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DEC 17 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

December 17, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW - Room TWB-204
Washington, DC 20554

Re: *Ex Parte* - CC Docket Nos. 96-61 and 98-183
1998 Biennial Regulatory Review -
Review of Customer Premises Equipment and Enhanced Services Unbundling
Rules in the Interexchange, Exchange Access, and Local Exchange Markets

Dear Ms. Salas:

Earlier today, Wendy Boudreau, Steven Garavito, and I, all of AT&T, met with Jake Jennings, William Sharkey, and Jodi Donovan May, all of the Common Carrier Bureau's Policy and Program Planning Division.

At this meeting, we discussed AT&T's positions as previously presented in this proceeding. In particular, we addressed: (1) why non-dominant carriers should be freed from the CPE and enhanced services bundling restrictions, (2) why such relief is long over due and should be promptly granted, and (3) why the public interest would not be served if dominant carriers were granted bundling relief before market conditions warrant such relief.

We also provided information regarding the types of new, innovative services AT&T would provide were the Commission's anti-bundling prohibitions removed, and discussed the consumer welfare benefits of bundling versus "one-stop shopping".

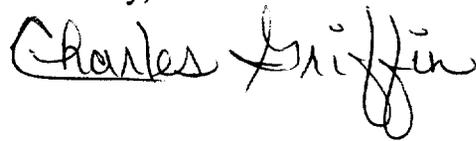
Attached hereto are copies of the handouts we used at this meeting. They include: (1) AT&T's talking points; (2) a press release that announced AT&T's Integrated Network Connection Service -- which could have been provisioned, priced, and its customers serviced in a more timely and economically efficient manner had the bundling prohibitions been removed; (3) comments from AT&T's MediaOne license transfer application (CS Docket No. 99-251) which show that BOCs do not need unbundling relief to stimulate the deployment of Advanced

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Services, and (4) an example of a BOC utilizing its market dominance in local exchange services to restrict consumers' choices for DSL service.

In accordance with Section 1.1206(a)(1) of the Commission's rules, two copies of this Notice are being submitted to the Secretary of the Commission for inclusion in the public record for the above-captioned proceeding.

Sincerely,

A handwritten signature in black ink that reads "Charles Griffin". The signature is written in a cursive style with a large, prominent "C" at the beginning and a long, sweeping tail that loops back under the name.

Attachments

cc: J. Jennings
J. Donovan May
W. Sharkey

CC Dockets 96-61, 98-183

Presentation to the
Federal Communications
Commission

December 17, 1999

Non-Dominant Interexchange Carriers Should Be Freed of Bundling Restrictions

- FCC tentatively concluded so in 1996.
 - NPRM, 11 FCC Rcd. 7141 (1996).
- Consumers should no longer be denied the benefits of bundling.
- Long distance, CPE, and enhanced services markets are robustly competitive.
- Dominant carriers should not be granted relief.
- Relief for non-dominant carriers should not be tied to relief for dominant carriers.

Bundling Provides Benefits that Packages of Separate Products Do Not

- Commission has recognized the benefits of bundling
 - “[A] blanket ban on bundling might well prevent competitively harmless transactions. Post-merger, AT&T-TCI may well have lower costs in billing and servicing customers that subscribe to several of its products. . . . [B]y offering these products as a package at a price below that of the individual prices . . . , the merged firm would both lower costs and pass at least some of those cost savings on to consumers.” TCI Order, Dkt. 98-178, FCC 99-24 (2/18/99)

Bundling Relief Will Permit Carriers to Make Innovative and Efficiently Priced Offers

- 800 en route announcements with media announcements.
- Offers that integrate basic and enhanced services.
 - Integrated Network Connection
- DSL service and CPE.
 - Reduce expense to customer of adopting advanced service.

Bundling Provides Benefits that One-Stop Shopping for Separate Products Does Not

- Bundling provides benefits to consumers.
 - Lower prices
 - Reduced costs (e.g., advertising, marketing, billing), streamlined procedures
 - Increased customer satisfaction
 - End-to-end solutions
 - Integrated billing
- No risk of abuses where carriers lack market power.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**EX PARTE REPLY DECLARATION OF
JANUSZ A. ORDOVER AND ROBERT D. WILLIG**

1. Our names are Janusz A. Ordover and Robert D. Willig. We previously filed testimony in the Reply Comments of AT&T Corp. and MediaOne Group, Inc. in this docket ("Ordover-Willig MediaOne Decl.").

I. QUALIFICATIONS

A. Janusz A. Ordover

2. I am Professor of Economics and Director of the MA Program at New York University, which I joined in 1973. At New York University, I teach undergraduate and doctoral level courses in industrial organization economics, the field of economics concerned with competition among business firms and upon which "antitrust economics" is founded. I have

devoted most of my professional life to the study and teaching of industrial organization economics and to its application through antitrust and regulatory law and policy.

3. In July 1991, President George Bush appointed me to the position of Deputy Assistant Attorney General for Economics in the Antitrust Division of the United States Department of Justice (“DOJ”). In this post, I participated in the drafting of the 1992 Horizontal Merger Guidelines, which have been widely used by courts and antitrust enforcement agencies. In addition, I led many merger reviews that employed and developed methodologies to define relevant markets in merger and other cases. I returned to New York University in 1993.

4. I have been actively involved in the formulation of public policy in the telecommunications sector. In particular, I have submitted written and oral testimony for AT&T to the Federal Communications Commission and to the state regulatory commissions in the Midwest, New England, and New York on a number of issues, including the pricing of unbundled network elements and access to bottleneck facilities.

5. I have written extensively on a wide range of antitrust and telecommunications topics, such as mergers and joint ventures, predatory conduct and entry barriers. My antitrust articles have appeared in the *Yale Law Journal*, the *Harvard Law Review*, the *Columbia Law Review*, and many other journals, monographs and books, here and abroad. A full list of my articles and other professional publications and activities is presented in my *curriculum vitae*, which is attached as Exhibit 1.

6. I have lectured extensively on antitrust topics to the American Bar Association, the International Bar Association, and the Federal Trade Commission (“FTC”). I recently deliv-

ered lectures to the FTC during its hearings on the Future of Antitrust Enforcement, which were organized by FTC Chairman Robert Pitofsky. I have also lectured on antitrust policy at colleges and universities in the United States and abroad, and at many conferences and meetings sponsored by various legal organizations.

7. I have acted as a consultant on antitrust and other competition matters to the DOJ, the FTC, and the post-communist governments of Poland, Russia, and Hungary. I have also consulted for the World Bank and the Organization for Economic Cooperation and Development in Paris. I have acted as a consultant in numerous antitrust lawsuits and investigations, including market definition and anti-competitive conduct matters for the FTC, DOJ and private clients in the United States, Australia, Germany and the European Union. I have extensive experience in the analysis of competitive effects of business strategies, including tying and bundling.

B. Robert D. Willig

8. I am Professor of Economics and Public Affairs at the Woodrow Wilson School and the Economics Department of Princeton University, a position I have held since 1978. Before that, I was Supervisor in the Economics Research Department of Bell Laboratories. My teaching and research have specialized in the fields of industrial organization, government-business relations and welfare theory.

9. I served as Deputy Assistant Attorney General of Economics in the Antitrust Division of the DOJ from 1989 to 1991. I also served on the Defense Science Board task force on the antitrust aspects of defense industry consolidation and on the Governor of New Jersey's task force on the market pricing of electricity.

10. I am the author of *Welfare Analysis of Policies Affecting Prices and Products*; *Contestable Markets and the Theory of Industry Structure* (with W. Baumol and J. Panzar), and numerous articles, including "Merger Analysis, IO theory, and Merger Guidelines." I am also a co-editor of *The Handbook of Industrial Organization*, and have served on the editorial boards of the *American Economic Review*, the *Journal of Industrial Economics* and the MIT Press Series on regulation. I am an elected Fellow of the Econometric Society and an associate of The Center for International Studies.

11. I have been active in both theoretical and applied analysis of telecommunications issues. Since leaving Bell Laboratories, I have been a consultant to AT&T, Bell Atlantic, Telstra and New Zealand Telecom, and have testified before the U.S. Congress, the Federal Communications Commission, and the public utility commissions of about a dozen states. I have been on government and privately supported missions involving telecommunications throughout South America, Canada, Europe, and Asia. I have written and testified on such subjects within telecommunications as the scope of competition, end-user service pricing and costing, unbundled access arrangements and pricing, the design of regulation and methodologies for assessing what activities should be subject to regulation, directory services, bypass arrangements, and network externalities and universal service. On other issues, I have worked as a consultant with the FTC, the Organization for Economic Cooperation and Development, the Inter-American Development Bank, the World Bank and various private clients. A full list of my articles and other professional publications and activities is presented in my *curriculum vitae*, which is attached as Exhibit 2.

II. PURPOSE OF STATEMENT

12. We have been asked to comment on certain matters raised in the Ex Parte Reply Declaration of Jerry A. Hausman and J. Gregory Sidak (“Hausman-Sidak Reply”) and the Ex Parte Reply Declaration of Robert H. Gertner (“Gertner Reply”). These declarations make three main points.

13. *First*, they argue that broadband Internet service is a separate relevant market from narrowband Internet service. In our initial declaration, we explained that the price of dial-up service (*i.e.*, narrowband) at present constrains broadband pricing because virtually everyone who considers signing up for a broadband service must be persuaded to switch from dial-up, and fewer will do so if broadband becomes relatively more costly. However, according to Professor Hausman and Mr. Sidak, it is wrong to consider a broadband provider’s desire to attract *new* customers when analyzing whether it would find a price increase to be profitable. In their view, the only pertinent consideration is how many *existing* broadband subscribers would switch back to narrowband in case of a price increase. They also argue, as does Professor Gertner, that the price differences between broadband and narrowband are larger than we suggested. On a fully amortized basis, they say, cable modem service costs \$8 per month more than dial-up service.

14. In support of their proposed market definition, Hausman and Sidak present an analysis which purports to show that broadband customers would be willing to pay significantly more than the prices currently being charged by AT&T for cable modem service. They do not, however, offer an explanation of what keeps AT&T from charging higher prices – whether the constraint is due, for example, to the need for promotional pricing in order to persuade Internet users to try switching from narrowband service providers, or whether the pricing constraint arises

from broadband providers utilizing other technologies, such as Digital Subscriber Lines (DSL). Hausman and Sidak also argue that broadband access cannot be in the same market as narrow-band access because the price of cable modem service is not correlated with the price of a second telephone line.

15. *Second*, Hausman and Sidak contend that the merged AT&T/MediaOne entity will have monopoly power in the putative “broadband Internet access” market because cable modem services have gotten off to a faster start in the marketplace than DSL. They claim that this monopoly power will be durable, notwithstanding the recent “explosive” growth of DSL, because of “the nature of network industries in general.” Relying on the same network effects, they contend that the merged company will be able to parlay its monopoly power in the “broadband Internet access market” into monopoly power in the markets for Internet content and Internet advertising.

16. Specifically, Hausman and Sidak contend that the merged company will have the ability and incentive to deprive its subscribers of the content they desire because, in their view, only a “small” number of customers would go to a competing broadband service. They contend that the merged company will be able to raise the price for advertising on its home page because Web advertisers will have no other means of reaching certain subscribers. In addition, they assert that AT&T’s head start in the *domestic, residential* broadband marketplace will allow it to dictate a closed, proprietary standard to which software developers (aiming for the *global* market) will flock. In addition, they claim that AT&T will have an incentive to thwart the development of cable-based Internet telephony.

17. *Third*, Hausman and Sidak deny that the merger will produce any public interest benefits. They assert that the accelerated deployment and marketing of DSL by the incumbent LECs is unrelated to the merger proposal. They deny that AT&T and MediaOne have any significant asset synergies that cannot be achieved through “interconnection” or brand licensing agreements, joint venture contracts, or other contractual arrangements that fall short of merger. And they “hypothesize” that the purchase premium offered by AT&T for MediaOne is evidence that AT&T expects to capture monopoly rents, not evidence that AT&T and MediaOne intend to offer large scale facilities-based telephony and internet services over the MediaOne network.

III. THE MERGER WILL NOT HAVE ANTICOMPETITIVE EFFECTS IN ANY RELEVANT MARKET

18. When the Commission approved AT&T’s merger with TCI, it concluded that there was no need to decide whether broadband and narrowband Internet services were in the same relevant market:

Even if we were to consider a market defined to include only high-speed Internet access services, we would still conclude that the merger is unlikely to adversely affect the public interest in a competitive market. Although AT&T-TCI together might be able more quickly to deploy high-speed Internet access services and win a significant number of residential Internet access customers, it appears that quite a few other firms are beginning to deploy or are working to deploy high-speed Internet access services using a range of other distribution technologies.¹

¹ Memorandum Opinion and Order, *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, 14 FCC Rcd. 3160, ¶ 95 (1999) (“AT&T-TCP”).

19. In this section, we show that the same conclusion applies to AT&T's merger with MediaOne. Regardless of how the relevant market is defined, the merger will not adversely affect competition. This is true for at least three independent reasons.

20. *First*, there is vigorous and growing competition among Internet service providers, even within the broadband segment. In particular, DSL deployment has proceeded much more rapidly than almost anyone expected, and DSL subscriptions have skyrocketed. Likewise, satellite-based and wireless broadband technologies are rapidly emerging as competitive threats.

21. *Second*, the merger will not reduce competition in any Internet market because Excite@Home and Road Runner do not compete as providers of broadband service.

22. *Third*, the merger will not enable AT&T to impose anticompetitive restrictions. If AT&T were so foolish as to impose unnecessary limitations on the content available to its customers, it would only succeed in driving Internet users into the waiting arms of its broadband competitors, or in encouraging them to stick with a dial-up service provider. Likewise, if AT&T were to adopt a closed, proprietary platform, it would limit the applications that could be used, thus alienating both Internet users and applications developers. And if it were to raise prices for advertising on its home page, it would simply send advertisers to the vast number of Web sites and other media eager for their business.

A. The Exploding Internet Market Is Fiercely Competitive, Even Within the Broadband Segment.

23. Internet usage is exploding. Over 100 million American adults now surf the Web (compared to 65 million a year ago), and continued growth is expected for some time to come.² AOL alone has over 19 million subscribers, and they are on-line for an average of nearly an hour a day (as opposed to 14 minutes in 1996).³ As the Commission noted, this “is a superlative record for a service that consumers had barely heard of five years ago.”⁴

24. The broadband segment of the Internet service market, though modest now, is expected to grow rapidly as consumer awareness broadens and millions of Americans switch from narrowband. Some forecasters predict that by 2003, more than 15 million U.S. Internet users will subscribe to a broadband service; others believe there will be more than 25 million broadband subscribers.⁵

² Strategis Group, “U.S. Internet Breaks 100 Million Mark” (Nov. 9, 1999), <www.strategisgroup.com/press/pubs/iut99.html>.

³ News Release, “AOL Surpasses 19 Million Members” (Oct. 25, 1999); Business Wire, June 16, 1999 (interview with Bob Pittman, President of AOL), available on Westlaw.

⁴ Report, *Inquiry Concerning the Deployment of Advanced Communications Capability to All Americans in a Reasonable and Timely Fashion*, 14 FCC Rcd. 2398, ¶ 86 n. 207 (1999) (“706 NOI Report”).

⁵ Forrester Research predicts that 16 million U.S. households will have broadband connections by 2002 and 26 million by the following year. By 2003, there will be 8.3 million cable modem subscribers (according to Strategis Group) and 9.6 million DSL lines (according to TeleChoice). See The Forrester Report (April 1999), <www.forrester.com/ER/Research/Report/Excerpt/0,1338,7007,FF.html>; The Forrester Report, “Broadband Hits Home” (Aug. 1998), <www.forrester.com/ER/Research/Report/Excerpt/0,1338,3296,FF.html>; Cable Modem University, “Stats/Projections” <www.catv.org/modem/stats>; TeleChoice, “Deployment – Updated 11/5/99,” <www.xdsl.com/content/resources/deployment_info.asp>.

25. The growth of broadband service will likely follow the typical “S Curve” pattern.⁶

The Commission made this very point in the *706 NOI Report*:

Typically, a successful product’s “S Curve” reflects (a) very few sales during its “launch period,” which may last for years, (b) a steep rise in sales during the product’s “take off” period as “positive feedback” from consumers stimulates additional sales and additional sales lower costs and prices per unit, and then (c) sales leveling off as the market approaches saturation.⁷

26. There can be little doubt that broadband Internet service is still in the “launch period” and that there is a very low level of consumer awareness about it.⁸ AT&T’s incentive is to attract millions of new broadband subscribers by creating incentives to try the new service, not to maximize the short-term profits from its existing customer base or from a relatively small pool of “early adopters.” Consequently, static analyses, like those proffered by Professor Hausman and Mr. Sidak, mischaracterize AT&T’s business objectives and strategies.

⁶ For discussions in the literature about the characteristic “S Curve” pattern of growth for successful new products, *see* Sharon M. Oster, *Modern Competitive Analysis*, at 125-26, 293-95 (1994); Carl Shapiro & Hal R. Varian, *Information Rules: A Strategic Guide to the Network Economy*, at 178 (1999); Frank M. Bass, “The Relationship between Diffusion Rates, Experience Curves, and Demand Elasticities for Consumer Durable Technological Innovations,” *Jnl. of Business*, at 551-67 (July 1980).

⁷ *706 NOI Report* ¶ 33 n. 44.

⁸ A recent study by the Strategis Group indicates that the overwhelming majority of consumers say they know “little or nothing” about either cable modem or DSL service. The Strategis Group, *Internet User Trends: Mid-Year 1999*, excerpts available at <www.strategisgroup.com>.

1. DSL is already a potent competitive force in the broadband arena

27. In our prior declaration, we demonstrated that DSL is *already* a powerful competitive force in the marketplace.⁹ Hausman and Sidak respond by belittling the significance of DSL, claiming that the projections we cited are “far outside the consensus forecasts.” They assert that unless the AT&T/MediaOne acquisition is stopped, “the broadband race may be over” because “the early leader in any broadband Internet access may enjoy a ‘lock-in’ of customers and content providers.”¹⁰ In fact, the passage of time shows how correct we were in our assessment, and how off-the-mark Hausman and Sidak were. Only a few weeks ago, GTE issued a press release touting the “exploding” customer demand for DSL.¹¹ And SBC, which did not even begin marketing its DSL service until January of this year, passed the 100,000-customer milestone in October.¹²

28. Hausman and Sidak’s view that “the broadband race may be over” is obviously not shared by the decision-makers in the industry. Both incumbent and competitive local exchange carriers are spending billions of dollars to develop and deploy DSL products. Huge investments are also being made in wireless and satellite broadband technologies. Industry leaders clearly believe that non-cable technologies can establish a viable position, and they reject

⁹ Ordoover-Willig MediaOne Decl. ¶¶ 98-101.

¹⁰ Hausman-Sidak Reply ¶ 40.

¹¹ News Release, “GTE continues to make it easier for customers to enjoy high-speed Internet access” (Nov. 10, 1999) <www.gte.com/AboutGTE/NewsCenter/News/Releases/DSLFreeInstall.html>.

¹² News Release, “SBC First to Surpass 100,000 DSL Subscribers” (Oct. 18, 1999), <www.sbc.com>; Kinetic Strategies, “SBC Commits to Massive Broadband Rollout,” Cable Datacom News (Nov. 1, 1999) <cabledatacomnews.com/nov99/nov99-5.html>.

the idea that cable has an insurmountable lead. Only last month, SBC announced a \$6 billion initiative (dubbed "Project Pronto") to accelerate DSL deployment and "transform the company over the next three years into the largest single provider of advanced broadband services in America."¹³ Likewise, the head of AOL dismissed the significance of cable's head start:

I think it's a little silly to think of cable having a huge lead in this space when the broadband opportunity is only beginning to emerge. The numbers are relatively small. The total number of [subscribers] @Home has after four years in business is less than the net additional subscribers we had for our AOL brand alone in the last three months.¹⁴

29. At the present time, DSL sales are growing at a much faster rate than cable modem sales.¹⁵ According to one analyst, cable modem service has only "a six-month lead on DSL technologies.... DSL is growing faster and is catching up rapidly."¹⁶ Some analysts believe that DSL sales will overtake cable modem sales within a few years.¹⁷ Indeed, the head of GTE, in discussing DSL, declared that "the local telephone company is going to be the principal

¹³ News Release, "SBC Launches \$6 Billion Broadband Initiative," <www.sbc.com> (October 18, 1999).

¹⁴ Diane Mermigas, "AT&T in peace talks," *Electronic Media*, at 20 (Nov. 1, 1999).

¹⁵ Cambridge Telecom Report, "DSL Deployment Surges Well Beyond Projections; Grows 5 Times Faster than Cable in 6-Month Period," 1999 WL 8104033 (Aug. 23, 1999); Shy Shin Luh, "DSL," *Washington Post*, p. F5 (Aug. 23, 1999); Press Release, US West (Aug. 17, 1999) ("DSL is growing at a consistently faster pace than cable modem services"), <www.uswest.com/news/081799.html>.

¹⁶ Sylvia Dennis, "DSL Taking Off Big Time," *Newsbytes News Network* (Aug. 17, 1999), 1999 WL 20018859.

¹⁷ Dan Costa, "The Battle for Broadband," *Computer Shopper*, at 255 (Oct. 1, 1999) ("Datapoint predicts that DSL sales will surpass cable modems within a few years"); "Report: ADSL Will Overtake Cable," *Wired News Report* (Dec. 18, 1998) (describing report by Allied Business Intelligence), <www.wired.com/news/technology/story/16922.html>.

vehicle to bring data communications to the world in the years ahead.”¹⁸ A recent report by TeleChoice shows spectacular DSL growth during 1999 and projects continued rapid growth in the future¹⁹:

Date	DSL lines in U.S.
1998 (year end)	39,000
3/31/99	74,000
6/30/99	159,000
9/30/99	275,000
1999 (year end)*	575,000
2000 (year end)*	2,107,000
2001 (year end)*	5,103,000
2002 (year end)*	7,655,000
2003 (year end)*	9,569,000

* Projected

30. The so-called “consensus forecasts” cited by Hausman and Sidak are outdated and obsolete. One of them predicted that there would be “almost 70,000 residential DSL subscribers” by the end of 1999.²⁰ That forecast that was off by a factor of about 600 percent; it now

¹⁸ Charles Lee, “Net Gains: Obstacles and Opportunities in a Network World” (Sept. 23, 1999), available at <www.gte.com/AboutGTE/NewsCenter?Executive/Cornellscript11-99.htm>.

¹⁹ TeleChoice, “Deployment – Updated 11/5/99,” <www.xdsl.com/content/resources/deployment_info.asp>. The Yankee Group predicts 4.1 million DSL lines in 2002. Forrester Research predicts 3.6 million DSL lines that year and 7.74 million lines in 2003. See Sarah L. Roberts-Witt, “The Coming DSL-Cable Race,” *Internet World* (Nov. 15, 1999), available at <www.iw.com/print/1999/11/15/infra/19991115-dsl.html>.

²⁰ The Strategis Group, *High-Speed Internet 1998-1999* (Dec. 1998), summarized at <www.strategisgroup.com/press/pubs/hsi982.html>.

appears that there will be about 500,000 residential DSL subscribers by year's end.²¹ All of the forecasts cited by Hausman and Sidak were issued between December 1998 and May 1999. Much has happened since then. The BOCs and GTE have launched major initiatives to accelerate their deployment of DSL.²² At the beginning of this year, the BOCs and GTE had announced plans to offer DSL to about 20 million homes by the end of 1999.²³ Now, however, they have intensified their efforts to such an extent that over 40 million lines will be DSL-capable by year's end.²⁴ Furthermore, to increase DSL sales, several of the BOCs and GTE have cut prices.²⁵ They have also formed alliances with major ISPs (such as AOL and Prodigy),²⁶ with retailers

²¹ See Sarah L. Roberts-DeWitt, "Cable Is Coming on Strong," *Internet World* (Nov. 1, 1999), available at <www.iw.com/print/1999/11/01/infra/19991101-cable.html> (citing TeleChoice).

²² In July 1999, Bell Atlantic announced that it would double its deployment of DSL this year. That same month, Ameritech launched its DSL program and GTE announced that it was accelerating DSL deployment. In October 1999, SBC announced its \$6 billion "Project Pronto" initiative. See News Release, "Bell Atlantic Doubles Infospeed DSL Deployment," <www.ba.com/nr/1999Jul/19990824002.html> (July 28, 1999); David Schobert, "Ameritech takes DSL leap – finally," *Telephony* (July 26, 1999), 1999 WL 11171924; News Release, "GTE to offer lower-priced, higher speed Internet access service while accelerating deployment in 17 states," <www.gte.com/AboutGTE/NewsCenter/News/Releases/ADSLBronze.html> (July 22, 1999); News Release, "SBC Launches \$6 Billion Broadband Initiative," <www.sbc.com> (Oct. 19, 1999).

²³ *706 NOI Report* ¶ 42.

²⁴ See Fred Dawson, "DSL Deployment Hits the Throttle," *Multichannel News*, at 73 (Oct. 11, 1999), at 73.

²⁵ Bloomberg News, "GTE slashes price for its DSL service," *CNET News* (July 22, 1999), <news.cnet.com/news/0-1004-200-345247.html?tag=st.ne.1004-200-14334217>; News Release, "GTE continues to make it easier for customers to enjoy high-speed Internet access" (Nov. 10, 1999), <www.gte.com/AboutGTE/NewsCenter/News/Releases/DSLFreeInstall.html>; John Borland, "US West expands discount DSL plans," *CNET News* (Sept. 15, 1999), <news.cnet.com/news/0-1004-200-119960.html?tag=st.cn.1>.

²⁶ Patricia Fusco, "AOL Expands Broadband Offerings," *ISP News* (July 27, 1999), available at <www.internetnews.com/isp-news/print/0,1089,8_169601,00.html>; Stephanie Mehta, "SBC,

(such as CompUSA and Staples),²⁷ and with computer manufacturers (IBM).²⁸ In addition, the “G.Lite” DSL standard was recently adopted – an event that “had a profound impact on market expectations about the growth curve in broadband connectivity.”²⁹ In light of these developments, DSL deployment “is far exceeding expert predictions,”³⁰ and, consequently, forecasters have been dramatically revising upwards their projections of DSL penetration.³¹

31. The competitive local exchange carriers (CLECs) are also aggressively establishing a broadband presence,³² and they are pursuing residential customers as well as businesses. Covad’s network already passes 25 million homes and businesses, and by the end of 2000 it

Prodigy to Combine Internet Plans,” Wall Street Journal, at A3 (Nov. 23, 1999); FCC Cable Services Bureau, *Broadband Today*, at 28 (Oct. 1999).

²⁷ News Release, “Bell Atlantic, 3COM Announce Industry-First DSL Retail Alliance” (Oct. 6, 1999), <www.ba.com/nr/1999/Oct/19991006004.html>.

²⁸ News Release, “SBC and IBM Offer One-Stop Broadband Solution” (Nov. 17, 1999), <www.sbc.com>.

²⁹ Fred Dawson, “Broadband Content Heats Up as DSL, Cable Base Grows,” Multichannel News (July 5, 1999), <www.multichannel.com/weekly/1999/28/zd28.htm>. The G.Lite standard eliminates the need for a voice-data splitter. Also, because it standardizes transmission parameters, customers can choose their own DSL modem and can obtain access from remote data jacks, such as those in hotels. See Joel Conover, “Buyer’s Guide: G.Lite SOHO Access,” Network Computing (Nov. 29, 1999), available on LEXIS.

³⁰ Sylvia Dennis, “DSL Taking Off Big Time,” Newsbytes News Network (Aug. 17, 1999), 1999 WL 20018859.

³¹ See, e.g., TeleChoice, “DSL Deployment Surges Well Beyond Projections; Grows 5 Times Faster than Cable in 6-Month Period” (Aug. 16, 1999), <www.telechoice.com/content/pressreleases/8171999.asp>; Fred Dawson, “Broadband Content Heats Up as DSL, Cable Base Grows,” Multichannel News (July 5, 1999) (noting that Forrester “raised its DSL-line projections to 16 million by the end of 2001”), <www.multichannel.com/weekly/1999/28/zd28.htm>.

³² See 706 NOI Report ¶ 41.

expects to pass over 40 percent of the homes in the United States.³³ The effort by CLECs to provide DSL service to residential customers will no doubt intensify as a result of the “line sharing” rules that the Commission adopted on November 18, 1999. According to NorthPoint Communications, this order “promises substantial reductions in loop costs and opens the gates for vibrant competition in the residential DSL market.”³⁴ NorthPoint announced that it is preparing to launch DSL services for residential customers through alliances with Microsoft and Tandy Radio Shack. By the end of 2000, its DSL network will pass nearly 45 percent of all homes in the U.S.³⁵

32. Thus, it is nonsense to suggest (as GTE does) that if the merger is allowed to proceed, AT&T/MediaOne will have a window of “two to three years” in which to build a broadband business “against little competition” in its cable service areas.³⁶ DSL is *already* a competitive force, capturing 100,000 customers per month,³⁷ and will become an even more potent force during the next two to three years as it becomes ever more widely available. If AT&T and other cable companies do not provide attractive, competitive services, they risk

³³ Press Release, Covad Communications Group, Inc. (Oct. 20, 1999), <222.covad.com/press_102099.cfm>.

³⁴ Press Release, “NorthPoint Commends the FCC for Delivering Broadband’s Triple Crown,” (Nov. 18, 1999), <www.northpointcom.com/pressroom/1999/press_991118ls.html>

³⁵ Press Release, “NorthPoint Communications Launches Residential Service Trials” (Nov. 18, 1999), <www.northpointcom.com/pressroom/1999/press_991118cs.html>.

³⁶ Ex Parte Reply Comments of GTE, at 7.

³⁷ The TeleChoice figures cited earlier indicate that DSL providers will sign up 300,000 customers during the final three months of 1999.

losing many millions of customers to DSL and possibly also to the emerging satellite and wireless broadband technologies.

2. Other broadband technologies will soon become competitive forces

33. Satellite-based technologies are rapidly emerging as a viable means of providing broadband Internet services to consumers. Several companies are already offering satellite-based broadband Internet service, including DirecPC, eSat and Gilat.³⁸ For example, DirecPC, a product of Hughes Network Systems, offers consumers “nationwide access to the Internet at speeds of up to 400 kbps.”³⁹ Hughes has entered into an alliance with AOL to develop dual purpose AOL TV/DirecTV set-top boxes, and by early next year the AOL-Plus broadband Internet service will be available nationwide via the DirecPC satellite network⁴⁰ – a network that is likely to become even more popular as a result of the new law regarding local retransmission. In addition, Teledesic is spending \$9 billion on its “Internet-in-the-Sky” project, which will provide consumers with broadband Internet service beginning in 2003.⁴¹ SkyCache, Inc., which currently serves over 3 million Internet users, just announced that it is upgrading its satellite

³⁸ See, e.g., <www.direcpc.com/consumer/index>; <www.esatel.com/carrier.htm>; <www.gilat.com>.

³⁹ See <www.direcpc.com/consumer/index>. ZDNet describes the DirecPC services as “fast, useful, and affordable.” Frank J. Derfler, Jr., “DirecPC 2.0,” ZDNet (Aug. 25, 1998), <<http://www.zdnet.com/products/stories/reviews/0,4161,2131474,00.html>>.

⁴⁰ See Press Release, “America Online and Hughes Electronics Form Strategic Alliance to Market Unparalleled Digital Entertainment and Internet Services” (June 21, 1999), <<http://www-db.aol.com/corp/news/press/view?release=669&search=hughes>>.

⁴¹ See “Teledesic, Motorola, Boeing, Matra Marconi Space to Partner on ‘Internet-in-the-Sky;’ Motorola Will Lead Global Industrial Team,” (May 21, 1998) <www.teledesic.com/newsroom/05-21-98.html>. See also *In the Matter of En Banc Hearing on Broadband Services* (July 9, 1998), Transcript Comments of Scott Hooper, co-CEO of Teledesic and Chairman of Nextlink Communications at 9-13 <www.fcc.gov/enbanc/070998/eb070998.html>.

Abuses of Bundling Require Market Power

- CLECs and non-dominant IXCs have no market power.
- Incumbent LECs have market power.

Bundling Restrictions Should Be Retained for BOCs (and Other ILECs)

- BOCs have market power in the local exchange market and will continue to have such power post-271 relief.
 - Congress recognized the continuance of such power when it adopted section 272.
- BOCs have shown they will abuse their market power.
 - SBC tying local service to its DSL service.
- Bundling restrictions should be retained pending practical experience with implementation of sections 271 and 272.
- BOCs need to maintain separate entity for enhanced and CPE services.

BOCs Do Not Need Unbundling Relief to Deploy Advanced Services

They are deploying aggressively today.

- More than 40 million homes will be DSL capable by year-end 1999.
- SBC plans to offer DSL to 77 million homes by 2002.
- ILECs have nearly 500,000 DSL customers.
 - Adding at the rate of more than 100,000/month.
 - Have a 17-1 edge in deploying ADSL to residential and small business customers.
- DSL is growing five times faster than cable modem service.

Relief for Non-Dominant Carriers Would Not Adversely Affect Other Areas

- Would not require changes in rules regarding network disclosure obligations or demarcation point.
- Fair and reasonable methods of universal service funding can be implemented through allocation procedures.

Summary

- CLECs and non-dominant interexchange carriers should be free of bundling restrictions.
- Bundling restrictions should be retained for BOCs.
 - Have shown they will abuse market power.
- Network disclosure obligations and demarcation point rules do not need to be changed.
- Universal service funding can be implemented.

THE HOME DEPOT AWARDS AT&T OVER \$100 MILLION CONTRACT FOR INTEGRATED NETWORK CONNECTION, VOICE AND FRAME RELAY SERVICES

AT&T Successfully Delivers Dynamic Bandwidth Allocation to Leading Retail Chain

BASKING RIDGE, N.J. – (Sept. 20) -- AT&T announced today that it has been awarded a three-year contract by The Home Depot, the well-known home improvement retail chain, valued at more than \$100 million, to provide Integrated Network Connection Service (INCS), voice and Frame Relay services. The Home Depot has already been using Integrated Network Connection Service in more than 30 of its stores in several states to support in-store applications, such as customer credit validation and inventory management. All of the approximately 900 Home Depot stores will be using INCS by mid-2000.

INCS supports up to 24 voice calls and over 1.2 Mbps of Frame Relay or IP traffic on one T1. To dynamically allocate bandwidth, the service uses voice compression and an AT&T-operated Asynchronous Transfer Mode (ATM) multiplexer located on the customer's premises.

“With AT&T providing the equipment on our premises, we’ve been able to forget about the technology piece of it and really focus on the business benefit,” said Dan Haumann, Network Services Manager, Home Depot. “The type of applications that we’re going to be able to put in the store environment over the next couple of years is just mind-boggling.”

AT&T announced INCS in January. The service lowers network costs, simplifies network management, and provides customers a “future-proof” evolution to packet voice. INCS also provides businesses with a simple “plug and play” interface that automatically devotes enough bandwidth to wherever it's needed as the type of traffic and demands on the network fluctuate. The service works with existing customer premises equipment and combines voice, Frame Relay, and IP traffic on business networks.

“The great thing is that even though we've significantly enhanced our network, we really don't have to change anything in our stores,” Haumann continued. “Store associates don't know that we've put a new service in, other than when they work with their applications, it provides a much snappier response time than it did before. And that leads to a much happier customer.”

“It's exciting to work with The Home Depot to make network convergence a reality,” said Rich Klapman, AT&T Product Director of INCS. “We've licked the technical challenges to turbo-charge the T1 to carry voice over packet. We're now scaling the operational processes and the support systems to meet robust demand. In fact, we recently doubled our capacity plans for

next year to meet customers' requests for the service.”

More About:

[INCS](#)

[AT&T Business Services](#)

[The Home Depot](#)

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EXHIBIT RM-1
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September 21, 1999

Robert S. Smith
3824 Shorecrest Dr.
Dallas, TX 75209

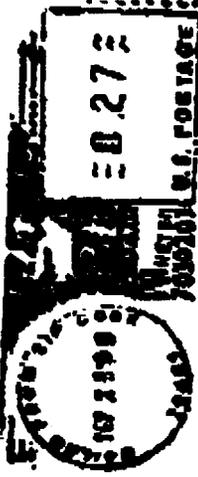
Dear Mr. Smith:

We regret to inform you that we will have to disconnect the ADSL from your line September 28th if we do not hear from you by that date. We would be glad to welcome you back with Southwestern Bell to enable us to continue to provide the ADSL service.

Sincerely,
Sandy
1 888 792-3751

(THU)12.16.99 12:07/ST.12:06/NO.48624446414 P 3

FROM AT&T LAW DEPT



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