B. "AT&T" means AT&T Corp., a New York corporation with its headquarters in New York, New York, its successors and assigns, and its parents, majority-owned subsidiaries, divisions, groups, and their officers, managers, agents, and employees. For purposes of Section IV of this Final Judgment, "AT&T" or its Affiliates shall not include Liberty Media or any entity which would be included within the definitions of "AT&T" or AT&T's Affiliates solely because of Liberty Media's ownership interests.

C. "Cable Modem Service" means any Residential Broadband Service provided over cable facilities.

D. "MediaOne" means MediaOne Group, Inc., a Delaware corporation with its headquarters in Englewood, Colorado, its successors and assigns, and its parents, majority-owned subsidiaries, divisions, groups, and their officers, managers, agents, and employees.

E. "Operating Agreement" means the agreement entitled Amended and Restated Operating Agreement of ServiceCo LLC, dated June 12, 1998, among Cable HoldCo LLC, Microsoft BOV, Inc., and CPQ Holdings, Inc.

F. "Residential Broadband Service" means any service offered to residential customers in the United States of America that permits users to transmit and receive information using Internet protocols at speeds which may exceed 128 kilobits per second.

G. "ServiceCo" means ServiceCo LLC, a Delaware limited liability company.

H. "ServiceCo Interest" means any direct or indirect financial ownership interest in, and any direct or indirect role in management or participation in control of, ServiceCo LLC to be held by AT&T pursuant to AT&T's acquisition of MediaOne. However, any ServiceCo Interest held as of May 8, 2000 by AT&T or MediaOne solely by virtue of ownership of a limited partnership interest in Time Warner Entertainment Company, L.P. shall not be considered a ServiceCo Interest for the purposes of this Judgment.

H. "Time Warner" means Time Warner, Inc., a Delaware corporation with its headquarters in New York, New York, Time Warner Entertainment Co., L.P., and ServiceCo, their successors and assigns, and their parents, divisions, groups, and majority-owned subsidiaries; and any legal entity that is subject to a merger or other agreement with Time Warner, Inc. and that would be included within this definition when such agreement is consummated.

III. Applicability

This Final Judgment applies to AT&T and MediaOne, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Restructuring

A. AT&T or MediaOne shall divest the ServiceCo Interest on or before December 31, 2001; provided, however, that this divestiture obligation shall not prohibit AT&T's or MediaOne's retention or acquisition of assets dedicated solely to the provision of service to MediaOne customers or any regional data centers that are used predominantly for the provision of service to MediaOne customers as defined in section 6.3(b) of the Operating Agreement ("Assets").

B. AT&T and MediaOne must satisfy the requirements of Section IV (A) of this Final Judgment through one of the methods described in this Section IV (B) (1) - (3):

(1) AT&T and MediaOne shall take all necessary steps to implement (a) the

dissolution of ServiceCo pursuant to the terms of sections 6.1 and 6.2 of the Operating Agreement; and (b) the distribution of the ServiceCo assets pursuant to the terms of section 6.3 of the Operating Agreement; provided, however, that notwithstanding any other contractual rights of AT&T or MediaOne, AT&T and MediaOne shall consent to the acquisition by Time Warner of any or all of ServiceCo's remaining assets (i.e. those assets remaining after AT&T or MediaOne retain or acquire Assets) at the fair market value of those assets (determined by a third party appraisal if the parties do not agree on valuation) so long as AT&T or MediaOne are permitted to lease capacity on those assets and transitional support services at fair market value until June 30, 2002 in order to maintain the quality of Cable Modem Services that AT&T and MediaOne offer to their customers; or

(2) AT&T and MediaOne shall take all necessary steps to divest the ServiceCo Interest pursuant to section 9.3 of the Operating Agreement; or

(3) AT&T and MediaOne shall implement an alternative plan for divestiture of the ServiceCo Interest that has been agreed to by AT&T and MediaOne and approved in writing by Plaintiff in its sole discretion.

C. If the remaining parties to the Operating Agreement whose consent is required offer to allow AT&T and MediaOne to terminate their affiliation agreement and divest the ServiceCo Interest pursuant to either of the methods specified in Section IV (B) (1) or (2) above after the closing of the merger between AT&T and MediaOne and prior to December 31, 2001, AT&T and MediaOne shall accept that offer and divest the ServiceCo Interest on the date proposed by the other parties; provided that AT&T or MediaOne are permitted to lease capacity on those assets and transitional support services at fair market value until June 30, 2002, in order to maintain the quality of Cable Modem Services that AT&T and MediaOne offer to their customers.

V. Limitations on Subsequent Agreements

A. Prior to the earlier of December 31, 2003 or two years after AT&T's and MediaOne's divestiture of the ServiceCo Interest, unless they obtain the prior consent of Plaintiff, AT&T, MediaOne, and their Affiliates shall not (1) enter into any contractual or other arrangement with Time Warner to jointly offer or provide any wholesale or retail Residential Broadband Service; (2) enter into any contractual or other arrangement with Time Warner that has the purpose or effect of preventing AT&T, MediaOne, their Affiliates or Time Warner from offering or providing a wholesale or retail Residential Broadband Service in any geographic region or to any group of customers; or (3) enter into any contractual or other arrangement with Time Warner that has the purpose or effect of preventing (a) AT&T, MediaOne, their Affiliates or Time Warner from including any content, services, capabilities, or features in any wholesale or retail Cable Modem Service offered by AT&T, MediaOne, their Affiliates, or Time Warner, or (b) AT&T, MediaOne or their Affiliates from granting preferential treatment in any wholesale or retail Cable Modem Service offered by AT&T, MediaOne or their Affiliates to content, services, capabilities, or features offered by any person other than Time Warner, or Time Warner from granting preferential treatment in any wholesale or retail Cable Modem Service offered by Time Warner to content, services, capabilities, or features offered by any person other than AT&T, MediaOne or their Affiliates.

B. Plaintiff shall consent to a proposed contractual or other arrangement if it determines in its sole discretion that such arrangement will not substantially lessen competition between AT&T and its Affiliates, and Time Warner in any market. Plaintiff shall be deemed to have consented to the proposed arrangement if Plaintiff has not provided written objection within 30 days of the submission of a request for Plaintiff's consent. If Plaintiff provides a written objection to a request within the 30 day period, Plaintiff's determination shall be final and binding unless, on application by AT&T or MediaOne, the Court concludes that Plaintiff abused its discretion in refusing to consent to an agreement.

C. AT&T's and MediaOne's participation in the management and governance of ServiceCo prior to completion of the restructuring required by Section IV in accordance with the requirements of Section VI and its agreement to receive transitional services in accord with Section IV shall not violate the restrictions of Section V.

VI. AT&T's and MediaOne's Interim Participation in the Management and Governance of ServiceCo

Until the divestiture required by this Final Judgment has been accomplished, AT&T and MediaOne shall conduct their relationship with ServiceCo in accordance with all of the requirements specified below, except as Plaintiff may otherwise consent in writing:

A. Except as necessary to comply with this Final Judgment, AT&T and MediaOne shall take all necessary steps to ensure that the management of the ServiceCo Interest will be kept separate and apart from, and not influenced by, the operation of AT&T and its Affiliates, and all books, records, and competitively-sensitive sales, marketing, and pricing information associated with ServiceCo will be kept separate and apart from the books, records, and competitively-sensitive sales, marketing, and pricing information associated with AT&T's

and its Affiliates' other businesses.

B. AT&T and MediaOne are prohibited (1) from participating in or attempting to influence any decision by ServiceCo regarding ServiceCo's offering of wholesale or retail residential broadband services to any customer other than AT&T's, MediaOne's and Time Warner's cable systems; (2) from participating in or attempting to influence any decision by ServiceCo relating to the content or services provided by any person other than Time Warner to ServiceCo subscribers; and (3) from impeding ServiceCo's ability to obtain additional capital from other direct or indirect holders of equity in ServiceCo.

C. Upon closing of the merger of AT&T and MediaOne, AT&T shall appoint a person or persons (the "Appointee") to oversee the ServiceCo Interest, who will also be responsible for AT&T's and MediaOne's compliance with this section. The Appointee shall have complete managerial responsibility for the ServiceCo Interest, subject to the provisions of this Final Judgment and subject to review and direction by AT&T's Chairman of the Board, its Chief Financial Officer, its Chief Operating Officer, General Counsel, and its Board of Directors. In the event that the Appointee is unable to perform his or her duties, AT&T shall appoint a replacement within ten (10) working days. The Appointee shall have the authority to act on AT&T's and MediaOne's behalf in exercising the rights under the Operating Agreement and the Affiliation Agreement that AT&T and MediaOne are permitted to exercise under the terms of this Final Judgment.

1. The Appointee shall be permitted to consult with individuals whose responsibilities pertain to the MediaOne cable systems only when necessary to exercise rights under the Operating Agreement and the Affiliation Agreement that AT&T and

MediaOne are permitted to exercise under the terms of this Final Judgment. The Appointee may disclose non-public information regarding ServiceCo's operations to personnel whose responsibilities pertain to the MediaOne cable systems only when necessary to exercise AT&T's and MediaOne's management rights, and no such information regarding ServiceCo's operations may be disclosed by the Appointee or by personnel whose responsibilities pertain to the MediaOne cable systems to other personnel of AT&T or its Affiliates.

2. The Appointee shall not communicate with any individuals employed by AT&T, MediaOne or their Affiliates with responsibilities relating to the operations of Excite@Home or AT&T cable systems other than those acquired from MediaOne. The Appointee shall not be given access to any nonpublic information regarding the operations of Excite@Home or AT&T cable systems other than those acquired from MediaOne.

3. Except for those circumstances provided for in this Section or as may otherwise be required by law, in no event shall any employee of AT&T, MediaOne or their Affiliates, other than the Appointee, have access to any nonpublic information regarding the operations and management of ServiceCo.

VII. Compliance Inspection

For the purposes of determining or securing compliance of defendants with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to AT&T or MediaOne made to its principal office, shall be permitted without restraint or interference from AT&T and MediaOne:

1. to have access during office hours of AT&T or MediaOne to inspect and copy or, at plaintiff's option to, request AT&T or MediaOne to provide copies of all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of AT&T or MediaOne, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, and to take sworn testimony from the officers, directors, employees, or agents of AT&T and MediaOne, who may have their individual counsel present, relating to any matters contained in this Final Judgment.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, made to AT&T or MediaOne, AT&T or MediaOne shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this section shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, or to the FCC (pursuant to a customary protective order or a waiver of confidentiality by AT&T or MediaOne), except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by AT&T or MediaOne to plaintiff, AT&T or MediaOne represent and identify in writing the material in any such information or documents as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days' notice shall be given by Plaintiff to AT&T or MediaOne prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which AT&T or MediaOne is not a party.

VIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purposes of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

IX. Further Provisions and Termination

A. The entry of this judgment is in the public interest.

B. Unless this Court grants an extension, this Final Judgment shall expire on the tenth anniversary of the date of its entry.

Date: ________________

____
Judge, United States District Court

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Plaintiff United States' Stipulated Order and proposed Final Judgment, were served via U.S. Mail, first class postage prepaid, on this 25th day of May 2000 upon each of the parties listed below:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. AT&T Corp., and MediaOne Group, Inc., *Defendants*.	)	CASE NUMBER 1:00CV01176 JUDGE: Royce C. Lamberth DECK TYPE: Antitrust DATE STAMP: 05/25/2000

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

The United States filed a civil antitrust Complaint on May 25, 2000 alleging that the proposed acquisition of MediaOne Group, Inc. ("MediaOne") by AT&T Corp. ("AT&T") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, by lessening competition in the nationwide market for the aggregation, promotion, and distribution of residential broadband content.

AT&T, through its ownership of TCI related companies, holds a majority of the voting securities in Excite@Home Corp. ("Excite@Home"), the nation's largest residential broadband services provider. Through its proposed acquisition of MediaOne, AT&T will acquire roughly a 34% equity interest and a significant management interest in ServiceCo, LLC ("ServiceCo"), the nation's second-largest provider of residential broadband services, which operates under the trade name "Road Runner."

By combining AT&T's controlling interest in Excite@Home with MediaOne's equity and management interest in Road Runner, the proposed transaction threatens to substantially lessen competition by increasing concentration in the market for aggregation, promotion, and distribution of residential broadband content. Competition between Excite@Home and Road Runner in the provision of these services may be substantially lessened or even eliminated. Through its control of Excite@Home and its substantial influence or control of Road Runner, AT&T would substantially increase its leverage in dealing with broadband content providers, enabling it to extract more favorable terms for such services. AT&T's ability to affect the success of individual content providers could be used to confer market power on individual content providers favored by AT&T. By exploiting its "gatekeeper" position in the residential broadband content market AT&T could make it less profitable for disfavored content providers to invest in the creation of attractive broadband content, and reduce competition and restrict output in that market.

Shortly before the Complaint was filed, the United States and defendants reached agreement on the terms of a proposed Final Judgment. The proposed Final Judgment requires AT&T to divest the interest in ServiceCo that it would acquire through its merger with MediaOne no later than December 31, 2001. The proposed Final Judgment also contains provisions limiting AT&T's participation in the management and governance of ServiceCo, designed to minimize any risk of competitive harm that otherwise might arise pending completion of the divestiture. It also contains provisions requiring AT&T to obtain the prior consent of the Justice Department before entering into certain types of agreements with the other principal partner in ServiceCo, Time Warner, that could have many of the same anticompetitive effects as the proposed merger would have. The proposed Final Judgment and a proposed Stipulated Order by which defendants consent to the entry of the proposed Final Judgment were filed simultaneously with the Complaint.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 ("APPA"). Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. The United States and defendants have also stipulated that defendants will comply with the terms of the proposed Final Judgment from the date of signing of the Stipulation, pending entry of the Final Judgment by the Court. Should the Court decline to enter the Final Judgment, defendants have also committed to continue to abide by its requirements until the expiration of time for any appeals of such ruling.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

AT&T, headquartered in New York, New York, is the nation's largest long-distance telephone company, one of the nation's largest wireless telephony providers, a growing local telephony provider with nationwide ambitions, one of the top ten narrowband Internet service providers via AT&T WorldNet, and the nation's second-largest cable multiple system operator ("MSO"). AT&T's 1999 revenues totaled approximately $62.4 billion.

AT&T also controls Excite@Home Corp. ("Excite@Home"), the largest provider of residential broadband service. Excite@Home provides residential broadband service over cable systems to over 1.5 million end user subscribers and is growing rapidly. AT&T currently holds approximately a 26% equity interest in Excite@Home and a majority of its voting stock. AT&T recently entered into an agreement which, if implemented, will significantly increase its control over Excite@Home. Excite@Home has exclusive contract rights to provide residential broadband service over the cable facilities of its three principal equity holders, AT&T, Comcast Corporation, and Cox Communications, Inc., which collectively account for over 35% of the nation's cable subscribers. Excite@Home also provides residential broadband service over the cable facilities of a significant number of other cable system operators nationwide.

MediaOne Group, formerly US WEST/MediaOne, is the nation's seventh largest cable MSO and is headquartered in Englewood, Colorado. MediaOne owns cable systems in major metropolitan areas in several states including California, Georgia, and Florida. MediaOne also holds a 25.51% equity interest in Time Warner Entertainment ("TWE"). TWE owns and operates numerous cable systems, and holds interests in a number of cable programming networks. MediaOne's 1999 revenues totaled approximately $2.7 billion.

ServiceCo, LLC, a limited liability company owned by several Time Warner related entities, MediaOne, and subsidiaries of Microsoft Corporation and Compaq Computer Corporation, is the second largest provider of residential broadband service in the United States, using the trade name "Road Runner." Road Runner provides residential broadband service over cable systems to more than 730,000 end user subscribers, and its subscriber base is growing rapidly. MediaOne owns approximately 34% of Road Runner. MediaOne owns approximately 25% of Road Runner through a direct ownership interest in the holding company that owns Road Runner and has additional indirect ownership through MediaOne's interest in TWE. Many important Road Runner decisions require only the concurrence of MediaOne and Time Warner. Road Runner has exclusive contract rights through December, 2001 to provide residential broadband service over the cable facilities of its two principal cable parents, MediaOne and Time Warner, which collectively account for more than 25% of the nation's cable subscribers. Road Runner also provides residential broadband service over the cable facilities of several other cable system operators.

On May 6, 1999, AT&T and Media One agreed to merge in a transaction valued at roughly $56 billion. As a result of this transaction, AT&T will have substantial equity and management rights in both Excite@Home and Road Runner--two firms that, combined, serve a significant majority of the nation's residential broadband users.

B. Market To Be Harmed By the Proposed Merger

The explosive growth of the Internet over the past several years has transformed the American economy as well as the lifestyles of millions of Americans. From a basic network that served primarily the military and academic institutions, the Internet has expanded into a network of networks which millions of individuals access daily for both personal and professional purposes. Increasing numbers of individuals have begun to access the Internet via "broadband" means--technology which allows the transmission of data at dramatically higher speeds and thereby enables new types of content and services to be delivered to consumers.

The vast majority of residential users of the Internet today access it via "dial-up" modems: their computer uses a standard telephone line to connect to an Internet Service Provider ("ISP") which in turn connects the user to the Internet and any proprietary or exclusive content offered by the ISP as a part of its service. This service generally allows users to send and receive data at rates of up to 56 kilobits per second or less and is referred to as "narrowband" access. A rapidly growing number of residential users are accessing the Internet through "broadband" networks and technologies. Broadband users may receive data at rates up to 25 times greater than the data transmission rate currently provided by narrowband access using standard dial-up modems.

In order to provide residential broadband service, an ISP must have access to transmission facilities capable of carrying data at a high rate between the facilities of the ISP and individual homes. The two principal types of transmission facilities used today to provide this access to residential customers are the networks owned by cable companies and local telephone companies.

Cable companies originally designed their networks to provide video programming to customers' homes, but in recent years many cable companies have upgraded their networks to provide the capability of two-way data transmission needed for residential broadband Internet service. Subscribers access the Internet over computers connected to a cable modem or, in some cases, over their televisions connected to a cable set-top box containing a cable modem. The cable modem sends and receives data over the cable company's transmission facilities to the facilities of the residential broadband service provider. Cable modem service generally permits the transmission of data from the ISP to the residence at rates of up to 1.5 Mbps-2 Mbps, 25 times faster than the fastest dial-up connections now available.

Digital subscriber line ("DSL") technology is used to enhance the transmission capabilities of existing copper telephone wires. DSL, which requires users to have a DSL modem attached to their personal computer, typically delivers downstream data transmission at rates between 256 Kbps and 1.5 Mbps. DSL service may be provided by local telephone companies or by other firms which contract with the local telephone company for the use of its copper wires. Because of technical limitations, and because upgrades of telephone networks which are needed to provide DSL service have not been completed in many areas, DSL service is available only to a portion of residences which have local telephone service.

Broadband transmission to residences is also provided through satellite technology, which uses a radio relay station in orbit above the earth to receive, amplify, and redirect signals. Satellite broadband services are provided by direct broadcast satellite ("DBS") providers such as DIRECTV and may be provided within the next several years by low earth orbit ("LEO") satellites deployed by firms such as Teledesic. At present, this technology provides only one-way broadband transmission; the satellite provider transmits data downstream to the consumer's home, but the consumer must use telephone lines for the upstream transmission of data from the home. Although satellite providers are working to address this deficiency, two-way satellite broadband service to the home may not be available for several years.

Broadband transmission may also be provided through "fixed wireless" technologies, including local multipoint distribution systems ("LMDS") and multichannel multipoint distribution systems ("MMDS"). Fixed wireless technology typically uses microwave transmission facilities to transmit data to and from residential consumers. Although firms are investing significant sums of money to develop fixed wireless technology, residential broadband service using such technology is not yet available on a large scale to consumers, and likely will not be commercially deployed on a large scale in the immediate future.

As of early 2000, approximately 70% of the subscribers to residential broadband service use a cable modem service in which data is transmitted over the facilities of a cable company. DSL services are the second most frequently used, but though the number of DSL users is growing rapidly, DSL still lags substantially behind cable modem service in market penetration and acceptance. Satellite and fixed wireless services have only a very small portion of residential broadband subscribers.

Of the seven largest cable MSOs, five have contracted with Excite@Home or Road Runner to provide residential broadband service over their cable facilities. Excite@Home and Road Runner together serve the vast majority of subscribers who receive residential broadband Internet service over cable facilities, and a significant majority of all residential broadband subscribers.

Because of the rapid growth in the number of residential broadband subscribers, and the expectation that there will soon be very large numbers of such subscribers, many firms are developing content that will be particularly attractive to residential broadband consumers. The transmission capacity of residential broadband service allows customers to access content that contains much larger quantities of data, such as high quality "streaming" video and various forms of interactive entertainment. Much of this broadband content will not be readily accessible or attractive to narrowband users, because of the much longer times that are needed to transmit the data through narrowband facilities.

Content providers may earn revenue in a variety of ways -- from the sale of advertising, from charging end users for access to the content, from the sale of products or services marketed through the Internet -- and most of the revenue opportunities are substantially enhanced in proportion to increased numbers of consumers who access the content or services. Content providers produce most broadband content with national distribution in mind, largely in order to maximize the potential number of consumers they will reach, thereby maximizing advertising and other revenues. AT&T and Time Warner (a co-owner of Road Runner) are substantial providers of content and services which are or could be delivered to end users through residential broadband Internet facilities.

A relevant product market affected by this transaction is the market for aggregation, promotion, and distribution of broadband content and services. The success or failure of content providers depends greatly on their ability to attract large numbers of consumers. Excite@Home, Road Runner, and other residential broadband service providers and "portals" can substantially enhance or detract from a content provider's ability to reach large numbers of customers. A portal generally is an Internet site containing a "first page" as well as several subsequent pages, that users see with a high degree of frequency. These pages aggregate links to a variety of types of content and services, and facilitate users' efforts to find content and services by providing search engines, "tree and branch" indexes, and prominent links to Internet content and services, as well as proprietary content and services. Most ISPs, including Excite@Home and Road Runner, include the first page of their portal as the default "start page" (i.e., the first screen a user seek upon access). There are also portals, such as Yahoo and Lycos, that are not affiliated with major ISPs. Many customers access content and service providers through portals and therefore content providers seek prominent links by which to promote their content and draw users to their sites. The more favorable the placement of a link (e.g.,"first page" rather than subsequent pages, a link that includes a larger share of the screen, etc.), the greater the content provider's likely audience, advertising revenues, and profitability.

For providers of broadband content, i.e., content that either requires broadband speeds or is much superior when viewed at broadband speeds, links that will attract more broadband customers, and only broadband customers, are more valuable than links that will be seen predominantly by narrowband users who will not access broadband content. Therefore, links that will be viewed by the general mass of Internet users--a substantial majority of which are narrowband users--are not a good substitute for links that will be widely and exclusively viewed by broadband users.

In addition, content providers seek network services such as caching that will facilitate the distribution of their data so as to enhance the quality and accessibility of their content. Caching stores a content provider's content at various locations throughout the country, closer to end users, thereby improving speed and performance. This is a particularly important service for broadband content providers who must rely on the rapid delivery of large quantities of data in order to provide the most attractive content. Broadband content providers therefore seek favorable data distribution arrangements, as well as favorable terms for aggregation and promotion of their content, in order to attract more customers.

The aggregation and promotion of content, and the efficient physical distribution of content, are valuable services to content providers that heavily influence their success or failure in the content market. Content providers typically contract on a nationwide basis with firms that provide such services.

Excite@Home and Road Runner are positioned to become two of the most important providers of aggregation, promotion, and distribution of residential broadband content. By virtue of the large number of subscribers to their residential broadband services, both firms will be able to significantly assist or retard the competitive efforts of broadband content providers, by granting or withholding aggregation, promotion, and distribution services, or through the prices, terms, and conditions by which such services are provided. Moreover, because of their ownership affiliations and exclusive contracts with many of the largest cable MSOs, it is unlikely that other providers of residential broadband services will be able to enter and attract comparable numbers of subscribers in the near term.

C Anticompetitive Consequences of the Merger

Upon consummation, the proposed acquisition would give AT&T complete ownership and control of the assets and holdings of MediaOne, including MediaOne's ownership interest in Road Runner and significant influence over Road Runner's operations and management. AT&T's post-merger ownership interest in Road Runner will entitle it to participate in the governance of Road Runner, to have effective veto power over Road Runner management decisions, to be present at meetings of Road Runner's Members' Committee, and to obtain all information available to members of the Board of Directors, including competitively sensitive information.

AT&T's control over Road Runner and access to sensitive competitive Road Runner information combined with its control over Excite@Home and access to confidential

Excite@Home information could facilitate collusion and coordination between Excite@Home and Road Runner in ways that would result in a substantial lessening of competition in the market for aggregation, promotion, and distribution of residential broadband content. Financial benefits derived from collusion that accrued to either Excite@Home or Road Runner would accrue in part to AT&T.

If the proposed merger were consummated, concentration in the market for aggregation, promotion, and distribution of residential broadband content and services would be substantially increased, and competition between Excite@Home and Road Runner in the provision of such services may be substantially lessened or even eliminated. Through its control of Excite@Home and substantial influence or control of Road Runner, AT&T would have substantially increased leverage in dealing with broadband content providers, which it could use to extract more favorable terms for such services.

The increased leverage that AT&T and its affiliates would acquire in this market could also be used to promote or retard the success of individual content providers. AT&T's ability to promote or retard the success of individual content providers could be used to confer market power on individual content providers favored by AT&T. AT&T could profit from the creation and exercise of such market power either through direct ownership of a favored content provider, or by obtaining payments from favored content providers in exchange for favorable treatment by Excite@Home and Road Runner. By exploiting its "gatekeeper" position in the residential broadband content market, AT&T could make it less profitable for unaffiliated content providers to invest in the creation of attractive broadband content, and reduce competition and restrict output in that market.

For these reasons, the United States concluded that the AT&T/MediaOne merger as proposed may substantially lessen competition, in violation of Section 7 of the Clayton Act, in the market for the aggregation, promotion, and distribution of residential broadband content.

Naturally, in emerging markets such as these, predictions about the way the market may develop in the future are far from certain. Nevertheless, the predictions and assumptions required to conclude that the proposed merger would present serious anticompetitive problems in the future are very reasonable ones. Moreover, the risks to the development of broadband industry posed by this merger are sufficiently grave that appropriate relief is warranted.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

A. The Divestiture Requirement

The proposed Final Judgment will preserve competition in the market for the aggregation, promotion, and distribution of broadband content by requiring defendants to divest their interest in ServiceCo no later than December 31, 2001. This divestiture is intended to ensure that Excite@Home and Road Runner (or any successor residential broadband service offered by Time Warner) will continue to be separate and independent of one another, thereby preventing the reduction or elimination of competition between them that otherwise would have resulted from AT&T's acquisition of MediaOne.

The divestiture requirements of the proposed Final Judgment direct defendants to divest their interest in ServiceCo, including their direct financial ownership interest and their role in ServiceCo's management, through one of three methods specified in Section IV.B. The first two methods specified in Section IV.B contemplate the defendants' exiting the ServiceCo partnership pursuant to the terms of the ServiceCo Operating Agreement entered into by the various ServiceCo partners. Should the defendants opt for a different means of divesting the ServiceCo interest, the third option in Section IV.B provides that the defendants may utilize this method only if the United States provides its written consent.

Consistent with other antitrust cases involving mergers in which the United States seeks a divestiture remedy, this Final Judgment requires completion of the divestiture within the shortest time period reasonable under the circumstances. The United States normally requires the divestiture of physical assets within six months or less. The circumstances here are highly unusual in that under the ServiceCo Operating Agreement, other ServiceCo owners have contractual rights that may limit the defendants' ability to divest the ServiceCo interest prior to December 31, 2001. Accordingly, the defendants are permitted until that date to complete the divestiture. However, if the other relevant ServiceCo owner(s) request the defendants to divest the ServiceCo interest before December 31, 2001, through one of the methods provided for in the Operating Agreement (and enumerated in Sections IV.B(1) and IV.B(2) of the proposed Final Judgment), the defendants are required to complete the divestiture at such earlier date. The proposed Final Judgment thereby effectively requires the defendants to divest their ServiceCo interest as soon as reasonably practicable. During the time that the defendants continue to hold the interest in ServiceCo, their ability to participate in the management and governance of ServiceCo will be restricted, pursuant to detailed requirements contained in Section VI of the Final Judgment which are discussed further below, in order to minimize the risk of interim harm to competition

In requiring the divestiture specified in Section IV, the Final Judgment strives to prevent current Road Runner customers from having any loss of, or impairment of, cable modem service by ensuring that both the principal ServiceCo partners can continue to offer cable modem service. Accordingly, Section IV.A permits the defendants to retain assets used solely or predominantly to provide service to MediaOne cable customers and Section IV.B(1) requires the defendants to consent to Time Warner purchasing the remaining assets (e.g., assets that do not automatically revert to the control of either the defendants or Time Warner, such as, potentially, "national" assets) at fair market value. The defendants are also permitted to lease capacity on those assets and transitional support services at fair market value until June 30, 2002. The proposed Final Judgment thereby should realize its competitive objectives without any unnecessary adverse interim effects on end users.

B. Limitations on Subsequent Agreements

The divestiture requirements of the proposed Final Judgment are intended to ensure that Excite@Home and ServiceCo continue to operate separately and independently from one another. The ServiceCo joint venture affected actual or potential competition between MediaOne and Time Warner in a variety of ways. That joint venture is a mechanism through which MediaOne and Time Warner jointly provide residential broadband service, rather than providing such service separately and potentially in competition with one another. Similarly, the ServiceCo venture is a mechanism through which MediaOne and Time Warner jointly control negotiations with content providers over the terms under which ServiceCo will provide aggregation, promotion, and distribution of broadband content AT&T's entry into this type of partnership with Time Warner (through its acquisition of MediaOne's ServiceCo interests)