



**TESTIMONY OF GREG SIMON
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Thank you for inviting me to testify today on the issue of open access to cable broadband Internet systems in the context of the AT&T-Media One merger. My name is Greg Simon and I am co-director of the openNET Coalition. OpenNET is an organization with more than 900 Internet technology and service providers nationwide.

The openNET Coalition is dedicated to promoting the rights of all consumers to obtain affordable, high-speed access to the Internet from the provider of their choice. Our members believe that as the Internet moves on to its next generation, high-speed broadband access, open competition is more important than ever. Anyone who wants high-speed access over cable wires should be able to keep their own ISP, or choose from among the more than 6,400 other ISPs who currently compete for customers in the narrowband world.

We believe that the Commission should implement a national policy of open access to cable broadband networks for three reasons:

- 1) It is irrefutably the policy of the Telecommunications Act and the FCC, as well as the Department of Justice, that open, competitive communications networks are preferable to closed networks,
- 2) Open networks benefit consumers by promoting investment in innovation, improved quality of service, lower prices and stimulating competition in new applications and services, and
- 3) The growth of the Internet depends on a competitive environment in each technology upon which the Internet rides.

The history of telecommunications in the United States from the telegraph to the Internet, demonstrates the importance of open, competitive networks. That is why, in 1994, Vice President Gore included open access as one of the five core principles of our National Information Infrastructure and as part of the Global Information Infrastructure. In fact, open access is critical to the success of the other principles – universal service, flexible regulation, private investment and competition.

The government has had a significant role in opening monopoly networks. This role is especially important with regard to the birth, growth and the future of the Internet. In a recent filing with the Federal Communications Committee, Harvard Professor Lawrence Lessig and University of Texas Professor Mark Lemley noted that:

“It is a view of many in the Internet community and ours as well, that the extraordinary growth of the Internet rests fundamentally upon its design principles. ... (T)hese principles have been understood to have a social as well as a technological significance. They have, that is, been meant to implement values as well as enable communication. In our view, one aspect of this social significance is the competition in innovation the Internet enables. The tremendous innovation that has occurred on the Internet, in other words, depends crucially on these design principles.”

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“It is fashionable today to argue that innovation is assured if government simply stays out of the way. The FCC’s hands-off policy to date appears largely to be motivated by this prevailing ideological vogue. The view is that the best way for the government to guarantee growth in Internet broadband is to let the owners of networks architect broadband as they see fit.”

“We believe this view is misguided. It ignores the history that gave the Internet its birth, and threatens to reproduce the calcified network design that characterizes our communications network prior to the Internet. The restrictions on innovation that marked the AT&T telephone monopoly were not removed by the government’s doing nothing. They were removed by active intervention designed to assure the possibility for innovation. It was the FCC and Department of Justice that cut the knot that tied innovation on the telecommunications network to the innovation favored by AT&T. It was their action that eventually freed the network for the control of a single strategic actor, and opened it up for the innovation of many.”

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The benefits of open access to society and the economy are best demonstrated by comparing an open network to a closed network. In an open network, such as the Internet has been, anyone can invest in innovative Internet technologies, applications and services with confidence that they can reach the consumer and succeed or not based on the value of their innovation. In a closed system, where the owner controls access to the network, fewer people will invest in innovation because of the increased risk that they cannot gain access to the network and to customers.

For example, we have over six thousand ISPs in the narrowband marketplace because they can offer a range of services to a range of customers over the existing networks. The ISPs, according to Professor Lessig, “are engines for

innovation.” As such, they represent potential “vertical competitors” in the broadband market as well because, if they have access to the network, they can bundle services and applications in competition with the owner of the network.

But as Lessig points out, “The architecture proposed by AT&T/MediaOne for their broadband cable service threatens this vertical competition. By bundling ISP service with access, and by not permitting users to select another ISP, the architecture removes ISP competition within the residential broadband cable market. By removing this competition, the architecture removes an important threat to any strategic behavior that AT&T might engage in once a merger is complete. The architecture thus represents a significant change from the existing End-to-End design for a crucial segment of the residential Internet market. Further, there is in principle no limit to what AT&T could bundle into its control of the network. As ISPs expand beyond the functions they have traditionally performed, AT&T may be in a position to foreclose all competition in an increasing range of services provided over broadband lines.”

“AT&T and MediaOne would achieve this change by bundling technologically. The consequence of this bundling will be that there will be no effective competition among ISPs serving residential broadband cable. The range of services available to broadband cable users will be determined by one of two ISPs - @Home and RoadRunner, both of whom would be allied with the same company. These ISPs will control the kind of use that customers might make of their broadband access. They will determine whether, for example, full length streaming video is permitted (it is presently not); they will determine whether customers might resell broadband services (as they presently may not); it will determine whether broadband customers might become providers of web content (as they presently may not). These ISPs will have the power to discriminate in the choice of Internet services they allow, and customers who want broadband access will have to accept their choice. Giving this power to discriminate to the owner of the actual network wires is fundamentally inconsistent with End-to-End design.”

It would be the height of irony for the country to allow the cable Internet market to remain a monopoly for Internet access at the very moment that advances in cable technology are capable of promoting competition in access, unbundling of services, decentralization of programming control, and providing abundant capacity where there once was scarcity. Yet, that is exactly what some in the cable industry are seeking.

As one analyst said, the beauty of the Internet is that it is a universal language that links any type of electronic device over any carriers' network to deliver any type of information. “In effect, the Internet “de-links” communications from physical technology.” However, the cable industry is now trying to reverse thirty years of separating the language from the network by claiming that its infrastructure and the Internet are one and the same.

In addition to being the historical policy of the United States and being essential to promoting investment in innovation, open access is crucial to the Internet's future success. Some argue that competition in cable Internet access does not matter because other broadband networks are or may become available. Others argue that while open access is a good thing, requiring it somehow is a bad thing because it would discourage investment in, and rollout of, the technology. Both of these arguments fly in the face of everything we know about networks, investment and especially the Internet.

The existence of other open networks that use DSL technology is hardly a justification for allowing the cable network to remain a closed system. As Professor Lessig puts it, "it makes no sense economically to argue that competition in a small subset of the broadband market is an adequate substitute for competition in the entire broadband market."

And while other technologies may arise several years from now, the message the Commission is sending, if it does not open the cable networks today, is that these other new networks can also be closed systems. And once we allow closed networks as a matter of course, we will begin starving the Internet of the nutrients of competition and innovation it needs to grow and flourish.

AT&T used to argue that it should be a crime – and it was – for others to innovate and introduce new technologies into their network. Now, they argue in the same vein, that it would be a shame to allow others to invest in their network in an open manner. But the Internet proves every day that competition and openness are the best drivers of investment. There is nothing about cable technology that changes the economic principle that competition, not monopoly control, is good for investment.

Recent cable mergers are forcing local authorities around the country to make decisions about open access as they transfer control of local cable franchises. Many cities and counties have already voted to require open access in their jurisdictions, including Broward County, Florida, Madera County, California and the cities of Portland, Oregon, Fairfax, Virginia, St. Louis, Missouri, Cambridge, Somerville, Quincy and North Andover, Massachusetts. The National Association of Counties has adopted a resolution in support of local jurisdiction over open access. And as you may know, open access measures have been introduced in several state legislatures, including Pennsylvania, Michigan, Virginia, Illinois and Massachusetts. These cities, counties and states have a simple message: we will protect consumer choice in the broadband environment and we will take action to ensure that the very future of the Internet is not dictated to us by cable monopolies.

In reaching a national policy to foster the growth of the Internet, the Commission needs to follow a guiding principle. The Internet's openness is that principle. And from that simple principle of openness, all the other dynamic traits of the Internet and the Internet economy follow. Those who would abandon that principle by closing their networks or opening them only to a few should bear the burden of persuading the rest of us why the Internet's open past should not be its prologue.

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