] Thomas E. Weber and Stephanie N. Mehta, *AOL Hopes to Trump Cable Deal by Using Some Fast Phone Lines*, Wall Street Journal (May 7, 1999).

[175] *See* Transcript of Panel Discussion, *Cyberspace and the American Dream*, Aspen Summit, (Aug. 25, 1998) (interview with George Vradenburg, AOL's Vice President for Law and Public Policy) ("Vradenburg Interview").

[176] Maura Ginty, *Prodigy to Buy Cable & Wireless U.S.A.'s Dial-Up Service*, InternetNews.com (May 27, 1999) <www.internetnews.com>.

broadband services would be able to raise prices profitably. All these factors demonstrate that broadband access is part of the overall Internet access services market.[177]

Currently, there are "a large number of firms providing Internet access services in nearly all geographic markets in the United States, and these markets are quite competitive today."[178] These firms employ different competitive strategies and offer different combinations of features to attract subscribers. There is no question that the market for Internet access services is "extremely competitive and highly fragmented," with "no substantial barriers to entry."[179] Even with respect to the broadband sector, the Commission reached the same conclusion only a few months ago, finding that there are "a large number of actual participants and potential entrants."[180] In light of this intense competition, the Commission decided that no regulatory intervention on its part was required.[181]

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[177] AT&T, @Home, and Road Runner also provide Internet backbone services, which route traffic between Internet access providers. *See MCI-WorldCom* ¶ 143 n.383 (describing backbone services). Nevertheless, the Merger will not create or enhance market power in the provision of backbone services because only AT&T owns its own facilities to provide these services. @Home and Road Runner each lease facilities from other backbone providers. In any case, even AT&T, @Home and Road Runner combined would have a *de minimis* share of any such "market."

Likewise, while AT&T and MediaOne also provide Internet access services to business customers, there are many companies providing similar services and, after the Merger, AT&T will still only have a *de minimis* share of this business. *Accord, AT&T-TCI* ¶¶ 60-61 (considering only residential usage of Internet access services).

[178] *AT&T-TCI* ¶ 93. *See also 706 NOI Report* ¶ 90 (according to one study, over 90 percent of the country has access by a local call to several Internet service providers).

[179] 1998 MindSpring Enterprises, Inc. 10-K at 18. *See also* 1998 America OnLine, Inc. 10-K at 17 (listing a wide range of competitors in the "rapidly-changing" marketplace).

[180] *706 NOI Report* ¶ 48.

[181] *Id.* ¶¶ 100-101.

The wisdom of that decision has been borne out by developments in the Internet market since January 1999. For example, every day there are more and more broadband transport alternatives.[182] In just the last few months, AOL has announced deals with several Bell companies to use DSL service to provide high-speed Internet access. AOL has also continued its "AOL Anywhere" strategy through alliances with manufacturers of set-top boxes and electronic organizers and the acquisition of the major provider of on-screen program guides.[183] In addition, Hughes Electronics Corp. announced that it will invest $1.4 billion in a two-way broadband data satellite network, Spaceway, that will begin providing service in the United States by the year 2002;[184] Sprint and MCI announced deals to acquire wireless cable companies;[185] Nextel introduced the first Internet-ready wireless phone;[186] and several data CLECs have had wildly successful initial public offerings.[187] Because the number of broadband alternatives increases

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[182] The stable regulatory environment created by the Commission has given providers of Internet access – and the financial community supporting them – the confidence to make the necessary investments.

[183] *See* Stephen Buel, *'AOL Anywhere' Philosophy Is Wider Reach, Marketing Muscle*, Mercury News (Nov. 24, 1998) (describing AOL's "relentless drive to extend its supremacy across computer-based communicating"); Paul Fahri and Mike Mills, *AOL Seeks Boost Via Phone, TV*, Washington Post (Dec. 8, 1998); Andrea Peterson, *AOL, 3Com Form Partnership to Let Users Get E-mail on Palm Organizers*, Wall Street Journal (June 23, 1999).

[184] *Hughes Invests $1.4B in Network* (March 17, 1999) <www.mercurycenter.com/ svtech/news/breaking/ap/docs/2496651.htm>.

[185] *See* Jason K. Krause, *Wireless Cable Makes a Surprise Comeback*, The Industry Standard, April 29, 1999 (describing MCI-WorldCom's acquisition of CAI Wireless Systems and Sprint's acquisition of People's Choice TV and American Telecasting) <www.thestandard.net>.

[186] Sarah Schafer, *Nextel First With Net Ready Phone*, Washington Post, at E3 (June 9, 1999).

[187] *Covad Shares Surge After $140 Million IPO Placed*, TR Daily, January 22, 1999; Corey Grice, *Rhythms Triples on First Day of Trading*, CNET News.com (Apr. 7, 1999) <www.news.com>. Microsoft recently announced a $50 million deal with Rhythms, which also

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every day, there is no way to monopolize the Internet access market by bundling broadband "transport" with connectivity or content.

As described in more detail below, AT&T and MediaOne compete with a vast array of companies that utilize different combinations of transport, connectivity, and content to attract subscribers:

- Some companies provide only connectivity, or "pure" Internet access.
- Some combine connectivity with transport over their own facilities, while others offer a "bundle" that includes transport purchased from a third party.
- Some providers include proprietary and non-proprietary content in their bundle, while other companies offer only content.
- Cable operators, which have chosen to provide a seamless offering that includes high-speed transport, connectivity, and content, offer customers yet another option for accessing the Internet.

All of these different providers compete in one Internet access "market," although they may offer different components or combinations of components to consumers.

ILECs. All of the ILECs offer Internet access services to their subscribers that include transport and content. For example, Bell Atlantic offers "Bell Atlantic.net," a dial-up Internet access service at speeds up to 56 Kbps.[188] Bell Atlantic is also deploying DSL technology and using it to provide broadband Internet access service to its subscribers. Bell Atlantic has announced plans to make its "Infospeed DSL" service available to 8 million homes

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received another $30 million from MCI WorldCom in January. *Microsoft makes its first DSL stake*, CNET News.com, March 17, 1999 <www.news.com>.

[188] *See Bell Atlantic.net for Home* <www.bellatlantic.net/home/banet/south>.

by the end of 1999 and 16 million homes by the end of 2000.[189] US WEST offers subscribers to its US WEST.net Internet access service a choice of transport either over standard phone lines or US WEST's "MegaBit" DSL service.[190] US WEST currently has 35,000 subscribers for its "MegaBit" services,[191] which are offered in forty cities and are capable of reaching several million customers throughout US WEST's sixteen state region.[192]

GTE and Southwestern Bell offer Internet access three different ways: dial-up access over standard phone lines, ISDN, or DSL.[193] SBC's DSL Internet access service is available to two million homes and SBC plans to increase its availability to 8.4 million homes by the end of 1999.[194] GTE has announced plans to offer its DSL services in approximately 300 central offices in 16 states, the nation's broadest deployment of ADSL technology, which will enable GTE to offer "end-to-end Internet solutions on a broader scale."[195] BellSouth offers its

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[189] Corey Grice, *Price Cuts Raise Stakes in DSL Race*, CNET News.com, March 31, 1999, www.news.com.

[190] *See MegaBit Services - Internet Connection* <www.uswest.com/products/data/dsl/connection.html>.

[191] John Borland, *US West Works on National DSL Strategy*, CNET News.com (May 21, 1999) <www.news.com>.

[192] *See US WEST Company Profile* <www.uswest.com/com/insideusw/info.profile.html>.

[193] *See, e.g., SBC We Make It Easy* <www.public.swbell.net/home.html>; *GTE Products and Services* <www.gte.net/pands/residential/dsl.html>.

[194] *See America Online and SBC Communications to Offer High Speed Upgrade to AOL Members* (March 11, 1999) <www-db.aol.com/corp./news/press/ view?release=579>.

[195] *See GTE to Offer Ultra-Fast Internet Access* <www.gte.com/AboutGTE/news/adsl041398.html>.

customers their choice of "FastAccess" ADSL service or "Internet access for less,"[196] while Ameritech offers both "Ameritech.net" dial-up and SpeedPath ADSL services.[197]

CLECs. Competitive LECs generally provide the transport component of Internet access service, by itself or bundled with connectivity. For example, Sprint is now offering its Sprint ION high-speed Internet access and telephone service to consumers,[198] while NorthPoint Communications offers wholesale high speed DSL service to ISPs nationwide.[199] Concentric Network Corporation's interconnection agreement with NorthPoint allows Concentric to offer a high-speed Internet access service to small and medium size businesses, telecommuters, and residential subscribers.[200] Covad Communications has a "Telesurfer" DSL transport service for consumers, which is available from several ISPs who bundle it with their Internet services.[201] A new "lite" version of DSL, which is not quite as fast but much easier to

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[196] *See BellSouth Buzz* <www.bellsouth.net/cgi-bin>. BellSouth's DSL services will reach six million lines by September 1999. *BellSouth Launches High-Speed BellSouth.net FastAccess ADSL Internet Service in Memphis* (May 3, 1999) <www.bellsouthcorp.com/ proactive/documents/render/26162.vtml>.

[197] *See Ameritech Home Products - Internet services* <www.ameritech.com/ products/ answer/data.html>.

[198] *See Sprint Launches ION Offer for Residential Customers*, TR Daily (June 21, 1999).

[199] *See Northpoint Communications Will Surpass Combined Bells' DSL Deployment* <www.northpointdsl.com/about/press_981215a.html>; *see NorthPoint Communications: Partners Resources* <www.northpointdsl.com/partners2/ index.html>.

[200] *See* <www.concentric.net/ corporate_info/about_concentric.html>.

[201] *See* < www.covad.com/partners>.

install, is viewed by Northpoint and Covad as a way to accelerate the deployment of high-speed access to consumers.[202]

Wireless. Fixed wireless services also provide the transport component of Internet access services. According to one industry analyst, "[w]ireless broadband provides firms an excellent way to deliver the last mile of Internet access."[203] For example, Teligent, which uses microwave signals to offer local phone and Internet services to small and medium businesses, has launched service in 23 markets and plans to offer service in 17 more by the end of 1999.[204] Sprint and MCI-WorldCom recently acquired several wireless cable licensees, including People's Choice TV, American Telecasting, and CAI Wireless,[205] whose spectrum is wide enough to carry high-speed services. Sprint plans to use wireless cable technology to provide transport for its bundled offerings of voice and broadband Internet access services to consumers.[206] MCI-WorldCom and Vulcan Ventures recently invested $300 million dollars each in Metrocom Inc., which provides "last mile" wireless Internet access at 128 kilobits per second

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[202] Jon Healey, *High-Speed Internet Access Gets a Boost*, San Jose Mercury News (June 22, 1999).

[203] Phil Harvey, *Waking Up to Fixed Wireless*, www.UpsideToday.com (June 4, 1999) <www.upside.com>.

[204] Corey Grice, *Short Take: Teligent Expands into Four New Markets*, CNET News.com (Feb. 8, 1999) <www.news.com>.

[205] John Borland, *Wireless Cable Bidding War Ahead?*, CNET News.com (June 17, 1999) <www.news.com>; Jason Krause, *Wireless Cable Makes a Surprise Comeback* (April 29, 1999) <www.the standard.net/articles/display/0,1449,4412,00.html? home.tf>.

[206] John Borland, *Sprint Readies ION for Consumer Market*, CNET News.com (April 12, 1999) <www.news.com>.

via its Ricochet microcell system.[207] And Lucent has developed a wireless end-to-end network solution that will allow companies to offer consumers and businesses a direct high-speed wireless connection to the Internet.[208]

Satellite. Satellite services provide subscribers with yet another option for Internet access that includes transport and connectivity. For example, DirecPC, a product of Hughes Network Systems, enables consumers to access the Internet at high speeds through digital satellite transmissions.[209] The Chairman of Hughes has announced that the DirecPC system is up and running and ready to compete with other high-speed services.[210] AOL and Hughes have reached an agreement to develop dual purpose AOL TV/DirecTV set top boxes, and by early next year AOL's Internet access service will be available nationwide via the DirecPC satellite network.[211] Teledesic, another global satellite concern, is spending $9 billion on its "Internet-in-the-Sky" project, which will provide consumers with affordable, worldwide, "fiber-like" access to telecommunications services such as broadband Internet access, video-

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[207] *Metricom Gets $600 Million Equity Jolt From Vulcan, MCI Worldcom*, TR Daily (June 21, 1999). As part of the transaction, MCI Worldcom signed a non-exclusive wholesale agreement with Metricom to market and sell a co-branded high-speed Internet service. Bob Sullivan, *Wireless Internet Service Gets $1 Billion Boost From Allen, MCI* (June 21, 1999) <www.msnbc.com/news/282296.asp>.

[208] *Lucent Technologies Introduces Industry's Most Comprehensive Network Solution for High-Speed Wireless Access to the Internet*, PR Newswire (March 18, 1999).

[209] *See Hughes Network Systems Launches DirecPC 2.0 With New Service Pricing, Bundled ISP Service, Electronic Program Guide, Turbo Webcast and Turbo Newscast; Latest Version of DirecPC Offers Customers the Ultimate in Speed, Service and Convenience* (June 23, 1998) <www.direcPC.com/about/ pr_20.html>.

[210] STREET SIGNS, The Faber Report: Interview with Michael Smith, Chairman and CEO of Hughes Electronics (CNBC Broadcast June 21, 1999).

[211] *AOL, Hughes in $1.5 Billion Marketing Agreement*, TR Daily (June 21, 1999).

conferencing, and high-quality voice and digital data service beginning in 2003 using a constellation of 288 low-Earth-orbit satellites.[212]

In March 1999, Hughes announced that it will invest $1.4 billion in a two-way broadband data satellite network, Spaceway, that will begin providing service in the United States by the year 2002.[213] Hughes' goal for the Spaceway project is to provide customers with two-way, high speed Internet access using small dish antennas.[214] Other satellite-based providers, including Motorola, Lockheed Martin, Alcatel Espace, and Loral, are projected to invest over 25 billion dollars to establish their broadband satellite services in the next decade.[215] According to industry analysts, these emerging broadband satellite providers will offer their services to a wider market, including consumers.[216]

Others. In addition to all this, there are thousands of dial-up ISPs that offer Internet access service across the nation. These ISPs generally provide connectivity and varying degrees of content. They may also offer bundled packages that include transport over ILEC or CLEC phone lines. A few large companies serve the vast majority of subscribers – AOL has

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[212] *See Teledesic, Motorola, Boeing, Matra Marconi Space to Partner on 'Internet-in-the-Sky;' Motorola Will Lead Global Industrial Team,* (May 21, 1998) <www. teledesic.com/newsroom/05-21-98.html>. *See also In the Matter of En Banc Hearing on Broadband Services* (July 9, 1998), Transcript Comments of Scott Hooper, co-CEO of Teledesic and Chairman of Nextlink Communications at 9-13 <www.fcc.gov/enbanc/070998/ eb070998.html>.

[213] *See Hughes Invests $1.4B in Network* (March 17, 1999) <www. mercurycenter.com>.

[214] *Putting the Internet in Orbit,* Washington Post, at F5 (April 12, 1999).

[215] *See generally* Pioneer Consulting, *Global Broadband Access Markets,* Executive Summary (1998).

[216] *See* Pioneer Consulting, *Satellite Data Networks: The Internet's Next Frontier*, Executive Summary at 7 (1997).

almost 18 million subscribers,[217] Microsoft has 1.7 million,[218] Earthlink has 1.1 million[219] and Prodigy has 700,000[220] members.

Many ISPs are beginning to offer Internet access services over broadband facilities as well. AOL has formed strategic alliances with SBC and Bell Atlantic to provide high-speed connectivity for its customers through the ILECs' ADSL networks.[221] AOL describes DSL as a "fabulous technology"[222] and predicts that it will be able to provide DSL-based Internet service to more than half of its customers by the end of 1999.[223] If AOL's negotiations with U S WEST and BellSouth are successful, "AOL's [DSL offerings] would blanket the country."[224] Prodigy has also announced an alliance with Bell Atlantic to provide DSL services to Prodigy customers in Bell Atlantic's service areas, which it says is the first step

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[217] *See* Ted Bridis, *Microsoft Browser Is Winner – Except in Court*, San Diego Union-Tribune, May 25, 1999.

[218] Leslie Walker, *Rivals Cede Throne to AOL*, Washington Post, at E1 (April 8, 1999).

[219] *EarthLink Surpasses One Million Members*, Jan. 4, 1999 <www.earthlink.net/about/pr/1mm.html>.

[220] Walker *supra* n.218.

[221] *See America Online and SBC Communications to Offer High Speed Upgrade to AOL Members* <www-db.aol.com/corp/news/press/view?release=579>; *AOL to Utilize SBC's DSL Service to Offer High Speed Upgrade to Members in Pacific Bell, Southwestern Bell and Nevada Bell Regions*, (March 11, 1999) <www.businesswire.com>; *America Online and Bell Atlantic Form Strategic Partnership to Provide High-Speed Access for the AOL Service* <www-db.aol.com/corp/news/press/view?release=544>.

[222] Weber and Mehta *supra* n.174.

[223] Bernhard Warner, *AOL Set to Rumble on AtHome's Turf* (March 11, 1999) <www.thestandard.net/articles/display/0,1449,3795,00.html>.

[224] Weber and Mehta *supra* n.174.

in its plan to make high-speed access available to its customers nationwide.[225] In addition, AOL has noted that it – and presumably other ISPs – can take other steps, such as caching, to satisfy customers who desire higher speeds.[226]

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Clearly, the Internet access market is competitive, with numerous companies offering services to residential subscribers "over a variety of media using a variety of technologies."[227] The number and variety of companies providing the various components of Internet access demonstrate that there are multiple competitive strategies for delivering Internet services to consumers. As the foregoing discussion demonstrates, there is no "best" arrangement for providing Internet access to consumers. This proliferation of alternative approaches to providing Internet access services is a sign of the robust marketplace competition that the Commission seeks to promote. Certainly, as set forth below, there are no issues specific to the Merger that require the regulation of AT&T and MediaOne's cable Internet offerings.

2. The Merger will Not have any Anticompetitive Effects in the Internet Access Services Market

Because the Internet access services market is competitive, and the "preconditions for monopoly appear absent,"[228] the Merger will not have any anticompetitive effects. AT&T's post-Merger interest in two firms that provide Internet access services over cable facilities in no

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[225] *Prodigy, Bell Atlantic Join in DSL Access Alliance*, TR Daily (May 25, 1999).

[226] *See* Vradenburg Interview, *supra* n.175.

[227] *AT&T-TCI* ¶ 60. *See also AT&T-TCI* ¶ 93; *706 NOI Report* ¶ 48.

[228] *See 706 NOI Report* ¶ 48.

way changes that conclusion. AT&T's cable Internet service subscribers, as well as its other Internet customers, will continue to have numerous broadband and narrowband alternatives available to obtain Internet access services. No firm will be able to raise prices as a result of the Merger.

a. Residential Internet access services will remain competitive post-Merger

After the Merger, A&T will have a very small share of the residential Internet access services market.[229] Moreover, residential customers will continue to have dozens of alternatives to choose from to obtain Internet access – available over both broadband and narrowband facilities. As the Commission concluded when it reviewed the AT&T-TCI merger, there are, in fact, "a large number of firms providing Internet access services" in markets that are already "quite competitive."[230] Because the Merger will not significantly reduce overall consumer choice for Internet access services, it does not raise any competitive concerns.

Even focusing solely on services offered over broadband facilities, the foregoing analysis does not change. As set forth above, many firms are deploying or beginning to deploy high-speed Internet access services using a wide range of alternative technologies, including DSL, satellite, fixed wireless, and others.[231] AT&T will reach a *de minimis* share of this

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[229] Even treating this transaction as a merger of WorldNet, @Home and Road Runner, which it is not, AT&T would have less than 2.4 million out of approximately 33.7 million subscribers in an increasingly competitive market (about a seven percent share).

[230] *AT&T-TCI* ¶ 93.

[231] *See id.* ¶ 94.

sector.[232] The availability of so many alternatives ensures a competitive environment in which any attempted price increase would surely be defeated.

b. The Merger will not impede access to Internet content

The Merger will not create impediments to Internet access. To begin with, even if this transaction were a merger between WorldNet, @Home and Road Runner, which it is not, the merged company would not have monopoly power in the "sale" of Internet access. Combined, these services would reach a trivial share of the market. Any attempt by WorldNet, @Home, and Road Runner to foreclose subscriber access to Internet content could easily be defeated by consumers switching to other Internet access providers.

Arguments about foreclosing access also fail to recognize that WorldNet, @Home, and Road Runner have no incentive to engage in such behavior. To the contrary, unreasonable content restrictions imposed by any of these companies, or their cable system affiliates, would cause subscribers to switch to other ISPs. Because the cable Internet services in particular do not have many subscribers, any subscriber losses would have dramatic consequences far outweighing the purported "benefits" of imposing anticompetitive restrictions.[233] Thus, it makes no sense to argue, as some have, that the provision of Internet

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[232] The company will have less than 200,000 cable Internet subscribers through its cable systems. AT&T will not "control" @Home or Road Runner's day-to-day operations, but even assuming *arguendo* that it would, the @Home and Road Runner combined subscriber count would be only about 600,000 – still a very small number of subscribers.

[233] For this reason, concerns that have been raised about legitimate restrictions imposed on the @Home and Road Runner services to limit video streaming applications are entirely misplaced. Cable Internet services actually *expand* the number of Internet applications available to consumers. Ancillary restrictions on the use of these services, which help manage bandwidth

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access services over cable facilities will lead to anti-competitive restrictions on access to Internet content.

Moreover, WorldNet, @Home, and Road Runner already provide an open environment through which subscribers can reach any available content on the Web. AT&T is pledged to ensuring that cable Internet access service subscribers are just "one click away" from all Internet content.[234] In addition to the proprietary and tailored content available to them, many WorldNet, @Home, and Road Runner subscribers also access proprietary content from providers not affiliated with AT&T or MediaOne. As the Chairman of AT&T has stated, "[w]e want to encourage as much content as possible."[235]

In fact, competition will create incentives for ISPs to *expand* the array of content available to their subscribers, to improve the quality of the content that does exist, and to provide easier access to the content that subscribers prefer. This is particularly true for services like @Home and Road Runner, which rely on an innovative and untested technology.

(. . . Continued)
utilization, are entirely reasonable. Moreover, consumers have a wide range of alternatives available to them if they consider such time restrictions too limiting.

[234] *See AT&T-TCI* ¶ 72 n.212 (referencing @Home's commitment to "full and open access to the entire Web" following its merger with Excite); *id.* ¶ 95 (referencing AT&T's commitment to ensure that @Home subscribers have access to unaffiliated online services after the merger). *Cf. id.* ¶ 96 (concluding that nothing about the AT&T-TCI merger would deny any customer the ability to access the Internet content or portal of his or her choice, based on the representations described above).

[235] C. Michael Armstrong, *Cable Ready: Convergence and the Communications Revolution*, Remarks before the National Cable Television Association (June 14, 1999) <www.att.com/speeches>. *See also* C. Michael Armstrong, *Telecom and Cable TV: Shared Prospects for the Communications Future*, Remarks before the Washington Cable Club, (Nov. 2, 1998) ("Our message to the largest OSP and all the others couldn't be more direct: if you've got a service our customers want, we want you on our system.").

Nor is there any basis for concluding that AT&T would have the incentive or ability to restrict @Home and Road Runner subscriber access to the Internet after the Merger. Because the popularity of cable Internet services has still not been proven, there is no incentive for AT&T to restrict their utility and appeal to consumers. Moreover, as content and applications tailored specifically to the broadband environment are developed and marketed, AT&T will instead have every incentive to make them more accessible to their subscribers – not to restrict access. After all, consumer acceptance of cable Internet services will be driven by the availability of such content, the development of which is still in its infancy. Restricting access would undercut the tremendous investment in broadband facilities both AT&T and MediaOne have already made. For these reasons, there is no basis to conclude that access to content will be restricted by the Merger.

In addition, AT&T will not have the ability to foreclose access to its cable subscribers by Internet content providers. Such an attempt would fail because these subscribers could access the same content through alternative ISP or OSP services. Thus, any attempt by AT&T to restrict the content available to subscribers of @Home or Road Runner services would prove futile.

If and when content providers develop services that are dependent upon broadband "last-mile" transport, the situation will be no different. Already today, numerous broadband alternatives exist or are close to market. Cable Internet services have no proven marketplace advantage over other broadband providers; consumers should be allowed to make that choice for themselves. Because consumer acceptance of broadband Internet access services may well hinge upon ready access to a wide range of content, there is no basis for concluding that content providers will have difficulty in reaching AT&T cable subscribers post-Merger.

c. AT&T's ownership interest in @Home and Road Runner raises no anticompetitive concerns

The Merger is expressly not a merger of Road Runner and @Home. AT&T's ownership interest in both companies after the Merger will raise no anticompetitive issues, for several reasons. First, cable companies that wish to provide their subscribers with high speed Internet access have several options.[236] In addition to @Home and Road Runner, there are many companies that compete to provide Internet services in conjunction with cable operators. For example, Convergence.com Corp., founded in 1994, was one of the earliest providers of cable Internet services. By early 1999, that company had made cable modem service available to 300,000 homes in at least eight service areas.[237] In 1998, High Speed Access Corp. offered its service in fourteen service areas.[238] The ISP Channel has agreements with twenty-three cable operators through which it passes 1.6 million homes.[239] Knology provides a cable modem Internet service called "OloBahn," and has also partnered with ISPs MindSpring and A World of Difference to provide cable Internet services in certain of its service areas.[240] And Earthlink, one of the largest ISPs in the United States, offers high-speed Internet access using cable modem

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[236] Each of the 18 largest cable operators, and many smaller cable operators as well, are beginning to deploy cable Internet services in the communities they serve. *See* Comments of the National Cable Television Association, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion,* CC Docket No. 98-146, at 8 (FCC Sept. 14, 1998).

[237] *See* <www.cabledatacomnews.com/cmic/cmic5.html>.

[238] Mike Farrell, *Vulcan Lords Over HAS*, Multichannel News Online (April 5, 1999) <www.multichannel.com>.

[239] *See* <www.ispchannel.com/press/11may99.html>.

[240] *See, e.g., Knology Adds ISP to Charleston Net*, Multichannel News Online, March 22, 1999 <www.multichannel.com>; KNOLOGY - Internet <http://www.knology.com/ internet.cfm>.

technology in six service areas,[241] while Internet Ventures Inc. has launched its "PeRKInet" cable Internet service in two service areas in California.[242] Thus, any attempt by @Home or Road Runner to charge supracompetitive prices to cable systems for the inputs they provide would simply drive these cable systems to these competitors.

Even if such alternatives did not currently exist, @Home and Road Runner face competition from any company willing to make the necessary investments to provide the same services. Although @Home and Road Runner have invested in developing an Internet offering uniquely tailored to the cable environment, these companies use equipment from large commercial venders. Other companies could lease Internet backbone services and combine them with caching and replication technologies like those used by @Home and Road Runner and to provide similar cable Internet services. And nothing prevents other ISPs from deploying their own content and special applications that could potentially appeal to consumers in the same way that @Home and Road Runner's content and applications do. For all of these reasons, numerous companies are well-poised to provide the same inputs that @Home and Road Runner provide to cable operators.

Most importantly, even if there were no alternatives to @Home and Road Runner, and no ability to replicate the inputs that they provide, there would still be not anticompetitive concerns. As clearly demonstrated above, there are a broad range of choices for broadband

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[241] *See Charter Pipeline Powered by EarthLink* <www.earthlink.net/home/ highspeed/cable>.

[242] *See, e.g., Internet Ventures, Inc., Sun Country Cable to Launch PeRKInet Service in California* (April 27, 1998) <http://www.ivn.net/news/042798.html>.

Internet access, including DSL and satellite.[243] Thus, even a "monopoly" cable Internet service provider could not harm consumers because any attempt to charge supracompetitive input prices would be cause cable ISPs to lose customers to their telephone and satellite delivered rivals.

d. The availability of an integrated cable Internet service that brings together high-speed access and enriched content does not present any anticompetitive concern

The Commission has already determined not to require the "unbundling" of cable Internet services so as to require the provision of a pure "transport" capacity by cable operators.[244] Nothing about the Merger should affect the Commission's prior analysis, nor will the Merger increase the amount of "bundling" in any case. Both @Home and Road Runner are already offered to residential customers as stand-alone, integrated cable Internet services. While the Merger could be seen as expanding AT&T's total number of Internet access "subscribers," every one of these subscribers will continue to have numerous alternatives for Internet access.[245]

Allowing AT&T to offer integrated content and high-speed access through @Home and RoadRunner also furthers numerous pro-competitive policies. Most importantly, deployment of cable Internet services requires investments in network upgrades and consumer education. The Merger will further facilitate the necessary joint investments in and planned

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[243] Whether any of these competitors wins the "race to the home" is irrelevant, because none have unique advantages that guarantee they will dominate the market.

[244] *706 NOI Report* ¶ 101. *Cf. AT&T-TCI* ¶ 147 (noting that the merger will enhance competition and create more "customer choice among video- and content enriched high-speed Internet access services").

[245] Moreover, regardless of which technology gets to the home first, competitors will continue to offer alternative Internet transport arrangements.

deployment of new facilities. By contrast, forced unbundling would reduce investment incentives by increasing the likelihood of "free-riding" by third parties.

Even if the ability to offer an integrated service did not create substantial investment incentives, consumers benefit from the availability of such an offering – just as they do from the combination of content and facilities produced by television broadcasters and DBS operators,[246] and the service bundles sold by online service providers. Like these other providers of "bundled" products, cable operators should be permitted to choose which "bundle" of services is most valued by their customers, and to add services only when they expect it makes sense to do so. Given the state of competition in this market, there is no reason to predict consumers will not receive the services they most value.

VI. PROCEDURAL MATTER

As the Commission is aware, MediaOne's subsidiaries and affiliates hold a number of licenses to operate cable television relay systems, satellite earth stations, private point-to-point microwave, common carrier and private business radio stations. The Merger results in a transfer of control of all of these authorizations. Given the ongoing regulatory activity of MediaOne, including the need for MediaOne to file numerous applications with the Commission during the period in which the instant transfer of control applications will remain pending at the Commission, the Parties request that grant of the instant transfer of control applications include the authorization for AT&T to acquire control of: (1) any authorization

[246] In fact, as noted, Hughes' AOL-DirecTV represents such a bundled offering. The transport component offered by Hughes presumably is not available to other ISPs on an unbundled basis.

issued to MediaOne or its subsidiaries and affiliates during the Commission's consideration of the transfer of control applications and the period required for consummation of the transaction following approval; (2) construction permits held by licensees involved in this transfer of control that mature into licenses after closing and that may have been omitted from the transfer of control applications; and (3) applications that will have been filed by such licensees and that are pending at the time of consummation of the proposed transfer of control. Such action would be consistent with prior decisions of the Commission.[247]

[247] *AT&T-TCI* ¶ 156.

APPENDIX A

AT&T CABLE OWNERSHIP[1]

	ENTITY	OWNERSHIP[2]	OWNERSHIP %	CABLE HOMES PASSED	SUBSCRIBERS	PURCHASES PROGRAMMING THROUGH AT&T
Owned and Operated Systems[3]	AT&T	AT&T	100%	17,249,000	10,670,000	Y
Consolidated Systems	Alabama T.V. Cable Inc.	**TCI Cablevision of Alabama, Inc.**	86.67%	40,000	27,000	Y
		William J. McDonald	6.67%			
		Locust Mountain Part II, L.P.	6.67%			
	Cablevision Associates of Gary Joint Venture	**Cable Television of Gary, Inc.**	90.00% general	40,000	18,000	Y
		Zarin Libauer Cablevision Corp.	10.00% general			
	District Cablevision Limited Partnership	**TCI of D.C., Inc.**	75.00% limited	262,000	110,000	Y
		District Cablevision, Inc.	25.00% general			
	InterMedia Partners	**Various TCI Entities**	97.981% limited	203,000	141,000	Y
		InterMedia Capital Management I, LLC	.002% general			
		InterMedia Capital Management, L.P.	2.017% limited			

1 As of May 31, 1999. Does not include two systems that have less than 1,000 homes passed/subscribers.

2 AT&T entities in bold.

3 AT&T systems with approximately 1,155,000 homes passed and approximately 735,000 subscribers will be transferred to Comcast upon consummation of the AT&T-MediaOne Merger. Comcast also has an option to acquire additional cable systems from AT&T. If Comcast exercises that option, the homes passed and subscriber numbers listed here will be reduced accordingly. In addition, AT&T recently entered into transactions to sell its interest in Falcon Communications, L.P., to reduce below 5% its interest in the cable systems currently owned by Bresnan Communications Co., Ltd. Partnership, and to sell its interests in certain cable systems to Cox Communications, Inc.

	ENTITY	OWNERSHIP	OWNERSHIP %	CABLE HOMES PASSED	SUBSCRIBERS	PURCHASES PROGRAMMING THROUGH AT&T
	Mile Hi Cable Partners, L.P.	Community Cable Television	78.00% limited	250,000	113,000	Y
		P&B Johnson Corp.	21.00% general			
		Daniels Communications, Inc.	1.00% limited			
	South Chicago Cable, Inc. (includes Communications & Cable of Chicago, Inc. and LaSalle Communications, Inc.)	TCI of Illinois	16.75%	641,000	220,000	Y
		TCID of Chicago, Inc.	33.25%			
		TCID of South Chicago, Inc.	40.00%			
		Numerous Small Investors	10.00%			
	Tele-Communications of South Suburbia, Inc.	TCI of Illinois, Inc.	80.00%	20,000	8,000	Y
		John L. Cifelli	20.00%			
	United Cable Television of Baltimore Limited Partnership	UCTC of Baltimore, Inc.	1.000% general	297,000	110,000	Y
		UCTC LP Company	82.878% limited			
		Universal Telecom, Inc.	3.087% limited			
		Clarence Elder	5.459% limited			
		Barbara Elder	1.290% limited			
		Clarence and Barbara Elder	4.798% limited			
		Clarence and C. Lewis Elder	0.496% limited			
		Clarence and Lisa M. Elder	0.496% limited			
		Clarence and Leann Elder	0.496% limited			

	ENTITY	OWNERSHIP	OWNERSHIP %	CABLE HOMES PASSED	SUBSCRIBERS	PURCHASES PROGRAMMING THROUGH AT&T
Non-consolidated Systems	Parnassos Communications, L.P.	**TCI Adelphia Holdings, LLC** Adelphia Western New York Holdings, Inc. Montgomery Cablevision, Inc.	33.33% general 66.57% general 0.10% limited	710,000	475,000	Y
	American Cable TV Investors 5, Ltd.	**IR-TCI Partners V, L.P.** (publicly traded units)	1.00% general 99.00% limited	32,000	20,000	Y
	Bresnan Communications Co. Ltd. Partnership	**TCI Bresnan LLC** Blackstone Entities BCI (USA), LLC (an affiliate of William J. Bresnan) William J. Bresnan	50.00% limited 39.40% limited 8.60% limited and 1.00% general 1.00% limited	949,000	640,000	Y
	Cablevision Systems Corporation	**Country Cable III, Inc.; CCC Sub, Inc.; TCI CSC II, Inc.; TCI CSC III, Inc.; TCI CSC IV, Inc.; TCI CSC V, Inc.; TCI CSC VI, Inc.; TCI CSC VII, Inc.; TCI CSC VIII, Inc.; TCI CSC IX, Inc.; TCI CSC X, Inc.; and TCI CSC XI, Inc.**	33 % in the aggregate	5,126,000	3,419,000	N
	Falcon Communications, L.P.	**TCI Falcon Holdings, LLC** Falcon Holding Group, L.P.	45.9474% general 54.0526% general/limited	1,626,000	955,000	Y
	Insight Communications of Indiana, LLC	**TCI of Indiana Holdings, LLC** Insight Communications Company, L.P.	50.00% member 50.00% member (mgr)	471,000	319,000	Y

	ENTITY	OWNERSHIP	OWNERSHIP %	CABLE HOMES PASSED	SUBSCRIBERS	PURCHASES PROGRAMMING THROUGH AT&T
	InterMedia Capital Partners IV, L.P.	Various TCI Entities	44.580% limited	940,000	595,000	Y
		Institutional Investors	48.933% limited			
		InterMedia Capital Management IV, L.P.	1.186% limited			
		ICM-IV Capital Partners, LLC	1.514% limited			
		InterMedia Capital Management, LLC	0.001% mgp			
	Intermedia Capital Partners VI, L.P.	TCI IP-VI, LLC	49.005% limited	653,000	424,000	Y
		InterMedia Capital Management VI, LLC	.001% general			
		InterMedia Capital Management VI, L.P.	.999% limited			
		Leo J. Hindery, Jr.	.495% limited			
		Blackstone KC Offshore Capital Partners L.P.; Blackstone KC Capital Partners L.P.; Blackstone Family Investment Partnership III L.P.	49.500% limited (combined interest)			
	Lenfest Communications, Inc.	LMC Lenfest, Inc.	50.00%	1,383,000	1,014,000	Y
		H.F. Lenfest; S. Morris/H. Brooks C/F Diane A.; S. Morris/H. Brooks C/F Brook J.S. Morris/H. Brooks C/F H. Chase	50.00% combined			
	Clearview Partners	[LENFEST SUB]		15,000	10,000	Y
	Garden State Cable TV	[LENFEST SUB]		302,000	212,000	Y
	Raystay Co.	[LENFEST SUB]		86,000	61,000	Y
	Susquehanna	[LENFEST SUB]		215,000	169,000	Y

	ENTITY	OWNERSHIP	OWNERSHIP %	CABLE HOMES PASSED	SUBSCRIBERS	PURCHASES PROGRAMMING THROUGH AT&T
	Kansas City Cable Partners	**Liberty Cable of Missouri, Inc.**	46.20% general	497,000 (These homes passed also are included in the TWE systems listed under the MediaOne Cable Ownership chart.)	307,000 (These subsribers also are included in the TWE systems listed under the MediaOne Cable Ownership chart.)	N
		TCI of Overland Park, Inc.	3.80% general			
		Time Warner Entertainment Company, L.P.	50.00% general			
	Texas Cable Partners, L.P.	**TCI Texas Cable Holdings LLC**	49.50% limited	2,189,000 (These homes passed also are included in the TWE systems listed under the MediaOne Cable Ownership chart.)	1,109,000 (These subscribers also are included in the TWE systems listed under the MediaOne Cable Ownership chart.)	N
		TCI Texas Cable, Inc.	0.50% general			
		Time Warner Entertainment - Advance/Newhouse	49.50% limited			
		TWE-A/N Texas Cable Partners General Ptnr.	0.50% general			
	Peak Cablevision, LLC	**TCI American Cable Holdings III, L.P.**	66.667% member	180,000	113,000	Y
		Fisher Communications, L.L.C.	33.333% member			
	TCA Cable Partners II	**TCI American Cable Holdings IV, L.P.**	20.00% general	450,000	308,000	Y
		TCA Holdings II, L.P. (a Texas limited partnership)	80.00% general			
	US Cable of Coastal - Texas, L.P.	**TCI USC, Inc.**	37.06% limited	216,000	135,000	Y
		US Cable Holdings, L.P.	62.94% general			

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	ENTITY	OWNERSHIP	OWNERSHIP %	CABLE HOMES PASSED	SUBSCRIBERS	PURCHASES PROGRAMMING THROUGH AT&T
	CAT Partnership	TCI Holdings II, Inc.	33.333% general	57,000	39,000	Y
		Time Warner Entertainment Company, L.P.	16.667% general			
		KBL Communications, Inc.	16.667% general			
		Comcast Cable Communications, Inc.	33.333% general			
	Sioux Falls	Liberty of South Dakota, Inc.	50% general	98,000	65,000	Y
		Midco of South Dakota, Inc.	50% general			

APPENDIX B

MEDIAONE CABLE OWNERSHIP

ENTITY	OWNERSHIP	OWNERSHIP %	CABLE HOMES PASSED	SUBSCRIBERS	WILL PURCHASE PROGRAMMING THROUGH AT&T
MediaOne	MediaOne	100%	8,530,000	4,970,000	Y
Time Warner Entertainment	MediaOne Time Warner	25.51% 74.49%	17,940,000	11,150,000	N