marketing objectives, as well as marketplace realities, prevent it from doing otherwise. Further, contrary to GTE's assertions,[85] AT&T/MediaOne demonstrated in their Reply Comments that even if it did have an incentive to engage in the anticompetitive behavior GTE hypothesizes, the Merged Entity would not have the ability to engage in any such anticompetitive strategies.

A. AT&T Has No Incentive or Ability to Restrict Subscriber Access to Unaffiliated Content

Since AT&T is seeking to gain and retain new customers in a highly competitive environment, it would be against AT&T's economic interests to limit its customers' "Internet experience" by restricting subscriber access to Internet content. Indeed, the @Home network is specifically optimized to maximize access to and performance from as many content sources as can be practically implemented.[86] Were AT&T to restrict or deny access to content, it would only make its broadband business less attractive to subscribers, who would turn to a competitor, or might decide to forego broadband altogether.[87] The loss of subscribers to competitors would far outweigh any purported "benefit" of imposing anticompetitive restrictions.[88]

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[85] GTE Ex Parte at 24.

[86] *See* Reply Declaration of Milo S. Medin ¶ 14 ("Medin Reply Decl."), attached hereto as Exhibit 3.

[87] GTE strains credulity by asserting that a statement by @Home CEO Thomas Jermoluk concerning the advantages of bundling content and connectivity constitutes an admission that "AT&T/MediaOne is using its monopoly power over broadband access to gain an advantage in vertically related markets for broadband content, applications and e-commerce." GTE Ex Parte at 12. There is no support for GTE's apparent position that the vertical integration of content and connectivity by ISPs should be barred.

[88] Ordover/Willig Reply Decl. ¶ 45. Further, AT&T/MediaOne demonstrated in their Reply Comments that "Internet content" is not a relevant market, and that a wide range of substitutes available through audio, video, electronic, and non-electronic media could easily substitute in the event that a hypothetical monopolist were to attempt to exercise market power in the "market" for such content delivered over the Internet. AT&T/MediaOne Reply Comments at 92.

Professors Ordover and Willig demonstrate that if cable companies were to adopt content restrictions and DSL's growth rate was boosted by only one percent, DSL would be able to capture over 1,200,000 customers who would otherwise have signed up for cable modem service by the end of 2001.[89] This loss of customers would represent more than the total combined subscriber base of both Excite@Home and Road Runner as of August 1999.[90]

GTE's unsupported claim that AT&T could counter this loss of customers by imposing higher advertising prices on its customers[91] rests on the false assumption that Excite@Home and Road Runner sell all of the broadband Internet advertising viewed by subscribers. However, as anyone using the Internet understands, Excite@Home and Road Runner can only sell advertising on the home pages they control -- a tiny fraction of the millions of sites subscribers can access through the services.[92] Thus, even within GTE's fictitious "broadband Internet advertising" market, AT&T could not exercise any market power over advertising, the vast majority of which appears on websites over which AT&T has no control. If Excite@Home and Road Runner tried to raise the prices they charge for access to their home pages, there would be many alternative sites to which advertisers could easily turn instead.[93] Further, even if @Home and Road Runner did control all broadband Internet advertising, and even if their prices were not constrained by other forms of advertising, Hausman and Sidak could not demonstrate that the Merger would lead to higher advertising rates, because @Home and Road Runner serve different areas and the

[89] Ordover/Willig Reply Decl. ¶ 48.

[90] *Id.*

[91] Hausman/Sidak Reply Decl. ¶ 54.

[92] Ordover/Willig Reply Decl. ¶ 76.

[93] *Id.*

two services do not provide advertising to the same broadband subscribers, and thus, the Merger is irrelevant to their ability to charge supracompetitive prices.[94]

Finally, there is no separate market for "broadband advertising" in any event, let alone the market for advertising on "broadband portals" that Hausman and Sidak create[95] in order to bolster their claims of a potential market monopoly. As AT&T/MediaOne demonstrated in their Reply Comments, U.S. online advertising revenue is only a fractional component of the overall advertising market,[96] and buyers have a variety of methods for reaching the public, including television, radio, print, and billboards, in addition to the Internet.

In any event, Hausman and Sidak do not offer any evidence to support their claim of a separate market for advertising on broadband portals, or explain why this type of advertising should be evaluated separately from advertising on narrowband or advertising on the Internet generally. As AT&T/MediaOne demonstrated in their Reply Comments, advertisers themselves do not view the Internet as a separate advertising "market."[97] Hausman and Sidak suggest that broadband users have different demographic profiles than narrowband users, but, as Professors Ordover and Willig demonstrate, the evidence on this issue is contradictory, and in any event, such a distinction would not constitute a market-defining difference, since broadband is not necessary to reach any particular demographic group, but rather, Internet advertisers can target any demographic group they wish by placing ads on sites likely to appeal to that particular

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[94] *Id.* ¶ 72.

[95] Hausman/Sidak Reply Decl. ¶¶ 53-54.

[96] *See* Mick O'Leary, *Can Telcos Become Portals to the Internet*, Global Telecom Business, (Sept. 1998) <http://www.globaltelecomsbusiness.com>.

[97] *See* AT&T/MediaOne Reply at 93, *citing* Valerie Seckler, *Portals' ability to drive Cybersales 'Overrated,'* WWD (April 12, 1999) at 6.

group.[98] Thus, even if @Home and Road Runner were merging, the combination of the two would not lead to higher advertising rates, and thus, the premise for GTE's unsupported assertion that AT&T will restrict subscriber access to unaffiliated content is invalid.

B. The Merger Will Not Result In AT&T Employing the Type of Anti-Competitive Tactics Conjured by GTE

GTE's speculations regarding AT&T's incentive and ability to employ discriminatory tactics against disfavored content providers are similarly predicated upon a misunderstanding of the Merged Entity's business incentives and a mischaracterization of its network's technological capabilities.

The foundation of GTE's position is that because discrimination against unaffiliated content providers is technically feasible and financial incentives to engage in such conduct can be hypothesized, the Commission must conclude that discrimination will occur. But the Commission's decision should be rooted in *actual* marketplace behavior and concrete evidence, not speculation and theory. The evidence demonstrates that AT&T does not, and does not plan to, discriminate against unaffiliated content providers in any of its network practices.

1. Local Caching.

As AT&T/MediaOne have explained, Excite@Home caches heavily trafficked sites to facilitate transmission, regardless of whether these sites are content partners or not. Caching is driven by subscriber visits to particular Web sites. The caching servers determine which content to cache based on traffic patterns, *i.e.*, the number of "hits" that a site receives from subscribers. Caching is also determined by the individual preferences of content providers, not by

[98] Ordover/Willig Reply Decl. ¶ 74.

Excite@Home.[99] Although Excite@Home may also cache the content of affiliated providers to make it more readily available to subscribers, this is no different than the practices of AOL and others of attracting customers by providing an on-screen button or other link to preferred content providers. Excite@Home does not utilize caching to degrade, slow down or block delivery of any unaffiliated or disfavored content, and provides consumers unimpeded access to any Web content of their choice.[100]

Hausman and Sidak nonetheless argue that because local memory caches are limited in size, AT&T/MediaOne have an incentive to give a preference to affiliated content providers when deciding what to cache. This argument is baseless. Hausman and Sidak have not demonstrated that preferential caching would increase AT&T's profits, and thus incent AT&T to grant preferential caching. Indeed, it is unclear how speedier delivery of content would allow AT&T or its affiliated content provider the opportunity to make more money, since the broadband connection is extremely fast even without the benefit of local caching. Further, even if there were an incentive to give caching preference to affiliated content, such an incentive would not be Merger-specific, but would exist whether or not AT&T merged with MediaOne.[101]

The simple point is that Excite@Home provides unfettered access to the Internet and routes data in the most expeditious manner possible, and it is in its economic interest to do.[102] AT&T has every incentive to provide its customers with the most open Internet experience possible, to retain existing customers and attract new ones. High-speed access customers

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[99] Medin Reply Decl. ¶ 16.

[100] *Id.* ¶¶ 17-18.

[101] Ordover/Willig Reply Decl. ¶ 52.

[102] Medin Reply Decl. ¶¶ 17-18.

demand delivery of all web-based content as quickly as possible.[103] Thus, GTE's speculative fear that Excite@Home might use caching to limit consumer access to disfavored Internet content is without foundation and cannot be the basis for new regulatory requirements.

2. Video Streaming.

AT&T neither imposes, nor has an incentive to impose, unnecessary restrictions on video streaming. As AT&T/MediaOne explained in their Reply Comments,[104] the AT&T@Home system, like all systems, has limited bandwidth, and AT&T@Home must ensure that sufficient capacity is available for its subscribers to share and use bandwidth simultaneously. "Streaming" traffic, however, occupies tremendous bandwidth, and is notorious for causing congestion on the Internet. There is no mechanism available today that would allow Excite@Home to measure bandwidth usage or limit bandwidth access on a per customer basis.[105] Thus, AT&T's limitations on video streaming make perfect sense.

Hausman and Sidak speculate that AT&T seeks to limit video streaming in order to eliminate competition to its video programming business. This is untrue. However, even if it were true, it is irrelevant to an analysis of the Merger, because such an incentive would apply to all cable companies, including both AT&T and MediaOne, whether they merged or not.

Hausman and Sidak further argue that AT&T could design a less restrictive mechanism to resolve the bandwidth management problems video streaming limitations are designed to address.[106] However, Professors Ordover and Willig explain that if such a more efficient

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[103] *Id.* ¶ 19.

[104] *See* AT&T/MediaOne Reply Comments at 96-97.

[105] Medin Reply Decl. ¶ 24.

[106] Hausman/Sidak Reply Decl. ¶ 48; *see* Ordover/Willig Reply Decl. ¶ 54.

mechanism exists, the realities of the market will drive AT&T to adopt it. If AT&T's video streaming limitations are proven unnecessary in the marketplace, customers will go elsewhere.[107] This is particularly true if video streaming becomes, as some predict, the "killer application" that separates broadband from narrowband, and thereby emerges as a substitute for the video programming service tiers currently offered by cable television operators. Cable operators that needlessly retain a video streaming limitation lose their Internet subscribers to competing broadband providers who do not impose such a restriction, but they also would risk driving such customers away from their core video programming business.[108]

3. Proprietary Standards.

Hausman and Sidak hypothesize that AT&T might impose proprietary standards in order to increase the value of its network. This is also untrue. AT&T has neither the business interest nor the ability to establish proprietary standards or protocols for Internet software and applications. As Professors Ordover and Willig conclude:

> both the economic literature and the realities of the Internet marketplace point to powerful economic forces pushing AT&T to continue to promote and support open, compatible standards. If AT&T were to provoke a "standards war" by adopting a closed proprietary platform for broadband Internet access, history teaches that its standard would probably be defeated -- and so the war is unlikely ever to be fought.[109]

Professors Ordover and Willig explain that a standards war poses very high risks to the firm initiating it, and in a war between an open standard and a proprietary standard, reliance on a proprietary standard would be particularly risky.[110] This is particularly true when dealing with the Internet: the Internet has a history of open, compatible standards that are used industry-wide,

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[107] *See id.*

[108] *Id.* ¶ 55.

[109] *Id.* ¶ 57.

[110] *Id.* ¶ 60.

such standards are constantly reviewed and updated by standards-setting bodies such as the Internet Engineering Task Force. Once developed, Internet standards and protocols are published and available to all users. This process yields generally-accepted standards that are available to all parties. Such standards are considered "open" and "compatible."[111] Excite@Home and Road Runner participate in the IETF, and they utilize the industry norms developed by the IETF for software and applications.[112] Companies that have attempted to advance Internet-related proprietary standards, however, have universally failed.[113]

No one company, and certainly not a company that has access to only a tiny fraction of the Internet subscribers in this country, has the ability to develop proprietary standards and protocols for Internet software and applications. If a post-Merger AT&T were to abandon its commitment to an open, compatible platform, it would have to persuade Internet software and applications providers to develop material specifically for its system.[114] Any Internet software and applications providers dealing with AT&T would thus face higher costs (because of the need to accommodate AT&T's proprietary design) and the extra trouble would net them less exposure, since the market for the product would be limited, and would have no incentive to act in the way Hausman and Sidak suggest.[115]

Hausman and Sidak offer no reason why software engineers would want to develop AT&T-proprietary applications, rather than develop applications that would be available to the open Internet platform, and marketable to the rest of the global market, including DSL, wireless

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[111] Medin Reply Decl. ¶ 10.

[112] *Id.*

[113] Ordover/Willig Reply Decl. ¶ 61.

[114] Medin Reply Decl. ¶ 11.

[115] *Id.*; Ordover/Willig Reply Decl. ¶ 64-65.

or satellite customers.[116] In fact, the most likely outcome in these circumstances is that software developers will focus their efforts on the open platform, as they have been doing.[117] Indeed, the Commission has found that marketplace forces and a commitment to openness are sufficient to prevent a merger from leading to the development of "proprietary" standards.[118]

Equally, if not more important, customer resistance would defeat a proprietary strategy of adopting closed standards (and hence the incentive to attempt it). Customers want access to as much content as possible.[119] Even AOL, the most successful ISP and Internet content provider in the world, years ago had to abandon its refusal to provide full Internet access to its customers in order to remain successful. Having only a small fraction of Internet subscribers, AT&T must convince customers to switch from the industry leaders in order to make its investments pay off. Because AT&T customers will continue to be able, post-Merger, to subscribe to any Internet access service they choose, and unaffiliated services may use any software or equipment of their own selection, AT&T will not be able to foreclose any particular manufacturer or standard, regardless of which manufacturer or software is selected for use in the Excite@Home or Road Runner services. Further, it would be nonsensical for AT&T or Excite@Home to frustrate its own customers' choices by rendering outside access services inoperable on AT&T's system.[120] Customers dissatisfied with AT&T@Home would be most likely to switch to the more

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[116] *Id.*

[117] *Id.* ¶ 57; *see also* Medin Reply Decl. ¶ 11.

[118] *See In the Matter of AT&T Corp., British Telecommunications, plc, et al. For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc*, FCC 99-313 (rel. Oct. 29, 1999), ¶¶ 52-61.

[119] Medin Reply Decl. ¶ 12.

[120] *Id.*

established method of Internet access – by subscribing to AOL or a similar access service -- than to switch to AT&T's own service.[121]

4. IP Telephony.

Hausman and Sidak argue that AT&T will have "a strong incentive to tie long-distance service to local cable telephony," and will impede innovation, or even scuttle the development of, IP telephony for the benefit of its long distance business.[122] As set forth in AT&T/ MediaOne's Reply Comments, there is no basis for such an argument.[123]

Even if AT&T chooses, as many carriers have, to bundle its telecommunications services together, each component of these services will also be available on a stand-alone basis. However, a decision to offer bundled services is not a "tying" decision that warrants regulation. As Professors Ordover and Willig have explained, regulation of tying arrangements should be confined to situations in which there is monopoly power over the tying product and a real danger of creating market power in a relevant tied market.[124] Although GTE plainly has market power in its local telephone markets, AT&T -- as a new entrant -- just as plainly will have no such power. And, as AT&T/MediaOne demonstrated in their Reply Comments,[125] IP telephony is a

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[121] *Id.* In yet another distorted mischaracterization, GTE asserts that @Home CEO Thomas Jermoluk's statement that "We're a partner for content creators" amounts to an admission that "AT&T has captured the broadband first-mover advantage, plans to negotiate advantageous partnerships with content creators, and will create new closed protocols." GTE Ex Parte at 12. Likewise, GTE transforms Jermoluk's reference to the old, vertically integrated AT&T in connection with his description of efforts by all market players to provide bundled voice, data, and video to residential subscribers into a statement that "AT&T/ MediaOne's ultimate goal is to reassemble the old AT&T." These distortions by GTE underscore the lack of concrete, empirical support for its positions in the instant proceeding.

[122] Hausman/Sidak Reply Decl. ¶ 62.

[123] *See* AT&T/MediaOne Reply Comments at 98-99.

[124] Ordover/Willig Reply Decl. ¶ 76; *see also* Ordover/Willig MediaOne Decl. ¶ 69.

[125] *See* AT&T/MediaOne Reply Comments at 98-99.

small and newly emerging option in the market for local telephone service, and in no way constitutes a separate market. Further, there are a vast number of IP telephony companies in any event, and additional companies can enter the IP telephony field with relative ease.[126] Within the market for local telephone service, AT&T is an extremely small competitor, especially as compared to the incumbent providers like GTE.[127] Finally, there is no danger that AT&T will obtain market power in the long distance market.[128]

Hausman and Sidak speculate that AT&T might "cause delays for customers using alternative IP telephony providers by implementing suboptimal routing strategies."[129] However, they offer no proof of any such plans, nor can they. Given the Merged Entity's intention to offer IP telephony, AT&T has no incentive to degrade the quality of IP telephony, or discourage subscriber conversion to IP telephony. Such a tactic would wholly undercut its local strategy. Harming IP telephony would simply make AT&T's broadband offerings less attractive, driving customers into the arms of other providers.

III. GTE CONTINUES TO MISCHARACTERIZE AND UNDERPLAY THE TECHNICAL OBSTACLES AND ADVERSE EFFECTS ASSOCIATED WITH THE MERGER CONDITIONS IT PROPOSES

A. The Forced Access Condition Proposed by GTE Would Raise Serious Technical Issues

GTE witness Parisian argues that cable systems can be opened to competing ISPs with "relative ease."[130] As in his initial testimony in this proceeding, however, Parisian continues to

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[126] *Id.*

[127] *See, e.g.*, "Ushering in a New Era for the Local Services Market," *InternetWeek* (February 15, 1999) <http://www.techweb.com/se/directlink/cgi?INW19990215550051>.

[128] *See* Ordover/Willig Reply Decl. ¶ 76.

[129] Hausman/Sidak Reply Decl. ¶ 65.

[130] *See* Parisian Reply Decl. ¶ 2.

advocate a forced access "solution" that would impose unnecessary costs, delays, and uncertainties on the merged entity.[131] As the attached declaration of Medin makes clear, Parisian's proposal would require AT&T/MediaOne to re-architect its cable system architecture, thereby hobbling the merged entity's ability to provide high-speed services to all Americans. Moreover, there is no indication as to whether the Parisian "solution" would be scalable or commercially reasonable. The difficulties associated with implementing Parisian's proposal are just what one would expect from an imposed solution. The substantial nature of these difficulties underscore the inappropriateness of a government-mandated access requirement.[132]

First, Parisian's assertion that "the only *additional* responsibility GTE's conditions would place on AT&T/MediaOne is the need to manage multiple connections between its cable modem network and ISPs"[133] is flatly incorrect. A slew of new providers using the same slice of shared bandwidth from the cable headend to the home that dedicated to Internet access would wholly disrupt the contention assumptions underlying the architecture of the network and the allocation of bandwidth between services. To accommodate the unanticipated increases in demand, cable operators would either have to invest more capital to move fiber substantially closer to the home or siphon existing bandwidth away from video and other services. Whichever choice is made, cable operators would lose control over either the uses to which their capital investments are put and/or the manner in which their networks are engineered.

Second, Parisian's claim that the operation of "off-the-shelf" ISP Subscriber Managers "does not create additional difficulties for cable modem providers" is also wrong. The ISP Subscriber Manager is an additional device added to the network, and requires individualized

[131] Medin Reply Decl. ¶¶ 3-9.

[132] *Id.*

[133] Parisian Reply Decl. ¶ 10.

care. Significant administration must also take place to manage and configure the devices continuously on an ongoing basis, which would require additional incremental hardware.[134] Additionally, the current "off-the-shelf" ISP Subscriber Manager Devices are designed to support DSL deployment, and do not support current cable modem provisioning.[135] Thus, their use will require at a minimum specialized configurations on those devices, and will likely require that incremental technology be added to these systems or the existing cable infrastructure in order to support the proposed approach.[136] Further, the mandatory addition of these devices would force cable modem providers to invest heavily in new and unproven technology.[137] Finally, there would be costs associated with retraining the existing field workforce to ensure that they are adequately equipped to maintain these devices at the level of service provided by current DOCSIS and router equipment.[138]

Third, Parisian also disingenuously dismisses the problems associated with coordinating network management practices among multiple ISPs to discourage end-users from engaging in bandwidth-hogging practices that degrade the utility of the service for others. While Parisian claims that "congestion problems can readily be solved by limiting the amount of bandwidth allocated to each customer,"[139] he takes no account of the fact that some ISPs may have little incentive to police or discourage bandwidth-hogging by their subscribers in areas where they have few customers; indeed, they may have precisely the opposite incentives. If one ISP is more aggressive in promoting and selling its service to high bandwidth users, its customers will

[134] Medin Reply Decl. ¶ 4.

[135] *Id.*

[136] *Id.*

[137] *Id.*

[138] *Id.*

[139] Parisian Reply Decl. ¶ 22.

unfairly degrade the service received by all other customers in the same area.[140] Parisian proposes no workable mechanism to prevent one ISP's customers from "hogging" bandwidth in this manner from other providers' customers. While one possible solution would be to meter connections and charge "by the bit," this solution would completely alter the way the service is provided today, and would require new solutions, processes, and equipment for collecting and billing based on usage statistics.[141] Further, it would reduce the possibility of achieving any bandwidth efficiencies from the use of multicast protocols.[142]

Fourth, Parisian also creates the false impression that a forced access solution can be accomplished easily by "tunneling." As support for his assertion that PPPoE is a viable approach, Parisian incorrectly suggests that cable networks' reliance on Layer 2 bridging is fairly widespread. Currently, there is only one platform on Excite@Home's network (the LANCity platform) that is Layer 2 based, and new deployments of that platform have ceased.[143] Moreover, Parisian effectively concedes that it would be extremely difficult to deploy a PPPoE approach given the fact that neither Cisco nor 3Com, two primary vendors of CMTS equipment in Excite@Home's network, offer products that support PPPoE over the HFC Network.[144]

Fifth, Parisian's statements regarding an L2TP solution ignore the complex technical difficulties and additional costs associated with such an approach. The implementation of an L2TP approach would require modifications to the networking software on all subscriber machines, which would introduce additional overhead and somewhat degrade the service level

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[140] Medin Reply Decl. ¶ 9.

[141] *Id.*

[142] *Id.*

[143] *Id.* ¶ 5.

[144] *Id.*

for the subscriber.[145] Additionally, L2TP does not support the bandwidth management features provided with the current standards-based cable approach. Finally, L2TP also precludes cable providers from deploying multicast services and therefore complicates another possible means of bandwidth management.[146]

Finally, notwithstanding Parisian's assertion that "an open network will spur ISP competition and innovation in a way that will reduce costs to consumers far more" than Excite@Home's existing network,[147] Parisian fails to provide any basis for this claim.[148] Parisian's Reply Declaration avoids discussion of the critical point that forcing traffic to an aggregation point at a regional data center raises significant quality of service, technical and cost issues. Excite@Home is fully integrated such that its equipment is located at almost every head-end to improve the quality of the services it provides it customers. Parisian's regional data center aggregation proposal, however, would force much higher up-front costs (such as construction and expansion of the headend facilities) as well as creating additional operational complexities.[149] Parisian conveniently ignores the technical and economic difficulties associated with deploying a solution that imposes tremendous additional demands on regional data centers.

B. Forced Access Threatens Investment Incentives and Would Embroil the Government in a Number of Complex Pricing and Regulatory Issues

GTE argues that the imposition of any forced access requirement would not involve regulators and industry in contentious proceedings to determine the cost, price and terms of access, because "GTE's conditions eliminat[e] any ground for disagreement over the terms and

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[145] *Id.* ¶ 6.

[146] *Id.*

[147] Parisian Reply Decl. ¶ 16.

[148] Medin Reply Decl. ¶ 8.

conditions of interconnection. . . . Likewise, GTE's proposed open access conditions would create no disputes over price. ISPs could only receive access to AT&T/MediaOne's cable network at the same price offered to an affiliated ISP."[150] Notwithstanding GTE's simplistic assertions, a government-mandated open access requirement would inevitably require substantial government involvement in ongoing disputes over the terms, conditions and pricing of access to the cable system.

While GTE argues that there would be no disputes over the terms and conditions of access,[151] in fact numerous, ongoing disputes over the meaning of "equal" and "nondiscriminatory" treatment would arise if an access obligation were imposed by the government. As the Cable Services Bureau recently concluded, "the Commission's experience . . . teaches us that a complex regulatory and tariffing scheme would likely accompany broadband access requirements."[152] Similarly, as Chairman Kennard recently explained, due to the complex issues surrounding forced access -- for example, what discrimination means, how the terms and conditions of access should be defined, how pricing should be determined, what pricing model should be used, and how access rules can be enforced -- attempting to regulate forced access would be to draw the government into the "quicksand of regulation" and to "embroil[] what is a

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[149] *Id.*

[150] GTE Ex Parte Comments at 33.

[151] *Id.* ("AT&T/MediaOne would only be required to allow competing ISPs to interconnect at the same locations AT&T/MediaOne interconnects with its affiliated ISP;" "[d]emands for interconnection at other locations could be rejected out of hand;" and "there is no need for any kind of equipment collocation . . . an ISP need only plug in its pipe into an AT&T/MediaOne router port").

[152] *Broadband Today* at 44-45.

very nascent marketplace in a situation I do not think we will be able to work our way out of anytime soon."[153]

C. The Conditions Proposed by GTE in Lieu of Forced Access Are Unnecessary and Contrary to the Public Interest

GTE argues that if the Commission determines not to impose forced access on AT&T, the Commission must impose, at a minimum, "a package of second-best conditions."[154] GTE proposes four conditions: (1) requiring AT&T to divest its interest in Excite@Home; (2) capping the number of customers AT&T/MediaOne can serve through any one ISP; (3) barring AT&T/MediaOne from negotiating exclusive contracts with broadband content, software and application developers; and (4) barring AT&T/MediaOne from incorporating any proprietary software, hardware, or protocols into the content, applications, or equipment associated with its provision of broadband services.[155] None of these conditions is necessary, and all are designed for GTE's benefit, not to further the public interest.

Requiring AT&T to divest its interest in Excite@Home or capping the number of customers it can serve are transparent efforts to hobble competition with the incumbent telephone companies and the dominant ISP. Such draconian requirements would only slow deployment of new choices and technological advances to Internet users. While the benefit to GTE is obvious, the benefit to the public is absent.

Further, barring AT&T/MediaOne from negotiating exclusive contracts with broadband content, software and application developers is unnecessary and counterproductive. No similar

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[153] Remarks by William E. Kennard, Chairman, Federal Communications Commission at the National Association of Telecommunications Officers and Advisors, Atlanta, Georgia (September 17, 1999).

[154] GTE Ex Parte at 34.

[155] *Id.* at 34-35.

restriction limits the ability of GTE, AOL, or any other ISP from negotiating exclusive arrangements with content providers – and such arrangements are commonplace in the Internet marketplace.[156] Singling out AT&T/MediaOne for such punishment would disadvantage the Merged Entity vis-à-vis other competitors in the marketplace that are free from such conditions. Moreover, such a condition could harm consumer welfare by thwarting the development and offering of new content and applications from providers and entrepreneurs that seek to be selective about their distributors for marketing and product-identity purposes. In any event, AT&T's commitment to negotiate access arrangements with ISPs on commercial terms obviates the need for such intrusive government regulation of business relationships between private parties.

Likewise, barring AT&T "from incorporating any proprietary software, hardware, or protocols into the content, applications or equipment associated with its provision of broadband services" is neither necessary nor in the public interest. Forcing AT&T to divulge every single new application, capability or network functionality would be intrusive, and would dampen AT&T's incentives to innovate. Such a demand stands in stark contrast to GTE's extensive legal attack on the Commission's efforts to narrow the range of "proprietary" network elements that it must furnish to competitors under section 251(c)(3) of the Communications Act.[157] In any case, standards that Excite@Home or Road Runner develop for future services will be subject to

[156] *See* Melanie Austria, "Electronic Arts Makes Net Push with AOL Deal," <http://www.cnet.com> (November 22, 1999); *see also* "SBC and Prodigy are Joining Forces to Create the Third Largest ISP in the United States," <http://www.techweb.com> (November 22, 1999).

[157] *See* Brief for Petitioners Regional Bell Companies and GTE, *Iowa Utilities Board v. Federal Communications Commission*, 119 S. Ct. 721, __ U.S. __ (1999).

review and approval by the IETF or other standards-setting bodies and ultimately available to all providers.[158]

IV. GTE HAS NOT REBUTTED AT&T's STRONG SHOWING WITH RESPECT TO THE PUBLIC INTEREST BENEFITS OF THE MERGER

AT&T and MediaOne have shown that the Merger will offer significant public interest benefits by expediting the provision of competing Internet access and telephony services to the public. As in the TCI case, the Merger expedites the provision of new services and competitive choices to consumers by taking full advantage of the AT&T brand, combining resources and complementary expertise held by the respective companies, and accelerating infrastructure upgrades through expanded access to capital and technological expertise.[159] AT&T/MediaOne have described these benefits in the Public Interest Statement, their Reply Comments and the recent answers to questions submitted by the Commission. GTE offers no credible rejoinder.

The marketplace is already confirming the competitive benefits of the proposed merger. The mere announcement of the Merger has spurred accelerated DSL deployment activity by ILECs and others. GTE's efforts to show that the pace and breadth of DSL deployment would be the same today irrespective of accelerated investment in broadband networks promised by the

[158] *In the Matter of Applications for Transfer of Control to AT&T Corp. of Licenses and Authorizations Held by MediaOne Group, Inc.*, Letter from Stephen C. Garavito to Ms. To-Quyen Truong dated Nov. 24, 1999 submitted in response to Ms. Truong's Nov. 3, 1999 request for information, at 17-18.

[159] GTE suggests that the purchase premium paid by AT&T supports the "hypothesis" that the MediaOne acquisition is designed to generate and capture monopoly rents. Hausman/Sidak Reply Decl. ¶ 68. In fact, however, AT&T/MediaOne will be subject to vigorous competition in each of the markets in which they will provide service -- voice, video and Internet service -- far more competition, in fact, than Bell Atlantic/GTE faces in its core local telephony service. *See* Ordover/Willig Reply Decl. ¶ 138. The purchase premium simply reflects the value which AT&T places on being able to provide new services (video, local telephony, Internet access) and enter new markets via a single set of facilities that it owns, rather than facilities owned and operated by the ILECs and others. *See id.*

Merger is thoroughly unconvincing, and it is refuted by the Cable Services Bureau's findings in *Broadband Today*. Finally, Commission approval of the transfer applications is not contingent upon a demonstration that the Merger is the least restrictive means of obtaining the benefits delineated by AT&T, and GTE has utterly failed to demonstrate that alternative arrangements might yield the same benefits in the same period of time.

A. The Merger Will Yield Significant and Substantial Public Interest Benefits

There is widespread recognition among industry and market analysts and the local monopolies themselves that this Merger promises a paradigm shift in the competitive environment in MediaOne's service areas. The durability of the ILEC monopolies continues to persist nearly four years after Congress directed them to open the gates to competition, and the threat of facilities-based competition by AT&T is the first -- and only -- entry strategy that has provoked any real competitive response.

As AT&T and MediaOne have explained, the public interest benefits of the Merger require the complementary assets of MediaOne and AT&T. MediaOne's most important assets are its existing cable network (substantially upgraded for two-way traffic) and its experience with cable telephony. AT&T's most important assets are its brand, experience in marketing telephone services in competitive markets, experience in obtaining interconnection agreements with incumbent LECs, and its expertise in IP telephony.

Combining the complementary assets of AT&T and MediaOne will create the first large-scale facilities-based competition to the large incumbent local telephone monopolists in MediaOne's service areas. The Merger also will allow the combined entity to gain substantial economies of scale, scope and clustering.[160] By enabling and encouraging mass market

[160] Ordover/Willig Reply Decl. ¶ 128.

consumers to bypass the incumbents' bottleneck local loops by choosing AT&T branded and operated local telephone service, the Merger will greatly increase competitive pressure on the local telephone monopolies. This will produce immediate benefits in the form of lower prices, better quality and increased innovation in the provision of local telephone services in MediaOne's service areas. The merger of AT&T and MediaOne also promises longer term benefits in creating competitive market constraints on the ability of these same incumbent monopolists to leverage their existing monopolies into the provision of other services.[161] Hausman and Sidak ignore the importance of each Applicant's complementary assets.[162]

MediaOne's Cable Network. MediaOne's cable network, which reaches millions of households, is a facilities-based vehicle for entering local telephony that AT&T could not duplicate without prohibitive expense and great delay. MediaOne's cable network currently passes 8.5 million homes and serves 5 million video customers. AT&T neither owns nor operates a large-scale cable or local telephone network in any of MediaOne's service areas. Without the MediaOne merger, AT&T would face the far costlier, slower, more burdensome and less certain prospect of entry through other means such as the purchase of unbundled network elements from incumbent LECs.[163]

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[161] As Ordover and Willig point out: "If GTE and other ILECs genuinely believed that the merger was unlikely to increase competition for local telephony, their reaction should be private rejoicing at AT&T's waste of corporate assets, not active opposition to the transaction." *Id.* ¶ 140.

[162] Ordover/Willig Reply Decl. ¶ 129.

[163] MediaOne also contributes its recent and planned upgrades of the existing cable network and its technical experience in deploying circuit-switched local telephony services over that network. MediaOne is nearing the end of a massive seven-year program to upgrade its network to handle high-speed two-way voice and data service, along with a platform for digital video service. The complete upgrade includes 750MHz hybrid fiber/coaxial cable ("HFC"), two-way amplifiers, power passing taps, and advanced headend, distribution hub and node electronics for new services. So configured, the network can handle not only enhanced analog video (electronic program guide, pay-per-view, music, expanded channel offering) but also high speed data (e.g.,

Hausman and Sidak are unwilling to acknowledge one of the central drivers and benefits of the merger: the development of a viable and durable alternative to the ILECs requires the emergence of a competitor of sufficient size and scope. The economies of scale and scope yielded by the merger are necessary to effectively compete over the long-term with entrenched incumbents such as SBC/Ameritech/Pacific/SNET and Bell Atlantic/NYNEX/GTE, each of which enjoys a broad geographic footprint and sizable integrated clusters.[164]

MediaOne's Experience in Circuit-Switched Telephony. MediaOne's experience and know-how in upgrading cable plant and deploying two-way service will enable AT&T to improve its deployment of circuit-switched cable telephony on TCI systems until IP-based cable telephony can be deployed on those systems. Hausman-Sidak deride MediaOne's experience, noting that Cox's telephony penetration is higher than MediaOne's,[165] but the real issue is MediaOne's edge in expertise and experience over AT&T.

AT&T's Brand Name and Marketing Experience. Perhaps the key complementary assets that AT&T brings to the merger are its powerful brand name, reputation and experience as a reliable provider of two-way communications services,[166] and its hard-won experience in obtaining interconnection and unbundled network elements from incumbent LECs. Hausman and Sidak's bald assertion that consumers would be just as likely to purchase telephone service

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fast Internet access), telephony, enhanced digital video (video on demand, web surfing), standard definition television, and high definition television. Nearly half of the MediaOne network already has received the network upgrades and service specific network equipment needed for high speed data service; 72 percent will be upgraded to this level by the end of 2000.

[164] *See* Ordover/Willig Reply Decl. ¶¶ 130-33.

[165] Hausman/Sidak Reply Decl. ¶ 87, n.159.

[166] Ordover/Willig Reply Decl. ¶ 135.

from MediaOne as AT&T is refuted by MediaOne itself, as well as by independent research.[167] The modest market shares gained by some new wireless providers and "cellular resellers" are hardly evidence that service reputation and an established track record are unimportant in those markets, let alone the far more demanding market for a residential subscriber's primary wireline service.[168] The fact is that, nearly four years after enactment of the 1996 Act, CLEC penetration of the local service market remains in the low single digits.[169] The limited success enjoyed by some CLECs, including Cox Communications, demonstrates, rather than disproves, the need for a well-established and respected brand.[170]

AT&T also brings to the merger its vast experience and resources in marketing and customer care, including two decades of experience marketing long distance services in competition with MCI, Sprint, and hundreds of other aggressive rivals. Hausman-Sidak's suggestion that MediaOne has obtained comparable experience in marketing TeleWest's telephone service is wholly inapposite,[171] since TeleWest operates in Great Britain, does not furnish telephone

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[167] *See* AT&T/MediaOne Reply Comments, Exhibit B, Declaration of Nancy McGee, at ¶ 8; International Data Corp. Press Release, October 12, 1999 ("IDC's survey revealed the brand game is AT&T's to lose. The company ranked as the best known, best trusted, and most powerful brand"); International Data Corp. Press Release, August 17, 1999 (AT&T has the greatest awareness of all telecommunications brands).

[168] Ordover/Willig Reply Decl. ¶ 136. In any event, the major players in the wireless market are wireline companies with established brand names: AT&T, Sprint, GTE and the Bell Companies. *Id.*

[169] *See* Ordover/Willig Reply Decl. ¶¶ 136-37.

[170] GTE's suggestion that AT&T could simply "rent" its brand name through marketing arrangements with other CLECs ignores the issues of quality control that can arise in such arrangements and effectively invites AT&T to surrender its ongoing supervision over the reliability and integrity of services furnished under the brand -- *i.e.*, the very things that have made the brand strong in the first place. *See* Ordover/Willig Reply Decl. ¶ 139.

[171] Hausman/Sidak Reply Decl. ¶ 75.

service over a cable network, and is a separate, stand-alone company that is not controlled by, nor integrated with, MediaOne.[172]

AT&T's Experience in IP Telephony. The combined entity will also benefit from AT&T's know-how in packet-switched IP telephony. Hausman and Sidak's assertion that the technology is "too new for AT&T to have any lead," is flatly incorrect.[173] AT&T Laboratories includes a staff of numerous professional researchers working on IP telephony, with a core focus on the provision of IP telephony over cable. With expertise in both telephony and cable, these researchers are at the forefront of developing open cable IP telephony standards.[174]

B. The Marketplace Conduct of GTE and Other Incumbent Monopoly Providers Confirms The Competitive Benefits Of The Merger.

AT&T's new investments in cable facilities and demonstrated commitment to offer consumers new services, choices and competition are already bringing great benefits to the public. AT&T's cable-based entry strategy, accelerated and broadened by the announcement of the Merger, has unleashed a wave of DSL, broadband, and other competitive service offerings by GTE, other major ILECs, and other providers of local telephone and online services. Although

[172] Ordover/Willig Reply Decl. ¶ 140. A related AT&T asset is its costly but invaluable experience negotiating the hurdles of obtaining interconnection and unbundled network elements from ILECs. This experience includes more than three years of litigating and negotiating interconnection agreements with ILECs in literally hundreds of hotly contested proceedings in virtually every state. Experience with TCG and TCI confirms that the merger will aid MediaOne in expediting the process of gaining just and reasonable interconnection to the incumbents' networks. *See id.*

[173] Hausman/Sidak Reply Decl. ¶ 87, n.159.

[174] Ordover/Willig Reply Decl. ¶ 141. Moreover, AT&T already is providing non-cable IP telephony through its Connect 'n Save™ offer. Through this service, AT&T has gained experience in routing packetized voice through its network. This experience will also help improve the eventual transition of MediaOne's local telephony from a circuit-switched offering to a packet-based offering.

these offerings could have been deployed years ago, the incumbent providers made no efforts to do so until after the AT&T-TCI and the AT&T-MediaOne mergers were announced.[175]

The Commission has acknowledged the cable companies' role in pushing the local telephone monopolies to accelerate deployment of DSL. For example, the Cable Services Bureau recently found:

> The ILECs' aggressive deployment of DSL can be attributed in large part to the deployment of cable modem service. Although the ILECs have possessed DSL technology since the late 1980s, they did not offer the service, for concern that it would negatively impact their other lines of business. The deployment of cable modem service, however, spurred the ILECs to offer DSL or risk losing potential subscribers to cable. In various communities where cable modem service becomes available, the ILECs would soon deploy DSL service that was comparable in price and performance to the cable modem offering. Thus, prior to cable modem deployment, the ILECs had little incentive to deploy DSL and the consumer had no choice for high-speed Internet access.[176]

Similarly, Chairman Kennard has noted that cable modem deployment is directly responsible for incumbent LECs' recent decision to deploy aggressively DSL service. For example, in a speech before the National Association of Telecommunications Officers and Advisors on September 17, 1999, he noted that

> [b]etween the end of March and the end of June of this year, the number of DSL lines doubled to nearly 200,000 and it is expected to double again by the end of the year. And this pickup in growth is a function of one thing: competition. The regional Bell companies know that for the first time in the history of this country they are facing a serious, facilities-based competitor in their backyard: the residential marketplace. And that is the cable television industry. And it is the prospect of that competition that is going to really jumpstart broadband deployment in this country.[177]

[175] *Id.* ¶¶ 107-08, 130; AT&T/MediaOne Reply Comments at 9-14.

[176] *Broadband Today* at 27 (footnotes omitted); *id.* at 32 ("There was little disagreement among the panelists that cable investment inherently spurs investment in DSL and vice versa.").

[177] *See* <http://www.fcc.gov/Speeches/Kennard/Spwek931.html>; *see also* <http://www.fcc.gov/Speeches/Kennard/spwek924.html> (offering further examples of the causal link between cable modem service and DSL rollout in a speech before the Northern California Chapter of the Federal Communications Bar on July 20, 1999).

GTE, however, clings to the tenuous position that the ILECs' stampede of anticipatory competitive responses is unrelated to the merger-specific prospect of new, facilities-based entry by AT&T.[178] This claim is wholly undermined by recent actions taken by incumbent LECs to update their networks to provide wide-scale DSL service deployment. For example, not long after the AT&T/MediaOne merger was announced, Bell Atlantic,[179] SBC,[180] and U S WEST[181] announced plans to accelerate considerably their deployment for DSL services. Ameritech also decided, after long delay, to enter the DSL market.[182] Thus, while the Commission reported in January of this year that the BOCs and GTE had announced plans to offer DSL to 20 million homes by the end of 1999,[183] their actual deployment is likely to exceed 40 million lines.[184]

Since July of this year, GTE (1) announced plans to offer lower-priced, higher-speed Internet access service, while accelerating DSL deployment in 17 states; (2) struck a deal with AOL to offer Internet access via DSL to nearly four million homes in GTE's service area by the end of 1999; (3) announced the expansion of its national broadband network to offer high-speed Internet access service across the United States; and (4) waived for the remainder of 1999 the one-time installation fees for its high-speed Internet access in 17 states—fees that previously

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[178] Hausman/Sidak Reply Decl. ¶¶ 54-58.

[179] News Release, "Bell Atlantic Doubles Infospeed DSL Deployment, Company to Make 17 Million Lines DSL-Capable This Year, " July 28, 1999, <http://www.ba.com/nr/1999Jul/19990824002.html>.

[180] News Release, "SBC Launches $6 Billion Initiative to Transform It into America's Largest Single Broadband Provider," October 18, 1999, <http://www.sbc.com/media/news/release.doc>.

[181] News Release, "U S West 'MegaBit Services' ADSL Subscriber Rate Jumps More Than 250 Percent in First Half of 1999," August 17, 1999, <http://www.uswest.com/news/081799.html>.

[182] David Schobert, "Ameritech takes DSL leap – finally," *Telephony* (July 26, 1999), 1999 WL 11171924.

[183] *706 NOI Report* ¶ 42.

[184] *See* Fred Dawson, "DSL Deployment Hits the Throttle," *Multichannel News* (Oct. 11, 1999), at 73.

ranged from $99 to $430 per customer.[185] This accelerated deployment and marketing of DSL is consistent with GTE's overall competitive strategy: "when competitors have tried to invade our markets, we've responded with aggressive competitive offers."[186] Not surprisingly, neither GTE nor Hausman-Sidak makes any mention of these facts.

Rather than confront candidly the marketplace reality that cable modem deployment is triggering accelerated deployment of DSL service,[187] Hausman and Sidak instead claim that the swelling number of ILEC DSL announcements "cannot be attributed to the announcement of the AT&T-MediaOne merger" because the "*first* major DSL deployment" by each company occurred in the second or third quarter of 1998.[188] This assertion, however, provides further evidence that AT&T's aggressive cable-based entry strategy serves to trigger a competitive response from the incumbent LECs. The TCI announcement, which occurred on June 24, 1998,[189] and which made clear that AT&T was serious about entering local telephony through merger with large cable operators, spurred the *first* real DSL deployments by the incumbents.

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[185] *See* Ordover/Willig Reply Decl. ¶ 114.

[186] Keynote Remarks of GTE Chairman and CEO Charles R. Lee, Merrill Lynch Global Telecommunications CEO Conference (Mar. 17, 1999), at 3 <http://www.gte.com/AboutGTE/NewsCenter/Executive/MerrillLynch.html>.

[187] Hausman and Sidak do cite a press release from GartnerGroup Dataquest for the proposition that growth in the overall demand for bandwidth is a "more likely explanation of the recent growth in DSL use" than is competition from cable modems. Hausman/Sidak Reply Decl. ¶¶ 59-60. The quoted passage, however, concerns only the *demand* for DSL, not its *supply*. The latter subject is covered in the very next sentence, which Hausman and Sidak neglect to quote: "Another factor spurring the growth of xDSL is the *telecommunications providers' need to compete with cable modems*, which currently lead xDSL in shipments." Press Release, "GartnerGroup's Dataquest Says Need For Higher Bandwidth Connections Spurs xDSL Equipment Growth") (July 26, 1999) <http://gartner3.gartnerweb.com/ dq/static/about /press/pr-b9941.html> (emphasis added).

[188] Hausman-Sidak Reply Decl. ¶ 54.

[189] *See In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 98-178 (Feb. 18, 1999) at ¶ 9 n.33.

Indeed, by GTE's own admission, the "first major DSL deployment" of SBC, BellSouth, and Bell Atlantic did not occur until two months later—i.e., *after* those RBOCs realized that AT&T was likely to "invade our markets" by offering local telephone and other services over the TCI and MediaOne cable networks.[190] Much more significant than the ILECs' initial deployment of DSL, however, is the pace of subsequent deployment and marketing. DSL offerings multiplied after the TCI merger announcement in mid-1998, and have multiplied further since the MediaOne announcement in May 1999.

Hausman and Sidak's purported comparison of DSL deployment by ILECs in MediaOne territory before and after MediaOne merger announcement is meaningless.[191] First, their computations cannot be tested or replicated, because GTE has refused to produce any underlying workpapers.[192/] Second, Hausman and Sidak's purported comparison wrongly adopts May 1, 1999, as the demarcation between "pre-announcement" and "post-announcement" deployment of DSL, even though AT&T's efforts to expand its cable footprint—and the attractiveness of MediaOne as a vehicle for large scale facilities-based entry into telephony through merger with a major carrier like AT&T—were widely reported long before the formal announcement of the MediaOne merger on that date.[193]

Most significantly, Hausman and Sidak do not consider the extent to which the ILECs have accelerated the rate at which they equipped central offices within metropolitan areas, nor do they examine whether the ILECs stepped up deployment in those specific central offices that serve MediaOne cable customers. Hausman and Sidak have simply ignored the increases in the

[190] Hausman/Sidak Reply Decl. ¶ 55 (Table 2).

[191] *Id.* ¶¶ 55-56 (Table 3).

[192] *Id.* ¶ 117.

[193] *Id.* ¶ 118.

number and *percentage* of households that have been offered DSL service in MediaOne service areas where DSL previously had only a token presence, the heightened intensity of the ILECs' DSL marketing efforts, and the falling *prices* for DSL since announcement of the MediaOne merger. Without considering these variables, Hausman and Sidak cannot credibly conclude that the MediaOne merger announcement failed to "spur[] DSL deployment in MediaOne territories." In fact, the available evidence shows that the intensity of these expected pro-competitive responses vastly increased in the wake of AT&T's broad-based commitment to a strategy of offering Internet access and telephony over existing cable networks.[194]

Hausman and Sidak's "formal econometric analysis" also is entitled to no weight from the Commission. The analyses ask whether DSL rollout is more likely during the post-announcement period in MediaOne areas than in non-MediaOne areas. Finding a negative answer to this question, Hausman/ Sidak conclude that the merger announcement failed to foster DSL deployment. This analysis suffer from many of the same defects as the previously mentioned DSL deployment comparison.[195] As Ordover/Willig explain, the regression results are meaningless because Hausman and Sidak have used an incorrect dependent variable. Hausman and Sidak have examined only the localities of DSL deployment, rather than the more important -- and relevant -- question of whether the announcement of the proposed transaction affected the *timing* and *extent* of DSL rollout.[196]

Second, Hausman and Sidak overlook the possibility that the announcement of the proposed transaction also spurred the deployment of DSL in regions *not* served by MediaOne. The ILECs serve regions that are not coextensive with MediaOne service areas. Hence, it is

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[194] *Id.* ¶ 119.

[195] Ordover/Willig Reply Decl. ¶¶ 120-124. Once again, GTE's refusal to provide any supporting workpapers renders the analysis largely unverifiable.

possible that the announcement of the merger stimulated the deployment of DSL generally, and that once the decision to deploy was made, the deployment was not confined to MediaOne's service areas.[197]

In sum, there is nothing at all speculative or unrelated about the increased competition that is taking place, and will continue to take place, as result of an AT&T/MediaOne merger. As AT&T and MediaOne have previously noted, the marketplace conduct of GTE and other incumbent monopoly providers confirms beyond any possible doubt that this Merger will serve the public in precisely the ways Applicants have identified.

C. Joint Ventures and Other Alternative Arrangements are Unlikely to Yield the Benefits of the Merger in a Timely and Effective Manner

As AT&T and MediaOne have shown, neither joint ventures or other non-equity alternatives to the proposed merger are likely to attain the same benefits. Broad-scale facilities-based entry is the only plausible way to inject effective competition into local exchange markets for the foreseeable future. Such entry is unlikely to occur through the solo efforts of MediaOne or other cable companies: the modest success of even well-managed providers of cable service in penetrating local telephone markets confirms that cable companies lack the brand reputation needed to gain market share rapidly among consumers. Joint ventures and other contractual arrangements to provide local telephone services are difficult to negotiate and structure. Scale, scope, and clustering merger-related synergies likewise are available only through the merger.

Hausman and Sidak claim that interconnection agreements between AT&T and MediaOne could somehow "capture the synergies" generated by the merger.[198] As Ordover and

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[196] *Id.* ¶ 122.

[197] *See id.* ¶ 123. Moreover, as with their DSL deployment comparison, Hausman and Sidak's use of May 1, 1999, as the demarcation date renders meaningless the dependent variables for DSL deployment, and, accordingly, and results derived therefrom. *Id.* ¶ 124.

Willig point out, however, joint venture contracts "generally prove an inferior substitute for a full equity merger when the proposed enterprise requires a large initial sunk investment . . . and when the ultimate risks and reward of the enterprise are highly uncertain."[199] Both conditions are inherent in cable telephony. Hausman and Sidak blithely suggest that "a simple interconnection price that was a function of the total traffic terminated would incorporate all possible variation in outcomes."[200] Yet, they never explain how such a simplistic usage metering mechanism would achieve an efficient division of revenues for services, such as Internet access and video, which are not provided or priced on a volume of traffic basis. Hausman and Sidak simply ignore such knotty issues as allocation of bandwidth, capital investment and operating costs needed to supply services over the network -- *i.e.,* issues whose resolution are contingent upon the levels of subscriber demand and intensity of competition for the various services, which in turn affect the division of net revenue (or losses). Given the dynamism of the marketplace and MediaOne's and AT&T's status as relatively new entrants, these questions cannot be answered before the services are deployed.

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[198] Hausman/Sidak Reply Decl. ¶ 87.

[199] Ordover/Willig Reply Decl. ¶ 142.

[200] Hausman/Sidak Reply Decl. ¶ 88.

CONCLUSION

GTE's Ex Parte Reply Comments offer no empirical basis or credible rationale for denying the license transfers sought herein, while the substantial evidence presented by AT&T/MediaOne demonstrates that the transfers will generate significant public interest benefits. Accordingly, the Commission should approve the transfer of licenses from MediaOne to AT&T without conditions.

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CERTIFICATE OF SERVICE

I, Margo B. Adams, hereby certify that on this 14th day of December 1999, I caused copies of the foregoing "Ex Parte Reply Comments of AT&T Corp. and MediaOne Group, Inc." to be sent via first class mail, postage prepaid or by hand delivery (*) to the following:

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