

**Comments of Comcast Corporation
December 1, 2000**

A. Section 251(c) Cannot Be Used To Justify a Forced Access Regime.

There is no conceivable way in which ISPs can invoke the unbundling requirements of section 251(c) to compel cable operators to supply network elements on an unbundled basis. As shown above, the requirement to provide network elements on an unbundled basis applies only to ILECs. It does not even apply to CLECs, much less to cable operators that provide no common carrier services.

But there is another, equally fatal problem with ISP efforts to invoke section 251(c)(3). The obligations that paragraph imposes on ILECs (along with other obligations in the same subsection) run only to “requesting telecommunications carrier[s],” not to providers of information services. And even that group of entities cannot invoke its rights without undergoing the negotiation and arbitration process established by section 252.

B. The Unbundling Requirements of *Computer II* Do Not Apply.

The ISPs fare no better with their efforts to invoke the unbundling requirements of *Computer II*. For the reasons discussed above, and in greater detail below, cable companies are not common carriers and there are no underlying communications common carrier facilities.

Moreover, a requirement that cable operators offer nondiscriminatory access to their cable Internet platform is the type of “traditional common carrier requirement of serving all customers indifferently upon request” which is prohibited under section 541(c).^{85/} Section 541(c) states that a “cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service.” “Nondiscriminatory access” is a core

^{85/} See *Amicus Brief of NCTA, MediaOne Group, Inc. v. County of Henrico*, Record Nos. 00-1680 (L), 00-1709, 00-1719, at 25-26 (filed Aug. 11, 2000). NCTA compared Henrico’s forced access requirements to the FCC rule overturned in *Midwest Video* which required cable operators to provide access to “broad categories of users” by holding out dedicated channels on a first-come, first served nondiscriminatory basis. NCTA observed that the court found that these rules “plainly impose[d] common-carrier obligations on cable operators.” *Id.* at 25-26, citing, *FCC v. Midwest Video Corp.*, 440 U.S. 689, 699-702 (1971).

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component of common carrier regulation. But the nondiscriminatory obligation applies only to common carriers, those that hold themselves out to serve on an indiscriminate basis.^{86/} The FCC lacks authority to conscript common carriers.^{87/} Cable operators have never held themselves out as common carriers and thus are not subject to common carrier obligations.

To impose nondiscriminatory access requirements on cable operators would be contrary to the legislative framework in another way. Congress has explicitly imposed certain access obligations on cable operators, including “access to channels for ‘public, educational, and governmental’ use for video programming; access to a statutorily-limited number of channels for commercial use for video programming (so-called ‘leased access’ channels); and the reservation of channels for carriage of over-the-air broadcast signals.”^{88/} By contrast, there is no explicit directive in the Communications Act to require cable operators to provide nondiscriminatory access to their cable Internet platform.^{89/} To the contrary, when imposing certain regulations on telephone companies offering video services in the 1996 Act, Congress refrained from imposing certain common carrier obligations.^{90/}

^{86/} *NARUC v. FCC*, 525 F.2d 630, 641 (D.C. Cir. 1976); *NARUC v. FCC*, 533 F.2d 601, 608-09 (D.C. Cir. 1976).

^{87/} *Id.* The legislative history of the 1984 Act reaffirms the findings in *NARUC*. For example, the House Report explained that “[a] cable system would not, for instance, be subject to ... the traditional common carrier requirement of servicing all customers indifferently upon request” H.R. Rep. 934, 98th Cong., 2d Sess. 60, 1984.

^{88/} See *Amicus Brief of NCTA, supra*, at 26 (footnotes omitted).

^{89/} As counsel for one ISP put it, albeit in the context of proposals for a government prescribed “return path” for interactive services of content providers, “any such requirement would, in effect, be the imposition of what amounts to ‘Internet must-carry’ obligations -- *i.e.*, governmentally mandated free Internet access service There is no basis in fact, policy, or law to support such an expansion of the regulation of cable operators” Letter from Peter D. Ross, Counsel for America Online, to Deborah Lathen, FCC (Sep. 29, 2000).

^{90/} See, *e.g.*, Section 651(b) of the Communications Act, 47 U.S.C. § 571(b) (establishing the regulatory scheme for the provisioning of video programming by telephone companies). Section 651 states that, to the extent a telephone company provides video programming to subscribers, it “shall not be required, pursuant to Title II of the Act, to make capacity available on a nondiscriminatory basis to any other person for the provision of cable service directly to subscribers.” *Id.* This provision was intended to ensure that telephone companies offering video services were on a level playing field with cable operators. Its prohibition on common carrier-like “nondiscriminatory access” requirements reinforces and explains the ban on “common carrier regulation” in Section 621(c).

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1. It has long been settled that common carriers are regulated but information service providers are not.

To the extent that Comcast is deemed to provide any “telecommunications” to itself, as an input to its Internet service, this is properly characterized as self-provisioning. It affords no justification for common carrier regulation.

The Commission has never required an information service provider that was not otherwise a common carrier to “unbundle” the telecommunications it provides to itself from the information service it offers to third parties. In *Computer II*, the Commission required common carriers owning transmission facilities and providing enhanced services to unbundle the basic from the enhanced component of their services and to offer the unbundled transmission capacity to other enhanced service providers at the same tariffed rates and terms.^{91/} But no such unbundling requirement was ever applied to information service providers.

2. Even the “value added networks” that added less in the way of computer processing and content than cable Internet does were exempt under the contamination theory.

Under *Computer II*, the Commission developed the “contamination doctrine” to preserve the non-regulated status of enhanced services providers. Under the contamination doctrine, a provider that offers enhanced services in conjunction with basic transmission services is not subject to unbundling requirements because the enhanced component of its offerings is viewed as “contaminating” the basic component, and as a result, the entire service is considered enhanced, and thus not subject to Title II regulation.^{92/}

This doctrine was first developed in the context of packet switched communications service offered by value-added-network service providers (“VANs”) that purchased common

^{91/} See *Computer II Final Order*, 77 FCC 2d at 475.

^{92/} See *Computer III Phase II Order*, 2 FCC Rcd at 3080.

carrier facilities from AT&T and added “value” by converting the protocol of data transmissions originating over voice-grade, circuit-switched lines into a format suitable for packet switching service. Despite the limited degree of the computer “enhancement” of the resulting packet-switching service, the Commission determined that the entire service was “enhanced” and therefore unregulated.^{93/} Subsequently, in the “*Frame Relay Order*,” the Commission reaffirmed the contamination theory as applied to non-facilities based common carriers.^{94/}

This precedent rests on firm ground. If anything, Congress has strengthened it by directing the Commission to permit Internet and other interactive computer services to develop “unfettered by Federal or State regulation.” Thus, any “deconstruction” of enhanced service offerings should be limited to the narrow facts of the *Frame Relay Order*, and should not be used to justify sweeping and unprecedented intrusions into the market for Internet services.

C. Common Carrier Regulation of Cable Internet Would Mire the Commission in Logistical Issues that Are Better Suited to Resolution on a Purely Commercial Basis.

Even if the Commission had authority to create some form of forced access regime for cable Internet, there are numerous reasons why it should not do so. Foremost among the reasons is the lack of any public policy benefit. *The openness that really matters to consumers -- and what makes the Internet so special and remarkable -- is the ability to go anywhere, to access any information with a single click of a mouse.* That openness exists with cable Internet today. No common carrier regulation is needed to make it so.

Indeed, a cable Internet customer is completely unfettered in his or her ability to reach any information service provider. Tens, if not hundreds, of thousands of subscribers to

^{93/} *Id.*

^{94/} See *IDCMA Petition for a Declaratory Ruling that AT&T's Interspan Frame Relay Service is a Basic Service*, Memorandum Opinion and Order, 10 FCC Rcd 13717, 13720 (1995).

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@Home and Road Runner also subscribe to America Online. The same could be true for any other Internet service provider that provides consumers with a sufficiently attractive “value proposition.” Whether and under what terms and conditions a cable operator permits ISPs to “access” its cable Internet platform is a determination properly made based on business-to-business negotiations between the cable Internet service provider and the ISP, not by regulatory fiat.

The nature and value of services rendered by ISPs can vary greatly. For some ISPs, the primary services they render are (i) to supply a local telephone number that can be reached by a circuit switched local telephone call, (ii) to convert an analog modem signal into a digital signal, and (iii) to transport the signal between their modem closet and a point of connection to the Internet. These particular functions are obviously not needed by a customer whose cable company is carrying packet-switched digital signals and connecting them directly to the Internet (in addition to providing Internet content). That the customer does not require a second provider for these functions is no more cause for regulatory concern than the fact that the delivery of an e-mail message does not require the assistance of a Postal Service employee.

Against this lack of legal or policy reasons for imposing a forced access regime, the Commission must weigh the regulatory costs. It is simply impossible to treat cable as a common carrier (for purposes of any telecommunications component of cable Internet service) without undertaking the responsibility to prescribe, in exacting detail, the terms of the common carrier offering. This inevitably means things like specifying points of interconnection, prices, provisioning intervals, and a variety of other matters.

The Commission’s experience with the attempted unbundling of ILEC networks should be instructive. It has taken almost five years of concentrated effort, thousands of pages of rulemaking orders, innumerable negotiations, arbitrations, and appeals, enforcement actions,

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etc., and yet the process is far from done.^{95/} (This is so despite the strong incentives that Section 271 creates, by rewarding the Bell companies with long distance entry once they have fulfilled their responsibility to open their local markets to competition.) Prices for unbundled network elements are *still* being adjusted; pricing principles are *still* in the courts; collocation rules, having been reversed and remanded, are *still* being developed; operations support systems are *still* being developed and tested; performance measures are *still* being revised. The list goes on and on and on. As a result, most ILEC customers are *still* waiting for competitive choices in the local exchange market. This is in contrast to the availability of facilities-based competitive alternatives for broadband services, which far surpasses competition for local telephone service.

It is inconceivable that the Commission would wish to undertake a similar process for cable Internet. It lacks statutory authority to unbundle cable networks -- in sharp contrast to the specific directive of Section 251(c).^{96/} It lacks the resources to replicate the efforts that have been deployed on ILEC unbundling. Unbundling requirements would also be counterproductive because they would almost certainly freeze new investments in cable Internet, which will lead to less investment in competing services. And unbundling cable would be far more complicated in the context of bandwidth-constrained networks that support a greater variety of services and that serve customers on shared rather than dedicated wires.

As the Commission knows, the pair of telephone wires that serves a given home is *dedicated* to a particular customer's use and carries only the voice and data traffic associated with that residence. By contrast, the cable wire that serves a home is *shared* by the whole neighborhood, carries signals that any given customer may have no right to receive, and carries several dozen analog video channels and dozens or hundreds more digital video

^{95/} Sad to say, the results in terms of residential telephone competition are also disappointing.

^{96/} Note, too, that Congress specifically directed the Commission not to use its forbearance authority with regard to Section 251(c) obligations of ILECs until that subsection is "fully implemented." 47 U.S.C. § 160(d).

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programming channels. That facility is also being prepared to carry a variety of other services, including interactive TV, video on demand, IP telephony, and home networking services, all of which need to share a facility of limited bandwidth.^{97/}

As a result, attempts to regulate the “unbundling” of the cable plant would be exponentially more complicated than unbundling of the ILEC plant. The technical issues are considerably more complicated: *e.g.*, reserved versus shared bandwidths,^{98/} upstream versus downstream bandwidths,^{99/} tunneling versus source-code routing, contention, scaling, and numerous other factors.^{100/} The commercial issues are also more complicated. Common carriers ordinarily just charge a fee for carrying information, and they are indifferent as to the content they carry. Cable, by contrast, has traditionally played an editorial role in selecting material it transmits, and revenues from carried services are shared in a complicated variety of ways that benefit both the cable operator and the content originator.

In short, Comcast expects to face a variety of complicated issues in managing its shared network across multiple broadband services to provide optimal benefit to consumers. These issues will test the limits of Comcast’s technical and economic skills and other resources. Needless to say, the many challenges of building, enhancing, and managing the cable

^{97/} An additional consideration is that the “customer” for certain home networking applications may not be the end-user but some other entity (*e.g.*, an energy supplier).

^{98/} If two Internet access services use a single cable facility, either each has bandwidth separately assigned to it (which leads to wasted bandwidth) or both share the same frequencies (which leads to issues of contention).

^{99/} These issues would be complicated enough in a static environment, but further complexity is added by changing customer usage patterns. For example, until not long ago, traffic patterns were highly asymmetric, with downstream bit rates vastly exceeding upstream bit rates. Napster alone has caused massive increases in upstream bit rates. On a shared facility such as the cable plant, unitary management is needed to monitor and adjust for such shifting consumer usage patterns.

^{100/} As noted above, Comcast plans to use its plant not only to provide analog and digital video programming and high-speed Internet access but also to provide a variety of other new services, including IP telephony, interactive program guides, and advanced shopping (among others). Cable operators face complex and difficult decisions in allocating the limited bandwidth of their facilities among a growing array of services: analog video, digital video, high-speed Internet, video-on-demand, telephone services, and other future services. *See Strike Up the Bandwidth*, WAVE, at 24-25 (Fall 2000).

broadband platform would be far more difficult to surmount if cable operators were to be subjected to ILEC-style regulation regarding the nature, manner, timing, and pricing of interconnection to and use of the cable plant.

V. TITLE II REGULATION OF CABLE INTERNET WOULD NECESSITATE TITLE II REGULATION OF NUMEROUS OTHER INTERNET SERVICES, INCLUDING THOSE DELIVERED VIA WIRELESS, SATELLITE, BROADCAST AND PART 15 DEVICES.

There is another powerful reason why the Commission should not adopt a forced access approach to cable Internet. The same logic that would justify subjecting cable Internet to Title II regulation would also compel the Commission to apply common carrier regulation to all other Internet delivery services, instead of permitting each to develop in its own way.

The Commission was absolutely right to include questions related to wireless, satellite, broadcast, and Part 15 services as part of the inquiry.^{101/} These other media are important parts of the competitive story, and they provide additional reasons for not regulating. They also illustrate the dangerous logic that forced access proponents rely upon.

As the Commission has learned through its inquiries concerning the deployment of advanced services, the opportunities to offer broadband services are attracting the interest of numerous and diverse companies. Part II above discussed the growing role of wireless, satellite, broadcast, and Part 15 services in delivering broadband Internet services. The Commission itself has expressly recognized these developments and deemed them to be beneficial to consumers.^{102/} To contemplate force fitting any of these other industries into Title II regulation is to illuminate the reasons why cable should not be subjected to this regime either.

^{101/} *NOI* at ¶¶ 43-46; *see id.* at ¶¶ 3, 7.

^{102/} *See Second 706 Report* at ¶ 8.

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The reasoning employed by advocates of forced access has sweeping implications. If a cable operator that chooses to offer Internet access and Internet content can be forced to unbundle some integral transmission component of its service and provide it on a nondiscriminatory basis, then the same logic will require the deconstruction and regulation of Internet offerings over other media as well. If one medium that provides Internet services to end-users may be conscripted to serve as a common carrier, and forced to rearrange its network to accommodate those who have not chosen to invest in building their own facilities, then broadcasters, wireless carriers, and even service providers whose nexus to the FCC is no greater than the use of low-power radio emissions under Part 15 are equally at risk. Thus, as Commissioner Powell rightly observed, “mandating open access to cable could unleash a never-ending regulatory exercise to catch up with change.”^{103/}

The fact is, many of the new services discussed in Section II.B., *supra*, “bundle” Internet access with an underlying transmission component.^{104/} To extend common carrier regulation to these other services would be inconsistent with Congress’s careful decision not to impose a unified regime for all advanced services. It would also represent unprecedented FCC intrusion into the evolution of the Internet and Internet access services, which are currently developing robustly without government “assistance” or hindrance.

VI. THE DEVELOPMENT OF CABLE INTERNET SHOULD BE GUIDED BY COMPETITION, TECHNOLOGY, CONSUMER PREFERENCES, AND OTHER MARKET FORCES, NOT BY GOVERNMENT FIAT.

Cable Internet service is in a period of rapid evolution. The manner in which cable operators interact with potential content partners -- just as in the case of wireless, satellite, broadcast, and Part 15-based Internet services -- should be governed by market forces, not Commission regulation.

^{103/} *Powell Remarks to the FCBA* at 7.

^{104/} *See, e.g., Oh the Hypocrisy: Sprint’s Fixed Wireless Service Offers Only One ISP*, CableFAX Daily, Oct. 30, 2000 (Earthlink is exclusive supplier of Internet access via Sprint’s fixed wireless service).

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The day of high-speed Internet access is still dawning. Exclusive arrangements are natural features of the earliest, riskiest phase of a new business, especially one requiring large capital investments and sophisticated technical know-how (for which many others are competing). For this reason, it is not the least bit surprising that cable, satellite, wireless, broadcast, and Part 15-based companies have all entered into individually negotiated, long-term, and often exclusive business alliances to support the investment, technology development, service experimentation, and business rollouts that are now underway.

As cable Internet matures, cable operators (as well as other broadband providers) will establish business relationships based on mutual interests and consumer wants. Cable operators (like other broadband providers) have powerful incentives to devise and implement mutually satisfactory arrangements with any partner that brings value-added to the consumer. Any such arrangements will occur more efficiently when driven by the market than by the government.

Comcast's relationship with @Home was calculated to ensure the most rapid progress possible in rolling out cable Internet, while minimizing business risks. The details of the initial relationship are spelled out in a contract that is on the public record. Now, the process of dismantling the exclusive arrangement is underway, and over the next 18-24 months Comcast expects to take over control of servers, provisioning systems, and regional systems. Over time, Comcast also expects to forge business relationships with other Internet service providers, and is already taking steps necessary to prepare for such developments.

Just this week, Comcast and Juno Online Services, Inc. announced an agreement for a trial to be conducted in the Philadelphia area in the first quarter, 2001.^{105/} This trial will enable the participants to evaluate technical and commercial issues -- and to explore consumer desires -- on a cooperative basis, with the hope of forging lasting relationships. Such relationships,

^{105/} *Comcast and Juno Announce Multiple ISP Trial*, Comcast Press Release, Nov. 29, 2000.

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however, are much more likely to be successful if they are permitted to evolve, informed by real-world experience and adjusted through individualized negotiations to yield mutual benefits, not coerced by government-imposed regulations.^{106/}

Cable plainly has no “bottleneck control” over Internet access that could theoretically warrant regulatory intervention. Already, DSL -- as provided by multiple competitors in most markets -- is growing almost three times as fast,^{107/} and the prospects for competition from other delivery media are growing by the day. Under such circumstances, proposals for new regulation (except as required by explicit statutory directive) ought to be subject to the most skeptical scrutiny.

Moreover, the world of the Internet is changing at breakneck speed, and right now no one even knows which assets will ultimately prove to be the ones that convey competitive advantage. It remains to be seen whether the key to success will be having a user-friendly search capability or friendly first screen (*e.g.*, Yahoo, MSNBC, Go), or ease of use and instant messaging capabilities with a vast number of other consumers (*e.g.*, AOL), or vast or specialized libraries of content (*e.g.*, Time Warner, Lexis/Nexis), or backbone capacity (*e.g.*, Genuity), or ability to monitor user behavior (*e.g.*, DoubleClick), or any one of -- or combination of -- numerous other capabilities.

These uncertainties strengthen the case for governmental restraint. The Commission should remember that regulation, by locking in a business model, can lock out the flexibility

^{106/} It is telling that one of the leading CLECs that delivers DSL service has reported financial difficulties resulting from nonpayment of bills by ISPs. *Covad Restates Quarterly Results as Delinquent ISP Payments Grow*, WASHINGTON TELECOMM NEWSWIRE, Nov. 15, 2000; *see also* Edie Herman, *Verizon Terminates Merger with Northpoint*, COMMUNICATIONS DAILY, Nov. 30, 2000, at 1-2 (similar problems attributed to Northpoint). This occurred in the context of voluntary, arm’s-length, commercial relationships. The prospects for financial injury to those supplying services to ISPs would obviously be increased in the context of government-coerced relationships.

^{107/} *High-Speed Subscribership Report*, at Table 1 (finding that cable Internet services grew by 59% in the six month period ending June 30, 2000, while DSL customers during the same time grew 157%).

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needed to experiment with new and different uses. If ever there was a market characterized by dynamism, experimentation, uncertainty, and risk, it is the businesses that are creating tomorrow's Internet.

The Commission's experience with video dialtone ("VDT") illustrates the danger of attempting to presume a business model through the regulatory process. With VDT, the regulation developed well ahead of the business, and the business never happened. Extensive rulemakings over many years were conducted to establish inter-industry relationships, and elaborate legal structures were designed to govern embryonic services. Seemingly logical decisions were made; detailed rules were adopted; every aspect was carefully explained.^{108/} But VDT service went nowhere, because ILECs uniformly found that the business plan formed by regulatory directives did not yield sufficient economic incentives to build or sustain the service. Years of regulatory effort to "stimulate competition" through this regulatory construct only served to distract the Commission from addressing other barriers to competition such as accelerating the availability of new spectrum.^{109/}

Two other examples are worth citing. First, the industrial policy embraced by France in the 1980s promoted ubiquity and uniformity, but at the expense of innovation. Tens of millions of people in France have the Minitel, an electronic device that replaced the telephone

^{108/} See *Telephone Company-Cable Television Cross-Ownership Rules, Section 63.54-63.58*, Further Notice of Proposed Rulemaking, First Report and Order and Second Further Notice of Inquiry, 7 FCC Rcd 300 (1991), Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 5069, *aff'd*, *National Cable Television Association v FCC*, 33 F.3d 66 (D.C. Cir. 1994); Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992), *aff'd*, Memorandum Opinion and Order on Reconsideration and Third Notice of Proposed Rulemaking, 10 FCC Rcd 244 (1994); Third Report and Order, 77 R.R.2d 1216 (1995); Fourth Report and Order, 78 R.R.2d 1422 (1995). The 1996 Act repealed the Commission's video dialtone rules and policies, and shortly after the passage of the 1996 Act, the Commission terminated the remaining video dialtone proceeding. 1996 Act Sec. 302(b)(3); *Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, Telephone Company-Cable Television Cross-Ownership Rules, Section 63.54-63.58*, Report and Order and Notice of Proposed Rulemaking, 11 FCC Rcd 14639 (1996).

^{109/} In fairness, the video dialtone situation is one where the Commission possessed at least colorable legal authority and acted on the basis of a strong pro-competitive intent. Nonetheless, the final result should provide a good lesson in regulatory restraint.

book and also offered rudimentary interactive capabilities. It is no coincidence that France is not the country that produced Microsoft, Compaq, Cisco, AOL, Palm, Yahoo, or thousands of other innovators, large and small.

Second, lessons can be learned from the manner in which Direct Broadcast Satellite service has evolved. When the Commission first authorized this service, it gave permittees the option of operating under common carrier or broadcast models.^{110/} Not one of the four permittees that ultimately entered the business chose the former.

The lesson of VDT and DBS is that, while some entities may choose to conduct their businesses as common carriers, government imposition of common carriage as the sole business or regulatory model is neither necessary nor desirable. Establishing a one-size-fits-all regulatory regime is fraught with additional risk in the early stages of a fast-changing and competitive market.

VII. ONE OF THE MOST USEFUL THINGS THE FCC COULD DO IS TO ENSURE THAT STATE AND LOCAL AUTHORITIES DO NOT REGULATE CABLE INTERNET SERVICE.

Although Comcast strongly counsels against FCC regulation of cable Internet, there is one way in which the FCC can play a valuable role -- by reaffirming its preemption of state regulation of this interstate information service.

As the trade press has been reporting over the course of the past two years, tremendous amounts of time and energy have been expended as more than 1000 local franchising authorities ("LFAs") have considered whether or not to impose forced access requirements on

^{110/} See *Inquiry into the development of regulatory policy in regard to Direct Broadcast Satellites for the period following the 1983 Regional Administrative Conference*, Report and Order, 90 F.C.C. 2d 676, 709 (1982) ("DBS Order"), vacated in part, *National Association of Broadcasters v. FCC*, 740 F.2d 1190, 1195 (1984) (vacating the portion of "the DBS Order that exempts customer-programmers of DBS common carriers from the statutory requirements imposed on broadcasters" but maintaining the flexibility of DBS operators to operate as common carriers or broadcasters).

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cable Internet. More than a dozen state legislatures have considered legislation to impose forced access requirements. Virtually all LFAs have chosen not to try to impose any such requirements, and no states have yet passed any such legislation. Of the handful of LFA forced access requirements, three have already been struck down in the courts.^{111/} Nonetheless, enormous amounts of time and money were wasted while the limits of LFA jurisdiction were explored over and over again, and LFAs (and state legislatures) were importuned by special interests to impose new constraints on cable Internet. The overhang has delayed investment in many markets.^{112/}

The judicial decisions regarding the Portland and Broward County requirements have made it harder for LFAs to try to impose common carrier obligations on cable Internet, but now new issues are arising in the form of telecommunications ordinances that restrict entry, or assess taxes, on cable Internet. Again, to the extent that cable Internet is saddled with such obligations, especially ones that apply uniquely to cable Internet, the prospects for investment, innovation, and competition will inevitably be diminished.

Accordingly, Comcast respectfully suggests that the Commission use this proceeding to discourage, or prevent, any additional layers of local and state regulation. *Computer II* was a brilliant decision not just because it fenced information services off from FCC regulation but also because it fenced them off from state regulation. In *Computer III* the FCC reaffirmed that interstate enhanced services should not be regulated under Title II of the Communications Act, but clarified that state commissions may regulate rates for purely intrastate enhanced

^{111/} These requirements were imposed by the City of Portland, Oregon, Henrico County, Virginia, and Broward County, Florida.

^{112/} For example, AT&T declined to deploy its cable Internet service in both Portland, Oregon, and Broward County, Florida, until forced access requirements were struck down. In Montgomery County, Maryland, the introduction of cable Internet by Comcast was delayed at least six months because of uncertainties over forced access engineered by wireline competitors.

services.^{113/} If the FCC rules that cable Internet is an information service, it should also rule that it is an *interstate* information service,^{114/} and it should reiterate that states and their subdivisions may not regulate entry, exit, or prices, nor may they impose common carrier obligations on such services.

VIII. THE COMMISSION SHOULD DISMISS THE USTA PETITION ON UNIVERSAL SERVICE.

The Commission ought not to concern itself with the petition filed by the United States Telecom Association (“USTA”).^{115/} This petition represents gamesmanship, not responsible policy advocacy, because it presupposes the outcome of an inquiry that has only recently been commenced.

Universal service is an important national goal and ought not be exploited as a political football. Comcast, in particular, has a strong commitment to universal service principles. Comcast has connected over 1000 schools to cable Internet service, along with connections to community centers and teacher training, with no installation charges and no ongoing charges. Comcast does these things, *without any government subsidy*, as part of its own voluntary effort to help bridge the digital divide. Insofar as Comcast is aware, none of its broadband competitors have made a comparable commitment to this cause.

^{113/} See 6 FCC Rcd at 7580. The FCC also granted the states some latitude to prescribe some structural separation requirements for exchange carriers’ intrastate enhanced services. *Id.* at 7632.

^{114/} The Commission has already determined traffic to the Internet is jurisdictionally mixed, and therefore under the ten (10) percent rule, is treated as interstate communications subject to federal authority. See *GTE Telephone Operating Cos. GTOC Tariff No. 1 GTOC Transmittal No. 1148, CC Docket No. 98-79*, Memorandum Opinion and Order, 13 FCC Rcd 22466, 22474, 22478-80 (1998) (GTE’s DSL Solutions-ADSL service offering is an interstate service that is properly tariffed at the federal level). (The FCC also ruled that dial-up calls to an ISP are interstate in nature, but this ruling has been vacated by the DC Circuit and remanded to the FCC. See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689, 3691 n.9, *vacated by Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000), *remand pending*. Despite any question as to the classification of the dial-up calls, the interstate classification of the information service is not in doubt.)

^{115/} *In the Matter of Universal Service Contribution Obligations of Cable Operators that Provide Telecommunications Services*, GN Docket No. 00-185, United States Telecom Association Petition for Declaratory Ruling (Sept. 26, 2000).

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As a cable operator, Comcast is also subject to the Title VI version of universal service obligations, through the anti-redlining provisions of section 621 (a)(3).^{116/} Comcast is proud to provide its broadband services throughout every community it serves and does not discriminate on the basis of race, creed, ethnic origin, or economic status. Comcast has also been a pioneer in the provision of a low-priced “skinny basic” cable service that makes local broadcast channels, C-SPAN, and public, educational, and governmental channels available for a monthly fee well below the usual charges for basic cable.

USTA’s request that cable operators offering cable Internet be required to pay universal service contributions presupposes that cable Internet is a telecommunications service. That, of course, is the open question that it is the purpose of this proceeding to consider.

There is, in any event, no universal service issue that requires Commission clarification. When cable operators offer a Title II service, they should -- and do -- pay universal service contributions. But when they provide an information service, any underlying telecommunications that they provide to themselves should be treated the same as the Commission treats all other information service providers that “self-provide” the underlying telecommunications. In such circumstances, the Commission has determined that universal service contribution requirements do *not* apply.^{117/} When and if the Commission decides to require contributions for the value of such self-provisioning, it should treat cable the same as all others -- including those who deliver Internet access via satellite, broadcast, wireless, and Part 15.

^{116/} 47 U.S.C. § 541 (a)(3) (“ . . . a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides”).

^{117/} *Report to Congress*, 13 FCC Rcd at 11528.

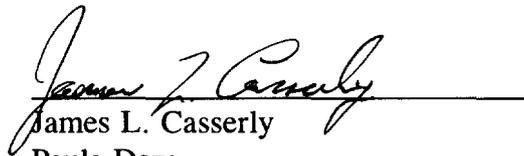
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IX. CONCLUSION.

For all of the foregoing reasons, Comcast applauds the Commission's long-standing policy of regulatory restraint regarding information services and urges the Commission to refrain from taking any action that would inhibit continued investment and innovation in cable Internet services.

Respectfully Submitted,
COMCAST CORPORATION

By:


James L. Casserly

Thomas R. Nathan, Esq.
Senior Vice President and General Counsel
COMCAST CABLE COMMUNICATIONS, INC.

Paula Deza
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.

Joseph W. Waz, Jr., Esq.
Vice President, External Affairs and Public
Policy Counsel
COMCAST CORPORATION
1500 Market Street, 35th Floor
Philadelphia, Pennsylvania 19102

701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

James R. Coltharp
Senior Director, Public Policy
COMCAST CORPORATION
2001 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20006

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Appendix A

Comcast Is Investing Aggressively To Provide Broadband Services and Faces Growing Competition in Every Market Endeavor.

Comcast Corporation is principally engaged in the development, management, and operation of broadband cable systems and the provision of programming content. Comcast is a Fortune 500 company, reporting revenues of \$5.8 billion for the nine months ending September 30, 2000, with 17,600 employees nationwide and over 11,000 in its cable operations alone. Since its founding in 1963, Comcast has grown from a local cable operator with 1,200 subscribers in Tupelo, Mississippi, to become the nation's third largest cable multiple systems operator ("MSO"), planning to serve 8.2 million customers by the end of the year.

Infrastructure Upgrades. Faced with intense competition in its core business from providers of Direct Broadcast Satellite ("DBS") services,^{1/} Comcast is responding by investing heavily in rebuilding and upgrading its systems. Currently, 81% of Comcast's customers are served by systems operating with bandwidths of 550 MHz or greater (allowing for 80 channels of conventional analog programming), and 64% are served by systems operating at 750 MHz or greater (110 channels).^{2/} Every month, Comcast upgrades plant serving nearly 250,000 more homes, mostly in areas served by recently acquired cable properties.

^{1/} DBS providers are signing up two of every three new subscribers to multichannel video programming services. See *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 99-230, Sixth Annual Report, 15 FCC Rcd 978, 1090 (2000) (MVPD subscribership increased by 4.3 million between June 1998 and June 1999; of those 4.3 million new MVPD subscribers, 2.8 million subscribed to DBS, while 1.3 million subscribed to cable). The Commission has also found that cable's share of the multichannel video programming marketplace has steadily declined over the past several years, from 90% in 1995 to 82% in 1999. *Id.* at 981, 1090. See also *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 00-132, Comments of the National Cable Television Association at 9-10 (more than 80% of MVPD subscriber growth between June 1999 and June 2000 went to DBS).

^{2/} Frequency requirements vary for different services. Digital video channels do not require the same 6 MHz per channel that is used for analog video. The limited bandwidth of the cable plant is increasingly shared with services other than video, including Internet access, program guides, and more.

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Comcast is committed to rebuild its systems in order to provide its customers with a full range of communications services, including new broadband offerings. These efforts have enabled it to compete effectively with DBS providers and a host of new, well-funded wireline overbuilders. Comcast, for example, has succeeded in quickly upgrading its Baltimore metro cable systems (covering Baltimore County, Howard County and Harford County, Maryland), is rapidly upgrading its recently acquired D.C. metro systems (in Arlington, Alexandria, Prince George's and Montgomery Counties), and looks forward to repeating that success with Washington's District Cablevision upon transfer of its franchise to Comcast. Comcast's competitive challenge in metropolitan Washington, D.C. will require extensive investment as well as significant operations and marketing efforts. As *Cablevision* recently explained:

[T]he bottom line is the Washington, D.C. system remains one of the sketchiest urban cable properties in the country. For example, there's still no cable-modem service in D.C., even as Verizon (formerly Bell Atlantic) continues to sign up thousands of DSL customers. Comcast has the unenviable task of trying to win back those early adopters someday. That won't be cheap. Or easy.^{3/}

For Washington's District Cablevision to be successful, Comcast must invest heavily in rebuilding the system, adding new programming options, and offering new services such as high-speed cable Internet service, as well as IP telephony, video-on-demand and interactive television. The direct beneficiaries of these competitively driven enhancements will be the residents of Washington, D.C. As *The Washington Post* observed, "if Comcast can repeat its Baltimore County success in the Washington area, it will be a significant gain for most local cable subscribers."^{4/} Comcast intends to rebuild and upgrade 85% of its newly acquired

^{3/} Michael Grebb, *Brian's D.C. Adventure: Comcast is taking over one of cable's worst-reputed systems*, CABLEVISION, Sept. 11, 2000, at 38.

^{4/} Christopher Stern, *Comcast Makes Its Play*, THE WASHINGTON POST, Aug. 28, 2000, at F17.

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systems within the next 18 months and plans to complete many upgrades within a greatly accelerated four- or five-month period.^{5/}

Digital Services. Comcast's substantial investments and rapid progress in upgrading its plant are driven by its commitment to supply a broad array of services that share a common platform. Comcast means not only to offer better cable service (more channels, better picture quality, and greater reliability) and to introduce cable Internet service wherever possible, but also to use its digital platform to support a host of new services including video-on-demand, IP telephony, interactive television, home networking, and transaction services.

Comcast's investment of nearly \$3.2 billion in fiber optics and nationwide systems rebuilds since 1996 has enabled it to deploy an array of new digital services.^{6/} As a direct result of this investment, the initial Comcast Digital Cable Service, launched in July 1998, offers more than 170 channels of programming with DVD-quality picture, CD-quality sound, and an interactive on-screen guide, for \$9.95 per month.^{7/} This past August, Comcast launched a digital basic tier that gives customers thirty-three additional channels as part of their digital cable service for just \$5 more than the cost of the existing Comcast Digital Service. The new service, "Comcast Digital Plus," offers a total of 250 channels, with forty-five premium channels, and is available in approximately forty Comcast systems. As a result of

^{5/} See Monica Hogan, *Comcast Execs Vow to Keep the Pedal to the Metal*, MULTICHANNEL NEWS, Sept. 18, 2000, at 16.

^{6/} This investment has been financed by investors and has been taken solely at Comcast's risk. Although Comcast anticipates a continued high level of consumer response to its new services, Comcast is not guaranteed any particular rate of return for its investments. Indeed, in today's highly competitive marketplace, Comcast neither expects nor receives any assurances whatever of financial success.

^{7/} The service also offers up to thirty-five premium movie channels (*e.g.*, ten HBO screens compared to the two or three on an analog system) and thirty-eight channels of Comcast Home Theatre pay-per-view, which provides a virtual multiplex theatre in the home, as well as over forty commercial-free digital music channels. Its interactive on-screen program guide allows customers to search for programs by title, time, channel, or category, and provides both greater service and greater choice to subscribers. See Comcast Cable Communications Inc., *Comcast Exceeds One Million Digital Set-Top Boxes* (Aug. 8, 2000) (press release), http://www.comcast.com/press_room/press_releases; Comcast Cable Communications Inc., *Comcast Introduces Robust Digital Product* (Aug. 1, 2000) (press release), http://www.comcast.com/press_room/press_releases.

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these kinds of offerings, Comcast is a recognized industry leader in providing digital cable services, and has now exceeded one million subscribers for its digital video service.

During the past year, Comcast has increased its focus on an accelerated rollout of its high-speed cable Internet service through Comcast@Home.^{8/} Last year at this time, Comcast@Home served 100,000 customers, up from just 25,000 in 1998. By the end of September 2000, that number had grown to more than 300,000. With accelerating installation rates, Comcast expects to add 8,000 new customers per week in December, reaching a total of 370,000 Comcast@Home subscribers by year's end.^{9/} Comcast's high-speed cable Internet service is now available to more than 4.4 million households in over twenty markets.^{10/} As explained in the body of these comments, Comcast has recently announced an agreement to conduct a trial with an unaffiliated ISP, Juno Online Services, Inc.

Comcast's deployment of broadband services also includes the provision of wired local exchange service and a continued leadership role in developing IP telephony. Over the next two years, Comcast plans a comprehensive entry into more than half a dozen telephone markets.

^{8/} See, e.g., Mike Farrell, *Comcast Portfolio Generates Net Gains*, MULTICHANNEL NEWS, Mar. 6, 2000, at 52 (Comcast executives said to "plan an all-out push to double cable-modem subscribers in 2000"). Comcast@Home delivers unlimited high-speed broadband Internet services directly to a customer's personal computer using a coaxial cable connection and cable modem. Comcast@Home also provides local content, e-mail, personal web space, chat rooms, and round-the-clock, toll-free, customer support.

^{9/} See Comcast Cable Communications Inc., *Comcast Reports Strong Third Quarter Results* (Nov. 6, 2000) (press release), http://www.comcast.com/press_room/press_releases/Comcast3Q2000Earnings.html. Comcast also is an acknowledged leader in the provision of free high-speed cable Internet services to schools and libraries. Last month, Comcast announced the connection of its 1000th school with a free high-speed cable modem, as well as an initiative to train teachers in using technology. See Comcast Cable Communications, Inc., *Summit Hall Elementary Is 1000th School Wired With Free High-Speed Internet Access by Comcast* (Nov. 3, 2000) (press release). Comcast now provides free high-speed Internet services to approximately 100 public libraries.

^{10/} These markets are Albuquerque, NM; Harrisburg and metropolitan Philadelphia, PA; North and Northwest New Jersey; Dover, Delaware; metropolitan Baltimore, MD including Baltimore, Howard and Harford counties and Chesapeake Bay areas; Montgomery County and Prince George's County, MD; Arlington, Alexandria and Prince William County, VA; Chamblee, Augusta and Savannah, GA; Huntsville, Tuscaloosa and Mobile, AL; Panama City and Sarasota, FL; Flint, MI; Detroit and Southeast, MI; Indianapolis, IN; Independence, MO; Sacramento, CA; and Orange County, CA. Comcast is also scheduled to launch @Home service in October 2000 in several markets, including Little Rock, AR and Knoxville and Chattanooga, TN.

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Currently, Comcast provides local telephone service primarily through telephony operations it has gained via system acquisitions. Comcast serves 12,000 circuit-switched telephony customers located principally in Prince George's County, Maryland and Alexandria, Virginia.^{11/} Comcast's other local telephone operations include service to multiple dwelling units in Ft. Lauderdale, Florida and Baltimore, Maryland with custom and CLASS features, as well as regional toll usage services such as intraLATA toll services.^{12/} Comcast also provides interexchange telecommunications services to business and residential customers in more than a dozen states through Comcast Business Communications, Inc. d/b/a Comcast Long Distance. Comcast continues to add telephony customers and expects to expand its telephony offerings in the future.^{13/}

Comcast is also a leader in the development of IP telephony, a capability now being added to the CableLabs specification for PacketCable[®]. Comcast continues to believe that PacketCable[®] will ultimately emerge as the leading multimedia technology delivery mechanism. As Comcast Vice Chairman Julian Brodsky has stated: "We believe in IP for the longer haul."^{14/} The company is currently conducting an IP telephony trial in New Jersey, and commercial deployment will depend upon resolution of a number of complex business issues,

^{11/} In Alexandria, Virginia, Comcast provides local telephony service that includes a range of custom and CLASS calling features such as call waiting and caller ID, with no usage-based features such as measured toll or long-distance service.

^{12/} These operations were begun in 1998, and employed traditional circuit-switched architecture, rather than hybrid fiber-coaxial technology, using a combination of Lucent and Nortel switching platforms.

^{13/} In May 1999, Comcast announced its agreement with AT&T to collaborate in bringing competitive local exchange service through AT&T-branded telephony to Comcast markets. The agreement between Comcast and AT&T provides that the venture will begin once AT&T has concluded separate telephony agreements with at least two other non-AT&T affiliated multiple system operators. Comcast Cable Communications Inc., *AT&T and Comcast Agree to Swap Cable Systems, Comcast to Add 2 Million New Subscribers, Two Companies to Collaborate in Offering Cable Telephony* (May 4, 1999) (press release), http://www.comcast.com/press_room/press_releases. See also *Ma Bell's Plan is to Serve Up TV, Phone via Cable*, THE WALL STREET JOURNAL, May 6, 1999, at B1. Comcast is continuing to pursue this collaborative approach to local telephony but notes that delays in AT&T's negotiation of the lead separate telephony agreements with the other MSOs have, in turn, delayed negotiation of its agreement with Comcast.

^{14/} *Most MSOs Still Waiting to Enter Residential Phone Market*, COMMUNICATIONS DAILY, Sept. 20, 2000, at 3.

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including billing and customer service. IP telephony will provide an additional mechanism for increased customer choice and will become yet another important competitive factor in the near future.

In addition to new lines of business such as high-speed cable Internet services and telephony, Comcast is in various stages of developing and deploying other new services for its customers such as video-on-demand, interactive program guides, advanced home shopping, and digital video recording features. Comcast Cable Communications President Steve Burke recently stated: "Our goal is to launch one or 2 major products every year for the next 5 to 10 years and turn our company into a new products company."^{15/}

Competitive Circumstances. Comcast faces intense competition in every segment of its business. In markets for multichannel video programming, DirecTV and Echostar are major players. In high-speed Internet, numerous ISPs (especially AOL) are using Verizon's DSL service as the basis for services that compete directly with Comcast@Home. RCN is rapidly constructing competing wireline systems and has already announced plans that will enable it to provide cable and cable Internet services in approximately half of Comcast's territory.^{16/} In addition, companies such as Knology and Digital Access provide, or soon will provide, competing broadband wireline services in Comcast markets.

^{15/} Alan Breznick, *Cable Operators Aim for Steady Flow of Digital Services*, COMMUNICATIONS DAILY, Sept. 22, 2000, at 3.

^{16/} See, e.g., RCN Corporation, *RCN Expands Presence in the Philadelphia Region* (Oct. 2, 2000) (press release), <http://www.rcn.com/investor/press/10-00/10-02-00/index.html> (viewed Nov. 27, 2000) ("RCN is rapidly establishing its footprint in the greater Philadelphia region").

CERTIFICATE OF SERVICE

I, Dallas Fields, hereby certify that on this 1st day of December, 2000, a copy of the foregoing Comments were served on the following parties listed below via messenger:

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, S.W.
Washington, D.C. 20554

Johanna Mikes
Federal Communications Commission
Common Carrier Bureau
445 12th Street, S.W.
Room 5-C163
Washington, D.C. 20554

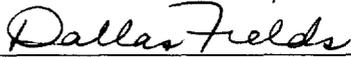
Christopher Libertelli
Federal Communications Commission
Common Carrier Bureau
445 12th Street, S.W.
Room 5-C264
Washington, D.C. 20554

Carl Kandutsch
Federal Communications Commission
Cable Services Bureau
445 12th Street, S.W.
Room 3-A832
Washington, D.C. 20554

Douglas Sicker
Federal Communications Commission
Office of Engineering and Technology
445 12th Street, S.W.
Room 7-A325
Washington, D.C. 20554

Robert Cannon
Federal Communications Commission
Office of Plans & Policy
445 12th Street, S.W.
Room 7-B410
Washington, D.C. 20554

International Transcription Service
445 12th Street, S.W.
CY-B402
Washington, D.C. 20554



Dallas Fields