

III. THE CONCENTRATION IN THE CABLE TV AND BROADBAND INTERNET MARKETS

A. THE HORIZONTAL CABLE MARKET POWER PROBLEM POSED BY THE MERGER

The central characteristic rendering the AT&T merger and related deals is suspect is that it involves a dominant firm in concentrated industries becoming more dominant horizontally, rendering those horizontal markets more concentrated. This concentrated horizontal base links vertically to the other stages of production.

1. CABLE DISTRIBUTION

Exhibit 7 presents a count of the number of subscribers and homes passed that are in play in the AT&T deals. We say in play because different views of the attribution of ownership will lead to different counts and the actual structure of the deal is still in flux. AT&T's filing makes vague references to other deals in the works.⁹³

We consider both subscribers and homes passed because different aspects of the merger review focus on these numbers. For example, the subscriber number is particularly relevant to Department of Justice review, since this is the actual market for cable services. Homes passed, is the potential market for cable and broadband. It is also the referent for the

⁹³ AT&T Filing.

EXHIBIT 7

AT&T'S CABLE, BROADBAND, AND TELEPHONE REACH (COUNTS AS FILED AT THE FCC AND USING FCC RULES)

SYSTEM	MILLIONS OF HOUSEHOLDS	
	SUBSCRIBERS	HOMES PASSED
<u>AT&T ATTRIBUTABLES</u>		
TCI OWNED AND OPERATED	10.7	17.2
TCI/CONSOLIDATED	.7	1.8
TCI/NON-CONSOLIDATED	10.4	15.2
MEDIAONE	4.9	8.5
TIME WARNER-MEDIA ONE	9.7	15.2
LESS COMCAST NET GAIN		
TO DATE	.7	1.2
FUTURE	1.3	1.7
AT&T TOTAL	34.4	55.0
NATIONAL TOTAL	74.0	96.0
AT&T PERCENT OF NATIONAL	49	57
COMCAST	6.4	8.5
TOTAL IN CONGLOMERATE	40.4	64.3

SOURCES: AT&T Corp. and MediaOne Group, Inc., "Applications and Public Interest Statement," *In the Matter of Applications for Consent to Transfer of Control of Licenses*, before the Federal Communications Commission; "Higgins, John M., "Top MSOs Own 90% of Subs," *Broadcasting & Cable*, May 24, 1999; "FCC to Scrutinize AT&T MediaOne Deal," *Broadband Daily*, May 10, 1999; "AT&T Household Reach to be Issue in MediaOne Merger Review," *Communications Daily*, May 10, 1999.

horizontal limit rule established by the FCC. The homes passed number is also a measure of the broadband and telephone market that AT&T could reach.

The top part of the table includes all of the subscribers and homes passed that should be attributed to AT&T. This is a combination of wholly and partially owned systems. Measured by the FCC's ownership attribution rules, we find that AT&T will have just under 35 million subscribers. This would give it just under 50 percent of the cable TV market. It would have about 55 million homes passed. This would give it just over 57 percent of the Multichannel Programming Video Distribution(MPVVD) market. It is well past the horizontal limit. Thus, the deal violates the public policy embodied in the 1992 Cable Act.

AT&T has argued to not include some of the systems in which it has ownership interests in its attributable total. For the reasons given in Chapter I, we do not believe that this is appropriate. AT&T has also argued that more households should be included in the base. That is, it wishes to include satellite in the count, which would raise the national total to about 80 million subscribers and the total homes passed to about 100 million. Even with these numbers in the base, it would violate the horizontal ownership limits (with about 44 percent of subscribers and 55 percent of homes passed). Only if regulators ignore the ownership relationships and expand the base does AT&T's horizontal presence come even close to the limits.

The problem goes even further. Measured by the FCC attribution rules, the merger would take a moderately concentrated market and move it significantly toward being highly concentrated. Exhibit 8 presents an estimate of the horizontal impact of the merger in the market where it has attracted the greatest attention – cable distribution.

EXHIBIT 8
INDICES OF CONCENTRATION AT THE NATIONAL LEVEL

	CFA/CU MARKET DEFINITION		FCC MARKET DEFINITION	
	MKT SHARE ATT (HOMES)	HHI	MKT SHARE ATT (HOMES)	HHI
1995	NA	1098	NA	1098
CURRENT BEFORE DEAL	36	1406	34	1225
WITH ATT/MEDIAONE DEAL	57	2633	55	2267

SOURCES: Federal Communications Commission, In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 97-141, Fourth Annual Report, December 31, 1997, Appendix E, Table E-4., for 1995 and 1998. In addition to subscribers listed in Exhibit 7, the following subscriber numbers are used, Cox 5.1; Adelphia, 4.9; Direct TV 4.4; Charter, 3.7 and Jones, 1.

The Merger Guidelines of the Department of Justice indicate that a merger in a moderately concentrated industry (with an HHI index between 1,000 and 1,8000) that increases the concentration in such a market by 100 points would be subject to challenge. This merger raises the index by over 1000 points, even using the FCC number published in January of 1999.

Having noted that the merger poses substantial problems based on recently published FCC analyses, it should be noted that we believe that the FCC's definitions underestimate the extent of market concentration and market power for two reasons.

First, in 1998, for the first time, the FCC included direct broadcast satellite in the base for the calculation of industry concentration. This is not justified.⁹⁴ DBS costs several times as much as cable and does not compete on price. It certainly did not restrain cable price increases in 1997-1998. The DBS niche market is growing, but it did not slow the growth of cable. Cable subscribership increased more in 1997-1998 than it did in 1996-1997 and just about as much as it did in 1995-1996.

Second, the FCC analysis, based on mid-1998 numbers, did not include pending transactions, which would further concentrate the industry, even before the AT&T deals.

Taking these two factors into account, we conclude that the merger has an even larger impact and moves the industry into the highly concentrated range. AT&T's count of 35 million subscribers results in a market that exceeds the DOJ measure of highly concentrated by a wide margin, even with DBS in the base.

As previously noted, once AT&T found that policymakers in Washington take concentration in the cable industry seriously, it began to restructure its deals and to put pressure on the FCC to reconsider its approach to measuring ownership. Exhibit 9 describes the steps AT&T has taken and the redefinition that it wants the FCC to make in order to allow

⁹⁴ Cooper, Mark and Gene Kimmelman, *Digital Divide* (Consumer Federation of America and Consumers Union, Washington, D. C, 1999)

EXHIBIT 9
AT&T'S STRATEGY TO SLIP THE DEAL THROUGH

FULL DEAL	% HOMES PASSED	HHI
CFA/CU DEFINITIONS	57	2633
FCC DEFINITIONS	55	2267
AT&T REDEFINITION		
EXPANDED BASE SPIN OFF SUBS	48	2047
DO NOT COUNT TWE OWNERSHIP	33	957

the deal to go forward. First we have the spin off of approximately 4.5 million subscribers and the expansion of the base of subscribers and households in the homes passed count. This does not come close to solving either the merger guideline problem or the horizontal ownership problem. Only by having the ownership in Time Warner ignored (or spun-off) would the damage to industry structure be repaired.

Regardless of the precise measurement, this merger leaves AT&T with excessive horizontal control of cable distribution systems. The horizontal concentration rises to a level that is unprecedented in the industry. This create a unique and new barrier to entry in the horizontal dimension, since AT&T could use its vast footprint and leverage it market power to retaliate against an established MSO that sought entry into its region. This concern is in

addition to the programming concern expressed by the FTC. An excessively large purchaser could exercise market power by denying economies to potential entrants. The cable operators in which AT&T has an interest would be the largest purchaser of cable programming by far. This alone would give AT&T the ability to make or break programming.

2. CABLE PROGRAMMING

Measuring horizontal concentration in programming is more difficult, since programming is both national and regional and channel capacity differs across systems. Moreover, cable programming concentration has always had a vertical dimension to it. The analysis has always been focused on programming owned by MSOs, since as the owners of bottleneck facilities, MSOs could make or break programmers. The AT&T deals would have such a substantial impact on concentration in the industry that it could change the focus away from vertical to horizontal concerns.

As Exhibit 10 shows, there are 254 national and regional programming services listed in the FCC annual report on cable competition.⁹⁵ Of these about 45 percent are owned by MSOs in whole or in part (as per the attribution rules). The MSO share at the national level

⁹⁵ Federal Communications Commission, *In the Matter of Annual Assessment of Competition in markets for the Delivery of Video Programming*, CS Docket No. 98-102, December 23, 1998.

EXHIBIT 10
THE CABLE PROGRAMMING MARKET

	NUMBER	PERCENT OWNED BY MSO
NUMBER OF PROGRAMS	254	45
NATIONAL PROGRAMS	194	40
NATIONAL AUDIENCE (SUBSCRIBERS. Billion)	2.54	44
REGIONAL PROGRAMS	60	60

SOURCES: Federal Communications Commission, In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CC Docket No. 98-102, Fifth Report, Table D-1, D-2, D-3.

measured by number of programs is 40 percent; by subscribership it is about 44 percent. The MSOs have a larger numerical share of the regional programming. The MSO share of regional programs is about 60 percent.

The MSOs involved in the AT&T deals are quite prominent in the programming market shown in Exhibit 11. Time Warner and TCI (including Cablevision) are the dominant players by far. Subscriber counts are available only for national programming. Focusing only on the MSO involved in the AT&T deal, we find that the national market is

EXHIBIT 11
NATIONAL PROGRAMMING MARKET CONCENTRATION
ALL PROGRAMS IN BASE, MSO OWNED USED FOR CALCULATION

THE INCREASED CONCENTRATION IN THE CABLE PROGRAMMING
MARKET VIOLATES THE DOJ GUIDELINES

	MARKET SHARE (%)
TCI/CABLEVISION	32
TIME WARNER	16
COMCAST	5
MEDIAONE	2
HHI	
CURRENT	1301
TCI/TWE/M1 MERGER	2474

SOURCE: FCC ANNUAL REPORT

moderately concentrated (HHI of about 1300). If the TCI-Time Warner interests are allowed to merge by the consummation of the AT&T deals, the HHI jumps almost 1,000 points to 2282, well above the highly concentrated range. Adding in the consolidation of the programming interests of the other MSOs involved in the deal adds another 200 points to the index. Even this smaller change, given the level of concentration in the industry, should be challenged.

The dramatic increases in the concentration of programming and the vertical integration with the highly concentrated distribution market underscore the complaint lodged by the FTC in opposition to the Time Warner/Turner/TCI merger. The incentive and ability

to frustrate competitive entry in both distribution and programming through leveraging of programming is quite clear.

B. BROADBAND INTERNET SERVICE

The market concentration problem in the realm of broadband Internet service parallels the cable industry problem.

1. DISTRIBUTION PLANT

The cable distribution plant is the dominant form of broadband Internet service. The homes passed numbers are particularly important in this regard. This is the market for Broadband Internet services and AT&T's reach is even greater in this market than as measured by cable subscribers.

Market definition becomes the central issue in deciding the impact of the merger on the broadband Internet market. If the market is defined narrowly as cable-based broadband Internet, there is no question that the merger poses a severe problem. If the market is defined broadly, to include narrowband Internet access, then it clearly does not, since @Home and Road Runner are small compared to AOL and other narrowband Internet service providers. We believe that the narrow definition is appropriate.

Distribution of Internet service over the telephone network is overwhelmingly narrowband, and cannot compete with broadband over cable. @Home describes its advantage over narrowband as follows:

Our primary offering, the @Home service, allows residential subscribers to connect their personal computers via cable modems to a high-speed Internet

backbone network developed and managed by us. This service enables subscribers to receive the “@Home Experience,” which includes Internet service over hybrid fiber co-axial, or HFC, cable at transmission speeds up to 100 times faster than typical dial up connections, “always on” connection and rich multimedia programming through our broadband Internet portal.

While narrowband can easily be excluded as a competitor for cable-based broadband because of its much slower speed, another technology delivered over the telephone network presents a more complex picture. Digital Subscriber Line technologies (referred to as xDSL), is being deployed over the telephone network. This technology is wideband and does not afford the speed of cable modems, with cable modems being up to six times as fast. Further, xDSL is restricted in the number of households it can pass by limitation of the distance the end-user can be located from the central office. It is also far behind in deployment and subscribers.

A Cisco Systems *White Paper* describing its cable oriented network equipment makes the point.

This paper discusses the opportunities that streaming-media technologies offer for the cable operator, as well as the architecture needed to support streaming-media services, and the economics of building out the required infrastructure and offering basic streaming media services...

Now, with the infrastructure for high-speed data services already being deployed, the cable industry is positioned to harness this trend to create services that combine on-demand, interactive, and broadcast services into a unique service offering. By offering both on-demand services and broadcast services, cable operators can effectively differentiate themselves from competing providers who can offer only on-demand delivery (for example, digital subscriber line [DSL]) or who can offer only broadcast services over large footprint (for example, digital satellite).⁹⁶

⁹⁶ Cisco Systems, *New Revenue Opportunities for Cable Operators From Streaming-Media Technology: A Case for Leveraging IP Technologies in Implementing VoD*, 1999.

Although Cisco is trying to sell systems to cable operators, this sharp difference between telephone company wideband and cable broadband has been noted by disinterested parties as well. One recent academic analysis presents a sharp contrast between constraint DSL capacity and cable broadband.

Maximum distance between the central office and the premise is 18,000 feet, which should reach more subscribers. ADSL... can deliver a 1.5-Mbps channel over a distance of 18,000, a 3-Mbps channel over a span of 12,000 feet, or a 6-Mbps channel over lops up to 8,000 feet long. It also provides a POTS voice circuit in both directions, plus a low-speed (16 Kbps) digital maintenance and control channel....

Cable TV companies are using cable modems and their existing H-F/C networks to offer broadband video, telephony, and data over their subscribers in competition with other local exchange providers. These modems and H-F/C provide 80 or more television channels in the downstream direction plus telephony and data transmission at rates from 4 to 10 Mbps in the upstream and downstream directions. Using the modems, cable companies can provide Internet and other data transport at rates 1,000 times those of the PTSN.⁹⁷

The near to mid term advantage of the cable TV plant rests on a number of factors. Cable TV provides greater bandwidth immediately⁹⁸ that supports a much broader range of

⁹⁷ Nellist, John G. and Elliott M. Gilbert, *Understanding Modern Telecommunications and the Information Superhighway* (Norwood, MA, Artech House: 1999), pp. 137-1388... 147-148.

⁹⁸ Residential Broadband, p.22, 140, 145.

Early networks will use one of two forms of existing wiring (1) telephone lines terminated with Asynchronous Digital Subscriber Line (ADSL) modems capable of downstream speeds from 1 to 12 Mbps depending on distance; or (2) upgraded fiber/Coax CATV lines capable of two-way transmission and cable modems capable of 1 to 30 Mbps, depending on traffic (not distance) over the shared CATV line..

While CATV cannot deliver interactive broadband to many people now, the CATV plant upgrade is considerably quicker and cheaper than central office switch replacement. If the telephone companies want to play they will have to play with new facilities dedicated to broadband...

services, particularly the video entertainment services that seem to be driving consolidation and technology deployment in the industry.⁹⁹ It does not face problems in distribution including weather, geography and distance limitations¹⁰⁰ and a lower cost upgrade to provision high quality video services.

The limitations on xDSL undermine its potential as a residential service, orienting it more toward business.

Widespread availability of xDSL services has been a long time coming. Standards issues, copper line quality, noise interference with other technologies and reticence by telephone companies have prevented mass deployment. But a study by the Business Research Group in Newton, Mass., says 250,000 xDSL lines will be deployed by year's end. And service rollouts

But CATV networks have the one thing telephone networks lack, namely, inherent broadband speed... This is why many have come to believe CATV lights the future of residential broadband.

⁹⁹ Residential Broadband, p. 170.

First-generation ADSL network will support data traffic, principally, not video traffic.

¹⁰⁰ Residential Broadband, pp. 166-167.

CATV systems (HFC) will start with higher speeds, lose ground to many users sharing the same bandwidth, then recover (this is, move to another generation) by splitting nodes to reduce users per line.

The distinguishing feature of first-generation ADSL networks will be data rate. ADSL data rates depend principally upon line distance. The longest usable lines in the United States will only support ADSL rates of about 1.5 Mbps. However, 1.5 Mbps suits first applications – Internet and corporate LAN access... To squeeze the last ounce out of each line, ADSL-based network service providers will deploy a so-called Rate Adaptive ADSL that adjusts itself to the conditions and finds the fastest rate for a given line. Network service providers may put an upper limit on rate – a line capable of 6 Mbps may be restricted to 3 Mbps, for example, with what's left coming only with a higher tariff – but the longest lines with other impairments such as bridge taps may only yield 1 Mbps.

If we divide the entire capacity into 6-Mhz channels and applied average modems to each channel, we could accumulate 6 Gbps of digital bandwidth, a capacity far exceeding what ordinary telephone lines can possibly provide.

are gaining momentum. According to Gary Cline, a principal analyst at BRG, 35 percent of ISPs will deploy xDSL this year...

Analysts predict cable won't compete directly with xDSL and that cable providers will end up catering to other markets...

"ADSL and cable modems don't compete," says Cline. "Cable modems are providing service to residential markets. @Home Network's @Work is the farthest you can go with cable."¹⁰¹

The business market is suited to xDSL because it does not require high quality video and loops are shorter.

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Now, with the infrastructure for high-speed data services already being deployed, the cable industry is positioned to harness this trend to create services that combine on-demand, interactive, and broadcast services into a unique service offering. By offering both on-demand services and broadcast services, cable operators can effectively differentiate themselves from competing providers who can offer only on-demand delivery (for example, digital subscriber line [DSL]) or who can offer only broadcast services over large footprint (for example, digital satellite).¹⁰²

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¹⁰¹ Cholweke, Kathleen, "XDSL: A Hire Wire Act," *Inter2active Week*, April 29, 1998.

¹⁰² Cisco Systems, *New Revenue Opportunities for Cable Operators From Streaming-Media Technology: A Case for Leveraging IP Technologies in Implementing VoD*, 1999.

parties as well. One recent academic analysis presents a sharp contrast between constraint DSL capacity and cable broadband.

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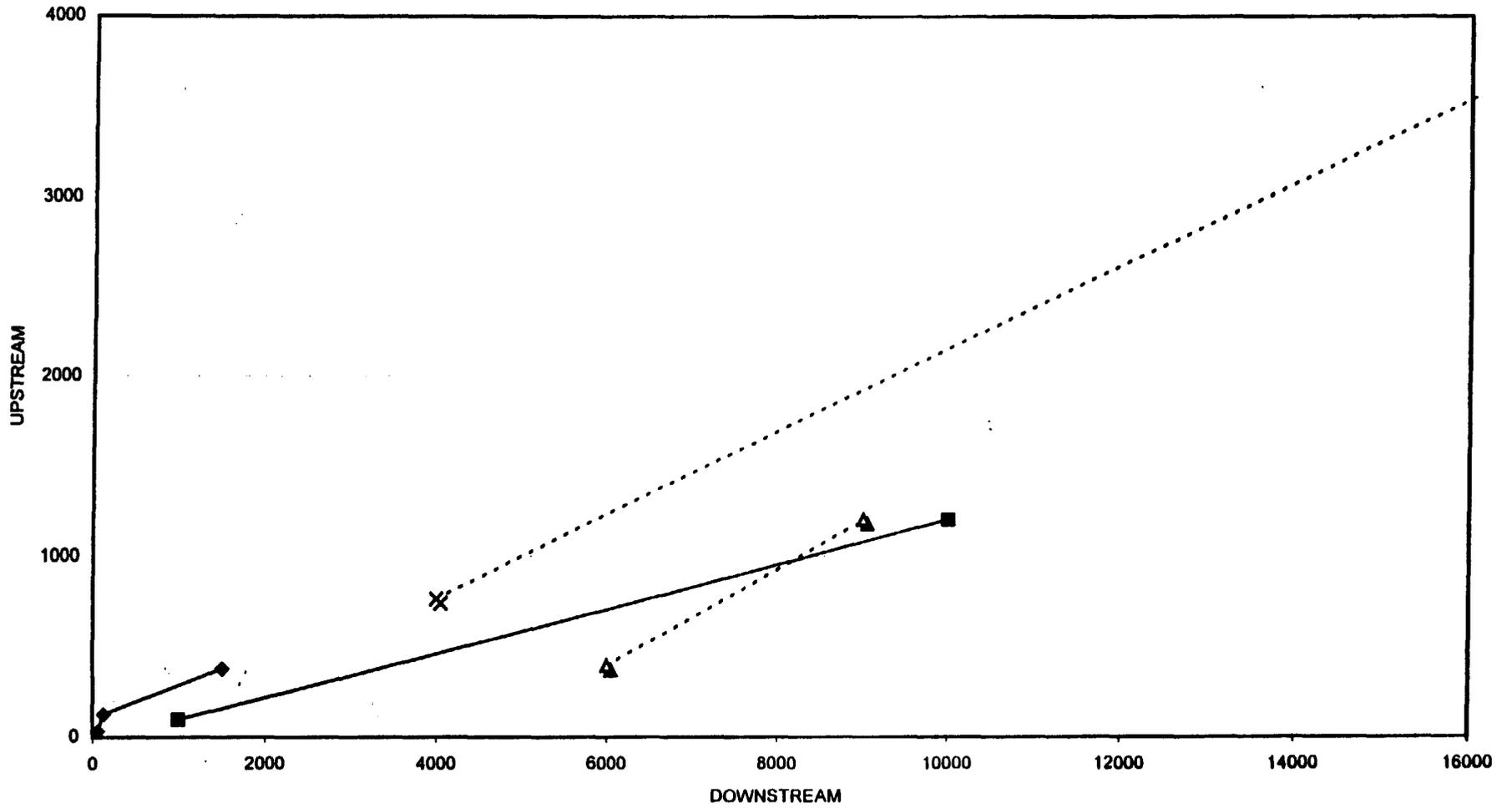
Cable TV companies are using cable modems and their existing H-F/C networks to offer broadband video, telephony, and data over their subscribers in competition with other local exchange providers. These modems and H-F/C provide 80 or more television channels in the downstream direction plus telephony and data transmission at rates from 4 to 10 Mbps in the upstream and downstream directions. Using the modems, cable companies can provide Internet and other data transport at rates 1,000 times those of the PTSN.¹⁰³

Given the substantial head start that cable based Internet service enjoys in deployment and its superior and distinct technological capabilities, it is incorrect to include telephone-based xDSL as an alternative. It is certainly inappropriate to cite potential competition from an inferior competitor as a reason not to stop an otherwise anticompetitive merger. Even a strong advocate of ADSL is forced to admit that for the near to mid-term, the cable system is far superior in terms of speed (see Exhibit 12).¹⁰⁴ For the next five to ten years, DSL is deemed inadequate to provide video services.

¹⁰³ Nellist, John G. and Elliott M. Gilbert, *Understanding Modern Telecommunications and the Information Superhighway* (Norwood, MA, Artech House: 1999), pp. 137-138... 147-148.

¹⁰⁴ The jacket blurb on Kim Maxwell says he "is the father of the modern dial-up modem and led the successful standards battle against AT&T and others for ADSL."

EXHIBIT 12:
NEAR AND MID-TERM CAPABILITIES OF
ADSL AND CABLE MODEMS
(THOUSAND BITS PER SECOND, Kbps)



—◆— ADSL NOW —■— CABLE NOW ···▲··· ADSL 5-10 YEARS ···×··· CABLE 5-10 YEARS

2. PROGRAMMING

The only two widely available Broadband Internet programming services – @Home and RoadRunner – are joined in the AT&T/MediaOne merger. In its financial disclosure statements @Home identifies Road Runner as the first source of competition for its service, the only one that is cable-based, and the only one that competes for both cable distribution arrangements and potentially end-user customers.

Providers of cable-based Internet services. For example, Time Warner Inc. and Media One Group have deployed high-speed Internet access services over their local cable networks through their own cable-based Internet service, Road runner. We currently compete with Road Runner to establish distribution arrangements with cable system operators, but may compete for subscribers in the future if and when our cable partners cease to be subject to our exclusivity obligations.¹⁰⁵

@Home describes itself as “the leading provider of broadband Internet services over cable television infrastructure to consumers.”¹⁰⁶ Its business model rests on exclusive arrangements with cable companies.

By virtue of our relationship with 21 cable companies in North America and Europe, we have access to approximately 65 million homes, which includes exclusive access to over 50% of the households in the United States and Canada... We have entered into distribution agreements with 18 cable companies in North America whose cable systems pass approximately 58.5 million homes.¹⁰⁷

Based upon the list of companies provided in the 10-Q report, we estimate that it has exclusive arrangements with companies that pass 53.4 million homes in the U.S. Not

¹⁰⁵ At Home Corporation, For 10-Q, May 17, 1999 (hereafter @Home 10-Q).

¹⁰⁶ @Home 10-Q.

¹⁰⁷ @Home 10-Q.

surprisingly, this includes the entire AT&T/TCI cable system. The additional cross-ownership with RoadRunner would have a dramatic effect on the market structure (as shown in Exhibit 13).

EXHIBIT 13
BROADBAND INTERNET MARKET CONCENTRATION

MARKET SHARE	CABLE-BASED BROADBAND		BROADBAND+ WIDEBAND	
	HOMES PASSED Millions	SUBS (%)	HOMES PASSED Million	SUBS (%)
@HOME 13 SYSTEMS	53.4	58	26.7	43
ROAD RUNNER		31	13.1	24
TIME WARNER	17.9			
MEDIA ONE	8.3			
HHI BEFORE	3754	4325	884	2425
AFTER	6724	7921	1584	4489

Subscribers all broadband = "The Battle for the Last Mile," *The Economist*, May 1, 1999.

The cable-based broadband Internet market is currently highly concentrated, with an HHI based on the three firms of 3754. This assumes that Time Warner and MediaOne, the dominant joint venturers in Road Runner, claim exclusive rights to cable-based broadband Internet to their own subscribers. The merger would increase the market share by 3000 points. If the analysis is done on actual customers, it would reveal an even more dramatic

impact on the cable-based broadband Internet market. These two companies account for virtually all such subscribers, with @Home accounting for almost 90 percent of the market. This is a merger between a number one and a number two in a highly concentrated market.

Even if the current base of all cable-based and DSL customers is included, the two cable-based firms are dominant. The market remains highly concentrated as measured by actual subscribers and its concentration doubles as a result of the merger. The merger adds almost two thousand points to the HHI. The merger services account for about two-third of all subscribers.

Only by assuming that market share should be measured by counting each wire that passes each home, might we conclude that the current market is not highly concentrated. Suppose the base is doubled, by assuming two wires into the home. The HHI would fall to about 1500 before the merger.¹⁰⁸ However, the merger would be suspect because it doubles the concentration and drives it well into the highly concentrated range. The analysis based on all cable modem and xDSL subscribers leads to a similar conclusion. What this analysis really indicates is that the duopoly that customer would face in a two wire world should not be an acceptable outcome. As noted above, two rivals is not enough to make a competitive market.

If one examines the projections for the next year or two, one can argue that preventing the merger of the two leading cable-based broadband services would promote competition.

¹⁰⁸ For the purposes of this analysis assume 200 million wires (2 per home passed). Market shares are approximately as follows:

@Home=.267; SBC/Ameritech=.167; Bell Atlantic/GTE=.167; RoadRunner=.131; USWest=.08; Bellsouth=.08.

Cable-based modems are projected to control two-thirds or more of the broadband Internet market.¹⁰⁹ If one assumes that Road Runner would hold its market share or achieve a market share equal to its share of homes passed it would be significant player in the market. Therefore, the merger eliminated an important player and increases current and likely future concentration in the market.

This concentration in and vertical domination of the cable-based broadband market is striking. The avowed principles of exclusivity and bundling of access to broadband services with programming will dramatically lessen competitive entry into broadband Internet programming.

C. CONCERNS ABOUT THE ANTICOMPETITIVE EFFECTS OF VERTICAL INTEGRATION

We believe that the merger can be rejected on horizontal grounds in all three markets: cable systems, cable programming and broadband Internet. While the horizontal concentration problems that the merger poses are quite obvious in both the economic and regulatory dimensions, the vertical problems are more subtle but quite serious. Although the literature is generally more ambivalent about the impact of vertical integration, it is unequivocal where dominant firms merge in concentrated markets virtual integration through merger is likely to harm competition and hurt the public.

¹⁰⁹ Boersman, Matthew, "The Battle for Better Bandwidth – Should Cable Networks be Open?," *ZDNet*, July 11, 1999; Morgan Stanley Dean Witter, *The Digital Decade*, April 6, 1999.

When markets are concentrated and dominant firms are involved, the market structural conditions that allow firms to exercise of market power exist. Here it is important to note that the merger entails virtually all of the mechanisms of vertical dominance.¹¹⁰ In addition to direct ownership of some companies, the AT&T merger and related deals includes leasing of facilities, contracts and quasi-integration. Moreover, it embraces all three stages of the cable/Internet industry – production of programming (in both cable and Internet services), distribution (wires), and exhibition through control of equipment (set top box hardware and more importantly, software).

Given the complex nature of the merger and the market structure that would result, we believe that the appropriate description of what is happening is the creation of a digital conglomerate at the heart of a broadband cartel.

¹¹⁰ Perry, p. 186:

Vertical integration means the ownership and complete control over neighboring state of productions or distribution. In particular, a vertically integrated firm would have complete flexibility to make the investment, employment, and production and distribution decisions of all stages encompassed within the firm.

Leasing of capital can allow control of production without ownership.

Vertical “controls” characterize a vertical relationship between the two extremes of vertical integration and anonymous spot market exchanges. A vertical control arises from a contract between two firms at different stages, which transfers control of some, but not all, aspects of production or distribution.

Vertical “quasi-integration” is a term used to define financial relationships between firms in neighboring stages. These relationships need not involve additional control of productions and distribution decisions. Examples include equity investments, loans or loan guarantees, leases on real estate or capital, and inventory credits. Porter argues that these arrangements may create a community of interests, which can achieve some of the benefits of vertical integration

1. BARRIERS TO ENTRY

Vertical integration through merger can create barriers to entry. By integrating across stages of production, incumbents may force potential competitors to enter at both stages, making competition much less likely. These barriers take a variety of forms.

[V]ertical mergers may enhance barriers to entry into the primary industry if entrants must operate at both stages in order to be competitive with existing firms and if entry at both stages is substantially more difficult than entry at one stage.¹¹¹

A barrier to entry that receives considerable attention in the general literature is the need to raise large sums of capital for entry into vertically integrated industries.

Backward integration by a dominant manufacturer may also create a barrier to entry so as to preserve its dominance. Bain popularized the concept of barriers to entry and also discussed the importance of potential competition. Bain argued that vertical integration creates a capital barrier to entry by forcing potential entrant to contemplate entry at two stages of production rather than just one.¹¹²

To avoid these hazards, firms entering either of the markets in question might feel compelled to enter both, increasing the amount of capital investment required for entry. If, in addition, unit capital costs were higher with larger-scale entry attempts or if there were absolute barriers to raising the amount of capital needed for integrated entry, a chain of causation would run from vertical integration to increased risk of nonintegrated operation of the need for large-scale entry to capital cost barrier to entry.¹¹³

The emphasis on capital markets in the above discussions of barriers to entry is appropriate to this merger. The three dominant firms in the conglomerate – AT&T, Time

¹¹¹ Perry, p. 247.

¹¹² Perry, p. 197.

¹¹³ Scherer and Ross, p. 526.

Warner, and Microsoft ranked 7, 28 and 1 in terms of market valuation. Adding Time Warner to the count would push the total to almost three-quarters of a trillion dollars in capital. Other players in the cable TV and Broadband Internet markets come nowhere near this size. The largest programmer, Disney, ranks 34th, less than half the size of AT&T alone. No other cable operator comes even close.

Together, AT&T and Microsoft have a market value of more than half a trillion dollars and, if linked, would form the world's leading force in technology and communications. Any AT&T-Microsoft partnership would be sure to arouse concerns among politicians and regulators. Though the two companies are not now competitors, both AT&T and Microsoft are behemoths with long traditions of dominating their industries. The prospect of an alliance is sure to seem mind boggling to at least some powerful people in Washington.¹¹⁴

The problem is not hypothetical. AT&T/@Home stress the fact that Internet Service Providers who want access to broadband technologies will have to make the investment in the transmission capacity.

Medin said if Prodigy and other ISPs don't like the current situation, instead of running to regulators for help, they should get behind DSL, or wireless or satellite access. Or, if they're so keen on cable, said Medin, they should string their own wires, or "overbuild" as it's called in the cable industry.¹¹⁵

Capital market barriers are only one of the problems that vertical integration and conglomeration can create to entry. Such mergers can also foreclose input markets to competitors.

¹¹⁴ Fabricant, Geraldine and Seth Schiesel. "AT&T Is Seen Forging Link to Microsoft," *New York Times*, May 7, 1999.

¹¹⁵ McWilliams Brian, "Prodigy Stumps for Access to Cable," *Internet News.com*, July 23, 1999.

When all production at a level of an industry is "in-house," no market at all exists from which independent firms can buy inputs. If they face impediments or delays in setting up a new supplier, competition at their level will be reduced. The clearest form of this is the rise in capital a new entrant needs to set up at both levels.¹¹⁶

Ores, special locations, or other indispensable inputs may be held by the integrated firm and withheld from others. The integration prevents the inputs from being offered in a market, and so outsiders are excluded. A rational integrated firm might choose to sell them at a sufficiently high price.¹¹⁷

The focal point of concern about vertical integration in the cable industry has been the link between cable programming and cable systems. As noted, the major MSO's involved in the AT&T deal are also the largest programmers. Concerns about this general pattern are heightened by AT&T's consolidation of a cartel in programming as depicted in Exhibit 14.

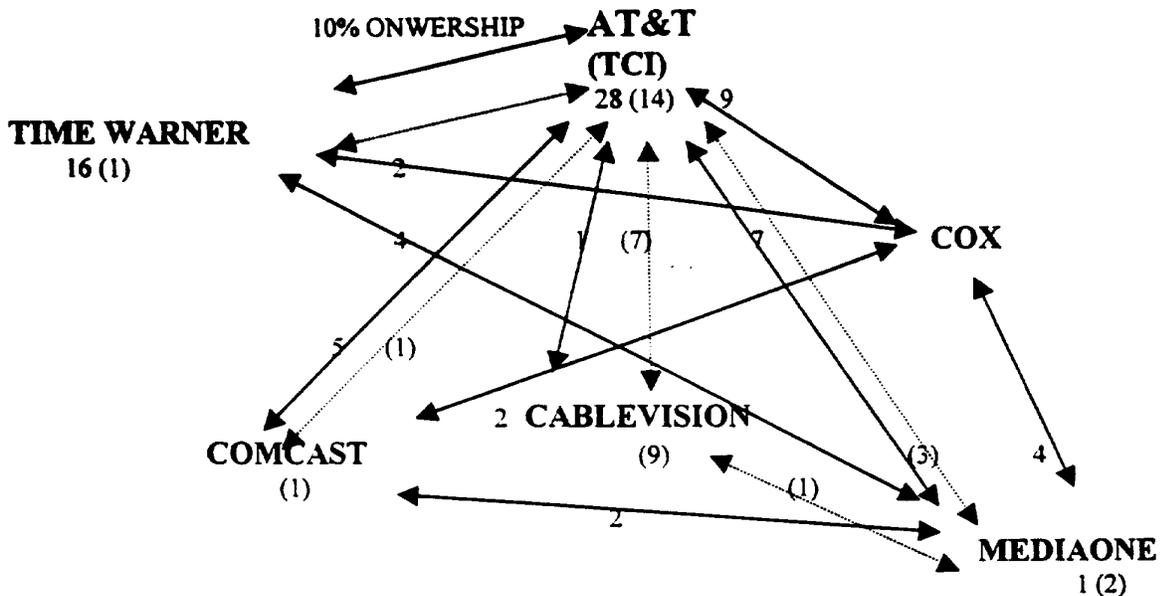
There is a long history of complaints about denial of access to subscribers by integrated MSOs and preferential access for affiliated programming. Evidence of these problems is both qualitative and quantitative.¹¹⁸ The dominant, integrated firms get the best deals,

¹¹⁶ Shepherd, pp. 289-290.

¹¹⁷ Shepherd, p. 290.

¹¹⁸ Ahn, Hoekyun and Barry r. Litman, "Vertical Integration and Consumer Welfare in the Cable Industry," *Journal of Broadcasting and Electronic Media*, 41.

**EXHIBIT 14
HORIZONTAL CONCENTRATION AND VERTICAL INTEGRATION
OF CABLE TV PROGRAMMING**



Numbers in parentheses indicate regional programming
 Numbers not in parentheses indicate national programming
 Numbers under the company name indicate wholly owned programs
 Joint ventures in national programming are shown by \longleftrightarrow
 Joint ventures in regional programming are shown by \longleftrightarrow

SOURCES: Federal Communications Commission, In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CC Docket No. 98-102, Fifth Report, Table D-3, D-5.

One problem comes from most favored nation clauses that large operators often secure from programmers. Such clauses are supposed to guarantee an MSO of getting as good a price as any other operator, sometimes excluding Time Warner and TCI.¹¹⁹

Efforts to impose or obtain exclusive arrangements have become ever present controversies in the industry including efforts to prevent competing technologies from obtaining programming, as well as to prevent competition from developing within the cable industry.¹²⁰ Price discrimination against competitors and other strategies, such as placing programming of competitors at a disadvantageous position on the dial have also been evident in recent years.¹²¹

Allegations of anti-competitive cable practices are not limited to industry critics. The practices within the industry became so bad that even major players became involved in formal protests. Viacom and its affiliates, a group not interconnected significantly with the top two cabals in the industry, filed an antitrust lawsuit against the largest chain of affiliated

¹¹⁹ McAdams, John M. Higgins, "Hangover from Takeovers," *Broadcasting & Cable*, April 19, 1999.

¹²⁰ HBO, a subsidiary of Time, played a key role in the effort to prevent TVRO operators from obtaining programming (see Chan-Olmsted, op. cit., at 11), and the effort to sell overbuild insurance (Competitive Issues in the Cable Television on Industry, Subcommittee on Antitrust, Monopolies and Business Rights, Committee on the Judiciary, United States Congress, March 17, 1988, at 127, 152-174. The current efforts to impose exclusive arrangements have raised numerous complaints from potential competitors (see for example "Statement of William Reddersen on Behalf of Bell South Enterprises (hereafter, Bell South)," and "Testimony of Deborah L. Lenart on Behalf of Ameritech (hereafter, Ameritech)," Subcommittee on Telecommunications, Trade and Consumer Protection, Committee on Commerce, U.S. House of Representatives, July 29, 1997.

¹²¹ Competitive Issues in the Cable Television Industry, Subcommittee on Antitrust, Monopolies and Business Rights, Committee on the Judiciary, United States Congress, March 17, 1988. More recently, for example, The Time Warner, Turner merger as originally proposed included preferential treatment for TCI (see "Separate Statement of Chairman Pitofsky and Commissioners Steiger and Varney," In the Matter of Time Warner, File No. 961-0004. Efforts to exclude non-affiliated program have also been in evidence, as Viacom's most popular programming (MTV) has been bumped.

competitors in its New York territory. Ultimately, it sold its distribution business to its competitors.

The landscape of the cable industry is littered with examples of these anti-competitive behaviors. These include, for example, exclusive deals with independents that freeze out overbuilders,¹²² refusals to deal for programming due to loopholes in the law requiring non-discriminatory access to programming,¹²³ tying arrangements,¹²⁴ and denial of access to facilities.¹²⁵

Integration through this merger removes the leading cable broadband Internet service provider as a customer for broadband backbone transport. As @Home put it

On January 5, 1999, we announced that we had entered an agreement with AT&T to create a nationwide Internet Protocol network utilizing AT&T's backbone to cost-effectively support broadband service throughout North America over the next 20 years. This new backbone facility, which is scheduled to be deployed in mid-1999, represent a 100-fold increase in our backbone capacity and initially will enable use to support up to five million broadband users.¹²⁶

The merger and its associated deals also entail another structural characteristic that does not receive much attention in the merger-related vertical integration literature, but does

¹²² Bell South (p. 4) cites examples of suspected exclusive arrangements involving Eye on People, MSNBC, Viacom, and Fox, as does Ameritech (p. 7).

¹²³ The loophole will be terrestrial transmission to regional clusters, thereby avoiding the requirement to provide non-discriminatory access to satellite delivered programming. Bell South gives examples of Comcast in Philadelphia and Time Warner in Orlando (p. 5). Ameritech cites Cablevision in New York (p. 8). A similar process seems to be developing in Detroit (see).

¹²⁴ Bell South gives examples including NBC/CNBC, Scripps Howard/Home and Garden.(p. 5).

¹²⁵ Testimony of Michael J. Mahoney on Behalf of C-TEC Corporation Subcommittee on Telecommunications, Trade and Consumer Protection, Committee on Commerce, U.S. House of Representatives, July 29, 1997.

¹²⁶ @Home 10-Q.

receive considerable attention in the general vertical restraint literature. As part of the transaction, AT&T has entered into a series of exclusive and preferential deals for the use of facilities and products. Given the size of the parties and the nature of the market, this can be anticompetitive.

The first firms to integrate into neighboring stages reduce the number of alternative sources for other firms at either stage. This “thinning” of the market can increase the costs of market or contractual exchange. Subsequent integration by other firms then becomes more likely.¹²⁷

Restrictions may be set on areas, prices or other dimension... Only when they are done by small-share firms may competition be increased. When done by leading firms with market shares above 20 percent, the restrictions do *reduce* competition.¹²⁸

Similarly, a dominant firm may also use vertical integration to raise the costs of its competitors... By leaving the open market thin, competitors may be unable to expand without significantly driving up the input price, they may be subject to higher prices set by the fewer remaining suppliers, or they may incur higher transaction costs for having to negotiate contracts with suppliers...¹²⁹

As previously noted, the AT&T-Microsoft deal on set top boxes is a major concern.

With Microsoft embroiled in a high profile antitrust case, its privileged position in the cable-based broadband market that would result from the deal has drawn fire. Not only does it dominate set top boxes, but it reduces potential competition for operating systems that could come from a broadband cable-based Internet industry.

As cable providers led by AT&T Corp. move aggressively to put increased computing power in television set-top boxes, the dominant computing platform

¹²⁷ Perry, p. 247.

¹²⁸ Shepherd, p. 294.

¹²⁹ Perry, p. 197.

of software giants Microsoft and its hardware partner Intel may fade in importance.

But with one sweeping deal, Microsoft has forged a wide-ranging alliance with the telecommunications leader that could leave it with a similarly dominant position in the emerging market for high-speed Internet and cable television services...

There are still some small-scale battles that have to be mopped up, but overall Microsoft looks like it has secured a pretty dominate position in this marketplace, both on the server and client side, said Scott McAdams, President of Seattle based brokerage McAdams, Wright Ragen. "I think it would be pretty hard for them to lose control going forward."

AT&T chairman C. Michael Armstrong himself drew the analogy between the part Microsoft plays in the personal computer industry and its role in the new generation of home entertainment and communications services.

"Just as Microsoft has published APIs (applications program interfaces) and had an open environment for their operating system, that will be true in the interactive TV arena of publishing APIs as well," he said.

That may be good news for software developers eager to create a new class of games, browsers and other programs that build on the new platform. But it is bad news for Microsoft's rivals and detractors who contend the Redmond, Wash.-based giant has abused its current monopoly position.¹³⁰

The irony of AT&T, which itself had been the target of a major antitrust action, citing Microsoft's routine business practices, which were the target of an even more high-profile antitrust case, is striking. But even without making assumptions about the business practices, the advantage gained could well be considered a threat to competition in the market.

AT&T seems to have agreed to make Microsoft's Windows CE the main (though not exclusive) operating system for the set-top box that cable subscribers will need to make their homes into multimedia centers, and to use other Microsoft software to offer customers email and Internet access through their televisions. Windows CE is somewhat clunky; but the alliance would

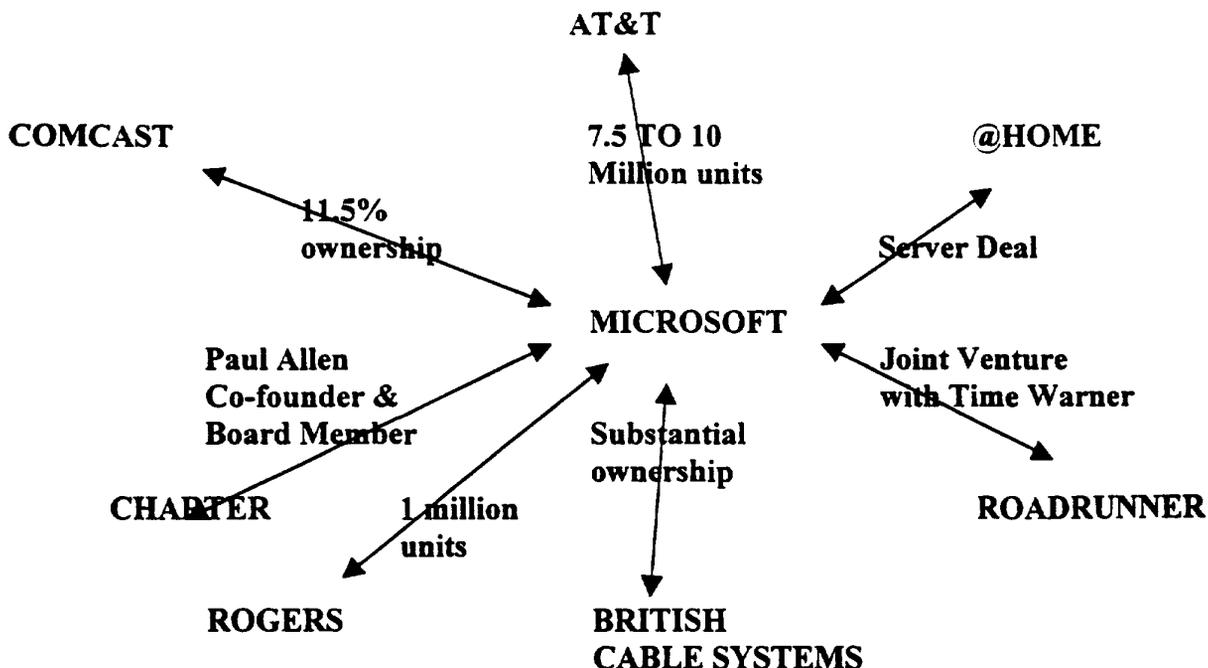
¹³⁰ Wolk, Martin, "Microsoft Poised for Major role in New Industry," *Reuters*, Seattle, May 6, 1999.

give Microsoft a first mover-mover advantage of the sort that Mr. Gates is good at exploiting.¹³¹

The Microsoft subplot in the deal involves more than the preferential access to as many as 10million of AT&T's set-top boxes (see Exhibit 15). Microsoft has forged separate

EXHIBIT 15
MICROSOFT'S LEVERAGE IN THE BROADBAND
INTERNET SET-TOP BOX MARKET

WITH A HISTORY OF EXCLUSIONARY PRACTICES AND A SERIES OF
PREFERENTIAL DEALS, MICROSOFT GAINS A FIRST MOVER ADVANTAGE
THAT WILL BE INSURMOUNTABLE



SOURCES: Cowell, Alan, "A Contest is On in Britain to Revolutionize Cable TV," *New York Times*, May 13, 1999; Boersma, Matthew, "Microsoft @Home Make Broadband Pact," *ZDNET*, May 13, 1999; Markhoff, John, "Microsoft Hunts Its Whale, the Digital Set-Top Box," *New York Times*, May 10, 1999.

¹³¹ "The Carve-up," *The Economist*, May 8, 1999.

links to cable systems with many millions more subscribers at Comcast, Charter, Rogers and several British cable companies, and has other links to the broadband service companies including a deal for the server side of the market with @Home.

Thus, the backbone market for the first five million subscribers and the set-top box market for the first 10 million subscribers served by the dominant cable-based Internet service firm has been foreclosed.

2. POTENTIAL COMPETITION

The merger and its related deals remove several of the most important potential entrants across a number of markets and stages of production.

Potential competition may be important for some markets. If one such potential entrant merges with a firm already inside the market, the ranks of actual plus potential competitors are reduced by one. Unless the entrant is in a vertical relation, the conglomerate reduces the total degree of competitive constraint, even if only slightly.¹³²

In addition, [Bain] pointed out that vertical merger also eliminated one of the most natural potential entrants into each stage. Indeed, these two theories are complements. It is difficult to argue that firms in neighboring stages are the most likely entrants without also believing that entry at both stages is more difficult than entry at one stage.¹³³

The obvious implication of the AT&T deals is that there are fewer competitors to enter each of these markets. Both AT&T and MediaOne should have been entering this market. As noted previously, AT&T had contemplated entry through new facilities, rather than the purchase of existing players.

¹³² Shepherd, p. 303.

¹³³ Perry, p. 197.

There is another aspect of the loss of potential competition in these industries. Because the cable industry has not been competitive, the possibility that broadband Internet services could compete against cable TV offerings is particularly important. Allowing cable TV companies to dominate broadband Internet undermines that possibility.

Not surprisingly one of the first steps taken by cable companies is to foreclose that possibility. Cable TV operators restrict the amount or duration of streaming video that consumers may receive over the broadband Internet. Unlike the relatively poor-quality streaming video over a common telephone modem connection, broadband-streaming video actually can give regular cable TV a run for the money. Unrestricted and open broadband Internet service could potentially compete against cable TV – by streaming full video programming to consumers. The private regulation of broadband access imposes restrictions to ensure that broadband Internet services will not undermine the cable TV monopoly.

AT&T's invokes the need to manage its network in response to the charges of discrimination and exclusion.

For this reason, concerns that have been raised about legitimate restrictions imposed on the @Home and RoadRunner services to limit video streaming applications are entirely misplaced. Cable Internet service actually *expand* the number of Internet applications available to consumers. Ancillary restrictions on the use of these services, which help manage bandwidth utilization, are entirely reasonable.¹³⁴

The Microsoft deal presents a similar cross-industry loss of potential competition. The vertical integration between AT&T and Microsoft allows it to capture a new market, which reinforces its hold on the PC operating system market.

¹³⁴ AT&T Filing, pp. 84-85.

3. CONDUCT

The market structural conditions that result from the concentration and integration of the industry make behavioral abuse effective. Cross subsidization becomes possible,¹³⁵ although this is by no means the only available instrument of anti-competitive conduct.

The simple concept involved in cross-subsidizing is that conglomerates can use profits from branch A to support deep, "unfair" price cuts by branch B...

If all branches of a diversified firm are dominant in their markets, their pooled resources are likely to increase their dominance through greater price discrimination, threats of punitive actions, and so forth. By contrast, a string of small-share branches is more likely to promote competition than to reduce it, if it can help its members at all.¹³⁶

The pricing patterns of the cable industry are a primary source of concern in this regard. The monopoly at the point of sale of video programming has allowed cable companies to impose sharp rate increases on the public. We will not repeat the heated debate over cable rates here. Suffice it to say that the increased consolidation in the industry and control over broadband access, which may compete with cable for provision of video programming reinforce the industry's ability to impose price increases on cable subscribers.

Vertical integration facilitates price squeezes and enhances price discrimination.¹³⁷ Controlling the broadband bottleneck, cable firms can impose higher costs on their rivals, or degrade their quality of service to gain an advantage.

¹³⁵ Asch, Peter and Rosalind Senaca, *Government and the Marketplace* (Dryden Press, Chicago: 1985), p. 248.

Subsidization: The conglomerate firm can choose to behave in a predatory fashion in one market, subsidizing its predation from profits earned elsewhere.

¹³⁶ Shepherd, p. 302.

¹³⁷ Scherer and Ross, p. 524.

This could happen, if, for example, the conduct of vertically integrated firms increased risks for nonintegrated firms by exposing downstream specialists to regular or occasional price squeezes or made it difficult for upstream specialists to find market for their output in times of depressed demand.¹³⁸

The open access debate in Washington and at the local level centers on this discrimination issue. AT&T has fought vigorously to preserve the right to give its affiliated broadband Internet service provide an advantage. Consumers will have to pay twice for Internet access – once AT&T's affiliate and a second time to any non-affiliated ISP the consumer wants.

AT&T also controls @Home Network Inc., the Internet service provider to which AT&T cable customers are forced to subscribe if they want high-speed data access via the cable lines. MediaOne is co-owner of a weaker cable-internet provider, RoadRunner, and its sage to assume that @Home will eventually be the cable-Internet service provider for the MediaOne customers, too. Most likely, RoadRunner itself will become part of @Home before long.

AT&T and other cable companies understand the power of owning the first screen of digital information. It's the front page to the digital world – an enormous asset in selling customers attention to advertisers and other companies.

So the cable companies are fighting bitterly to maintain that control, refusing to allow other Internet providers to gain the same kind of access to the cable lines that @Home now enjoys by default. Here's an upgraded definition of two-way, cable-style: We'll send you the Internet services – e-mail, home

Substitution elasticities of unity and less normally imply that inputs are indispensable, that is, that no output can be produced until at least some use is made of each relevant input. When the monopolist of an input indispensable in this sense integrates downstream, it can make life difficult for remaining downstream competitors. It can refuse to sell the input to them, driving them out of business. Or it can sell it to them at a monopoly price, meanwhile transferring input at marginal cost to its affiliated downstream units, which, with their lower costs, can set product prices at levels sufficiently low to squeeze the rivals out of the market

¹³⁸ Scherer and Ross, p. 526.

banking, etc. – that we designate, and you'll send us a bigger check. If you want a different Internet service provider, fine – just send them a check too.¹³⁹

AT&T's network management can clearly advantage its affiliated ISP.

Not only will the dominant firm in the industry gain the leverage to profitably engage in anti-competitive conduct, but also the dynamic processes in the industry will clearly shift toward cooperation and coordination rather than competition. The issue is not simply collusion, although that is a concern.

The *Guidelines* do recognize three major competitive problems of vertical mergers in concentrated industries. First, forward mergers into retailing may facilitate collusion at the manufacturing stage by making it easier to monitor prices or by eliminating a "disruptive buyer."¹⁴⁰

Beyond collusion, a mutual forbearance and reciprocity, as spheres of influence are recognized and honored between and among the small number of interrelated entities in the industry.

Now we consider the big picture, rather than market-by-market effects. Imagine an extreme situation, which five big diversified firms extending into all major sectors. They coexist in parallel, touching one another in hundreds of markets. Whatever their effects on each market might be, they pose a larger problem of spheres of interest, or diplomatic behavior replacing competition...

Reciprocity is an exchange of favors. Reciprocal buying is one form of it. At its simplest, firm A buys from firm B because of some purchase that B makes from A...

Reciprocity: The large conglomerate may have numerous opportunities for reciprocal buying arrangements.

¹³⁹ Gillmor, Dan, "AT&T Deal Provides No Help to Consumer," *Mercury Center*, May 5, 1999.

¹⁴⁰ Perry, p. 247.

Mutual forbearance: More generally (it is sometimes claimed) large firms treat each other with deference, avoiding competitive confrontation whenever possible.¹⁴¹

The final behavioral effect is to trigger a rush to integrate and concentrate. Being a small independent at any stage renders the company extremely vulnerable to a variety of attacks.

It is possible that business firms undertake vertical integration mergers not to enhance the level of monopoly power at some stage, but to redistribute it. Oligopolies often settle down into behavioral patterns in which price competition atrophies, even though some or all sellers suffer from excess capacity. Non-price rivalry then becomes crucial to the distribution of sales. One form of nonprice competition is the acquisition of downstream enterprises which, all else (such as prices) being equal, will purchase from their upstream affiliates. If acquisition of this sort deflects significant amounts of sales, disadvantaged rivals are apt to acquire other potential customers in self-defense, and reciprocal fear of foreclosure precipitates a bandwagon effect in which the remaining independent downstream enterprises are feverishly sought.¹⁴²

Triggering. If there are 10 nonintegrated firms and only one of them integrates, then little effect on competition might occur. But if this action induces the other 9 to do the same, the ultimate impact of the first "triggering" move may be large. Any increase in market power is magnified.¹⁴³

With the AT&T deal, the concentration and coordination in the industry has risen to an extremely high level. More can be expected.¹⁴⁴ In particular, as AT&T restructures to lower

¹⁴¹ Asch and Senaca, p. 248.

¹⁴² Scherer and Ross, pp. 526-527.

¹⁴³ Shepherd, p. 290.

¹⁴⁴ Colman Price and John M. Higgins, "More Deals to Come," *Broadcasting & Cable*, March 29, 1999, identified seven of the top twenty-one markets, in which there were multiple cable systems. Of these, only one was consolidated directly by the AT&T-MediaOne deal.

its national share. it appears to be consolidating regional domination (and allowing others to do the same).¹⁴⁵

4. MONOPSONY POWER

One important aspect of the AT&T/MediaOne merger and related deals that has not been a major concern in the past is the issue of monopsony power. Monopsony is a situation in which "some buyer can perceptibly influence price."¹⁴⁶

This topic is generally discussed under the broad category of vertical integration.¹⁴⁷ The issue is dealt with as an analysis of a large (or the sole) purchaser of an input or product at wholesale who can exercise bargaining power in the confrontation with suppliers who possess market power. The power of the buyer is said to countervail the power of the seller. This bilateral monopoly situation results in an improvement in consumer welfare under certain circumstances.

Under what circumstances might countervailing power lead to still better results for the consumer? The answer must involve an asymmetry on the buyer's side: the buyer must be powerful enough to constrain the monopolistic seller's prices, but lack the power as a reseller to charge monopoly prices.¹⁴⁸

¹⁴⁵ The list of metropolitan areas in More Deals indicates that at least two would be affected by the secondary deals associated with the merger.

¹⁴⁶ Scherer and Ross, p. 17.

¹⁴⁷ The major texts cited in this paper, Scherer and Ross, Shepherd and Perry all treat the issue in this context.

¹⁴⁸ Schere and Ross, p. 527.

The key to the outcome is "the absence or presence of power on the selling side of the market."¹⁴⁹ Our concern is that the very large size of the post-merger AT&T will give it a great deal of monopsony power in the programming market. Since it faces little competition in the MVPD market, price concessions are not passed through. Moreover, price discrimination is likely.¹⁵⁰

5. OTHER NEGATIVE CONSEQUENCES

These are the negative effects of the merger strict economic terms. There are social and political concerns in the literature as well.

Loss of local control is one concern. This would be a particularly strong concern in a media industry.

There remain the social impacts of absentee ownership upon localities. Though they are less technically proven, they may ultimately be important.

One impact occurs through plant closures decided by distant officials who are unaware or insensitive about local strengths...

Local firms are normally knit into their communities, with the companies' officials contributing and participating in local affairs... When taken over by

¹⁴⁹ Schere and Ross, p. 532.

¹⁵⁰ Shepherd, p. 287, describes the situation as follows:

It is from the final level that pressure may arise to hold the bilateral monopoly to competitive results.

Bilateral oligopoly follows much the same lines as bilateral monopoly, ut of course the effects are not as sharp or clear. Powerful buyers will noe play off the sellerg against each other, extracting low input prices. Some will threaten to integrate vertically. The sellers, from their viewpoint, will be charging "what the traffic will bear," in line with demand elasticities.

The whole process breeds price discrimination... The net tendency toward restricitve or competitive results will still depend on the oligopsonits' status as *sellers*.

large firms, the local companies typically stop their local involvement. Indeed, there is often a shift toward pressuring the city for tax reductions and other favors.¹⁵¹

A second concern is the accumulation of political power. Again, given the fact that this industry involves the most important means of information discourse this would be a particular concern.

Large size can also yield political power, for two main reasons. First, large firms are a focus of large-scale financial resources, which can be quickly mobilized and deployed effectively. Second, their large employment rolls give them a direct influence over voting patterns.¹⁵²

Supporters of conglomerate size limitations frequently respond to such claims with a "noneconomic" argument, stating that the relevant issue for policy rests *not* in the "actual harms, however defined" that conglomerates create, but rather in "a *fundamental ideological concern* with giant aggregations of privately held assets."¹⁵³

The joining of significant numbers of large corporations may well affect power in a broad context – visible perhaps in rising aggregate concentration measures – even though the impacts on specific markets cannot be readily discerned. This result may give rise to social or political rather than economic concerns, but even economists will concede that such worries are real ones.¹⁵⁴

¹⁵¹ Shepherd, p. 304.

¹⁵² Shepherd, p. 298.

¹⁵³ Asch and Senaca, p. 249.

¹⁵⁴ Asch, p. 264.