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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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In the Matter of	)	
	)	
Annual Assessment of the Status of	)	CS Docket No. 99-230
Competition in Markets for the	)	
Delivery of Video Programming	)	

COMMENTS OF AT&T CORP.

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COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T"), by its attorneys, hereby files its comments in response to the Commission's Notice of Inquiry ("NOI") in the above-captioned proceeding.[1]

I. INTRODUCTION

There are two predominant factors influencing the MVPD marketplace today. First, non-cable MVPDs, particularly DirecTV and EchoStar, have grown explosively, making the MVPD marketplace fully and irreversibly competitive. Second, there has been enormous private sector investment in the development of advanced broadband cable networks that will allow cable operators to provide competitive local telephony, high-speed data, and other new services that will significantly benefit consumers.

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[1] In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Notice of Inquiry, FCC 99-148, CS Docket No. 99-230 (released June 23, 1999) ("NOI").

The MVPD Marketplace is Now Competitive. Competition has developed to the point that it is now appropriate for the Commission to recognize that the MVPD marketplace is not becoming competitive, it is competitive. Consider, for example, that two of the seven largest MVPDs today are DBS companies. DBS is growing 20 times as fast as cable (and winning two of every three new customers when competing against cable), obtaining exclusivity rights to valuable sports and entertainment programming, partnering with powerful ILECs to market programming locally, and aggressively entering the Internet access business. It is no wonder that the Justice Department recently found that consumers view DBS and cable as substitutable services. In fact, under the Communications Act, a cable franchise is deemed competitive if 15% of the subscribers in the franchise area get their programming from a non-cable MVPD, and today, on a national basis, 18% of all MVPD subscribers get their programming from a company other than their cable operator.

Moreover, none of the characteristics that antitrust scholars look to as evidence of market power or lack of competition -- supracompetitive prices, restrictions on output, and a lack of innovation -- are present in the cable industry. To the contrary, cable price increases have been entirely reasonable and consistent with the rising costs of the quality programming operators deliver, per-channel prices have been declining, and cable output (in terms of additional channel capacity) and innovation have been growing dramatically. These factors confirm the highly competitive nature of the MVPD marketplace.

Private Sector Investment in Advanced Broadband Cable Networks. In recent years, there has been an unprecedented level of private sector investment in the development of advanced broadband cable networks. These investments will not only allow cable operators to improve consumers' video services, but will facilitate Congress' and the Commission's goal of bringing competition to local telephony, high-speed data, and other areas. In such an environment, the Commission should be reducing or eliminating cable regulations, and in no event should it consider imposing new regulations. Such regulations are not only unnecessary, they will dampen enthusiasm for investment and delay introduction of competition and new services to consumers.

In short, the MVPD marketplace today has exactly the characteristics that Congress and the Commission have sought -- it is competitive and awash in private sector investment. The Commission should embrace these developments and take a strong stand against any government regulation that threatens to undermine them.

II. THE TWO PREDOMINANT FACTORS IN THE MVPD MARKETPLACE TODAY -- STRONG AND GROWING COMPETITION AND MASSIVE PRIVATE SECTOR INVESTMENT -- SHOULD LEAD THE COMMISSION TO ELIMINATE OR REDUCE EXISTING CABLE REGULATIONS AND TO AVOID ANY NEW REGULATIONS.

A. The Rapid Growth of Non-Cable MVPDs, Particularly DBS, Has Created a Competitive MVPD Marketplace.

More than 14.5 million consumers, representing approximately 18% of all MVPD subscribers, now obtain multichannel video programming from a company other than their local cable operator (see NCTA Comments on the NOI). Growth by non-cable MVPDs has far outpaced cable. For example, non-cable MVPDs grew 18 percent between June 1997 and June 1998, while cable subscribership grew by only two percent over the same period.[2] Industry analysts have estimated that non-cable MVPDs will serve approximately 18 million (or 22%) of all MVPD subscribers by next year and nearly 27 million (or 28%) of all MVPD subscribers by 2004.[3]

DBS is a particularly strong competitor to cable. In the early 1990's, when most of the current cable regulations were adopted, DBS had not even been launched. Today, two of the top seven MVPDs in terms of subscribers are DBS operators. DirecTV (with 7.4 million subscribers) is now comparable in size to the third largest cable MSO; EchoStar (with 2.6 million subscribers) is now comparable in size to the seventh largest cable MSO. Last year, DBS subscribership grew by 43 percent -- over 20 times faster than cable,[4] and two out of every three new MVPD subscribers chose DBS over cable for their video programming.[5] Moreover, as the

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[2] See In re Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Fifth Annual Report, 13 FCC Rcd. 24284, at ¶ 8 (1998)("Fifth Annual Report").

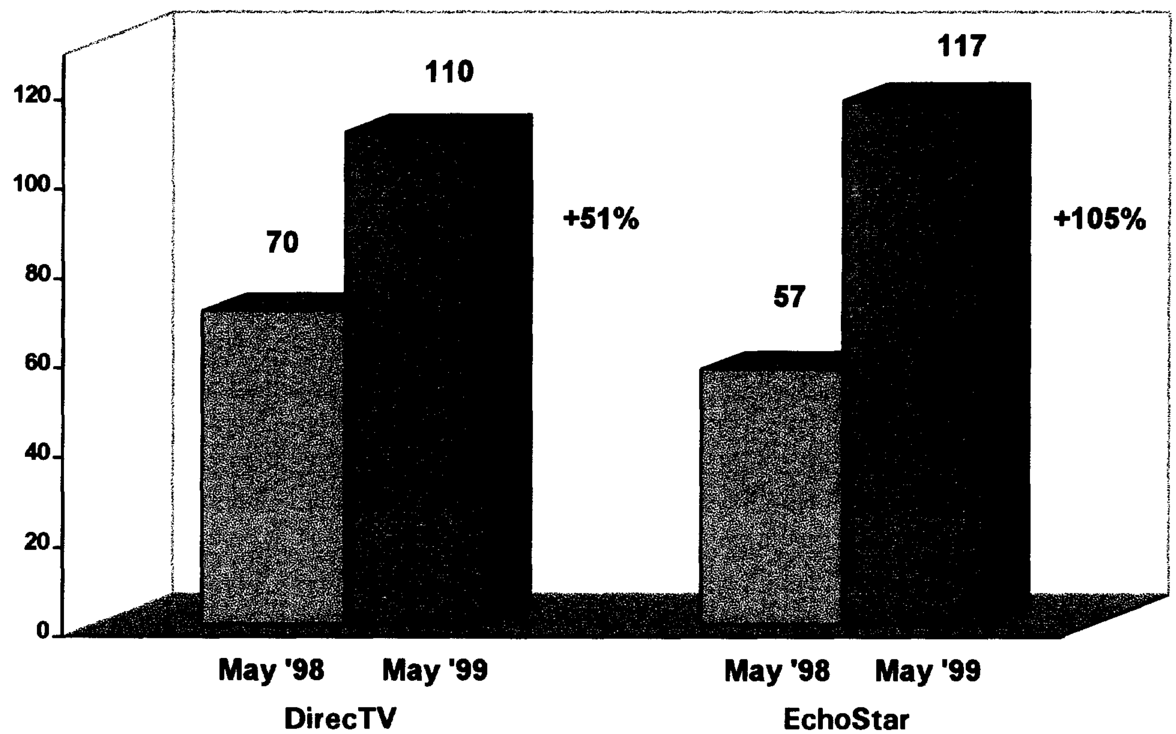
[3] See, e.g., Donaldson, Lufkin & Jenrette study, the results of which are reproduced in Cablevision: The Handbook for the Competitive Market, Blue Book, Vol. III, Spring/Summer 1998, at 10 ("Cablevision Blue Book").

[4] Fifth Annual Report at ¶ 62.

[5] Id. at ¶ 12.

following chart illustrates, the number of combined DirecTV and EchoStar subscribers jumped by nearly a quarter million in a single month in May 1999; as compared with the subscriber numbers for the previous May, DirecTV and EchoStar grew by 51 percent and 105 percent, respectively.

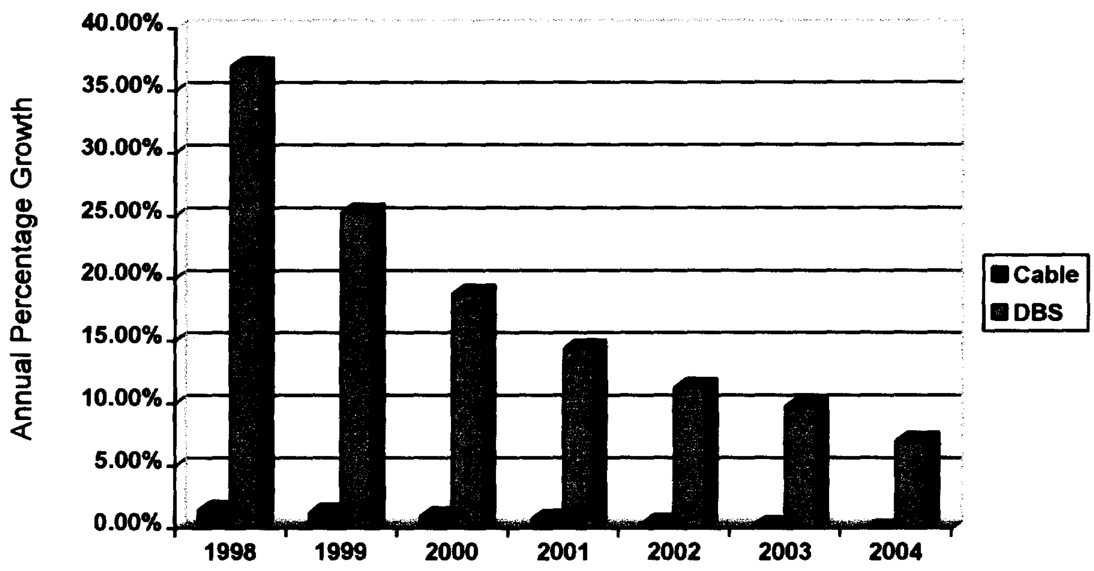
New DBS Subscribers
(in thousands)



Sources: DirecTV News Release, "DirecTV Announces Record Growth for May," (June 8, 1999), available at <<www.directv.com/press>>; EchoStar Press Release, "EchoStar Communications Corporation nets 117,000 Customers in May 1999," (June 14, 1999), available at <<www.dishnetwork.com/profile/press>>.

Moreover, as the following chart illustrates, in the future, DBS subscriber growth is expected to continue to far outpace cable.

SUBSCRIBER GROWTH CHART
Cable vs. DBS



Source: Blue Book, Volume IX, CABLEVISION, Summer/Fall 1999, at 10.

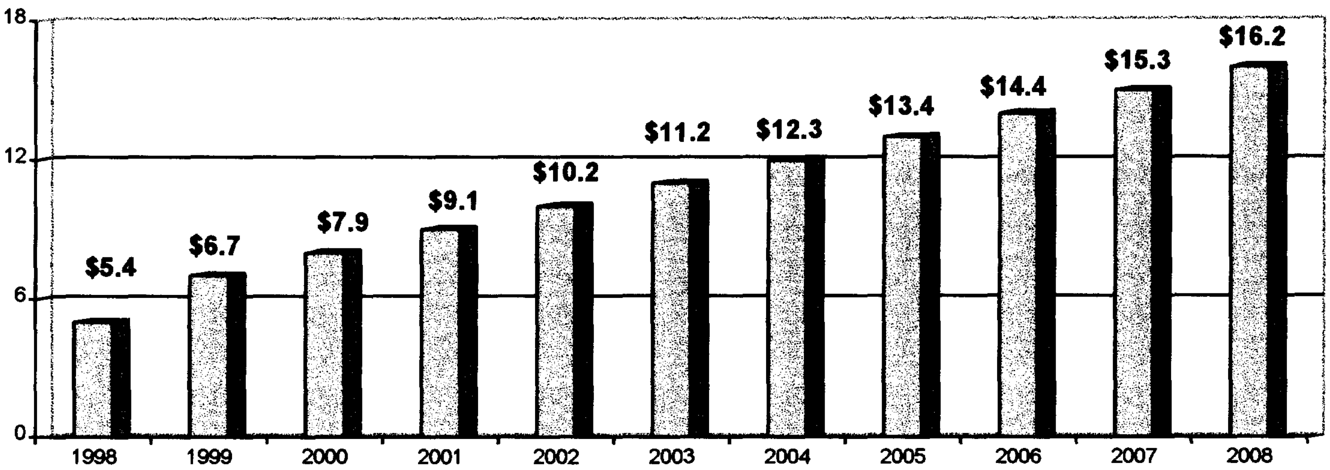
In fact, certain analysts predict that DBS will capture over 20 million subscribers in the next few years and nearly half of all MVPD subscribers over the next decade:

> [W]ith the 600K+ new subscribers added during the first quarter of 1999, the DBS industry is headed toward a year that could easily achieve well over three mil. net new subscriber additions. Carrying that scenario a couple of steps further, by year-end 2001 (just 18 months from today, and just 7.75 years after the industry's 3/94 launch), the DBS industry is easily capable of topping the magical 20 mil. subscriber mark, on its way toward accessing almost 30 mil. subs and

almost half of today's 78 mil. subscription TV marketplace by 2008.[6]

As a consequence of this growth, DBS revenue will <u>triple</u> in the next decade to over $16 billion a year.

Projected Revenue Growth of US Direct-to Home (DTH) Satellite TV Industry (in billions $US)



Source: C.E. Onterberg Towbin, <u>The Satellite Book: Second Quarter 1999</u>, Vol. 1 No. 2 (1999).

Several key marketplace and regulatory developments are facilitating this impressive DBS growth. <u>First</u>, DirecTV will add a significant number of new subscribers as a result of its recent acquisitions of the United States Satellite Broadcasting ("USSB") and PRIMESTAR.[7] In addition, the Commission's approval of the

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[6] <u>See</u> The Carmel Group, "Research and Data," at 3 (Apr. 1999) <u>available at</u> <<www.carmelgroup.com/Research_Data>>("Carmel Research & Data").

[7] <u>See</u> DirecTV News Release, "Hughes to Acquire PRIMESTAR," (Jan. 22, 1999) <u>available at</u> <<www.directv.com/press>>; DirecTV News Release, "Hughes Completes Acquisition of PRIMESTAR Medium-Power DBS Business," (Apr. 28, 1999) <u>available at</u> <<www.directv.com/press>>.

transfer of DBS licenses from Tempo to DirecTV will enable DirecTV to operate DBS satellites from three orbital locations that are capable of transmitting DBS signals to all portions of the U.S.[8] These acquisitions will strengthen DirecTV's ability to compete. Indeed, the Commission justified its approval of the Tempo transfer by stating that it will "allow DirecTV to compete more effectively with EchoStar and cable operators."[9]

Similarly, the Commission approved EchoStar's acquisition from MCI of 28 additional DBS channels at the full CONUS 110° W.L. orbital slot, noting that the acquisition "will likely allow EchoStar to provide consumers with a more competitive alternative to cable offerings and thereby increase competition in the [MVPD] market, which should lead to additional service offerings and/or lower prices."[10]

Second, DirecTV and EchoStar have a significant channel capacity advantage over cable. DirecTV and EchoStar currently offer 200 or more channels that include all the most popular and widely carried

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[8] See Tempo Satellite, Inc., Assignor and DirecTV Enterprises, Inc., Assignee, Order and Authorization, IBFS File No. SAT-ASG-19990127-00014, DA 99-1043 (rel. May 28, 1999).

[9] Id. at ¶ 6.

[10] See MCI Telecommunications Corp. and EchoStar Corp., Order and Authorization, FCC 99-109, at ¶ 1 (rel. May 19, 1999) ("EchoStar Order").

national cable networks. They aggressively market this breadth of programming as a point of comparison for consumers choosing between satellite television and cable. For example, DirecTV displays the following chart on its Web site:

VIDEO PROGRAMMING			
Channel Type	**DIRECTV**	**EchoStar**	**Avg. Digital Cable***
Total Video Channels	180	162	116
Total Premium channels	33	23	24
Total Pay Per View Channels	50	12	23
Sports Networks	31	28	Varies
No. of Sports Packages	8	1	Varies
Total Audio Channels	31	31	24
Total Channel Count	**211**	**193**	**140**
* Of course, the average number of channels on analog cable systems would be lower still.			

Source: DIRECTV, "DIRECTV vs. EchoStar and Avg. Digital Cable," available at <<www.directv.com/overview>> (visited July 7, 1999) (footnotes omitted).

Moreover, the acquisitions described above will allow DirecTV to deliver 370 channels and EchoStar 500 channels of video and audio programming.[11] And, unlike cable which has to upgrade its system capacity one local system at a time, the new orbital slots

11 See Hughes Electronics Corp., 1998 Annual Report 23-24 (1999) ("Hughes 1998 Annual Report"); EchoStar Press Release, "EchoStar Communications Corporation Completes Acquisition of Assets From News Corporation, MCI WorldCom," (June 24, 1999) available at <<www.dishnetwork.com/profile/press>>.

acquired by DirecTV and EchoStar will allow them immediately and ubiquitously to expand their channel capacity and service offerings to all consumers nationwide.

Third, not only does DBS have more programming services, but because it is not subject to the program access rules, it has more exclusive programming that is not available to cable. Indeed, DirecTV relies heavily upon its exclusive programming in marketing their service. For example, DirecTV has marketed its sports packages (such as "NFL Sunday Ticket,"[12] "NBA League Pass," and "NHL Center Ice") as "not available on cable"[13] and has trumpeted its exclusive music concerts as part of its "tradition of delivering quality programming not available on cable."[14] The ability of DBS operators to enter into such exclusive arrangements free of the onerous

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[12] See Hughes 1998 Annual Report at 22 (1999)("DirecTV's important arrangement making it the exclusive small-dish provider of NFL Sunday Ticket has been extended through 2002.").

[13] DirecTV News Release, "DirecTV to Offer Last Six Weeks of '97 NFL Sunday Ticket Free to New Subscribers," (Nov. 3, 1997) available at <<www.directv.com:80/press>>; DirecTV News Release, "DirecTV Offers Free Preview of NBA League Pass and NHL Center Ice to Subscribers," (Oct. 3, 1997) available at <<www.directv.com:80/press>>.

[14] DirecTV News Release, "Shania Twain's First-Ever Televised Concert to be Broadcast Live Only on DirecTV," (Aug. 17, 1998) available at <<www.directv.com:80/press>>; see DirecTV News Release, "DirecTV to Air Exclusive Premiere of Tom Petty and Heartbreakers Concert," (July 12, 1999) available at <<www.directv.com:80/press>>(stating that such broadcast is "[i]n keeping with [DirecTV's] strategy of delivering programming not available elsewhere....").

regulations that apply to their cable counterparts is a significant competitive advantage.

Fourth, DirecTV and EchoStar have begun to partner with other powerful companies in order to broaden their service offerings and enhance the local marketing of these services. For example, DirecTV has signed marketing and distribution agreements with Bell Atlantic, SBC, GTE, and Cincinnati Bell, to offer bundled telephone and video services to millions of potential subscribers in 30 states.[15] Likewise, EchoStar has signed strategic partnership agreements with private cable and competitive residential phone service providers to bundle EchoStar's satellite programming with other services, such as Internet access and telephony.[16]

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[15] See Hughes 1998 Annual Report at 22 (1999); DirecTV News Release, "SBC Communications, DirecTV and USSB Sign Agreements to Offer Digital Satellite TV Service in Apartment Complexes," (Mar. 2, 1998) available at <<www.directv.com/press>>; DirecTV News Release, "Bell Atlantic, DirecTV and USSB Announce Agreements," (Mar. 2, 1998) available at <<www.directv.com/press>>.

[16] EchoStar Press Release, "EchoStar, OpTel Form Alliance to Provide Dish Network Satellite Television Services to Multi-Family Residential Complexes," (Feb. 2, 1999) available at <<www.dishnetwork.com/profile>>. DBS has been equally aggressive in establishing partnerships on the HDTV front. DBS operators have announced plans to expand availability of HDTV and are developing next generation set-top boxes capable of receiving high-definition satellite programming. See DirecTV News Release, "DirecTV to Deliver DreamWorks Pay Per View Films in High Definition," (June 21, 1999) available at <<www.directv.com/press>>; EchoStar Press Release, "EchoStar Demonstrates HDTV Broadcast Technology at Nashville Satellite Trade Show July 22-26," (July 23, 1998) available at <<www.dishnetwork.com/profile>>; Hughes 1998 Annual Report at 22-23 (1999)(touting DirecTV's partnership with Thomson Multimedia "to develop and distribute a new family of advanced interactive DirecTV receivers, and HDTV sets with integrated DirecTV reception capability").

In addition, DirecTV and EchoStar are entering into partnerships for development and marketing of two-way, data-enhanced television services. For example, America Online's ("AOL's") announcement that it will invest $1.5 billion in DirecTV's parent, Hughes Electronics, enables DirecTV to market its product to AOL's 17 million subscribers and to accelerate development of its satellite-based system for high-speed Internet connections and interactive television.[17] Similarly, earlier this year EchoStar announced its launch of a new high-speed interactive broadcast service which will include channels from Bloomberg Financial News, The Weather Channel, and E!Online, among others.[18]

These partnerships not only transform DirecTV and EchoStar into broad-based media players on equal footing with AT&T or any other cable MSO, they significantly increase the competitiveness of their partners as well:

> DirecTV, the nation's biggest satellite TV broadcaster, and SBC Communications announced a marketing and distribution deal that could help SBC reach its goal of becoming a one-stop provider of telephone, Internet and TV services. The deal boosts SBC's ability to compete with AT&T and other big phone companies that want to bundle TV, Internet and phone services into a single package for consumers.[19]

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[17] See A. Breznick, "AOL Takes DirecTV Aim at Cable MSOs," MediaCentral (June 28, 1999) available at <<www.cableworld.com>>; "AOL to invest $1.5 billion in Hughes, CNET News.com (June 21, 1999) available at <<www.news.com>>; DirecTV News Release, "AOL and Hughes Electronics Form Strategic Alliance to Market Unparalleled Digital Entertainment and Internet Services" (June 21, 1999) available at <<www.directv.com/press>>.

[18] EchoStar Press Release, "EchoStar Announces Interactive Television Broadcast Agreement," (Jan. 7, 1999) available at <<www.dishnetwork.com/profile>>.

[19] See Washington Post, July 17, 1999, at E1.

Fifth, sharp reductions in the up-front consumer equipment costs for a DBS system will continue to fuel growth in the industry. In 1994, the Commission noted that consumers wanting to buy a DBS system could purchase DBS dishes for $699, and could pay $150-200 for professional installation or could purchase the installation equipment for $69.95.[20] Today, promotions offered by DBS providers have lowered the cost of equipment and installation to little or nothing.[21]

Finally, favorable regulatory and legislative developments will further enhance the competitive strength of DirecTV and EchoStar. For example, Congress's ongoing legislative initiative to authorize DBS providers to retransmit local broadcast signals within the broadcaster's local market (an initiative the cable industry has never opposed) will eliminate the primary reason why people say they do not subscribe to DBS.[22] According to information received

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[20] See In re Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, First Report, 9 FCC Rcd. 7442, at ¶ 65 (1994).

[21] See, e.g., "$249 Rebate and $99 Installation Special Promotion," available at <<www.dishnetwork.com/promos>> (visited July 9, 1999) (offering a free DISH network system including professional installation if consumer purchases a one-year programming package).

[22] Both the House and Senate have approved bills that would allow satellite carriers to retransmit a local television station to households and businesses throughout that station's local market, as cable providers do currently. The House bill, H.R. 1554, was approved in April, and amended and adopted by the Senate in May. The House and Senate are expected to complete work on the legislation later this year. Given the pending enactment of this

(footnote continued ...)

by the Commission, 55 percent of individuals inquiring into DBS cited the lack of local broadcast signals as a reason not to purchase DBS.[23]

In short, the growth of DBS has been extraordinary and will continue going forward. It is no wonder therefore that the Justice Department recently found that:

> Cable and DBS are both MVPD products. While the programming services are delivered via different technologies, consumers view the services as similar and to a large degree substitutable. Indeed, most new DBS subscribers in recent years are former cable subscribers who either stopped buying cable or downgraded their cable service once they purchased a DBS system.[24]

Likewise, the Commission recently concluded that "DBS operators and cable operators have engaged in increasingly

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(... footnote continued)

legislation, DirecTV announced plans to offer local broadcast network channels to approximately 50 million homes across the U.S. See DirecTV Press Release, "DirecTV Announces Record April Subscriber Growth," (May 12, 1999) available at <<www.directv.com/news>>. The Commission has also paved the way for direct competition for domestic MVPD service by permitting DBS providers in Mexico and Argentina to provide service in the United States. See International Bureau Announced Conclusion of U.S.-Mexico Protocol for Direct-to-Home Satellite Services, Public Notice, 12 FCC Rcd. 13105 (1996); International Bureau Announces Conclusion of U.S.-Argentina Framework Agreement and Protocol for Direct-to-Home Satellite Services and Fixed-Satellite Services, Public Notice, 13 FCC Rcd. 16581 (1998).

[23] See Fifth Annual Report at ¶ 63, n.274. See also Separate Statement of Commissioner Powell in the Fifth Annual Report at 2 ("[I]t is worthy to note that many of the 'barriers to entry' [in the MVPD market] are regulatory, rather than a consequence of a monopolist's market power or control over essential facilities.")("Commissioner Powell Statement").

[24] Complaint, United States v. PRIMESTAR, Inc., No. 1:98CV01193, ¶ 63 (D.D.C. May 12, 1998).

rivalrous behavior, and ... will likely increase the degree of that competition."[25] As one industry analyst recently put it:

> [T]he Federal communications Commission (FCC) and Congress should be pleased. What was predicted five years ago has finally arrived, i.e., clear and unmistakable satellite delivered competition to cable and other video service providers."[26]

And, of course, DBS is not the only competitor cable faces. The telephone companies[27] and public utilities[28] are increasingly

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[25] See EchoStar Order at ¶ 19 (citing DOJ's comments filed in that proceeding).

[26] See Carmel Research & Data (Apr. 1999).

[27] Ameritech now passes more than 1.7 million homes with over 100 cable franchises. See "ANM Launches in Two Ohio Towns," Multichannel News, at 22 (May 17, 1999). BellSouth has cable franchises passing 1.2 million homes, and is a large MMDS investor. See Fifth Annual Report at ¶¶ 112, 114. GTE has cable franchises that pass over 500,000 homes. See "Does GTE Provide Cable TV?" available at <<www.gte.com/products>> (visited July 13, 1999). SNET has acquired the first state-wide cable franchise in Connecticut and is offering cable service in over a dozen communities. See Fifth Annual Report at ¶ 43. U S West operates video systems in Omaha, Nebraska, and Phoenix, Arizona, the latter representing the first use of very high-speed digital subscriber line ("VDSL") technology to deliver video, high-speed Internet access, and telephone service over existing copper plant. Id. at ¶ 114.

[28] For example, RCN Corporation now provides bundled phone, video, and Internet-access services in New York, Boston, New Jersey, and Pennsylvania. RCN also has built a $300 million, 350-mile fiber network in the Washington, D.C. region with a local utility, Potomac Electric Power Company, and is already providing bundled services under the brand name "StarPower" in the nation's capital. See Fifth Annual Report at ¶ 12. Similarly, Seren Innovations Inc., a subsidiary of Northern States Power Co., Minnesota's largest electrical and natural gas utility, has begun offering cable and Internet service in Minnesota and has applied for cable franchises in markets served by AT&T in California and Colorado. See "Overbuilder Seren Could Stir Things In Denver," Multichannel News, at 48 (June 7, 1999).

active MVPDs. SMATV operators,[29] C-band distributors,[30] and MMDS companies[31] also continue to offer alternatives to cable. Finally, local broadcasters, armed with an additional 6 MHz of spectrum to launch digital broadcasting services, are poised "to become more effective competitors with cable operators in the MVPD market."[32]

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[29] SMATV operators serve approximately 1.5 million subscribers primarily in multiple dwelling units. See Fifth Annual Report at ¶ 90. Moreover, SMATV operators are beginning to bundle local and long distance residential telephone services, closed-circuit security monitoring, Internet access, voice mail, and paging services in order to increase their competitive position and are pursuing technological advancements, such as the use of common carrier supertrunking and the integration of DBS and SMATV services, to foster additional growth in the SMATV industry.

[30] C-band distributors serve over 1.8 million subscribers and provide access to several hundred program services.

[31] MMDS operators currently serve approximately 1.5 million subscribers, and, upon the Commission's authorization of two-way digital MMDS, are offering high-speed Internet access, video conferencing, distance learning, continuing education, and other two-way services. See In re Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, Report and Order, 13 FCC Rcd. 19112 (1998)("Two Way Order"). For example, BellSouth and GTE both launched digital MMDS systems in their regions in direct competition with cable operators. Once all systems are launched, BellSouth estimates that it will be able to service more than three million homes. See BellSouth News Release, "BellSouth Brings New Era of Home Entertainment Service to Atlanta" (June 4, 1998) available at <<www.bellsouthcorp.com>>. In addition, as noted by the Commission, its recent Two-Way Order provides MMDS operators with greater flexibility to provide service, which will further enhance MMDS' competitive potential. See Two-Way Order at ¶¶ 8-9.

[32] See Fifth Annual Report at ¶ 101. As early as November 1, 1999, more than half of all television households will have access to multiple channels of digital broadcast television. See In re Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement, and Construction of Broadcast Station Transmission Facilities, Notice of Proposed
(footnote continued ...)

The cable industry's pricing activity and significant ongoing efforts to innovate and increase output also confirm the competitive nature of the MVPD marketplace. As Commissioner Powell has pointed out, cable's current market share alone cannot be used to assess the state of competition. Rather, other criteria must be considered which indicate the presence or absence of a competitive market, including: (1) whether cable operators are imposing non-cost-based price increases; (2) whether cable operators are restricting output; and (3) whether cable operators are refraining from innovating.[33] The cable industry's conduct with respect to each of these criteria confirms that the MVPD marketplace is competitive.[34]

- **Price Increases**. Price increases are not evidence of a lack of competition unless they substantially exceed a firm's costs. In the case of video programming, it is indisputable that MSOs' costs have increased dramatically (18.4% last year) as have the programming expenses for the cable networks themselves (20.9%

(... footnote continued)

Rulemaking, 12 FCC Rcd. 12504, at ¶ 2 (1997). By combining the digital spectrum of all stations in a local television market, broadcasters estimate that they will be able to create a 40 to 50 channel service to compete with existing MVPDs. See Fifth Annual Report at ¶ 101.

33 See Commissioner Powell Statement at 1.

34 This list is not exhaustive. Other factors, such as the ease of potential competitive responses by DBS and other alternative MVPDs, further demonstrate the competitiveness of the MVPD marketplace.

last year).[35] On the following page is a graph that TCI previously submitted to Congress comparing the consumer price index with TCI's programming cost increases in 31 large TCI cable systems (representing a very large proportion of TCI's subscribers). As the graph illustrates, TCI's programming costs far exceeded inflation during the applicable five-year period.[36] This graph also shows that even as TCI's programming costs were dramatically increasing, its per-channel rate remained relatively stable.[37]

Moreover, as Commissioner Powell observes, "it is not monopolistic behavior to increase prices to upgrade infrastructure and facilities that will ultimately benefit consumers in the market."[38] As the Commission has acknowledged, capital expenditures to upgrade cable facilities were $6.8 billion last year, up 21% from the previous year.[39]

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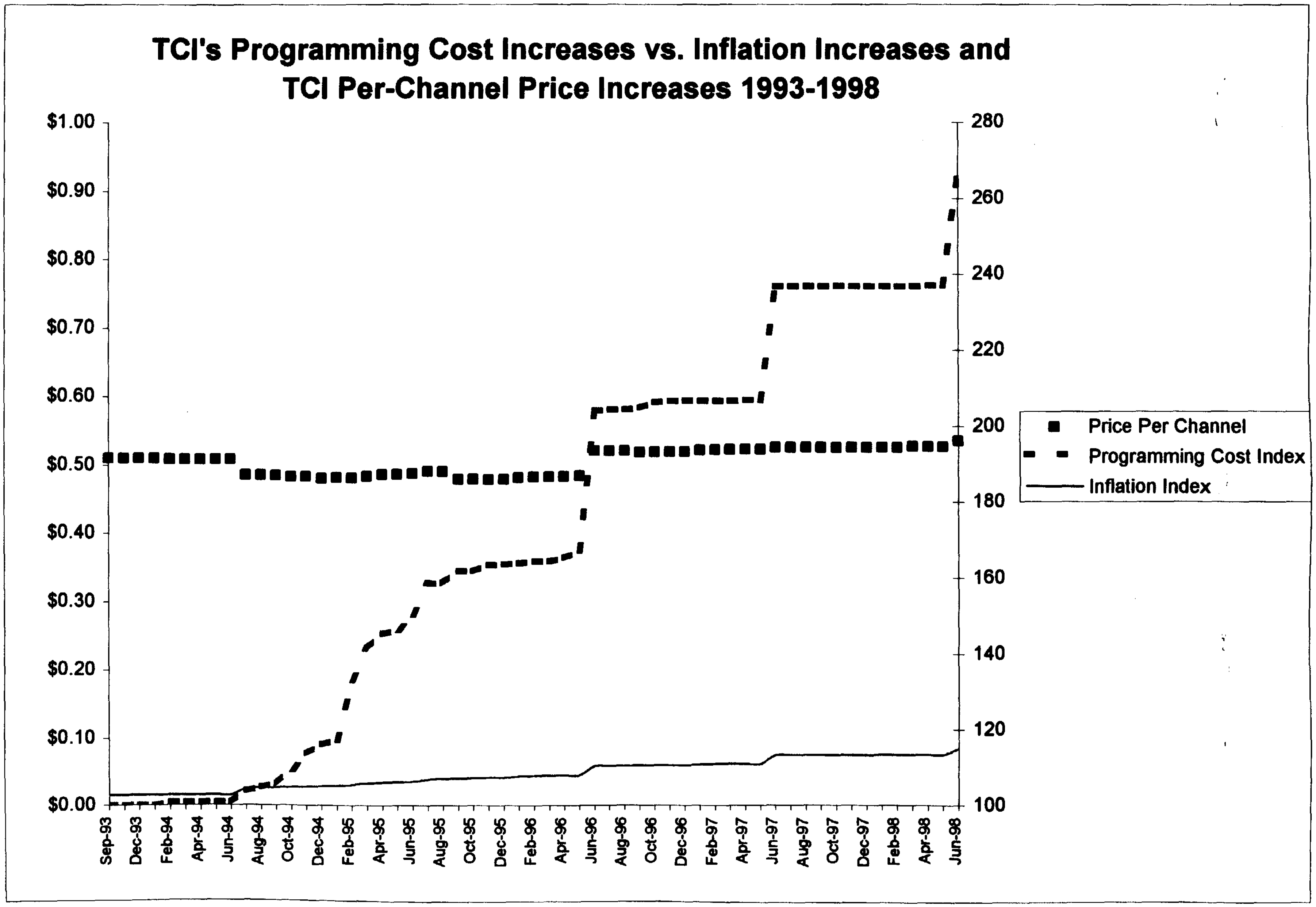
[35] See Fifth Annual Report at ¶ 24.

[36] TCI previously submitted this chart along with the written testimony of Leo J. Hindery, Jr. before the Senate Commerce Committee on July 28, 1998.

[37] This is consistent with the industry trend, as the Commission has acknowledged. For example, in its first cable pricing report, the Commission noted that the average monthly per-channel rate in regulated cable franchises in 1993 was $0.62. See Report on Cable Industry Prices, 12 FCC Rcd. 3234, at ¶ 10 and Chart 2 (1997). Likewise, in its most recent cable price report, the Commission found that the average monthly per-channel rate in regulated cable franchises was nearly identical -- $0.63. See Report on Cable Industry Prices, 15 Comm. Reg. 915, at ¶ 31 and Table 7 (1999)("1999 Cable Price Report").

[38] See Commissioner Powell Statement at 2.

[39] See Fifth Annual Report at ¶ 37.



TCI's Programming Cost Increases vs. Inflation Increases and TCI Per-Channel Price Increases 1993-1998
$1.00
$0.90
$0.80
$0.70
$0.60
$0.50
$0.40
$0.30
$0.20
$0.10
$0.00
280
260
240
220
200
180
160
140
120
100
Sep-93
Dec-93
Feb-94
Apr-94
Jun-94
Aug-94
Oct-94
Dec-94
Feb-95
Apr-95
Jun-95
Aug-95
Oct-95
Dec-95
Feb-96
Apr-96
Jun-96
Aug-96
Oct-96
Dec-96
Feb-97
Apr-97
Jun-97
Aug-97
Oct-97
Dec-97
Feb-98
Apr-98
Jun-98
Price Per Channel
Programming Cost Index
Inflation Index

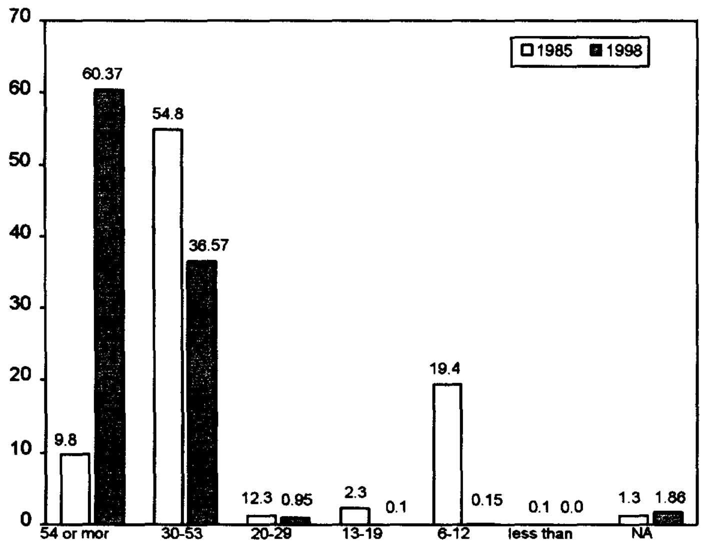
0066904.03

In short, any price increases have been entirely reasonable and consistent with rising programming costs and network expenditures.

- **Output**. Cable operators have not restricted output, which is the hallmark of monopolistic behavior. To the contrary, they have steadily increased the number of channels and programs available to consumers. As the Commission's own video competition report acknowledges, "cable operators have made significant capital expenditures to upgrade and rebuild cable infrastructure in order to increase channel capacity and provide additional services."[40]

And these channel capacity increases have been exponential. For example, as the graph below illustrates, between 1985 and 1998, the number of cable subscribers receiving more than 54 channels grew by over 500 percent (from 9.8% in 1985 to 60.37% in 1998).

Percent of Subscribers by System Channel Capacity: 1985, 1998



Source: NCTA Cable Television Developments, Fall 1998/Winter 1999, at 10-11.

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[40] See Fifth Annual Report at ¶ 18.

In short, it cannot be said that cable operators have restricted output. Rather, they have dramatically increased it. In fact, with this expansion has come continued growth in subscribership, suggesting that consumers continue to value cable's product.

- **Innovation.** Finally, far from shying away from innovation, the cable industry has been a technology leader over the last decade. As Commissioner Powell describes it:

> Not only have there been steady increases in the quality of programming as discussed above, but also this industry has been investing significant sums to upgrade plant for high speed, two-way capability. This is allowing the industry to begin to offer residential phone service in direct competition with incumbent phone companies -- a development Congress clearly hoped for in the 1996 Act. Moreover, the rapid innovation of cable plant is accelerating the universally shared desire to bring broadband Internet services to homes and residences.[41]

In Section II.B. below, AT&T describes in more detail the extraordinary level of private investment in advanced broadband cable networks that continues to occur, largely in an effort to bring greater competition to American consumers in local telephony and other services.

* * *

As the foregoing discussion demonstrates, competition in the MVPD marketplace is here, it is growing, and it is irreversible. And it is having a real impact on cable operators in terms of

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[41] See Commissioner Powell Statement at 2.

moderating and lowering their prices, increasing the number and quality of programming services they deliver, and fostering significant network innovation which will increase competition in other important services, such as local telephony.

In light of such marketplace facts, it is simply no longer credible for anyone to talk in terms of cable's "stranglehold" over the MVPD marketplace. Rather, the Commission must acknowledge that when you have 18% of American consumers (and two out of every three new MVPD consumers) subscribing to a cable competitor, when you have two DBS companies available to virtually all U.S. homes and growing at 20 times the rate of cable, when you have steady or declining per-channel cable prices, and when you have billions of dollars being invested to upgrade and innovate in cable networks, what you have, plain and simple, is a competitive marketplace.

The competitive reality of the MVPD marketplace <u>alone</u> justifies elimination or reduction of cable regulations. When one considers the potentially dampening effects of regulations on continued cable investment in telephony and high-speed data, such regulation is decidedly anti-consumer.

B. Enormous Private Sector Investment by AT&T and Other Cable Operators Is Facilitating the Development and Deployment of Advanced Broadband Cable Networks and Generating Significant Competition in Local Telephony, High-Speed Data, and Other Services.

Private sector investment is driving the development of, and competition in, the broadband marketplace. As the Commission recently acknowledged, "substantial investment in broadband technologies is taking place across virtually all segments of the communications industry,"[42] with sums reaching well into the tens of billions of dollars.[43]

AT&T has been a leading investor in this market. Its $48 billion acquisition of TCI[44] and its proposed $58 billion acquisition of MediaOne[45] are testament to this fact. Even beyond these acquisitions, AT&T, through its investment of additional billions of dollars to upgrade its networks, is committed to breaking the monopoly stranglehold incumbent LECs have over American consumers and ensuring that residential customers obtain

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42 See In re Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Report, 14 FCC Rcd. 2398, at ¶ 44 (1999)("Section 706 Report").

43 Id. at ¶ 35.

44 See AT&T News Release, "AT&T, TCI to Merge, Create new AT&T Consumer Services Unit," (June 24, 1998) available at <<www.att.com/press>>.

45 See "AT&T Delivers MediaOne Merger Plan to FCC for Review, Approval," Washington Telecom Newswire (July 9, 1999).

the benefits of competitive local telephone service.[46] Indeed, the Commission has recognized the importance of AT&T's investment to the goal of local telephony competition:

> AT&T is one of only a few firms that currently possesses the experience, brand name assets, and financial resources that are essential for quick and substantial entry into the retail residential local exchange and exchange access markets.[47]

As one financial analyst report recently stated:

> Besides AT&T, no other company has yet laid out a coherent plan for attacking a broad swathe of the Bells' residential business.48

And, of course, AT&T's determination to invest the capital necessary to create advanced broadband networks will enable it to provide content-enriched high-speed data services, and improved video services, as well as competitive telephony.

Other cable operators also are making significant investments in broadband. The Commission has recognized that "[s]ince 1995 [in which cable operators spent $2.5 billion on upgrades and rebuilds], expenditures for the improvement of existing plant has increased approximately 20% each year."[49] NCTA estimates that from 1996

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[46] This investment is expended, for example, on capital upgrades to facilities to provide for high-quality Internet protocol ("IP") local telephone service, and prior to the initiation of such IP telephony, competition in the provision of facilities-based, circuit-switched local telephony.

[47] See Applications for Consent to Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee, Memorandum Opinion and Order, 14 FCC Rcd. 3160, at ¶ 47 (1999).

[48] See "New Communications Industry Takes Shape," FT Telecoms, at 1 (June 9, 1999).

[49] See Fifth Annual Report at ¶ 37.

through 2001, the cable industry will spend $33 billion to upgrade its facilities.[50]

Not only will this enormous investment allow cable operators to compete aggressively with ILECs and others for the provision of local telephony and other services, it will also stimulate additional investment by the ILECs and others. For example, as the Commission itself has noted, broadband investment by cable operators "appears to have spurred incumbent LECs to construct competing facilities."[51] More recently, Chairman Kennard correctly observed:

> Where cable modem service has been introduced, DSL has followed. For instance, in May 1997, @Home launched service in Phoenix; four months later U S West launched DSL there. That same month, @Home began offering service in San Diego; soon thereafter Pacific Bell began offering DSL. In June 1998, @Home entered Denver; that same month so did U S West. And just last week, Bell Atlantic -- anticipating the roll-out of cable Internet access in New York City -- announced that it will begin offering DSL service in the Big Apple. The competitive pattern is set, and it works.[52]

Such market-driven competition is precisely what Congress established as the central policy goal of the 1996 Act.[53]

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[50] See "Cable Television Industry Overview," available at <<www.ncta.com/overview98>> (visited July 12, 1999).

[51] See Section 706 Report at ¶ 42, n. 84.

[52] See Remarks of FCC Chairman William E. Kennard Before the Federal Communications Bar Association's Northern California Chapter, San Francisco, CA, at 5 (July 20, 1999).

[53] See, e.g., H.R. Rep. No. 104-204, 104th Cong., 1st Sess., at 47-48 (1995)(stating that the purpose of the Telecommunications Act of 1996 is to "promote[] competition and reduce[] regulation in order to secure lower prices and higher quality services" for Americans consumers.). See also id. at 48-55.

C. **In Such A Marketplace, Where Competition and Private Sector Investment are Substantial, the Commission Should Eliminate or Significantly Reduce Existing Cable Regulations and Should Avoid Entirely the Imposition of Costly New Regulations.**

Most existing cable regulations were developed and implemented nearly a decade ago at a time when cable operators were perceived as facing no meaningful competition. Today, DBS companies have become the equal of cable MSOs in terms of subscribers (in fact, DBS prevails in head-to-head competition by capturing two of every three new MVPD subscribers). And, DirecTV and EchoStar pass many more homes than any MSO. This competition has transformed the MVPD marketplace and rendered obsolete the notion that cable does not face a credible competitive threat. Strict regulation of the cable industry, therefore, is no longer necessary or appropriate, and the Commission should, wherever possible, eliminate or reduce existing regulations, and should not impose any new cable regulations. In fact, the only result of such unnecessary regulation will be to dampen enthusiasm for investment and delay or deny the introduction of competition and new services to consumers.

The suspended cable horizontal ownership limit is a good example of a rule that was adopted in the early 1990's, before the launch of DBS, and which needs to be eliminated or revised in light of today's competitive marketplace. Congress enacted the limit based on concerns that cable operators could: (1) exercise monopsony power to force unfair concessions from programmers;[54] and

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[54] See H.R. Rep. No. 102-628, 102nd Cong. 2d Sess. 42 (1992)("[T]he size of certain MSOs could enable them to extract concessions from programmers, including equity positions, in exchange for carriage.").

(2) vertically foreclose entry by programmers, thereby reducing program diversity.[55]

However, the rapid development and growth of non-cable MVPDs during the past six years means that programmers now have meaningful alternative outlets for distributing their product that did not exist when the limit was adopted. The presence of these alternatives, and the fact that they are growing much more rapidly than cable, necessarily reduces any MSO's power to foreclose rival programmers or to obtain unfair concessions from programmers. The Commission has recognized that with the growth of alternative MVPDs, *"network programmers gain alternative avenues for distribution of their products, thus reducing cable operators' market power or influence in the purchase and distribution of network programming."*[56]

It would thus be arbitrary and irrational for the Commission to retain the suspended cable horizontal ownership limit without major changes that account for the presence of new, alternative

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[55] See S. Rep. No. 102-92, 102nd Cong, 1st Sess. 32 (1991) ("[T]here are special concerns about concentration of the media in the hands of the few who may control dissemination of information ... and will slant information to their own biases or ... provide no outlet for unorthodox or unpopular speech because it does not sell well, or both.").

[56] In the Matter of Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992 - Horizontal Ownership Limits, Memorandum Opinion and Order on Reconsideration and Further Notice of Proposed Rulemaking, 13 FCC Rcd. 14462, at ¶ 80 (1998)("Further NPRM")(emphasis added).

MVPDs. Rather, in order to reflect the competitive realities in the MVPD marketplace, the Commission should at least make the following changes to its suspended rules: 1) consistent with the underlying purposes of the rules, attribute to an MSO only those cable systems for which the MSO actually does, or could, control programming choices or purchase programming; 2) consistent with the Commission's proposal in the Further NPRM, measure an MSO's horizontal concentration level as a percentage of all MVPD subscribers; and 3) significantly raise the 30 percent limit. These changes would allow the Commission to satisfy the underlying purposes of the horizontal rules without sacrificing the enormous benefits in terms of local telephony competition that AT&T and other companies could achieve through increased cable system ownership.

Moreover, in no event should the Commission adopt any new cable regulations. The only consequence of new regulations would be to negatively impact the enormous private sector investment in broadband networks described above, thereby reducing competition in local telephony and other services.

A good example of the potentially anti-consumer, anti-competition ramifications that would flow from the imposition of new cable regulations is presented by various proposals to "unbundle" cable operators' networks to provide forced access for ISPs. AT&T has elsewhere already fully described the legal, policy, economic, and technical problems surrounding a cable unbundling requirement.[57] While we will not reiterate those arguments here, AT&T emphasizes that a cable unbundling requirement would negatively impact private sector investment in new broadband technologies and services.[58] Any regulation will impose costs and create disincentives to invest, or to invest at the same level. This is particularly so in the development of businesses such as broadband Internet (or cable IP telephony), where the up-front costs are so high and the returns on investment so uncertain. This concern is not mere speculation. Investment community leaders have issued strong warnings of the significant dangers of imposing unbundling regulations in the nascent Internet services business.[59]

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[57] See, e.g., AT&T/MediaOne Public Interest Statement at 68-90 (filed July 7, 1999).

[58] In fact, the Commission recently refused to impose a cable unbundling requirement, stating that "[o]ur experience in communications markets teaches that entry by many competitors is the best paradigm by which to bring broadband to all Americans" and that such competition now exists in the broadband market. The Commission concluded that "it is premature to conclude that there will not be competition in the consumer market for broadband. The preconditions for monopoly appear absent." See Section 706 Report at ¶¶ 48, 53, 101.

[59] See Joint Letter from Laura Martin (Credit Suisse), Dennis Leibowitz (DLJ Securities), Jessica Reif Cohen (Fenner and Smith), and Thomas Eagan (Paine Webber) to FCC Chairman William Kennard (Dec. 18, 1998)("Martin Joint Letter")(attached hereto as Exhibit A). See also Letter from Intel, Compaq Computer, Cisco Systems, IBM, Novell, and other Silicon Valley executives to Chairman Kennard at 2 (Dec. 19, 1998)("Investments in [new broadband facilities] are very risky and lack any guaranteed return. Government regulation would actually limit the return on investment, and cause investors to be less willing to risk the billions of dollars necessary to build out the networks. Government intervention is particularly misplaced in the case of new broadband networks deployed by entities that lack the market
(footnote continued ...)

According to these investors, "even a hint of [regulation] would severely diminish the willingness of investors to finance system upgrades and new facilities."[60] Other investors have reached the same conclusion:

- Not only would [regulatory] uncertainty diminish the ability of corporate entities to plan new buildouts, but it would effectively kill the public equity market for financing.[61]

- If the Commission were to [adopt] ... common carrier regulation of cable companies providing Internet services, it could cast a significant cloud over the willingness of lenders and investors to provide additional capital to these companies.[62]

The Commission is well aware of the negative impact regulation will have on the deployment of advanced broadband services. Chairman Kennard recently acknowledged that "the amount of investment in broadband and the number of deals concerning it over the past four months have been staggering" and that this level of investment has been possible <u>only</u> because the government has refrained from regulating broadband and thus, "[t]he market has a degree of certainty."[63]

(... footnote continued)

position of traditional telephone companies.") (attached hereto as Exhibit B).

60 <u>See</u> Martin Joint Letter at 2.

61 <u>Id.</u>

62 <u>See</u> Letter from Phyllis Reggins (NationsBanc) to FCC Chairman William Kennard (Oct. 7, 1998).

63 <u>See</u> Remarks of FCC Chairman William E. Kennard before the NCTA, Chicago, IL, at 4-5 (June 15, 1999).

A recent OPP white paper on Internet regulation reinforces these conclusions:

> [T]he market, not the government, should bring broadband to all Americans. ... A deregulatory approach to cable modem deployment is aimed at permitting this nascent market to flourish without governmental interference. ... At mid-1999 it appears that this policy is working, with nearly one million cable modems deployed, up from only 500,000 at the beginning of the year. ... The challenge to the FCC, other governmental agencies, and the affected industries they touch, is to enter the era of convergence in a way that furthers the Commission's long-standing goal of promoting competition, not regulation, in the marketplace.[64]

And it is not simply the Internet access marketplace that would be negatively impacted by an unbundling requirement. The provision of local telephony over cable systems also requires that substantial investments be made to upgrade cable plant. Because a cable unbundling requirement would deter investment in such plant upgrades, it would necessarily also seriously impair the ability of cable operators to offer local telephony over their systems in competition with the ILECs. All in all, the impact of an unbundling requirement would be severe: reduced investment, loss or delay of service innovations, reduced (and likely higher-priced) access to the Internet, and loss of the consumer benefits of telephony competition.

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[64] See Jason Oxman, "The FCC and the Unregulation of the Internet," Office of Plans and Policy, Federal Communications Commission, OPP Working Paper No. 31, July 1999, at 21-22.

III. CONCLUSION

The Commission could not hope for a better situation than it finds itself in today. The MVPD marketplace is competitive, with DirecTV and EchoStar having become the equals of any cable MSO and, in fact, growing at a rate that far exceeds any MSO. Private sector investment is at an all time high. Cable operators and their competitors are slugging it out in the marketplace, spending enormous sums of money to bring new and exciting services to consumers. Each of these dynamics -- a competitive marketplace and strong private sector investment -- should lead the Commission to relax or eliminate existing cable regulations (because they are no longer necessary) and to avoid adopting new regulations (because they would reduce incentives for continued investment). AT&T respectfully urges the Commission to reflect these dynamics in its sixth annual competition report and in its approach to cable generally.

Respectfully submitted,

Michael H. Hammer LKS

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August 4, 1999

EXHIBIT A

December 18, 1998

Chairman William Kennard
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

Dear Chairman Kennard:

We are members of the Financial Community who advise investors about telecommunications companies and who help these companies raise capital. We follow the Commission proceedings with great interest.

We are writing you today to provide our thoughts on the recent proposals by various businesses and entities that the Commission force cable operators to unbundle their networks so as to permit third parties to offer cable-based data services. We believe adoption of these proposals would significantly slow down the deployment of advanced telecommunications services and would retard the substantial progress the Commission has made toward the deregulatory, competitive telecommunications market envisioned by the 1996 Telecommunications Reform Act.

We urge the Commission, in evaluating these proposals, to consider the following:

1. **The market for Internet access and data transmission services is a highly vibrant, competitive and innovative market.**

   Over the 64 years of the Commission's existence, it has had to deal with a number of issues raised by markets in which there was only one provider. Internet access is a very different market. It is fiercely competitive, with consumers having dozens of choices and several access opportunities in each market. The extraordinary explosion of innovations and new companies over the last several years provides compelling evidence that this is not a market that requires new government regulation.

   Some now argue that broadband access is a different market and that the Commission should act now to assure there are many providers. This argument is contrary to marketplace reality. As financial analysts, we would never advise a client about a proposed investment in the broadband market without a thorough evaluation of trends in the narrowband market. As the record in the Commission's proceedings clearly shows, narrowband service is a viable, and in many cases attractive, substitute for broadband.

Further, the Commission does not have to act now to assure that there will be many providers of broadband access; the market is already doing so. Over the last year, investors in capital markets have had numerous opportunities to invest in a wide range of companies pursuing two-way broadband business strategies. These businesses include: phone companies offering ADSL and ADSL-Lite; MMDS and other fixed wireless companies; utility companies; and satellite companies offering such products as Direct PC. There are at least five networks with national footprints offering the opportunity for competition as great as that offered by the wireless phone industry, where the Commission has wisely taken a deregulatory approach.

The investment in these facilities and companies are already in the tens of billions. With that kind of investment, the market is clearly signaling that it believes many competitors have a realistic chance of offering high-speed, broadband Internet access. The presence of these facilities, the plans for many more, and the continuing innovations in this marketplace should give the Commission comfort that such marketplace is, and will continue to be, highly competitive.

2. **Serious consideration of an unbundling proposal will dampen the willingness of the market to finance deployment of upgraded cable facilities, other broadband facilities and related equipment.**

It cannot be stated strongly enough that even a hint of regulating the cable network as a common carrier would severely diminish the willingness of investors to finance system upgrades and new facilities.

As soon as such a threat is seen by the market as a realistic possibility, the uncertainty factor would immediately stall further upgrades and delay rollouts, just as uncertainty about the ultimate levels of federally mandated LEC resale rates delayed several cable operators' push to deploy lifeline telephony services. The ultimate financial implications of such a rule would not be known until the Commission worked through all the time-consuming details, such as interconnection rates, co-location terms, and minimum set-aside for third parties, among others. Even then, investors would still need to wait until the court challenges were completed before they could be certain of the terms and conditions of their investment. Not only would this uncertainty diminish the ability of corporate entities to plan new buildouts, but it would effectively kill the public equity market for financing.

> This would not just effect the financing of the cable plant; it would also create, in the eyes of the financial market, a dangerous precedent in which anyone who builds a superior network would risk having that network subsequently subject to common carrier regulation. At a minimum, this would significantly raise the cost of capital for new competitors. More likely, it would be the death knell for any number of other proposed high-speed broadband communications systems.
>
> The enthusiasm of those who would speed the deployment of broadband networks by subsidizing the cost of the customer equipment would also be dampened. As the cost of customer equipment is one of the major deterrents to rapid deployment, this kind of arrangement is critical to building early customer acceptance, and Commission action that would undercut such transactions will eliminate this kind of support.

We are excited about the economic and social benefits that new technologies can create for America. We believe that the Federal Communications Commission has appropriately articulated speeding the deployment of broadband networks as one of its most important goals, but that goal will never be reached and these benefits will never be realized if the Commission acts in a way that undermines investor confidence to provide capital for these new networks.

Sincerely yours,

Laura A. Martin
Credit Suisse First Boston Corporation

Dennis H Leibowitz
Donaldson, Lufkin & Jenrette Securities

Jessica Reif Cohen
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Thomas W. Eagan
PaineWebber Incorporated

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Sincerely yours,

Laura A. Martin Credit Suisse First Boston Corporation	Dennis H Leibowitz Donaldson, Lufkin & Jenrette Securities	Jessica Reif Cohen Merrill Lynch, Pierce, Renner & Smith Incorporated

Thomas W. Eagan
PaineWebber Incorporated

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Sincerely yours,

Laura A. Martin Credit Suisse First Boston Corporation	Dennis H Leibowitz Donaldson, Lufkin & Jenrette Securities	Jessica Reif Cohen Jessica Reif Cohen Merrill Lynch, Pierce, Fenner & Smith Incorporated

Thomas W. Eagan
PaineWebber Incorporated

cc: Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani

EXHIBIT B

<u>FOR IMMEDIATE RELEASE</u>
December 9, 1998

Contact: Chris Cimko
(202) 371-0200

HIGH-TECH LEADERS TO FCC:
DON'T ADOPT ANY NEW BROADBAND REGULATIONS

Silicon Valley, California – December 9, 1998 -- A collection of high-tech companies including hardware and software companies; start-up broadband companies; and venture capitalists sent a letter today to the Federal Communications Commission (FCC) urging it not to adopt any new broadband regulations. This collective effort by some of the largest and most established high-tech leaders was initiated to reinforce to the FCC, which is currently evaluating several different actions, that their decision will impact the speed and ubiquity of the deployment of broadband.

The two page letter states, "Government intervention is particularly misplaced in the case of new broadband networks deployed by entities that lack the market position of the traditional telephone companies."

The signatories stress that all businesses would benefit from the deployment of broadband and that there would be numerous social advances in education, heath care and other public services.

In light of the FCC's proceedings, these companies have offered the Commission two observations. First, although the marketplace is building multiple, competitive broadband markets, these companies believe the marketplace needs to move faster. In the letter, industry leaders state, "...we are just beginning to see the fruits of that effort." The letter continues by saying that, "The emergence of these broadband networks, and the plans for more, should give the Commission comfort that marketplace forces will bring the public the benefits of vibrant competition envisioned by the authors of the Telecommunications Act of 1996."

Second, these high-tech leaders make the point that the government should avoid actions that will dampen the willingness of financial markets to finance the construction of broadband facilities. They believe, "... that new and unnecessary regulations will diminish the willingness of capital markets to finance the construction of new broadband networks."

Overall, these leaders share the Commission's view that the public interest will be best served by the deployment of multiple broadband networks as widely and as quickly as possible. However, the goal will only be realized if the Commission maintains a "hands off" approach until markets can determine how the emerging broadband networks will be built and utilized.

A copy of the letter is attached.

###

December 9, 1998

Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Ex Parte Presentation
CC Docket No. 98-146

Dear Mr. Chairman:

We are writing to you regarding the Commission's important effort to encourage the deployment of broadband networks.

While we are involved in many different types of businesses, we all share a strong interest in making sure high speed broadband networks are built out as quickly and widely as possible. All our businesses will benefit from the deployment of these networks. Just as important, such deployment would catalyze numerous social benefits in education, health care and other public services.

We know the Commission is currently evaluating several different actions that will affect the speed and ubiquity of the deployment of broadband networks. In light of those proceedings we would like to offer two observations.

1. The Marketplace is Building Multiple Competitive Broadband Networks, but Needs to Move Faster.

Over the last several years a broad array of providers has invested billions of dollars to create new broadband networks. We are just beginning to see the fruits of that effort, as incumbent and competitive telephone companies, long distance carriers, cable companies, wireless providers, satellite companies, and utilities are now beginning to offer broadband services.

The Commission can rightly take pride in its limited but important role in these developments. For example, it was Commission action that led directly to the creation of new billion dollar companies such as WinStar and Teligent. Similarly, the Commission recently took action to enable wireless cable companies to provide high-speed data transmission.

Significantly, the government action in these instances was limited to making spectrum available to these parties. The Commission then wisely stepped back and let the companies figure out the best way to offer services to the public.

This hands-off approach is right and is beginning to work, but we need to move faster. The emergence of these broadband networks, and the plans for more, should give the Commission comfort that marketplace forces will bring the public the benefits of vibrant competition envisioned by the authors of the Telecommunications Act of 1996. The Commission should ensure that the new multiple broadband networks are not shackled by burdensome new regulations.

2. The Government Should Avoid Actions That Will Dampen the Willingness of Financial Markets to Finance the Construction of Broadband Facilities.

It is a simple but undeniable reality that new and unnecessary regulations will diminish the willingness of capital markets to finance the construction of new broadband networks.

This is true for a number of reasons. As a threshold matter, such investments are very risky and lack any guaranteed return. Government regulation would actually limit the return on investment, and cause investors to be less willing to risk the billions of dollars necessary to build out the networks. Government intervention is particularly misplaced in the case of new broadband networks deployed by entities that lack the market position of the traditional telephone companies. Not only is broadband investment in its infancy, there is plenty of competition from existing networks and there will be plenty of competition from emerging networks. Further, the uncertainty created by even potential government regulation increases the cost of capital for new networks.

We share the Commission's view that the public interest will be best served by the deployment of multiple broadband networks as widely as possible. But that goal will only be realized if the Commission maintains a "hands off" approach that trusts markets to determine how the emerging broadband networks will be built and utilized.

Sincerely,

Leslie L. Vadasz
Senior Vice President
Intel Corp.

John T. Chambers
President and CEO
Cisco Systems

Dr. Eric Schmidt
Chairman and CEO
Novell, Inc.

Eckhard Pfeiffer
President and CEO
Compaq Computer Corporation

Peter D. Fenner
President and CEO
COM21, Inc.

C. Richard Kramlich
Partner
New Enterprise Associates

Roger McNamee
Partner
Integral Capital Partners

Gary Griffiths
CEO
SegaSoft Networks, Inc.

Christopher G. Caine
Vice President, Governmental Programs
IBM Corporation

John Doerr
Partner
Kleiner Perkins Caufield & Byers

Jim Breyer
Partner
Accel Partners

Ric Fulop
President
Arepa Inc.

Kevin Bermeister
President
Brilliant Digital Entertainment

cc: Hon. Susan Ness
Hon. Harold Furchtgott-Roth
Hon. Michael Powell
Hon. Gloria Tristani