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

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In the Matter of	)	
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Applications for Consent to the Transfer of Control of Licenses	)	
	)	
MediaOne Group, Inc., Transferor	)	
	)	CS Docket No. 99-251
To	)	
	)	
AT&T Corporation Transferee	)	
	)	

To The Commission:

PETITION TO DENY
OF
THE TELECOMMUNICATIONS ADVOCACY PROJECT

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TABLE OF CONTENTS

SUMMARY

The Telecommunications Advocacy Project ("TAP") herein requests that the Commission deny its consent to the transfer of the applications at issue in this proceeding. TAP submits that this merger presents substantial public interest concerns, and that the Commission's denial is necessary to ensure that the public interest is protected.

The proposed merger has the potential to exacerbate the differences in access to telecommunications services based on race, income level and geography. One of the applicants, MediaOne, has already contributed to this problem by frequently engaging in the practice of redlining in the deployment of its cable, telephony and data services throughout the United States. Moreover, the proposed merger offers only speculative competitive benefits to the local exchange market or video programming and Internet businesses. Any of the alleged benefits of this merger could easily be enjoyed through contractual agreements between AT&T and MediaOne. An anticompetitive merger is simply not necessary in this instance.

The merger would create an opportunity for this new cable giant to exercise monopoly power over the video programming industry. AT&T has also demonstrated its aversion to competition by seeking to block municipalities from allowing competing Internet service providers "open access" to cable-based high speed Internet access.

TAP believes that the Commission can and should deny the applications for transfer outright. Alternatively, if the Commission deems it necessary to approve the merger, it should consider imposing conditions and procedures similar to those suggested in the proposed merger between SBC and Ameritech.

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To The Commission:

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The Telecommunications Advocacy Project ("TAP" or "Petitioner") hereby submits this Petition to Deny, urging the Commission to deny the above-referenced applications for consent to transfer control of certain Cable Television Relay Station and Business Radio Service licenses from MediaOne Group, Inc. ("MediaOne") to AT&T Corporation ("AT&T") (collectively, "Applicants").

The Petitioner believes that grant of the applications will not be in the public interest as this merger offers no competitive benefits to the local exchange market or video programming and Internet businesses, and will reestablish AT&T as a dominant carrier in the long distance, local and subsequently cable industries. Finally, the Commission must evaluate whether this merger is in the public interest, due MediaOne's knowingly and willingly engaged in redlining practices in the deployment of its cable, high speed data and telephony services throughout the United States.

The Petitioner submits the following arguments in support of its Petition, and urges the Commission to hold a series of hearings in light of this Petition.

STATEMENT OF PETITIONER'S INTEREST

TAP is a non-profit organization created to increase small business participation in emerging opportunities within the telecommunications industry through (1) advocacy directed at federal, state and local legislatures; (2) teaching organizations and individuals how to become effective advocates; (3) facilitating coalitions among non-profit, grassroots organizations that are interested in participating in new technological opportunities; (4) identifying emerging opportunities in the telecommunications industry as well as new sources of capital for start-up businesses; and (5) promoting entrepreneurship within historically disadvantaged communities. TAP works with historically, economically and geographically disadvantaged organizations operating in the telecommunications industry. TAP identifies emerging industry trends and provides technical assistance and advocacy training for disadvantaged groups. Its goal is to increase the level of access and service provided by telecommunications companies in rural and urban areas throughout the country. TAP has participated in proceedings before both the FCC and United States Congress. *See* In the Matter of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Systems (PCS) Licenses, *Order on Reconsideration of Second Report and Order*, 13 FCC Rcd. 8345 (1998).

JURISDICTION

The Commission has personal jurisdiction over the Applicants, 47 U.S.C. §§301, 303, (a) 307, 308, 309, 601 and it has subject matter jurisdiction over the allegations in this Petition, 47 U.S.C. §§ 215(a), 215(c), 254(b), 257, 303(f), 303(g), 307(a), 307(c), 601, and 621.

This Petition contains "specific allegations of fact sufficient to show . . . that a grant of the application[s] would be *prima facie* inconsistent with [the public interest, convenience and necessity]." 47 U.S.C. §309(d)(1); *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988); *Dubuque T.V. Limited Partnership*, 4 FCC Rcd 1999 (1989).

The allegations herein, except those of which official notice may be taken, are (and will further be) supported by factual evidence and by the declarations under penalty of perjury of a person with knowledge of the facts alleged and attesting to the Petitioner's allegations raised in this matter. 47 U.S.C. 309(d)(1); *See* 47 CFR §1.16. Appended hereto is a declaration, under penalty of perjury, from Khalil Munir, Executive Director of TAP. Mr. Munir is a citizen of the United States and resides in Maryland where he receives long distance and wireless telephone services from AT&T. TAP also uses AT&T as its long-distance carrier. *See* Maumee Valley Broadcasting, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd. 3487, ¶¶ 4-6 (1997) (prerequisite for standing is one's ability to receive transmissions from Title III licensee at one's home).

Furthermore, this Petition is appropriate for review, 47 U.S.C. §309(d)(1) and 47 CFR §§ 1.45(a), 1.939, and fully complies with the Commission's rules governing pleadings, 47

CFR §1.48, 1.49, 1.51 and 1.52, petitions to deny, 47 CFR §§63.52(c), and service of process, 47 CFR §1.47. Therefore, Petitioner has met all jurisdictional requirements, and its allegations must be fully considered on the merits.

DISCUSSION

I. FCC INTERVENTION IN THE MERGER IS NECESSARY TO PROTECT THE PUBLIC INTEREST.

As required by the Telecommunications Act of 1996, the Commission has an obligation to ensure that telecommunications services are provided on a universal basis.[1] The Petitioner believes that the proposed merger will not, among other things, promote universal service and therefore is not in the public interest. AT&T and MediaOne have filed a skeleton application. The Applications stand mute on virtually all of the major public interest issues attendant to mergers of this nature and size, including the potential for redlining, cherry-picking and price discrimination, all of which impact the carriers commitment to universal service. The Application fails to explain how the new enterprise will address MediaOne's pervasive practice of "redlining" in the deployment of cable, telephony and data services. Therefore, the Commission's comprehensive review is necessary to protect the public in this regard.

"[W]hether the proposed merger would aggravate a situation where either of the merging parties deployed telecommunications facilities in a discriminatory manner" is a factor in the

1. 47 U.S.C. § 254 (1996).

Commission's public interest discrimination.[2] The Commission also stated that its analysis of the Bell Atlantic/NYNEX merger "would have been greatly assisted by a fuller description of [Bell Atlantic's] actual plans, even if Bell Atlantic believed those plans were irrelevant." NYNEX Corporation and Bell Atlantic Corporation, *Memorandum Opinion and Order*, 12 FCC Rcd. 19985, ¶ 243 (1997) ("*Bell Atlantic/NYNEX Order*").

The applications fail to address how the merged company will promote universal service through the equal deployment of basic and enhanced telecommunications services. Therefore, the Commission must investigate the merger proposal thoroughly in order to fulfill the Telecommunications Act's requirement that the FCC make an affirmative determination that approval of such mergers would serve the public interest. The Commission has full authority to perform such an investigation. 47 U.S.C. § §208(b)(1), 218, 219(b), 309(a) and 403.

At a minimum, the Commission cannot approve the merger until it is able to find that the benefits flowing from potentially greater competition in the local markets materially outweigh the public interest costs associated with greater concentration in the cable, Internet, local and long distance markets.[3] As the Commission recently found in evaluating a smaller merger:

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2. Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications to WorldCom, Inc., *Memorandum, Opinion and Order*, 13 FCC Rcd 18025, ¶ 208 (1998) ("*MCI-WorldCom Order*"), *appeal pending sub nom. Rainbow/Push v. FCC*, Case No. 98-1470 (D.C. Cir. 1998).

3. *See* In the Matter of the Merger of MCI Communications Corporation and British Telecommunications, Plc., *Report and Order*, 12 FCC Rcd. 15351, ¶10 (1997) ("*BT/MCI Order*") (where a merger "is likely to benefit competition in certain relevant markets and harm competition in other relevant markets . . . we would need to balance the relative expected beneficial and harmful competitive effects, taking into account the relative size and importance of the markets involved, and the relative impact on U.S. consumers.") Petitioner (continued...)

> A merger will be pro-competitive if the harms to competition -- *i.e.* enhancing market power, slowing the decline of market power, or impairing this Commission's ability properly to establish and maintain the competition that will be a prerequisite to deregulation -- are outweighed by benefits that enhance competition. If applicants cannot carry this burden, the applications must be denied.

Bell Atlantic/NYNEX Order at ¶ 2. If the Commission is unable to develop specific findings of tangible benefit, hearings or a supplementary inquiry is necessary. *Hawaiian Tel. Co. v. FCC*, 493 F.2d 771 (D.C. Cir. 1974).

AT&T and MediaOne both use Title III facilities, and universal and nondiscriminatory deployment is a relevant factor in considering Title III (and Title II) applications.[4] Moreover, issues of redlining, price discrimination and "cherry-picking" as they relate to the provision of universal service also apply to the business relationship between the company and its subscribers. As the Commission found in the *Bell Atlantic/NYNEX Order*, competition is not the only public

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3. (...continued)
notes, though, that the contention that unlawful concentration in one market can be overlooked on the basis of potential competition in another market is questionable at best. *See U.S. v. Phillipsburg National Bank*, 399 U.S. 350 (1970) ("*Phillipsburg Bank*") (holding that severe anticompetitive effects in banking in one geographic market cannot be counterbalanced by a presumed procompetitive effect in a wider geographic market).

4. The Commission has always found authority to promote diversity in its regulation of CARS licenses employed by cable television systems, even though consumers at home do not directly receive these microwave transmissions. *See, e.g., Prime Cable*, 4 FCC Rcd. 1696 (1989), *affirmed* 5 FCC Rcd 4590 (1990). Universal service concerns as they relate to equal deployment of facilities attach to CARS applications because CARS is ancillary to a broadcast-like service, cable television. Thus, universal service and diversity are public interest rationales for common carrier regulation, especially where a common carrier seeks to enter into the cable industry. Congress recognized this when it enumerated the policies the Commission should foster in its efforts to eliminated market entry barriers as "diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity" (emphasis supplied). 47 U.S.C. § 257(b).

interest factor to be considered when mergers arise: "Commission analysis of the effect of the transfer on competition is informed by antitrust principles, but not limited by the antitrust laws." *Bell Atlantic/NYNEX Order* at ¶ 32 (footnotes omitted), *citing, inter alia*, Capital Cities/ABC, Inc., 11 FCC Rcd 5841, ¶¶ 82-99 (1996) for the principle that the "public interest includes concerns regarding diversity and concentration of economic power." *Bell Atlantic/NYNEX Order* at ¶ 67. *See also* Triathlon Broadcasting of Little Rock, Inc., 12 FCC Rcd 13906, 13914 n.10 (1997). The benchmark for evaluating these economic and universal service issues is the Commission's "duty to refuse licenses or renewals to any person who engages or proposes to engage in practices which will prevent either himself or other licensees or both from making the fullest use of radio facilities . . . ." Teleprompter and Group W, 87 FCC 2d 531, 541, ¶¶ 21 (1981), *aff'd*, 89 FCC 2d 417 (1982).[5] Also, as Commissioner Tristani noted, allegations of racial discrimination in determining whether proposed telecommunications mergers serve the public interest is a concern.[6]

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5. The "concentration of economic power" in the hands of white males continues to be an impediment to the participation of minorities in the mainstream of commerce. Congress recognized this when it adopted Section 309(j)(4)(D) of the Act, providing that the Commission should "ensure that...businesses owned by minorities and women are given the opportunities to participate in the provision of spectrum-based services." The Commission has found in Section 309(j)(4)(D) the broad authority to require common carriers to adhere to EEO requirements in order to "provide increased communications experience for minorities and women. This experience will, in turn, enable them more easily to become owners of communications enterprises." Regulatory Treatment of Mobile Services, *Third Report and Order*, 9 FCC Rcd 7988, ¶232 (1994).

6. *MCI-WorldCom Order* (separate statement of Commissioner Gloria Tristani, dissenting in part).

The issues raised herein, including redlining, are a necessary component of any meaningful review of the competitive impact of a major merger.[7] By revising Section 151 of the Communications Act to expressly provide for nondiscrimination on the basis of race, Congress was directing the Commission to affirmatively prevent race discrimination when it regulates telecommunications services.[8] Moreover, among the President's fundamental principle for

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7. The legislative history of the Telecom Act of 1996 indicates that Congress recognized a nexus between

> minority and women-owned small businesses continue to be extremely under represented in the telecommunications field.... Underlying [Section 257] is the obvious fact that diversity of ownership remains a key to the competitiveness of the U.S. communications marketplace.

142 Cong. Rec. H1141 at H1176-77 (daily ed. Feb. 1, 1996) (Statement of Rep. Cardiss Collins).

8. In 1934, Congress created the FCC for the purpose of "regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges. 47 U.S.C. §151 (1934). The version of Section 151 in the Telecommunications Act of 1996 adds, after the words "all the people of the United States, the words "without discrimination on the basis of race, color, religion, national origin, or sex". *See* 47 U.S.C. §151 (1996). The new, 1996 language did not limit the Commission's jurisdiction to "intentional" discrimination. Thus, the Commission's jurisdiction is not so attenuated as to exclude consideration of the many forms of discrimination as to which deliberate intent could never be proved. The reason this language should be given the most expansive possible reading is that the Commission has affirmative public interest obligations, flowing from Section 309 of the Act, which include avoiding the ratification or validation of all forms of discrimination. In light of the universal service provisions of the Act, this point is more poignant now than ever.

telecommunications policy is "preserving and advancing universal service to avoid creating a society of information 'haves' and have nots.'"[9]

As the Applicants noted, a relevant factor under the public interest standard is "the complexity and rapidity of change in the industry." *Bell Atlantic/NYNEX Order* at ¶32. Thus, the Commission must take into account the prospect of the "digital divide" which eliminates access to basic and enhanced telecommunications services, including high-speed Internet service, for rural and low-income America.[10] To advance the goals of universal service in reviewing this merger, the Commission must heighten and expand the scope of its analysis of the Applications.

Furthermore, to delay scrutiny of this merger until after alleged pro-consumer and procompetitive benefits have been given time to manifest is an inadequate approach for the Commission to take because it does not provide guidelines for the Applicants to proceed with the merger in a manner fully consistent with universal service principles. These companies have already engaged in long-term strategic planning, and they know exactly what their plans are. The plan, if one exists, to combat "redlining" should be setforth in detail. Therefore, the Commission must determine as to whether this transfer will encourage the parties ask whether to realize the

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9. White House, *Administration White Paper on Communications Act Reforms*, January 27, 1994. The Department of Education has recognized that we are well on our way to becoming a society of information "haves" and "have-nots". In 1996, the Department found that schools in with predominately white student bodies are much more likely than schools with predominately black or brown student bodies to have Internet-access computers in their classrooms. National Center for Education Statistics, U.S. Department of Education, *Advanced Telecommunications in U.S. Public Elementary and Secondary Schools, 1995*, Report NCES-96-854 (February, 1996).

10. "The Digital Divide: Small Towns that Lack High-speed Internet Access Find it Harder to Attract New Jobs." *Time*, March 22, 1999.

economic potential of all sectors of the population and provide service on equal terms and conditions to all consumers. An even more reassuring and direct approach would be for the Commission to require conditions upon approval of the merger.[11] Thus, the public is far better served if the Commission tells the Applicants now what it expects of them, which can be done by either (1) encouraging the Applicants to voluntarily design a public interest plan against "redlining" [12] (2) imposing public interest conditions on its own motion,[13] (3) designating the application for hearing (4) or deny it.[14]

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11. Commissioner Tristani suggested this approach in the *MCI-WorldCom Order* when she stated that: "I respectfully disagree with [the majority's] decision not to impose some type of reporting requirement on the merged company that would facilitate [monitoring the merged companies' progress in the local residential market.]" *MCI-WorldCom Order*, at 18173 (separate statement of Commissioner Gloria Tristani, Dissenting in Part).

12. The Commission has encouraged "prospective merger partners to make pro-competitive commitments, whose likely effect in enhancing competition in some or all relevant markets outweighs the likely harmful effects that are expected to occur by reason of the merger." *BT/MCI Order* at 15357 ¶10 (fn. omitted). It has noted that such commitments may tip the balance in a close case, enabling the Commission to "find it in the public interest, convenience and necessity to approve the merger." *Id. See also Bell Atlantic/NYNEX Order* at ¶ 14. Such commitments are "binding upon the Applicants" and are enforceable through complaints pursuant to Section 208 of the Act or oppositions to future applications for radio licenses under Section 309 or for certificates of convenience and necessity under Section 214. *Id.* ¶ 191; *see Central Television, Inc. v. FCC*, 834 F.2d 186, 190 (D.C. Cir. 1987), *citing Willard Shoecraft (KINO)*, 3 FCC 2d 775, 776 (1966) ("[a]cceptance of a grant, with any attendant conditions, is presumed if no rejection occurs within thirty days of the grant's issuance.") The Commission itself can appropriately be involved in this process, as it does when it negotiates social contracts with cable systems.

13. The Clayton Act permits the FCC to issue a cease and desist order and negotiate through a consent order such conditions as the public interest may require. 15 U.S.C. §21(b) (1997); *See Bell Atlantic/NYNEX Order* at ¶ 29, n.57. The Commission may also grant with conditions any Title III application, 47 U.S.C. §303(r) and 47 CFR §1.110.

14. The Commission must deny or designate a Title III application for hearing if there is an unresolved material question of fact., 47 U.S.C. §309(e). *See, e.g., Tele-Media Corp. v. FCC*, (continued...)

The Petitioner asserts that there are substantial and material questions of fact which must be addressed before the Commission consents to this merger. They are: (1) whether MediaOne engaged in redlining practices in the provision of its cable and high-speed data and Internet services, (2) whether the public interest would be harmed due to Applicants' failure to provide open access to Internet service providers ("ISPs"), and (3) whether the public interest would be harmed by a consolidation of market power in the cable industry. [15] The Applicants should not be allowed to evade these issues by being silent on these matters in their applications and Public Interest Statement.[16] The Commission must compel the Applicants to provide the public with sufficient information to evaluate all public interest aspects of their proposed transaction.

II. THE COMMISSION MUST ENSURE THAT THE PROPOSED CONSOLIDATION WILL NOT RESULT IN A WIDENING OF THE "DIGITAL DIVIDE"

Perhaps the most fundamental tenet of the Communications Act of 1934, as amended, is that all U.S. citizens should have the opportunity to avail themselves of the benefits arising from

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14. (...continued)
697 F.2d 409 (D.C. Cir. 1983).

15. *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 397 (D.C. Cir. 1975) ("[i]t would be peculiar to require, as a precondition for a hearing, that the petitioner fully establish... what it is the very purpose of the hearing to inquire into.")

16. *Cf. RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981) ("the Commission is not expected to play procedural games with those who come before it in order to ascertain the truth[.]"). *See also, Stone v. FCC*, 466 F.2d 316, *rehearing denied*, 466 F.2d 331, 332 (D.C. Cir. 1972) (holding that consumers without access to material facts in the sole possession of a broadcast renewal applicant may perceive the renewal process as a "meaningful exercise or a never-ending battle for which [they] have insufficient resources.")

the development of communications technologies. Indeed, Chairman Kennard has observed that "[t]he very first sentence of [the Commission's] organic law is 'to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.'"[17] Electing to deny service to a class of people based on race, ethnicity or income hardly seems to comport with the language of 47 U.S.C. § 151. Indeed, it seems impossible to reconcile the actions of MediaOne, described below, with such a clear legislative command.

The members of the Commission have acknowledged their role in ensuring that such discrimination does not occur, and have indicated their willingness to make such assessments in the context of a merger review. In the words of Commissioner Powell:

> I believe there may be some merit in attaching some weight to discrimination concerns in our merger review when such discrimination contravenes carriers' universal service obligations or the traditional duty of common carriers to treat all customers equally . . . . To the extent allegations of racial and other forms of discrimination amount to violations of that duty, there may be an argument that such alleged violations should be given weight in our merger analysis.[18]

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17. *In the Matter of Federal Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11501, 11618 (1998) (separate statement of Chairman William E. Kennard) (citing 47 U.S.C. §151 (1996)).

18. *MCI-WorldCom Order* at 18168 (1998) (separate statement of Commissioner Michael K. Powell).

Commissioner Tristani spoke even more forcefully to the issue, stating: "I would underscore that I will always be concerned with allegations of racial discrimination in determining whether proposed telecommunications mergers serve the public interest."[19]

Much attention has been paid of late to the growing "digital divide" or "technology gap" that has developed as an unfortunate result of the digital revolution. These terms describe the vast and growing differences in access to and use of advanced telecommunications services and information technologies by people of different races and income levels. Recent studies by the National Telecommunications and Information Administration of the Department of Commerce and by the Benton Foundation illustrate the scope and nature of this phenomenon in dramatic terms.[20]

This merger has the potential, even likelihood as things now stand, to exacerbate the inequities of the digital divide. As shown below, MediaOne has engaged in the practice of "redlining" -- denying or delaying the deployment of advanced or even basic telecommunications services to areas populated by low-income or minority residents. Even when MediaOne has deployed in low-income or minority neighborhoods, there continues to be a disparity in the quality of service when compared to affluent and predominantly white suburban areas.[21] In each

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19. *Id.* at 18173 (separate statement of Commissioner Gloria Tristani-Dissenting in Part).

20. *See generally*, Nat'l Telecomm. & Information Admin., U.S. Dep't of Commerce, Falling Through the Net: Defining the Digital Divide (1999) ("*NTIA Study*"); Benton Foundation, Losing Ground Bit by Bit: Low-Income Communities in the Information Age (1998) ("*Benton Study*").

21. The assertions made by TAP in this section concerning "redlining" apply to the conduct of MediaOne only, and not to the conduct of AT&T.

case, these practices violate the Communications Act and generally subvert the public interest. For these reasons, the Commission must demand that the Applicants discontinue these practices, and offer the same services on a fair and equitable basis to all.

A. MediaOne Redlined Cable TV and High-Speed Internet Access Services

Although, as shown below, redlining in the provision of telecommunications services violates Communications Act, available evidence indicates that MediaOne has been engaging in the practice for some time with respect to the provision of its cable television and cable-based Internet access services. MediaOne has built their systems in such a way that they largely avoid providing service to predominantly African-American neighborhoods. Moreover, when the companies do happen to serve minority or low income neighborhoods, consumers can expect to receive a lower quality product on a delayed basis.[22]

Petitioners allege (and record evidence will show) that MediaOne engaged in intentional and systematic redlining in many franchises including those in the following areas:

- Atlanta, Georgia
- Chicago/Dalton, Illinois
- Fresno/Stockton, California
- Jacksonville, Florida
- Los Angeles, California
- Pompano Beach, Florida
- Richmond, Virginia

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22. Whether MediaOne intended these distinctions is irrelevant, since facially neutral practices that have a disparate impact on a protected class may still be deemed illegal, even in the absence of discriminatory intent. *See Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971); *Koger v. Reno*, 98 F.3d 631, 639 (D.C. Cir. 1998); *Arnold v. U.S. Postal Service*, 863 F.2d 994, 996 (D.C. Cir. 1988).

Petitioner's investigation into MediaOne's redlining practices includes a review of (1) the initial network designs, (2) construction schedules and (3) actual service activations for high speed data, digital cable television and telephone offerings. This research is being complied geographically by county, franchise, and zip code.[23]

The results of the investigation are shocking. MediaOne frequently planned its "roll-out" of new services in high-income, affluent, non-minority areas. These areas often received the best technology, at the most reasonable rates with the highest quality installation and service technicians. Alternatively, the residences of low-income ethnic areas were most often the last wired and last hired.[24]

Redlining has also taken forms other than the outright denial of access. Anecdotal evidence indicates that in at least some areas where MediaOne's provides service to "less desirable" low-income customers, local franchising authorities receive a higher volume of complaints concerning service quality. In Jacksonville, Florida for example, consumers have complained about continuing to be billed for Internet access service, even though the service failed to function. In the words of one affected consumer, "there is no apparent interest [from MediaOne] in offering a superior product, though they offer a superior price."[25] In other areas,

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23. TAP will supplement the record promptly in this proceeding.

24. MediaOne's egregious behavior towards the minority communities is also reflected in the company's employment records. Public and private EEO audits commissioned since 1995 reflect an alarming trend of erroneous reporting of minority employees, systematic attrition of minority managers, hostile work environments and sexual or racial harassment by senior management.

25. *The Florida Times-Union*, October 21, 1998 at B-1.

MediaOne has arbitrarily decided to add new costs to their cable systems, despite evidence that these costs have the effect of curtailing access to the system, especially for low-income users.[26] Still other low-income MediaOne communities have suffered through inefficient and ineffective attempts to upgrade systems from coaxial to either hybrid coaxial/fiber optic or pure fiber optic cables, lengthy service outages, poor customer service, installation of above ground transmitters on residential property, closure of customer service offices, poor picture quality, failure of workers to keep service appointments and, of course, rate increases.[27] In deciding whether to approve this proposed merger, the Commission should consider whether it wants these illegal practices to continue.

B. "Redlining" Violates the Communications Act

Not only is redlining in opposition to universal service, it contravenes both the spirit and intent of the Act. Specific statutory provisions dealing with both the regulation of common carriers, as well as with the regulation of the provision of cable services, also prohibit the practice.[28] For example, Section 202(a) of the Act states as follows:

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or

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26. *Multichannel News*, December 21,1998 at 17.

27. *The Daily News of Los Angeles*, July 16, 1999 at SCI, *The Florida Times-Union*, July 10, 1999 at 3, *The Atlanta Journal and Constitution*, May 6, 1999 at North Fulton Extra, p. 10JH; *Sun Sentinel*, March 14, 1999 Community Close up at 3.

28. In light of the fact that provisions governing both common carriers and cable system operators prohibit discrimination in the provision of access, it is irrelevant for present purposes which category of technology the RoadRunner and @Home services fall into.

> unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.[29]

Refusing to offer all consumers in a service area access to the same services, and penalizing consumers because of the color of their skin or their socioeconomic status, violates this provision of the Act.

Moreover, Section 254 of the Act, dealing with universal service, further indicates Congress' intent that telecommunications services should be provided on a fair and equitable basis. Section 254(c)(3) provides particular guidance, stating in part that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including . . . advanced telecommunications and information services, that are reasonably comparable to those services" that are provided in urban or low cost areas. Although not directly applicable in the present context, the provision indicates a clear interest by Congress in ensuring that developments in communications technologies are enjoyed broadly, rather than selectively.

Where the provision of cable television service is concerned, Section 621 of the Act contains clear prohibitions against redlining. Section 621(a)(3) states as follows: "[i]n awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential cable subscribers because of the income of the residents of the local area in which such group resides."[30] Based in part on the House Report accompanying the

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29. 47 U.S.C. § 202(a).

30. 47 U.S.C. § 521(a)(3). The House Report accompanying Section 621(a)(3) even more (continued...)

bill containing the provision, the D.C. Circuit subsequently interpreted Section 621(a)(3) to prohibit redlining in the provision of cable services on the basis of income, and to permit a franchising authority to order that the cable provider offer service to the entire franchise area, in the event that evidence of such redlining comes to light.[31] In short, Section 621(a)(3) prohibits cable service providers from using a customer's income to determine whether they will serve that customer. Statutes seldom speak with such clarity, however, MediaOne often ignored the spirt and language of these provisions of the Act.

C. "Redlining" Subverts the Public Interest

Before it can approve the proposed merger, the Commission must affirmatively conclude that the merger would further the public interest, convenience and necessity. Although the statutory prohibitions on redlining noted above provide some evidence of the nature of the public interest inquiry in this proceeding, the Commission's decision should be informed by other considerations as well. In particular, the Commission should consider the already substantial and ever increasing penalties paid by the residents of redlined neighborhoods. Indeed, prevention of redlining may be the single most effective means of stopping the resegregation of the U.S. into a society of information "haves" and information "have nots."

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30. (...continued)
specifically stated that, pursuant to the provision "cable systems will not be permitted to redline (the practice of denying service to lower income areas). Under this provision, a franchising authority in the franchising process shall require the wiring of all areas of the franchise area to avoid this type of practice." H. Rep. 934, 98th Cong., 2d Sess. at 59, *reprinted in* 1984 U.S. Code Cong. & Admin. News 4655, 4696.

31. *See ACLU v. FCC*, 823 F.2d 1554, 1580 (D.C. Cir. 1987).

Two recent studies vividly illustrate the present costs and future dangers of an inequitable distribution of access to technology. The July 1999 *NTIA Study* paints a disturbing picture of the effect of redlining on Internet use. Although the study concludes that all Americans are becoming increasingly connected over time, it also clearly demonstrates that increases in use by members of certain racial groups are far outpacing the gains made by others.[32] The study indicates that "[t]he digital divide has turned into a 'racial ravine' when one looks at [Internet] access among households of different races and ethnic origins."[33] Specifically, between 1997 and 1998, the gap in Internet access between white and African-American households increased by 53.3%, from a 13.5% difference to a 20.7% difference.[34] Even when holding income levels constant, the racial gap increased during that same period: by 73.0% for households earning less than $15,000 annually; and by 61.7% for households earning between $15,000 and $34,999 per year.[35]

The *NTIA Study* further documented the enormous gap in Internet access between high and low-income households. It found that, regardless of race, families with an annual income of over $75,000 were more than seven times more likely to have home Internet access than those with an income of under $10,000.[36] As with race, the difference in Internet use by people of different incomes has grown. The divide between the highest and lowest income groups

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32. *NTIA Study* at 9.

33. *Id.* at 8.

34. *Id.*

35. *Id.*

36. *Id.* at 6.

measured in the study grew by 29% between 1997 and 1998.[37] The study noted a similar trend when comparing households with incomes of under $50,000 to upper-middle and upper income households.

Where the *NTIA Study* documents the growing racial and economic differences in Internet access, the *Benton Study* goes a step further and illustrates the disturbing impact of this phenomenon. The *Benton Study* observes that "[a]dvances in telecommunications are speeding the exodus of good jobs from urban areas to the suburbs, leaving inner cities and rural areas more isolated than ever from the kinds of jobs, educational opportunities, quality health-care services, and technological tools that they need to be able to contribute to the overall economy."[38] In light of these developments, the *Benton* Study concludes that "even as digital technologies are bringing an exciting array of new opportunities to many Americans, they are actually *aggravating* the poverty and isolation that plague some rural areas and inner cities."[39]

The *Benton Study* contends that the problems of the "digital divide" have a clear effect on individuals, but also have a broader impact on the welfare of communities as a whole. The study notes a prediction by Assistant Secretary of Commerce for Communications and Information that in the year 2000, 60% of all available jobs will require skills involving technology.[40] According to the study, the outlook for those who lack such skills is bleak: "[t]he gap between wages for skilled and unskilled workers has been widening for some years as

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37. *Id.* at 9.

38. *Benton Study* at iv.

39. *Id.* (emphasis in original).

40. *Id.* at 4.

employers increasingly compete for well-trained workers who can use new technologies."[41] Moreover, the study notes, "the technology gap may slow efforts by low-income communities to help themselves," because without access to modern communications technologies, such communities lack "an important tool for fostering civic engagement."[42] And as the study observes, this absence of necessary communications infrastructure removes a critical tool at a time when the governments are forcing individuals and communities to become more self sufficient. In the words of one observer, "'it's as if we're asking them to pull them up by their boot straps, and we are taking away their boots.'"[43]

Both the *NTIA Study* and the *Benton Study* show in stark detail the serious detriment that redlining in the deployment of advanced telecommunications systems will cause. With all that is at stake, the Commission should give substantial consideration to the impact of redlining on the public interest, and approve the merger only if it can conclude without reservation that the merged entity will avoid this invidious practice.

D. MediaOne Has Not Shown That They Will Not Redline in the Provision, Pricing, and Access to Their Services

Despite the grave concerns raised by the prospect that the proposed merger would lead to increased redlining in the provision of access to telecommunications services, the Applicants have offered little evidence to suggest that they understand and will respond to the problem of

41. *Id.*

42. *Id.* at 6. *See also*, "The Digital Divide: Small Towns that Lack High-speed Internet Access Find it Harder to Attract New Jobs," *Time*, March 22, 1999.

43. *Benton Study* at 7, quoting Joey Rodger, president of the Urban Libraries Council.

redlining. The Applicants do not specifically discuss in their Public Interest Statement how they intend to deploy advanced (or basic) communications services in rural and urban communities. The Public Interest Statement acknowledges that the merger will increase the geographic scope in which AT&T can offer services,[44] and that the recent merger with TCI gave AT&T customers in only limited service areas.[45] However, the MediaOne cable facilities that AT&T would acquire through the proposed merger serve both high-income suburban communities and low-income urban and rural areas. The Public Interest Statement says nothing about how basic and advanced telecommunications services will be deployed in these areas. As such, it appears that the various procompetitive benefits that the Applicants claim will result from the merger will not reach those consumers in greatest need of access to advanced telecommunications services.

The Communications Act, and substantial public interest considerations, require that the Commission consider very seriously the possibility that the proposed merger could lead to more redlining, and the attendant harms caused thereby. The Applicants have, to date, provided too little information on this critical concern for the Commission to give its blessing to this transaction. Of course, the door has not completely closed on this issue -- the Applicants may still be able to clarify their commitment not to redline in the provision of access to their services. But the Commission should be wary: any commitments by the Applicants could turn out to be little more than empty promises. As such, the Commission should impose some conditions and penalties that continue after the transaction is completed, before accepting concessions from the

44. Applications and Public Interest Statement at 27.

45. *Id.*

Applicants that assuage redlining concerns. There is simply too much at stake for the Commission to do otherwise.

III. THE APPLICATIONS' ALLEGED PROCOMPETITIVE BENEFITS ARE SPECULATIVE.

In its merger review analysis, the Commission is obligated to examine the procompetitive benefits of the proposed merger.[46] This is not only an anti-trust review -- it is a comprehensive evaluation of many public interest factors.

The applications allege that the proposed merger will produce substantial procompetitive benefits that will outweigh any conceivable harms. Specifically, the Applicants claim that benefits will arise in the telephone, Internet and cable services as a result of the merger. The Petitioner disagrees. The Petitioner sees the merger benefiting only two entities, the Applicants. As the Commission will see from the barrage of Comments and/or Petitions to Deny to be filed in this proceeding, many telecommunications industry groups are opposed to this merger, including cable operators, video programmers, local exchange carriers, Regional Bell Operating Companies, and most importantly, consumer groups because of the anticompetitive harms and lack of pro-consumer benefits that will derive from this merger.

AT&T appears to be wielding its mega-corporate structure to acquire all viable entities to position itself as one of the largest local, long distance, Internet and cable service providers in the United States. Apparently, AT&T has not quite learned its lesson from the 1982 Modified Final Judgment Consent Decree which broke up its monopoly of the local and long distance

46. *MCI-WorldCom Order* at 18134-35 ¶ 194.

telephone service. Although there are many more competitors in the local and long distance telephone service as a result of this decision (as well as in the cable, Internet and video programming) AT&T's greater presence in these industries as a result of this merger coupled with the TCI merger will undoubtedly position it to be a mega-multi-service provider in these industries that will quash the competition.

A. The FCC Should Delay Reviewing the Merits of this Proposed Merger to Determine Whether the Stated Procompetitive Benefits in AT&T/TCI Merger Result in any Meaningful Competition.

AT&T has alleged similar procompetitive benefits when seeking the Commission's consent in the TCI merger. In the AT&T/TCI merger, AT&T alleged that it would expand and accelerate incentives and abilities to compete with incumbent LECs in providing local telephone service to residential customers, and develop and offer the next generation of IP telephony, broadband data and cable services within a foreseeable period of time.[47] However, the American public has yet to see any of these benefits manifest themselves to any tangible benefits to consumers such as lower cable rates, high-speed Internet access and the like. AT&T may argue that enough time has not lapsed to allow these benefits to take place, which is precisely the Petitioners' point. AT&T appears to be so busy acquiring entities like TCI and MediaOne that no real consumer benefits or procompetitive benefits are known to have resulted. The ink has not completely dried on the AT&T/TCI deal, nor have its alleged procompetitive goals been met. Therefore, the Petitioners believe that the Commission should determine if these benefits are

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

being met by AT&T and TCI before approving AT&T's acquisition of MediaOne. The public interest dictates that meaningful competition occur as a result of the AT&T/TCI merger, and that consumers benefit from lower cable rates and reasonably-priced access to high-speed Internet service and other services. Until these benefits are clearly evident, the Commission must not hastily approve another merger which only stabilizes AT&T's foothold in the local, long distance telephone markets and cable and Internet industries.

The Commission should not allow AT&T to claim that these mergers are interdependent or interrelated, The showing that AT&T and TCI made to gain FCC approval of the merger is wholly independent of the AT&T/MediaOne transaction. Therefore, all of the procompetitive benefits that the Applicants rely on which involve the TCI cable structure and assets should be dismissed as irrelevant and speculative. The Commission should require this merger to stand on its own merits without the consideration of TCI's assets, which have yet to yield any procompetitive or pro-consumer benefits since its approval by the FCC in February 1999.

B. AT&T's Acquisition of MediaOne Will Cause AT&T To Become a Dominant Carrier Again.

AT&T is no novice in the telecommunications industry, and has set the pace for many competitors to follow. The Public Interest Statement on its face admits that MediaOne can benefit from AT&T's brand name recognition, telephone network management expertise, telephone marketing, and customer care service.[48] MediaOne stands to gain much knowledge and expertise as well as access to a highly sophisticated telecommunications network. This fact

48. Applications and Public Interest Statement at 22-23.

does not concern the Petitioners. The Public Interest Statement indicates, however, that the "[m]erger will increase the geographic scope in which AT&T can offer local service."[49] This concerns the Petitioners. By its own admission, AT&T plans to compete for customers for local telephone service. The problem arises when AT&T also wants to be the sole provider of these customers' cable, Internet and long distance service. AT&T hopes to leverage its expanding cable monopoly to dominate and impede competition in numerous adjacent markets. It appears that the days of monopoly of a peculiar service has ended, and now AT&T wants to be a conglomerate offering many, multilevel services to the customers.

Following this merger, the AT&T conglomerate will have access to approximately 56% of U.S. households. If the Commission allows this to happen by approving this merger, the many competitors will be squashed in the process, and the consumer will be left without choice but to select AT&T for all, not some, of its telecommunications needs, rather than having the option of choosing its cable provider, ISP and its local and long distance telephone carrier. Even though AT&T is no longer classified as a dominant carrier, one cannot feel sympathetic for a company who boasts communications revenues exceeding $53 billion. One company should not be allowed to have such power or access, and the Petitioner urges the Commission to deny the applications to avoid such a occurrence.

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49. Applications and Public Interest Statement at 27.

IV. THE ALLEGED PROCOMPETITIVE BENEFITS CAN BE REACHED CONTRACTUALLY IN AN AGREEMENT BETWEEN THE APPLICANTS.

Anticipating this argument, the Applicants claim that the speculative procompetitive benefits cannot be achieved independent of the merger. They argue that without the merger, AT&T would either have to duplicate MediaOne's cable facilities or attempt to contract with MediaOne for lease of the facilities to provide cable telephony.[50] First, the Applicants claim that duplication of MediaOne facilities is economically infeasible. And this is a statement coming from a company whose 1998 communications services revenues were $53.2 billion, no insignificant amount. Certainly, a mere billion or so of this money can be used to build a competing system with MediaOne, and bring choice to consumers as well as reduce rates for consumers.

The Applicants claim that contractual relationships are much less efficient than full integration where technology is rapidly evolving.[51] However, a contractual arrangement is a flexible tool that can be amended if and when technology changes. The beauty of contractual arrangements regarding evolving technology is that the parties do not have to predict what technology will be developed in the future; they merely would need amend the contract to accommodate the developing technology. Contracts do allow for written amendments as agreed by the parties.

Moreover, the Applicants' argument in this regard is substantively weak since MediaOne can only offer AT&T one consideration -- access to its cable network facilities and

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50. Applications and Public Interest Statement at 31.

51. *Id.*

customer base. The contract simply needs to provide for the leasing of cable network facilities and access to its customer base) for a certain dollar amount. How difficult or inefficient can that process be?

In fact, Congress has mandated the same process when it enacted the Telecommunications Act of 1996. Specifically, Section 251 of the Act requires an incumbent local exchange provider to allow a competing telephone company to interconnect with the incumbent's facilities for the provision of local telephone service and to bring competition to this area. Upstart telephone companies have benefited from this section of the Act. The problem lies when incumbents become unreasonable in the terms or rates that it will charge for such service and the matter, as prescribed by the Act, goes to arbitration. Here, however, you have two parties who are willing to transact with one another. For the right price, AT&T can obtain access to MediaOne's cable network facilities.

A. A Contractual Arrangement is More Procompetitive than a Merger

The Petitioner believes that a contractual relationship between the Applicants is a more competitive approach for the FCC to suggest rather than approval of the merger. As stated earlier, the procompetitive benefits that were alleged in the approval of the AT&T/TCI merger have not come to fruition, and the FCC should delay its analysis of the instant merger until such benefits are evident and working for American consumers. Approval of the instant merger will be a permanent action that cannot be undone if the Commission recognizes that an error was made. The Commission's suggestion that the Applicants enter into a contractual arrangement (rather than a full merger) will allow the Commission to evaluate whether stated procompetitive benefits will result from a merger.

The Applicants will argue that the procompetitive benefits will never be attained but for the merger. However, the alleged procompetitive benefits are not really benefits for competition or the public, but benefits for the Applicants. The Petitioners cannot accept carte blanche the Applicants' assertion that this merger will be the utopia for competition in business telephone service, domestic long distance service, international telephone service, mobile telephone service, multichannel video programming distribution and video programming as alleged in the Public Interest Statement. The Applicants' Public Interest Statement fails to state how the merger will benefit any of these industries or what positive impact will the merger have on these industries. Without this information, it is far better for the Commission to commit to a less permanent solution of a contractual arrangement than agreeing to a merger between the Applicants.

V. THE MERGER WILL RESULT IN ANTICOMPETITIVE HARM TO VIDEO PROGRAMMERS AND VIDEO PROGRAMMING DISTRIBUTORS AND WILL RESULT IN CONSOLIDATION OF THE CABLE INDUSTRY.

Contrary to the Applicants' position, the merger will have adverse impact on video and cable programming. One effect of this merger on video programming is the consolidation of bargaining power in video programming distribution by one monolithic distribution player. Without a doubt, AT&T plans to utilize its video distribution bargaining power with the acquisition of TCI and MediaOne. Unfortunately, MediaOne has already shown its unwillingness to be reasonable in video programming distribution against at least one potential competitor, Ameritech New Media, Inc ("Ameritech"). Last year, MediaOne refused to back down from requiring Classic Sports Network to sign an exclusive deal with it and Time Warner.

Ameritech filed a program access complaint against Time Warner and MediaOne, alleging that they coerced the cable network to sign such an exclusive arrangement, which would prevent other competitors, like Ameritech, from providing the same network coverage on their systems. Time Warner apparently agreed not to enforce the exclusivity provisions, but MediaOne originally refused to back down, but did so only after Ameritech stood steadfast in its complaint at the FCC.[52] This is just one example of how MediaOne has and how both Applicants can use their bargaining power to depress competition in video programming distribution, and force or limit programmers to the AT&T/MediaOne cable network.[53]

The Petitioner believes that small program service companies will not have financial or bargaining wherewithal to negotiate with the consolidated power of AT&T, TCI and MediaOne. The current state of affairs in the cable industry already requires upstart programmers and distributors to receive a lower premium for cable licensing fees. In some instances, programmers have to pay for carriage on major cable networks. Many of MediaOne's customers nationwide have complained that MediaOne is getting bigger, but its service is not getting better.[54] Other customers have complained that MediaOne has taken preferred programming off the air.[55]

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52. *Variety*, July 13-19, 1998 at 26. *See* Ameritech New Media, Inc. v. MediaOne Inc. and Time Warner Cable, CSR-5273-P, *Memorandum Opinion and Order* (1998).

53. *See generally*, Statement of Deborah L. Lenart, President, Ameritech New Media, Inc. before the Senate Judiciary Committee, Subcommittee on Antitrust, Business Rights and Competition, October 8, 1997 (discussing harms to cable competition caused by programming exclusivity agreements).

54. *The Manchester Union Leader*, July 15,1998 at 5.

55. *Id.*

If MediaOne's cable subscribers are lodging complaints with local franchising authorities regarding programming and distribution issues, certainly the programmers themselves are not happy with the arrangements and decisions that MediaOne has made with them. For example, earlier this year, MediaOne unceremoniously dumped the TV Guide Channel from MediaOne's systems in Los Angeles and the Northeast. AT&T's presence will only exacerbate the problem. The Petitioners believe that one monolithic cable program distribution entity will yield much more bargaining power over cable programmers than a single cable distribution system alone, resulting in anticompetitive harm to these businesses.

AT&T controls @Home, Internet access (and RoadRunner once the merger is complete). As a result, AT&T will have 98% of the U.S. and global cable Internet access services and 79% of U.S. broadband Internet service. Furthermore, AT&T will control the backbone networks needed to establish links to the Internet hubs. Though its pending joint venture with Time, Warner, AT&T will integrate and control the content and the network for high-speed, local Internet access service for its captive cable customers.

Through its interests in @Home (and RoadRunner once the merger is complete), AT&T will completely control Internet access services over cable for its residential customers. A cable customer in AT&T's new service area will have to subscribe to the @Home and RoadRunner service to get high-speed Internet Access over cable. The same customer will also have to buy its cable set-top box and cable modems from General Instrument, which also is controlled *de facto* by AT&T.

Moreover, with its pending joint venture with Time Warner, AT&T will obtain exclusive rights to provide cable telephony to residential and small business customers over

Time Warner's networks. AT&T will also have control over voice-over-cable access to the tune of 81% of U.S. households now that its agreement with Comcast, an @Home partner, is complete.

AT&T is well-positioned to consolidate the cable and Internet access industries, and maintain dominant status the world of telecommunications. Its merger with MediaOne will result in control of over 60% of the cable market in the United States. The FCC should not allow such dominance in this industry.

VI. "OPEN ACCESS" FOR COMPETING INTERNET SERVICE PROVIDERS IS NECESSARY FOR COMPETITION IN THE INTERNET INDUSTRY.

It is no secret that AT&T does not want to maintain open access to its cable facilities for competing Internet service providers. The Commission should take judicial notice of AT&T's vigorous attempts to deny Internet service providers access to recently acquired (TCI) cable facilities. In the words of one municipal official involved in the open access fight, allowing AT&T to acquire cable properties "would place control of local cable and high-speed Internet access in the hands of one mega-company," and expose the public to the threat of predatory pricing.[56] This shows AT&T's unwillingness to allow competition to flourish in this thriving market.

In addition, MediaOne's customers have complained that the introduction of new services, such as the Internet, has resulted in increased cable rates. Certain city officials believe

56. Sam Howe Verhovek, *AT&T Fights for Control of Its Cable Lines in Struggle Over Internet Access*, N.Y. Times, February 15, 1999, at A12 (quoting Jane Hague, chairwoman of the Metropolitan King County Budget Committee).

that MediaOne may be passing the costs to introduce these services to the cable subscribers.[57] There appears to be more adverse impacts to consumers with or without this merger from MediaOne's perspective, and although AT&T's presence may eliminate some of MediaOne's problems, the Commission cannot overlook the glaring fact that this merger will result in a major market dominance in the Internet industry for AT&T. Both companies have shown a willingness to use exclusionary, anticompetitive conduct as a business strategy. Now AT&T will move even closer to possession of monopoly power in the U.S. cable and Internet market. In concert, these two facts seem to satisfy the Supreme Court's definition of illegal single-firm monopolization.[58]

CONCLUSION

The Petitioner believes that the adverse impact that this merger will have on video programming and on competition in various telecommunications industry, especially the Internet industry. The facts that the merger: (1) will reward a proven "redliner"; (2) will allow AT&T to have dominant status in several telecommunications services, especially in the cable and Internet industries, and (3) fails to address how universal service will be achieved are reasons why the Commission should deny the applications. Furthermore, the alleged procompetitive benefits are speculative at best, and AT&T's goal of controlling MediaOne's cable facilities can be better

57. *The Manchester Union Leader*, July 15, 1998 at 5.

58. *See Aspen Skiing Co. v. Aspen Highlands Skiing Corp.* 472 U.S. 585 (1985); *U.S. v. Grinnell Corp.*, 384 U.S. 563 (1966) (elements of single-firm monopolization are "(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth of development as a consequence of a superior product, business acumen, or historic accident").

facilitated through a contractual arrangement. Therefore, the Commission should withhold its consent to this merger.

The Commission should investigate the merger thoroughly and offer the public a reasonable opportunity to comment on the results of its investigation, and should thereafter designate for hearing and ultimately deny the applications, or impose conditions and penalties necessary to protect the public interest. *See, e.g.*, Letter from FCC Chairman William E. Kennard to Ameritech Chairman and CEO Richard E. Notebaert and SBC Chairman and CEO Edward E. Whitacre, Jr., CC Docket No. 98-141 (April 1, 1999).

The Petitioners respectfully requests that the FCC act upon the above-captioned applications in a manner consistent with the views expressed herein.

Respectfully submitted,

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AFFIDAVIT

I, Khalil Munir, do hereby affirm and state as follows:

1. I am the Executive Director of the Telecommunications Advocacy Project ("TAP").

2. TAP is a non-profit organization whose goal is to promote the inclusion of small businesses in evolving telecommunications industry opportunities. Working with historically, economically and geographically disadvantaged communities, TAP's goal is to increase the effectiveness of small businesses as providers of telecommunications services and products.

3. TAP is a customer of AT&T. I am personally a customer of AT&T.

4. I hereby certify that I have examined this Petition to Deny, and affirm that the facts, claims, statements and other information contained therein are true, complete and correct to the best of my knowledge and belief, and are made in good faith

Executed on: 8/23/99

Signature: Khalil Munir

Khalil Munir
Executive Director
Telecommunications Advocacy Project

CERTIFICATE OF SERVICE

I, Sherle DeWitt, hereby certify that I have this 23rd day of August, 1999 caused a copy of the foregoing "Petition to Deny in the AT&T MediaOne Case" to be delivered by U.S. First Class Mail, postage prepaid, to the following:

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