

transmission path” to customers.³⁶⁴ These conclusions fully apply here. Although AT&T and Media One utilize transport capabilities in providing their cable internet services, the undisputed fact is that neither AT&T nor Media One provide broadband transport stripped of content to anyone, for a fee or otherwise. Thus, whether AT&T or Media One’s Internet service qualifies as a “cable service” or not, AT&T and Media One are simply not telecommunications carriers when they provide that service.³⁶⁵ Because Congress provided that an entity “shall be treated as a common carrier . . . only to the extent that it is engaged in providing telecommunications services” there is no legal basis for the Commission to impose an “open access” obligation on AT&T or Media One’s broadband cable plant.

c. Forced Access Constitutes Unauthorized Regulation of the “Provision” and “Content” of Cable Service.

In addition to banning common carrier requirements Congress also mandated, in section 624(f)(1), that “[a]ny Federal agency, State, or franchising authority may not impose requirements regarding the provision or content of cable services, except as expressly provided

³⁶⁴ *Id.* ¶ 73.

³⁶⁵ This is true even if the provision of transmission capacity on a cable system to third parties were characterized as “telecommunications.” In characterizing a service or product, the focus is always on the customer or user of the product. *See ABC v. FCC*, 633 F.2d 144 (D.C. Cir. 1980). When what is provided to the customer is a pure “pipe,” the offering is telecommunications. By contrast, the offering of a content-enriched Internet access service delivered over that pipe is a cable service. *Cf. Nat’l Assn. of Reg. Util. Comm’rs. v. FCC*, 533 F.2d 601 (D.C. Cir. 1976) (“*NARUC II*”) (same entity can be a common carrier for some purposes but not for others). Significantly, however, the Communications Act does not separately define cable transmission technology for regulatory or other purposes when that technology is used to deliver cable service, but rather establishes a regulatory structure for “cable service” provided by “cable operators” over “cable systems.” The definition of cable service refers to the “transmission” of video programming or other information services, but does not establish a separate regulatory regime for the self-provision of that transmission capacity.

in [Title VI].” It thus prohibits any other forms of regulatory interference with the programming and related decisions of cable operators. *Time Warner Cable v. City of New York*, 943 F. Supp. 1357, 1367, 1399 (S.D.N.Y. 1996), *aff’d sub nom. Time Warner Cable v. Bloomberg L.P.*, 118 F.3d 917 (2d Cir. 1997).

The proposed “open access” requirement would undeniably condition the provision of cable modem services by AT&T and MediaOne on a new requirement. AT&T and Media One could not offer @Home or provide Road Runner unless they allow any requesting ISP to interconnect with their cable systems and provide it with broadband transmission facilities. In other words, AT&T and Media One’s “provision” of the AT&T@Home and MediaOne Road Runner cable services would trigger the proposed forced access condition. That violates the plain terms of section 624(f)(1).

United Video v. FCC, 890 F.2d 1173 (D.C. Cir. 1989), which upheld the Commission’s “syndex” rules against a challenge under section 624(f), clearly establishes that the proposed forced access requirement would be unlawful. The court in that case held that Congress had adopted section 624(f) for the sole purpose of barring regulatory bodies from “specify[ing] the services that the [cable] operator must provide.” *Id.* at 1188. For example, the court stated that, under section 624(f), a regulator may neither “*prohibit* the carriage of HBO” nor “*require* carriage of HBO.” *Id.* at 1188-89. Conversely, the Court said that section 624(f) does not prohibit “regulations of cable that are not based on the content of cable programming, and do not require that particular programs or types of programs be provided.” *Id.* 1189; *accord Storer Cable Communications v. City of Montgomery*, 806 F. Supp. 1518 (M.D. Ala. 1992) (following *United Video*).

A forced access rules would violate section 624(f) by “prohibiting” AT&T and Media One from carrying a “particular type of program” (cable Internet services) unless they also offer to carry “on nondiscriminatory terms” the services of all third party ISPs who offer competing on-line services. In the words of *United Video*, the proposed “open access” condition is thus not “content-neutral” even for “first amendment purposes” because it cannot be applied or “justified without reference to the content of the regulated speech.” 890 F.2d at 1189 n.13, (*citing Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

Imposition of a forced access requirement would “interfere with the editorial decisions of the [cable operators]” by imposing the burdensome requirement that they carry third party’s services if and only if they choose to provide a particular type of programming with distinctive content: interactive online services that include Internet access and that compete with ISPs’ offerings. *Storer Cable Communications v. City of Montgomery*, 806 F. Supp. 1518, 1546 (M.D. Ala. 1992); *accord, United Video*, 890 F.2d at 1189. That is barred by section 624(f)(1).

d. Regulatory Symmetry Is Neither Lawful Nor Necessary

MCI and MindSpring argue that there is no reason to regulate Internet access services provided by cable operators any differently than similar services provided by incumbent or competitive LECs.³⁶⁶ This argument completely disregards the fundamental differences between cable systems and telecommunications networks and the enactment by Congress of separate statutory schemes to govern these two industries.

Unlike common carriers, cable operators are “speakers,” and their “speech,” including their exercise of editorial discretion concerning the content, information, programming, and

³⁶⁶ MindSpring at 15-16; MCI at 31-32.

services offered over their networks -- is protected by the First Amendment.³⁶⁷ Cable systems have been built and operated to meet the demands of consumers for video and other programming. Cable operators select the programming they will offer, obtain rights to it, and then include it in the menu of what is available to subscribers. Whether the programming is CNN, HBO, or an interactive online cable service that includes Internet access, the cable operator purchases rights to the programming (or produces it itself) and then sells it as a cable service to its subscribers at prices determined by the cable operator.

Congress has recognized the historic role of cable operators as editors and creators of content, and not mere conduits for third party speakers.³⁶⁸ In this fundamental regard, cable operators differ from telephone companies. Thus, courts have upheld requirements that cable operators carry particular programming only when such requirements were specifically mandated by the Communications Act and proven to be necessary to further some substantial national policy.³⁶⁹ None of the existing statutory access or carriage obligations authorities forced access for ISPs.³⁷⁰

³⁶⁷ See *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 636 (1994) (“*Turner I*”); *id.*, 520 U.S. 180 (1997) (“*Turner II*”).

³⁶⁸ See, e.g., 1984 House Report at 69-70 (noting First Amendment rights of cable operators and cable programmers); *id.* at 36 (noting that as long as Congress limits access uses to a “relative few” channels, it will not “unduly impinge on the cable operator’s journalistic or editorial function.”).

³⁶⁹ See *Turner II*, 520 U.S. 180.

³⁷⁰ See, e.g., 47 U.S.C. § 531 (access to channels for “public, educational, and governmental” use for video programming); 47 U.S.C. § 532(c) (leased access for “video programming”); 47 U.S.C. § 534 (“must carry” for over-the-air broadcast signals); 47 U.S.C. §§ 624(i) (access to in-home cable wiring); 47 U.S.C. § 628 (access to satellite cable programming); and 47 U.S.C. § 629 (availability of navigation devices).

Also unlike telephone networks, which provide a dedicated connection to each user, the transmission capacity of a cable system is limited and is effectively shared by all subscribers. A cable operator has only a certain amount of capacity available at any one time, and it must exercise editorial discretion to allocate the limited system capacity among different types of programming. For example, to provide cable modem service, a cable operator must allocate a portion of its limited transmission capacity to this service. A requirement that a cable system carry additional programming could necessitate that the cable operator drop other programs or modify its network to add transmission capacity. In addition, because the transmission capacity of a cable system is shared among multiple uses, control and management by a single entity is necessary to ensure that one use does not interfere with, or degrade the quality of, another subscriber offering. There is currently no ability to allocate bandwidth to a “pool” of unaffiliated ISP customers to prevent this interference.³⁷¹

Consistent with the differences between cable operators and telecommunications common carriers, cable operators are regulated under a dedicated title of the Communications Act. Title VI of the Act “establish[es] a national policy concerning cable communications” and “minimize[s] unnecessary regulation that would impose an undue economic burden on cable systems.” 47 U.S.C. §§ 521(1), (6). In particular, as noted above, Title VI exempts cable operators from “common carrier” regulations (47 U.S.C. § 541(c)), and prohibits “requirements regarding the provision or content of cable services.” *Id.* § 544(f)(1).

As the Commission is aware, an entirely different statutory regime applies to telephone systems. Telephone companies were established not to engage in speech, but to serve as

³⁷¹ See Medin Decl. ¶ 24.

conduits for the unedited speech of others and to provide point-to-point communications to any member of the public. Unlike the shared facilities of cable systems, telephone services are provided over networks in which transmission wires and facilities are dedicated to each individual telephone subscriber and are designed to provide service to any person or entity, including firms providing online services. Therefore, local telephone companies are regulated separately, under Title II of the Communications Act as “common carriers.” Title II generally requires those firms to offer service under tariff to all who request it on rates, terms and conditions that are just, reasonable, and nondiscriminatory. 47 U.S.C. §§ 201-205.

Further, “Congress, when it enacted the [1996] Act, created or retained these models [for separate cable and telephony regulatory schemes] and thereby endorsed their continued use.”³⁷² In fact, Congress expressly declined to adopt proposals advanced by several Senators and the Administration for just the kind of uniform regulatory framework suggested by the Opponents.³⁷³ The Commission recently affirmed its intent to “continue to recognize and adhere to the distinctions Congress drew between cable and common carrier regulation.”³⁷⁴ The uniform forced access obligations sought by MCI and MindSpring would destroy the separate statutory scheme established by Congress and upheld by the Commission.

³⁷² See 706 NOI Report at ¶ 77.

³⁷³ See, e.g., “Stevens Draft Includes ‘Title VII’ Provision; Senator Hopes to Include Language in Other Bills,” *Telecommunications Reports* (Apr. 18, 1994) at 1-2; “White House Working to Include ‘Title VII’ in Telecom Bills; Hollings Says Provision ‘Isn’t Realistic At This Time,’” *Telecommunications Reports* (February 28, 1994) at 4-6. Under one version of this proposed framework, all providers of “advanced” services would have been subject to similar access and interconnection obligations. See “NARUC Adopts Package of Legislative Resolutions to Guide Negotiations on Fast-Moving Telecom Bills,” *Telecommunications Reports* (Mar. 7, 1994) at 10-15 (describing specifics of proposed Title VII and NARUC’s opposition thereto).

³⁷⁴ *AT&T-TCI* ¶ 29.

Hence, concerns about “regulatory parity” cannot justify the imposition of common carrier-like requirements on cable operators. Congress imposed unbundling, interconnection, and resale discount obligations on ILECs in order to break open their monopolies over the provision of two-way local services.³⁷⁵ Significantly, Congress did not extend unbundling requirements to any other telecommunications carriers, including competitive local exchange carriers, or to cable operators, which are not telecommunications carriers at all. To the contrary, Congress carefully distinguished among carriers based on their market power.³⁷⁶ The Commission specifically has held that an ILEC’s obligations may not be applied to new entrants in the local telephone business.³⁷⁷

Demands for regulatory parity are also completely ungrounded in sound economic theory. Such demands ignore the clear differential in risk that ILECs face in deploying broadband services as compared to cable companies. First, cable companies have virtually no phone or Internet customers. In stark contrast, ILECs today have nearly all telephone and dial-up Internet access customers. The basic infrastructure used by ILECs to provide high speed services was deployed by ILECs under a regulatory regime that shielded them from competition

³⁷⁵ 47 U.S.C. § 251(c). At the time of enactment, ILECs controlled 99% of the local residential telephone market. The total number of cable Internet service customers currently represents less than 2% of Internet subscribers in the United States.

³⁷⁶ Compare 47 U.S.C. § 251(a) (obligations imposed on telecommunications carriers) with 47 U.S.C. § 251(b) (obligations imposed on all local exchange carriers) and § 251(c) (obligations imposed solely on incumbent local exchange carriers).

³⁷⁷ In fact, the Commission preempted attempts by several states to extend ILEC unbundling obligations to competitive carriers. First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶¶ 1247-48 (1996) (subsequent history omitted).

funded their investments with captive ratepayer charges. And the ILECs faced no research and development risk with regard to the use of DSL technology – it was developed by Bell Labs in the 1980s. By contrast, cable companies must bear the full risks of developing and deploying cable modem services in a vigorously competitive market. Differential regulation is also necessary to prevent ILECs from abusing their bottleneck monopolies.³⁷⁸

Interconnection to the local telephone network work and unbundled network elements are examples of services and facilities where access regulation unfortunately remains necessary – both to foster competition in existing monopoly markets and to prevent incumbent providers from extending their monopolies over traditional services to new services before competition has a chance to develop. In the absence of comparable problems, however, centralized access regulation is likely to produce only a deadweight loss to consumers.³⁷⁹

³⁷⁸ See Ordoover/Willig Decl. ¶ 79.

³⁷⁹ Ordoover/Willig Decl. ¶ 77. In this regard, Commissioner Powell has suggested that regulators should:

start with a rule of decision . . . that any one advocating the extension or intrusion into such a vibrant market bears a heavy burden of providing that the public will be harmed, absent doing so. . . . [W]e should favor antitrust application to actual, substantial harms to consumers over industrial policy. Government-orchestrated industrial development may be unwise generally, but it is especially inappropriate in a market like the Internet. . . . [W]e should carefully assess the costs of regulation, including direct costs, indirect costs, and opportunity costs.

Remarks by Michael K. Powell, Before the FCBA (Chicago Chapter), Chicago, IL (June 15, 1999) <<http://www.fcc.gov/Speeches/Powell/spmcp902.html>>.

e. The Telecommunications Advocacy Project's Allegations of Redlining Are Baseless.

Telecommunications Advocacy Project ("TAP") alleges that MediaOne is "redlining" its broadband deployment to exclude low income or minority areas.³⁸⁰ TAP provides no support for these serious allegations, nor can it. Far from engaging in redlining, MediaOne has been in the forefront of deploying upgraded facilities in the communities it serves. Wherever MediaOne upgrades its cable network, it does so in *all areas* passed by the cable system, without regard to income or demographics.³⁸¹ For example, while TAP irresponsibly alleges that MediaOne has redlined in Los Angeles, the truth is that MediaOne's initial deployment in that area included roll-out of new and advanced services to an economically and ethnically diverse base of residential customers. MediaOne was not only the first cable operator in the City of Los Angeles to begin upgrading its systems to 550 MHz and then to 750 MHz, and the first to offer advanced services, but it began its rebuild in South Central Los Angeles, a community with a population that is 48% Latino and 43% African American.³⁸² Although the 750 MHz hybrid fiber coax network rebuild will not be entirely completed until year end 1999, MediaOne is already offering both high speed data service ("HSD") and telephony in South Central Los Angeles, and in neighboring Compton, Carson, Inglewood, Lynwood and Watts, all communities with significant

³⁸⁰ TAP Petition to Deny at 14-16. TAP also submitted an untimely "Supplemental Petition to Deny" on September 15, two days before the Reply Comments were due. The Supplemental Petition contains maps that purport to demonstrate MediaOne's alleged redlining. MediaOne will submit a supplemental response to TAP's unauthorized pleading shortly, once it has had the opportunity to review it fully.

³⁸¹ Card Decl. ¶ 3.

³⁸² *Id.* ¶ 4.

minority populations.³⁸³ Significantly, neither service is yet available in Beverly Hills, Pacific Palisades or Malibu (generally recognized as high income communities).³⁸⁴

TAP allegations about Atlanta, Georgia, Pompano Beach, Florida, Fresno, California, and Richmond, Virginia,³⁸⁵ are similarly baseless. MediaOne is upgrading all of its systems in Atlanta, where the population is over 50% African American, and many Atlanta systems serve areas where the average annual income is \$30,000 or less.³⁸⁶ Likewise, MediaOne upgraded the entire Pompano Beach, Florida system, the entire Fresno, California system, and the entire Richmond, Virginia system, including all minority and low income areas.³⁸⁷ In the Richmond market, the City was rebuilt and HSD and telephony were offered ahead of the surrounding suburbs, clearly rebutting TAP's allegations.

In Hamtramck, Michigan, MediaOne also has upgraded its system to offer broadband services, including HSD, and that community is 78% African American with an average household income of \$15,000.³⁸⁸ In contrast, Ameritech New Media has sought overbuild franchises in most of the surrounding communities, but has ignored Hamtramck.

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ TAP at 14.

³⁸⁶ Card Decl. ¶ 5.

³⁸⁷ *Id.* In addition to these communities, MediaOne has upgraded dozens of other communities to be capable of providing high speed data service. These communities include smaller cities such as Santa Fe Springs, California, a 66% Hispanic community, and localities such as Sanford, California, whose average household income is \$26,735, and East Wareham, Massachusetts, whose average household income is \$32,097. Contrary to TAP's allegations, MediaOne also has upgraded all its Jacksonville, Florida systems. In each locality, the upgraded facilities pass every neighborhood. *Id.* ¶ 7.

³⁸⁸ *Id.* ¶ 6.

The pattern of equitable investment in all franchise areas is the common approach in all MediaOne markets, and is a far different pattern than the one TAP recklessly alleges. In short, TAP's petition lacks any factual support and should be accorded no weight.

D. The Merger Will Have No Material Impact On Navigation Device Or Electronic Programming Guide Competition.

1. Navigation Devices.

Three ILECs contend that the Merger will give AT&T the ability to exercise monopsony power over navigation device manufacturers and, through Liberty's minority interest in General Instrument ("GI"), on incentives to foreclose GI's navigation device competitors from access to AT&T's customers.³⁸⁹ Relatedly, these LECs speculate that AT&T will use proprietary standards to drive out GI's rivals and point to AT&T's agreement to purchase Windows CE from Microsoft as the first step in this direction.³⁹⁰ Not a single equipment manufacturer or equipment manufacturing trade association (*i.e.*, those entities that allegedly would be harmed under the LECs' theories) joins these claims, and they are baseless.

Monopsony. The manufacturers of navigation devices are sophisticated parties with substantial bargaining power. Scientific-Atlanta and GI provide digital and advanced analog set-top boxes to numerous cable operators in the U.S. and Canada.³⁹¹ Major new players, including large consumer electronics firms such as Sony and Philips, are also entering the market for set-

³⁸⁹ Ameritech at 23-26; Bell Atlantic at 52-55; SBC at 31-40; Hausman Decl. ¶¶ 31-34.

³⁹⁰ Ameritech at 25; Bell Atlantic at 53-55; SBC at 37.

³⁹¹ *See, e.g.*, "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).

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 . . .)

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,

Mark C. Rosenblum
Mark C. Rosenblum *(11-75)*
Stephen C. Garavito
Lawrence J. Lafaro
AT&T Corp.
295 N. Maple Avenue
Room 3252G1
Basking Ridge, NJ 07920

David W. Carpenter
David L. Lawson
David M. Levy
Lorrie M. Marcil
C. Frederick Beckner III
Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20006

Howard J. Symons
Tara Corvo
Michelle M. Mundt
**Mintz Levin Cohn Ferris
Glovsky & Popeo, P.C.**
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, DC 20004

Susan M. Eid
Susan M. Eid *(FB)*
Sean C. Lindsay
MediaOne Group, Inc.
1919 Pennsylvania Avenue, N.W.
Suite 610
Washington, DC 20006

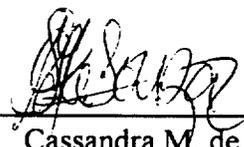
Philip L. Verveer
Michael H. Hammer
Michael G. Jones
Francis M. Buono
Willkie Farr & Gallagher
1155 21st Street, N.W.
Suite 600
Washington, DC 20036

Wesley R. Heppler
Robert L. James
Cole Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, DC 20006

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.



Cassandra M. de Souza
Legal Assistant

Magalie R. Salas
Office of the Secretary
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, SW
Room TW-B204
Washington, DC 20554

ITS, Inc.
1231 20th Street, NW
Washington, DC 20036

Walter Strack
Wireless Telecommunications Bureau
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, SW
Room 3-C204
Washington, DC 20554

Andrew J. Schwartzman
Harold Feld
MEDIA ACCESS PROJECT
1707 L Street, NW
Suite 400
Washington, DC 20036
*Counsel for Consumers Union, Consumer Federation
of America and Media Access Project*

John Norton
FEDERAL COMMUNICATIONS COMMISSION
The Portals
445 12th Street, SW
Washington, DC 20554

To-Quyen Truong
Associate Chief, Cable Services Bureau
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, SW
Room 3-C488
Washington, DC 20554

Frances Eisenstein
International Bureau
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, SW
Room 6-C866
Washington, DC 20554

Sunil Daluvoy
Cable Services Bureau
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, SW
Room 4-A737
Washington, DC 20554

Randi M. Albert
Cheryl A. Leanza
MEDIA ACCESS PROJECT
1707 L Street, NW
Suite 400
Washington, DC 20036
*Counsel for Consumers Union, Consumer Federation
of America and Media Access Project*

Leon M. Kestenbaum
Jay C. Keithley
Michael B. Fingerhut
SPRINT CORPORATION
1850 M Street, NW
11th Floor
Washington, DC 20036

Khalil Munir
Executive Director
TELECOMMUNICATIONS ADVOCACY
PROJECT
1221 11th Street, NW
Washington, DC 20001

SHOOK, HARDY & BACON
600 14th Street, NW
Suite 800
Washington, DC 20005-2004
Counsel for Telecommunications Advocacy Project

Charles C. Hunter
Catherine M. Hannan
HUNTER COMMUNICATIONS LAW GROUP
1620 I Street, NW
Suite 701
Washington, DC 20006
*Counsel for Telecommunications Resellers
Association*

William T. Lake
William R. Richardson, Jr.
Julie A. Veach
WILMER, CUTLER & PICKERING
2445 M. Street, NW
Washington, DC 20037-1420
Counsel for US WEST

Mark Roellig
Dan L. Poole
Robert B. McKenna
Norman G. Curtright
US WEST, INC.
1020 19th Street, NW
Washington, DC 20036

Paul J. Sinderbrand
Robert D. Primosch
William W. Huber
WILKINSON BARKER KNAUER, LLP
2300 N Street, NW
Suite 700
Washington, DC 20037-1128
*Counsel for The Wireless Communications
Association International, Inc.*

George Vradenburg, III
Jill A. Lesser
Steven N. Teplitz
AMERICA ONLINE, INC.
1101 Connecticut Avenue, NW
Suite 400
Washington, DC 20036

John T. Lenahan
Christopher Heimann
AMERITECH
30 S. Wacker Drive
39th Floor
Chicago, IL 60606

Deborah H. Morris
AMERITECH NEW MEDIA, INC.
300 South Riverside Plaza
Suite 1800
Chicago, IL 60606

Lawrence R. Sidman
Lisa M. Fowlkes
VERNER, LIIPFERT, BERNHARD,
McPHERSON & HAND, CHTD.
905 15th Street, NW
Suite 700
Washington, DC 20005
Counsel for Ameritech

John Thorne
Robert F. Griffen
BELL ATLANTIC CORPORATION
1320 North Courthouse Road
8th Floor
Arlington, VA 22201

Geoffrey M. Klineberg
Evan T. Leo
KELLOGG, HUBER, HANSEN,
TODD & EVANS, PLLC
1301 K Street, NW
Suite 1000 West
Washington, DC 20005-3317
Counsel for Bell Atlantic Corp.

Richard G. Taranto
FARR & TARANTO
1850 M Street, NW
Suite 1000
Washington, DC 20036-5802
Counsel for Bell Atlantic Corp.

William B. Barfield
Thompson T. Rawls, II
Alan L. Silverstein
BELLSOUTH CORP.
1155 Peachtree Street, NE
Suite 1800
Atlanta, GA 30309

Michael Tessler
BROADSOFT
200 Perry Parkway
Suite 1
Gaithersburg, MD 20877-2177

Gary M. Epstein
James H. Barker
Kimberly S. Reindl
LATHAM & WATKINS
1001 Pennsylvania Avenue, NW
Suite 1300
Washington, DC 20004
Counsel for DIRECTV

David K. Moskowitz
ECHOSTAR SATELLITE CORPORATION
5701 South Santa Fe
Littleton, CO 80120

Philip L. Malet
Pantelis Michalopoulos
Matthew S. Yeo
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
Counsel for Echostar Satellite Corp.

William P. Barr
John F. Raposa
David E. Wheeler
GTE SERVICE CORPORATION
1850 M Street, NW
Suite 1200
Washington, DC 20036

Steven G. Bradbury
John P. Frantz
Kelion N. Kasler
J. Peter Ban
KIRKLAND & ELLIS
655 Fifteenth Street, NW
Washington, DC 20005
Counsel for GTE Corp.

Anthony C. Epstein
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
Counsel for MCI WorldCom

Kecia Boney
Larry Fenster
Lisa B. Smith
MCI WORLDCOM, INC
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Earl W. Comstock
John W. Butler
SHER & BLACKWELL
1850 M Street, NW
Suite 900
Washington, DC 20036
Counsel for MindSpring Enterprises, Inc.

Dave Baker
MINDSPRING ENTERPRISES, INC.
1430 West Peachtree Street
Suite 400
Atlanta, GA 30309

Genevieve Morelli
Paul F. Gallant
QWEST COMMUNICATIONS CORPORATION
4250 North Fairfax Drive
Arlington, VA 22203

Robert J. Aamoth
Steven A. Augustino
Todd D. Daubert
KELLEY DRYE & WARREN LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036
Counsel for Qwest Communications Corp.

Roger K. Toppins
Michael Zpevak
SBC COMMUNICATIONS INC.
One Bell Plaza
Room 3008
Dallas, TX 75202

Richard E. Wiley
R. Michael Senkowski
Robert J. Butler
WILEY, REIN & FIELDING
1776 K Street, NW
Washington, DC 20006
Counsel for SBC Communications, Inc.