

top boxes.³⁹² Similarly, the top manufacturers of cable modems include such large and influential companies as Motorola, Nortel, and 3Com.³⁹³

AT&T is only one of many companies that purchase such devices. Navigation devices are purchased not only by every other MSO in the United States, but also by cable and other buyers worldwide. The relevant market is global, not national, and it is growing rapidly.³⁹⁴ Accordingly, for the same reasons discussed above in connection with the ILECs' video programming monopsony claims – namely, that sellers have far too many alternative sales outlets to be beholden to AT&T – the incumbents have not, and could not, support their navigation device monopsony claims.³⁹⁵

But there is another critical factor ignored by the ILECs that removes any doubt on the matter. Even if there were a *single* potential corporate buyer of navigation devices, the steps taken by Congress and the Commission to ensure a vibrant retail market for navigation devices would defeat any attempted exercise of monopsony power.³⁹⁶ Navigation device manufacturers

³⁹² “New Box Players Gain Ground,” *Kagan Broadband* (Aug. 24, 1999) (noting that MediaOne is the first MSO to sign a set-top deal with Philips, and Cablevision may soon sign a deal with Sony). Other producers of digital navigation devices include Pioneer and Toshiba.

³⁹³ See “Motorola Ships 500,000 Cable Modems,” *Bloomberg News* (Feb. 15, 1999), available at (<www.news.com/News/Item/0,4,32401,00.html>); “Cable Modems: Motorola Leads Cable Modem Market,” *Cambridge Telecom Report* (June 21, 1999).

³⁹⁴ MediaOne, for example, buys equipment from European vendors. See, e.g., *MediaOne Plugs Away at Open System Deployment*, Multichannel News, August 2, 1999, at 39 (describing MediaOne’s recent purchase from Philips, a Dutch company, navigation devices based on the Digital Video Broadcasting platform used widely in Europe and by DBS companies).

³⁹⁵ See Ordoover/Willig Decl. ¶ 128.

³⁹⁶ See 47 U.S.C. § 549; 47 C.F.R. § 76.1200 *et seq.*; Report & Order, *In Re Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd. 14775, ¶ 69 (1998) (“Retail Sale Order”); Order on Reconsideration, *In Re Implementation of Section 304 of the Telecommunications Act of 1996: Commercial*
(continued . . .)

could simply bypass any cable company that refused to pay competitive market prices by employing a retail distribution strategy.³⁹⁷

Thus, the Commission in its *Retail Sales Order* recently required MVPDs – including AT&T – that wish to distribute navigation devices using integrated security to also make available to subscribers a separate, security-only module that is compatible with navigation devices that subscribers may obtain from independent retailers.³⁹⁸ This means that cable operators may retain control of the security function of navigation devices, but that local and national retail distributors, such as RadioShack, Circuit City, and Best Buy, will be able to sell navigation devices with all other functions in competition with cable operators.³⁹⁹ Indeed, in order to ensure a robust retail market, the Commission further required that MVPDs: (1) provide technical information to manufacturers, retailers, and customers to permit navigation devices to

(. . . continued)

Availability of Navigation Devices, 14 FCC Rcd. 7596, ¶ 33 (1999) (“*Retail Sale Reconsideration Order*”).

³⁹⁷ See Ordoover/Willig Decl. ¶¶ 123-25.

³⁹⁸ 47 C.F.R. § 76.1204. See also *Retail Sale Order* ¶ 49; *Retail Sale Reconsideration Order* ¶¶ 13-16 (applying separation requirement to digital and hybrid devices). The Commission set the July 1, 2000 deadline so that navigation devices are “fully introduced and available for the critical year end electronic equipment sales period in the year 2000.” *Retail Sale Order* ¶ 76. Thus, Dr. Hausman’s suggestion that “consumers will not begin to purchase set-top boxes [from retailers] for at least 2-3 years” is mistaken. Hausman Decl. ¶ 31 n.32.

³⁹⁹ See *Retail Sale Order* ¶ 61 (“The record with respect to equipment used with cable services convinces us that the separation of security will significantly enhance the commercial availability of the equipment. Separated security will allow individual cable operators to design and operate equipment reflecting their particular security needs, a circumstance providing broad discretion for each cable operator, while still facilitating portability and the development of the consumer equipment market.”).

interface with the MVPD-supplied security modules;⁴⁰⁰ (2) allow consumers to attach any compatible navigation device to an MVPD's network;⁴⁰¹ and (3) refrain from using contractual, patent, or other arrangements that prevent navigation devices from being made available to subscribers from retailers.⁴⁰²

The Commission patterned its *Retail Sales Order* on equipment distribution models that have proven successful in the telephone and DBS industries.⁴⁰³ For example, giving customers a right to attach equipment to the cable network, and requiring disclosure of technical interface specifications, derive from the Commission's experience with telephone CPE.⁴⁰⁴ Likewise, the Commission predicated the separation of security and non-security components in its *Retail Sale*

⁴⁰⁰ 47 C.F.R. § 76.1205. See also *Retail Sale Order* ¶ 35 ("We believe that a requirement to disclose information will assist retailers as the commercial market develops as a source for navigation devices and will aid consumers seeking to buy their own navigation devices. Accordingly, we will require that MVPDs provide to the requesting party the technical information concerning interface parameters necessary for a navigation device to operate with the services delivered by the MVPD's system."). CableLabs is now developing the specifications for the digital security "Point of Deployment" ("POD") module and for the digital security module interface. As the cable industry noted in its most recent status report to the Commission, CableLabs has once again met the scheduled milestones for development of the module and the module interface. See NCTA Status Report filed in CS Docket No. 97-80 on July 7, 1999) at 7-10 ("NCTA Status Report"). Such an industrywide standard-setting process will, consistent with the purposes of the retail sale statute, help affiliated and unaffiliated vendors compete effectively in the navigation device market.

⁴⁰¹ 47 C.F.R. § 76.1201.

⁴⁰² 47 C.F.R. § 76.1202.

⁴⁰³ See, e.g., *Retail Sale Order* ¶ 11 ("The competitive market for consumer equipment in the telephone context provides the model of a market we have sought to emulate in this proceeding.").

⁴⁰⁴ *Id.* ¶¶ 28-32 (right to attach); *Id.* ¶¶ 33-34 (disclosure of interface specifications).

Order on the current DBS “smart card” model and found that under this model “DBS reception equipment is already nationally portable and commercially available.”⁴⁰⁵

Indeed, even prior to the *Retail Sales Order*, market forces and open industry standards had begun to spur retail competition for cable modems. CableLabs has developed standards for cable modems in its DOCSIS project and has certified the products of 11 modem suppliers for retail sale.⁴⁰⁶ Retailers are offering cable modems for sale in their stores *today*,⁴⁰⁷ and such offerings are expected to increase greatly as more manufacturers are certified and begin to roll out new products.⁴⁰⁸ In this environment, the ILECs’ “monopsony” speculation simply cannot be credited.

Foreclosure. The ILECs’ foreclosure arguments fare no better. The incumbents suggest that AT&T will deny navigation device manufacturers access to AT&T customers in order to favor AT&T’s “affiliate,” GI.⁴⁰⁹ But AT&T has no direct ownership interest in, exercises no

⁴⁰⁵ *Id.* ¶ 22.

⁴⁰⁶ *CableLabs Certified 11th Cable Modem As Interoperable*, Communications Daily, Sept. 3, 1999, at 10 (1999 WL 7580306). Certified modems are capable of working on any cable system using CableLabs-specified headend equipment. DOCSIS has been renamed the CableLabs® Certified™ Cable Modems project.

⁴⁰⁷ See Martin Levine, *Clearing Shelf Space: Set-Top Boxes Mandated to be Available Via Retail Channels by July 2000*, Multichannel News, at 15A (July 19, 1999) (noting that Circuit City is already selling cable modems). Compaq, Dell, and CompUSA are also selling cable-ready personal computers. See *@Home Network Surpasses 330,000*, PR Newswire (Jan. 11, 1999).

⁴⁰⁸ Cahners In-Stat Group forecasts that end-user sales volume for cable modems could jump by 84% in the first nine months of 1999, compared with the total for all of 1998. Bill Menezes, *New Modem Standards May Shuffle Market*, Multichannel News, at 51 (March 8, 1999) (noting that retail sales will continue to grow as new entrants from the consumer electronic sector, such as Sony, Thomson, and Samsung, “leverage new industry standards with their huge retailing channels to muscle their way into the market.”).

⁴⁰⁹ See, e.g., Hausman Decl. ¶ 32.

control over, and, most fundamentally, can derive no economic benefit from, GI or its operations. Liberty, not AT&T, has an ownership interest in GI.⁴¹⁰ As explained above,⁴¹¹ because AT&T has no economic interest in Liberty, AT&T has no incentive to act anticompetitively with regard to GI. A foreclosure strategy could not possibly benefit AT&T, but would only benefit the Liberty tracking stock shareholders who hold the entire economic interest in Liberty.⁴¹² And, even if AT&T had an incentive to cause GI to act in an anticompetitive manner to benefit AT&T, it would have no ability to cause such a result because AT&T has no ability to direct Liberty's separate management.⁴¹³

Finally, even if AT&T had both incentive and ability – and it has neither – any attempted foreclosure would surely fail. Contrary to Bell Atlantic's attempts to portray the navigation

⁴¹⁰ See *General Instrument to Repurchase 5.3 Million Shares as Forstmann Little Concludes Its Eight Year Investment* (<www.gi.com/press/currentnews/repurchase%5F040599.html>) (“Liberty Media Corporation . . . has agreed to purchase 10 million GI shares from the Forstmann Little partnerships for \$280 million. . . . The purchase by Liberty Media Corporation together with its present holdings, increases Liberty Media's ownership interest in General Instrument to approximately 18% of currently outstanding shares (and to approximately 20.5% assuming the exercise of currently vested warrants to purchase General Instrument common stock.”).

⁴¹¹ See Section II.A.1 *supra*.

⁴¹² AT&T's current purchasing practices confirm the relevant incentives. AT&T has always purchased set-top boxes from a number of manufacturers, including GI, Scientific-Atlantic, Panasonic, and Zenith. On the modem side, AT&T has purchased modems from GI, Com21, Motorola, Nortel, Thompson, and 3Com. Such multiple-source purchases have continued even after Liberty acquired its interest in GI.

⁴¹³ See generally Coffee Supp. Decl. Indeed, even Liberty will soon have no conceivable control over GI. On September 14, 1999, General Instruments entered into a merger agreement with Motorola Corporation under which the shareholders of General Instruments will receive shares in Motorola in exchange for their General Instruments shares. As a result, Liberty's holdings in General Instruments will be diluted such that, after the GI-Motorola merger, it will hold only approximately 3 percent of Motorola's outstanding common stock.

device business as a GI monopoly with a few small “also-rans,”⁴¹⁴ that business is a fiercely competitive one in which GI’s competitors could easily thrive without AT&T (and indeed will soon have options of pure retail distribution). Scientific-Atlanta, which provides digital and advanced analog set-top boxes to Time Warner, Cox, and Comcast,⁴¹⁵ has seen its digital set-top sales rise dramatically.⁴¹⁶ Sony and Philips have only recently entered the market, but Sony has already inked a \$1 billion deal to sell 3 million set-top boxes to Cablevision.⁴¹⁷ Cable modems are sold not only by Motorola, Nortel, and 3Com,⁴¹⁸ but also by niche market suppliers such as Antec and Tellabs.⁴¹⁹ There are also numerous suppliers involved in the development of the

⁴¹⁴ Bell Atlantic at 52.

⁴¹⁵ *The ‘Explorer has Landed’ and Subscribers Love It!*, Scientific-Atlanta Investor News, (<www.sciatl.com/investornews/index.htm>) (noting that Scientific-Atlanta is selling digital systems to 17 MSOs, representing more than 89 systems serving over 17 million subscribers and 25 million homes passed in the U.S. and Canada).

⁴¹⁶ See *Digital Set-Tops Roll: Worldwide Units by Supplier and Mkt. Share by Type, 1998-2000*, Kagan.com Database (June 24, 1999) (noting that Scientific-Atlanta has announced plans to extend its Explorer line of set-top boxes to rival GI’s DCT-5000). According to Kagan, Scientific-Atlanta’s share of the digital market in 1999 will be 1.12 million out of total worldwide market of 4.46 million, and its share next year will rise to 2.96 million out of 7.26 million. Kagan also notes that Scientific-Atlanta’s shipments of advanced analog boxes this year will be 2.05 million (GI’s will be 2.25 million), and next year 1.77 million (GI’s will be 1.90 million). *Id.*

⁴¹⁷ <www.multichannel.com/dial/33d.shtml>; *New Box Players Gain Ground*, Kagan Broadband (Aug. 24, 1999) (noting that MediaOne is the first MSO to sign a set-top deal with Philips, and Cablevision may soon sign a deal with Sony). Other producers of digital navigation devices include Pioneer and Toshiba.

⁴¹⁸ See *Motorola Ships 500,000 Cable Modems*, Bloomberg News (Feb. 15, 1999), available at (<www.news.com/News/Item/0,4,32401,00.html>); *Cable Modems: Motorola Leads Cable Modem Market*, Cambridge Telecom Report (June 21, 1999).

⁴¹⁹ Kent Gibbons, *Antec Venture Lands AT&T Phone Order*, Multichannel News, at 1 (November 2, 1998).

POD module, including Mindport, NDS/SCM Microsystems, Philips, and Pioneer/Nagra/SCM Microsystems.⁴²⁰ And research and manufacturing giant Lucent has announced that it intends to enter the market for cable broadband equipment.⁴²¹

In short, numerous other, strongly positioned market participants would remain even if the weakest of the group succumbed to an attempted foreclosure by a cable company that could benefit economically from GI dominance. Thus, such a foreclosure strategy would be costly to the cable company – reducing the value of its cable offerings by denying its customers access to devices that they value – and there would be no offsetting benefits, because competition from the remaining competitors would constrain GI's prices.⁴²²

Proprietary Standards. The ILECs' hypothesis that AT&T has the ability and incentive to force GI to use "proprietary standards" and that this will foreclose customers to GI's rivals or allow GI to gain control of the navigation device market suffers from the same – and additional – flaws. As an initial matter, the Commission's *Retail Sales Order* is the complete answer to these claims. In order to ensure a vibrant retail market, the Commission promulgated regulations that require MVPDs to publish technical standards that would allow manufacturers to build

⁴²⁰ NCTA Status Report at 9-10. Moreover, GI has licensed various aspects of its proprietary technology, including its access control technology, to other manufacturers, thereby enabling them to develop and market interoperable security equipment for use in conjunction with satellite, cable, MMDS, and other networks. GI licensees include Hewlett-Packard Company, Zenith Electronics, and Pace Micro Technology. See GI Comments, filed in CS Docket No. 97-80 on May 16, 1997, at 97-100.

⁴²¹ See Bill Menezes, *Lucent, Motorola Team Up on IP Telephony*, Multichannel News, at 126 (June 21, 1999) (noting that Lucent recently announced alliance with Motorola to offer an end-to-end Internet Protocol telephony/data solution for cable operators).

⁴²² See Ordoover/Willig Decl. ¶¶ 121-22.

navigation devices to interface with the MVPD-supplied security modules⁴²³ and barred MVPDs from asserting intellectual property rights that prevent navigation devices from being made available to subscribers from retailers.⁴²⁴

Further, as explained above, AT&T has neither the ability nor the incentive to direct GI (through Liberty) to employ any anticompetitive strategy that would favor GI. Nor could any such strategy succeed in driving GI's competitors from the market – as explained above, navigation device manufacturers have many alternative outlets, and, GI's insistence on proprietary standards would only make its competitors' offerings more attractive to these other buyers.

Most fundamentally, however, any such strategy would prove enormously costly to AT&T in an environment in which industry-wide open standards and retail availability will predominate. As Shapiro and Varian have explained:

[F]ailure to open a technology can spell its demise, if consumers fear lock in or you face a strong rival whose system offers comparable performance but is nonproprietary. Sony faced precisely this problem with its Beta video cassette recorder system and lost out to the more open VHS system, which is now the standard. Openness will bolster your chances of success by attracting allies and assuring would-be customers that they will be able to turn to multiple suppliers down the road.⁴²⁵

Insisting on proprietary standards would mean fewer suppliers and less compatible content.⁴²⁶

That in turn could increase costs and reduce the quality of the services available to AT&T

⁴²³ 47 C.F.R. § 76.1205.

⁴²⁴ 47 C.F.R. § 76.1202.

⁴²⁵ Carl Shapiro and Hal R. Varian, *Information Rules: A Strategic Guide to the Network Economy*, at 197 (1998).

⁴²⁶ See Ordoover-Willig Decl. ¶ 132.

consumers through navigation devices. Given that customers can obtain video, Internet and other services contemplated over navigation devices elsewhere, a proprietary standards approach simply makes no sense.

AT&T's recent agreement with Microsoft to purchase set-top box operating systems provides solid proof that it is in AT&T's interest to ensure that as many application developers as possible can and will develop content and services that can be delivered by AT&T. As part of that deal – which is non-exclusive – AT&T required Microsoft to agree to *publish* the standards and protocols that will allow any third party to write applications that will run on the operating system.⁴²⁷ AT&T officials have also repeatedly stated that Sun Microsystems' PersonalJava will also be used in some set-top boxes.⁴²⁸ In fact, AT&T insisted when designing its digital cable system that set-top boxes used on the system be open to a variety of software vendors.⁴²⁹ This is consistent with AT&T's overall business philosophy in this area, which is that it is preferable to have multiple sources of compatible equipment and software to run its systems than to rely on a

⁴²⁷ See Testimony of C. Michael Armstrong Before the Senate Judiciary Committee (July 15, 1999) (“Microsoft is required by our contract to disclose all Application Programming Interfaces (“APIs”) that it or any other firm uses in the software.”).

⁴²⁸ See, e.g., Price Colman, *AT&T Wins MediaOne Fight*, *Broadcasting & Cable*, at 14 (May 10, 1999) (noting statements of AT&T Chairman Michael Armstrong to that effect).

⁴²⁹ See, e.g., Leslie Ellis, *Malone as Gates-Keeper; Warns Against Microsoft Set-Top Dominance*, *Multichannel News*, at 1 (Sept. 1, 1997) (quoting TCI Chairman John Malone as saying that “it’s critical that the [cable] industry has to pick published and open standards”); Diane Mermigas, *Malone: Sculpting TCI’s Future: Digital Everything*, *Electronic Media*, at 1 (April 20, 1998) (noting TCI Chairman John Malone’s preference for “open” cable set-top boxes). Furthermore, GI’s digital boxes provide an open platform for various operating systems. See, e.g., *General Instrument Announces Plans for Launch of DCT-5000+*, *GI Press* (May 4, 1999) (<www.gi.com/PRESS/CURRENTNEWS/3q_launch_dct5000_050499.html>) (noting that the DCT-5000+ set-top box can run on operating software from Microsoft, NCI, Sony, and Sun Microsystems).

single-source supplier.⁴³⁰ In sum, there are no serious – and certainly no Merger-specific – navigation device issues.⁴³¹

2. Electronic Programming Guides (“EPGs”).

Consistent with their efforts to “commoditize” AT&T’s broadband pipe, SBC, Ameritech and AOL furthermore assert that the Merger will undermine competition and consumer choice in connection with the provision of EPGs to subscribers. Offering as evidence nothing other than a sentence fragment from a *New Yorker* article that is more than one year old, AOL asserts that “AT&T would deny cable consumers the ability to choose among competing electronic program guides.”⁴³²

As a threshold matter, none of the commenters offer any tangible economic evidence that EPGs constitute a separate product market. Nor could they. There are an array of options for obtaining the information provided by EPGs, including listings in daily newspapers, weekly publications such as *TV Guide*, various World Wide Web sites, dedicated channels provided to subscribers by cable operators and other MVPDs, television sets and set-top boxes with built-in

⁴³⁰ Marshall Decl. ¶ 13.

⁴³¹ The Commission has announced that it will conduct a broad review next year of the state of the navigation devices market as a follow-up to its recently completed retail sale proceeding. See *Retail Sale Order* ¶ 69; *Retail Sale Reconsideration Order* ¶ 33. If the Commission has general concerns about the future state of navigation device competition, those concerns should be addressed in that industry-wide proceeding.

⁴³² AOL at 10 (“the AT&T-TCI plan is for consumers to ‘have to go through us’”). Of course, AOL does not reconcile its view that it is somehow anti-competitive for AT&T to serve as an access source for voice, video and Internet services with its own practice of forcing consumers to sift through AOL’s proprietary content screens and advertising prior to being able to access unaffiliated content.

program guides, personal video recorders, or simply “channel-surfing” among the various program offerings supplied by an MVPD.⁴³³

It is precisely for these reasons that the Commission should reject SBC’s and Ameritech’s unfounded speculation about competitive effects that might occur in the next generation of EPG for cable platforms, whatever form they might take.⁴³⁴ The provision of digital video services by cable operators is still nascent, particularly in comparison to DBS,⁴³⁵ thereby vitiating concerns that AT&T will be able to impede competition for EPG services. Indeed, Bell Atlantic, in marketing DBS to millions of its residential customers, specifically touts the EPG offered by DirecTV.⁴³⁶ In addition, cable customers will be able to obtain EPGs from

⁴³³ In fact, EPGs and cable programming are complementary goods. They are not end products, but are aids in selecting other products and services just like third-party restaurant and motel directories. Indeed, both Ameritech and SBC’s expert describe EPGs as an “element” of some other service, rather than a separate and distinct product offering. Ameritech at 24; Hausman Decl. ¶ 28. Opponents’ efforts to conflate EPGs with Web browsers underscore the degree to which the EPG issue is simply forced access for unaffiliated broadband service providers under a different guise. *Cf.* AOL at 10; SBC at 37; Ameritech at 25.

⁴³⁴ Ameritech at 24; SBC at 37.

⁴³⁵ *See, e.g.,* Comments of National Cable Television Association, *In the Matter of Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming*, CS Docket No. 99-230, at 33 (filed Aug. 6, 1999) (noting that by year-end, digital tiers will be available to 4.7 million of the 67 million total cable subscribers); *see also* <www.directv.com/about> (characterizing DirecTV as “America’s top digital television service” providing more than 5 million customers access “to more than 210 digital-quality channels”); <www.echostar.com> (stating that EchoStar’s Dish Network offers “over 300 channels of digital video and CD-quality audio programming”); *Fifth Annual Video Competition Report* ¶ 63 (“DBS subscribers have reported that the main advantages of DBS are . . . digital quality picture, CD-quality sound”).

⁴³⁶ *See* <www.bellatlantic.com/digitaltv/programming.html> (offering consumers in a variety of Bell Atlantic service areas “a wide selection of digital programming from DirecTV” and “advanced system features including an interactive on-screen electronic program guide (EPG)”).

AOL and SBC also are making their marketing clout and subscriber base available to DirecTV. *America Online and Hughes Electronics Form Strategic Alliance to Market*
(continued . . .)

sources other than their cable operator. EPGs can be provided via over-the-air broadcast technology or embedded in television sets and set-top boxes.⁴³⁷

Similarly, while some EPGs may in the future incorporate enhanced features such as links to related Web sites and the Internet, reviews or descriptions of listed shows, or previews, consumers will have a wide range of choices for obtaining program information such that no single entity, including AT&T, could exercise market power in connection with the provision of EPG services.⁴³⁸ To the contrary, the convergence of Internet and video offerings will provide consumers with more alternatives to MVPD platforms and with more sources of programming information – not fewer. In fact, even as the merged entity begins to roll-out digital cable services to more subscribers, a number of competing providers have already begun to offer program guides with advanced and interactive features – including Gemstar, SourceMedia’s Interactive Channel, TV Guide Interactive, Tivo, and WebTV – and more new entrants are expected to emerge in the near future. In short, there is such a wide range of current and potential future purchasers of EPG services as to preclude a conclusion that any company could exercise market power.⁴³⁹

(. . . continued)

Unparalleled Digital Entertainment and Internet Services, (Press Release June 21, 1999); *SBC Signs Strategic Marketing Agreement with DirecTV to Offer Television Entertainment Programming to its 18 Million Residential Customers* (Press Release July 16, 1999) (announcing “strategic marketing and distribution agreement that will allow SBC to make high-quality digital satellite television service available to its 18 million” residential customers).

⁴³⁷ See Kathy Haley, “New Directions,” *Broadcasting & Cable*, September 6, 1999 at 18-36.

⁴³⁸ See Ordoover/Willig Decl. ¶¶ 123-25.

⁴³⁹ *Id.*

Finally, it would be exceedingly difficult in a digital environment to determine with sufficient precision the extent to which various services, systems, modalities, portals, browsers, or interfaces might conceivably be characterized as EPGs.⁴⁴⁰ Thus, while the convergence of television, computers, and Internet-based services and the concomitant evolution of program guides, navigation devices and browsers that afford access to Internet and video services may raise a set of highly complex and far-reaching technological, policy and business issues, this proceeding is not the appropriate setting in which to address such matters.⁴⁴¹

E. The Merger Will Not Violate The Commission's Cellular Cross-Ownership Rule.

SBC argues that the Merger would violate the Commission's cellular cross-ownership rule because AT&T would have interests in both of the cellular providers in over 30 markets across the country.⁴⁴² As adopted in 1991, the cellular cross-ownership rule prohibited an entity

⁴⁴⁰ The Commission has twice declined requests that it mandate carriage of EPGs by cable operators, and the Merger provides no basis for revisiting those decisions. *See Retail Sale Order; Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Broadcast Signal Carriage Issues*, 9 FCC Rcd. 6723, ¶ 47 n.145 (1994) (“*Must Carry Order*”). Congress expressly limited the scope of the navigation devices’ commercial availability mandate only to *equipment* used to access services offered by MVPDs, such as set-top boxes, and not to services (such as an EPG) offered over MVPD systems or through such boxes. H.R. Rep. No. 204, 104th Cong., 1st Sess. 112 (1995); H.R. Rep. No. 458, 104th Cong., 2d Sess. 181 (1996). EPG carriage obligations would also implicate serious First Amendment issues, by interfering with a cable system’s editorial discretion, forcing carriage of content not of the operator’s choosing, and impinging upon its freedom to package and present its aggregate video program offerings to viewers.

⁴⁴¹ Any “remedy” to the EPG issue created by Opponents would be worse than the “problem.” EPG carriage obligations would saddle the merged entity with new technical and operational burdens, complicate marketing and packaging of programming and other services, and create subscriber confusion. The clearest consequence of the EPG obligations sought by SBC, Ameritech, and AOL would be to further diminish AT&T’s ability to determine and control the look and feel of the video services provided over its systems in a digital environment.

⁴⁴² SBC at 14-16. In its Motion to Dismiss, Consumer Union claims that AT&T failed even to address violations of the cellular cross-ownership restrictions. Consumer Union Motion to Dismiss (continued . . .)

from having an ownership interest in licensees for both channel blocks in overlapping cellular service areas unless the interests pose no substantial threat to competition.⁴⁴³ However, the Commission recently modified the rule to permit a licensee with a controlling interest in one block to hold up to five percent in the other.⁴⁴⁴ MediaOne holds a passive interest of Vodafone of less than five percent.⁴⁴⁵ The Merger therefore will not violate the cellular cross-ownership rule as amended.

(. . . continued)

at 1 n.5. This suggestion is clearly false, as AT&T demonstrated in its opposition to Consumer Union's motion. *See* Opposition of AT&T Corp. and MediaOne Group, Inc. to Motion to Dismiss, at 3 n.3 (citing Public Interest Statement at 40-41 & n.91).

⁴⁴³ *See* First Report and Order and Memorandum Opinion and Order on Reconsideration, *Amendment of Part 22 of the Commission's Rules to Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, 6 FCC Rcd 6185, 6228-29 (1991). The cellular cross-ownership rule originally was codified at 47 C.F.R. § 22.902(b), but then moved without revision to 22.942.

⁴⁴⁴ News Release, *FCC Largely Retains Spectrum Cap, Ensuring That Consumers Continue to See Benefits of Competition; Relaxes Spectrum Cap in Rural Areas*, WT Report No. 99-26 (Sep. 15, 1999).

⁴⁴⁵ *See* Public Interest Statement at 38.

CONCLUSION

For the reasons stated above, the Commission should approve the transfer of licenses from MediaOne to AT&T without conditions.

Respectfully submitted,


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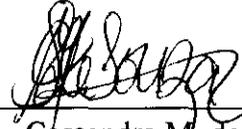
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September 17, 1999

Certificate of Service

I, Cassandra M. de Souza, do hereby certify that I caused one copy of the foregoing Reply Comments of AT&T Corp. and MediaOne Group, Inc. to be served by First Class mail on all parties on the attached service list, this 17th day of September, 1999.



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