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Submitted to:
Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
Attention: GN Docket No. 00-185
Room TW-B204
445 12th St. SW
Washington, D.C. 20554

Comments on:
Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities
September 28, 2000 (GN Docket No. 00-185)

Submitted by:
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Citizens for a Sound Economy Foundation (CSE Foundation) is a non-profit, 501 (c)(3), non-partisan research and education foundation. For more than fifteen years, CSE Foundation has been educating consumers and the policy community about market-based solutions to public policy problems. CSE Foundation respectfully submits the following comments to the Federal Communications Commission's (the Commission's) docket, "Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities."

It is unclear that "open access" is a desirable policy goal. Many commentators wish to delineate commission-mandated, or "forced access," from an open access reached through private agreement. Such a distinction concedes the optimality of open access to cable lines, but encourages it to be accomplished within the framework of private contract and not regulation.

It is easy to recognize why private contracts would be preferred as a means to achieve open access. The regulatory disputes and complexity of unbundled network element (UNE) pricing in telecommunications "deregulation" is cause for great restraint. To impose a similar set of conditions on the nascent high-speed Internet market would be quite disastrous.

However, such a position fails to explain why open access would be beneficial to consumers. With the investment in myriad rival networks, such as Digital Subscriber Line (DSL), two-way satellite, and wholly-new cable systems, it is likely that consumers will benefit more from the choices provided by the current policy of "un-regulation."

The access debate is confusing, because ISPs actually sell two things: *proprietary content* and *transport to the Internet*. In popular discussion, the two arguments often are lumped together to justify whatever particular form of access regulation a particular party favors.

In practice, forced, or mandated access, will limit consumer choice of transport options. This will eliminate market-based pricing and reduce private incentives for future network upgrades.

After an assessment of the current market for high-speed Internet access, Citizens for a Sound Economy Foundation respectfully requests that the Commission take no action at this time.

Access to Content

The first rationale for forced access is to prevent cable companies from restricting the content their Internet customers can access. According to this view, a cable company would deny other ISPs access to its cable lines and filter online content. The company would do so in an effort to secure licensing contracts from content providers. Under such a scenario, access to Internet sites would be restricted to sites that pay the cable company's ISP a fee. Consumers would pay inflated prices for restricted service and less innovative content.

Forced access advocates predict this is the world that will soon exist unless the cable company's ISP is forced to give competitors "first-screen" access to customers and allow for direct billing from rival ISPs.[1]

"First-screen" access regulation would require cable companies to offer every competing ISP available through the cable system as an option at the time of sign-up or installation. In this way, "first-screen" regulation would become a marketing tool for competing ISPs; they would be guaranteed consideration from customers who have already purchased a broadband connection. This form of forced access regulation would provide a substantial supplement to the advertising budget of a competing ISP.

Direct billing regulation would be used in conjunction with "first-screen" to further encourage customers to subscribe to a competing ISP. Proponents of forced access contend that two different payments, one to the cable company and the other to the competing ISP, would make consumers less likely to subscribe to a competing ISP. To avoid this outcome, direct billing would allow competing ISPs to consolidate the cable company's charge for Internet access and their own price for content into one bill for the customer. The combination of "first-screen" regulation and direct billing would save customers the trouble of discovering an ISP and then making an additional subscription payment.

Are such extreme remedies necessary? Would cable broadband companies restrict content in order to collect licensing fees from competing content providers? Forced access supporters point to this May, when Time Warner Cable blocked ABC from its customers' television screens for 36 hours during negotiations with ABC's parent, Walt Disney Corporation. Consumers were livid over the blockage, and Time Warner was forced expeditiously to end the blackout.

Inherent differences between the medium of television and broadband Internet make a similar blackout over the Internet unlikely. Customers who buy Internet service expect to be able to access just about anything on the web. They pay extra only if a particular content provider decides to charge for access to items on its web site. Even in the absence of access regulation, customers already have affordable access to the content produced by competing ISPs, whether they use dialup Internet service or cable broadband.

Dialup customers have many options from which to choose. The more affordable ones, such as Starpower Communications, provide simple Internet access for a fee of $13.95 a month. Others, such as AOL ($21.95) and Earthlink ($19.95), are priced higher, but provide more value-added services to the consumer. As Table 1 shows, dialup customers who choose AOL are willing to pay an $8 premium for its proprietary content and software.

The story is much the same for the broadband customer. A consumer who pays $39.95 for Comcast's cable broadband can pay $9.95 for AOL's "Bring your own service package," which is accessed over the Internet. Consumers pay the additional money for the value added service—just as in the dial-up model. And in percentage terms, the cable broadband deal is actually better. In neither case is there anything to prevent the customer from accessing AOL.

[1] Technology Daily AM - AOL, Time Warner Meet The FCC (September 22, 2000).

Table 1	Dial-Up Model	Cable Broadband
Price for Internet Access	$13.95[2]	$39.95[3]
Price for Value-Added Content Package from a Competing ISP	$8.00[4]	$9.95[5]
Price of Value Added Content as a % of Original Price	57.35%	24.91%

The nature of the Internet and expectations of its users make content restriction an unwise business practice. Competition also exercises a powerful constraint on any cable provider that wants to restrict the content its customers can access. A cable company practicing this strategy would eventually lose many of its broadband subscribers to the telephone companies' DSL service, satellite, wireless, or even a rival cable company.

Internet Access

The other principal rationale for access regulation is to help independent ISPs compete with the cable company's ISP as they carry traffic from the cable system to the Internet. Two forms of regulation could accomplish this goal.

The cable company could be required to carry traffic between independent ISPs and cable subscribers at the same price and on the same terms as it carries traffic to its own, affiliated ISP. The price might be regulated, or it might simply equal the best price received by any ISP (including an affiliated ISP). To make such regulation work, cable companies would likely have to offer nondiscriminatory interconnection and let independent ISPs collocate equipment on the cable company's property. This form of forced access is analogous to the way incumbent local telephone companies must behave toward long-distance phone companies and independent ISPs that offer ordinary dial-up Internet access.

Another form of forced access would require the cable company to lease various elements of its network to independent ISPs at wholesale prices – or at least on the same terms as the cable company's own ISP. ISPs could then market their own, complete high-speed Internet service directly to customers. This is analogous to the way incumbent local telephone companies must

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[2] *https://www.erols.com/promo/signup.htm (starpower/erols pricing)*
[3] Nearly universal price for broadband cable. See http://www.athome.att.com/faq.html#howmuch (AT&T Broadband pricing, http://www.rr.com/rdrun/ (Time-Warner broadband pricing) and http://www.optimumonline.com/price (Cablevision broadband pricing)
[4] The $21.95 charged by AOL minus the $13.95 charged by "internet only" ISPs. *http://www.aol.com/info/pricing.htm (AOL pricing)*
[5] *Ibid.*

treat new competitors in local phone service and high-speed Internet service via the phone company's DSL facilities.

Either form of regulation might also be accompanied by a requirement that the customer has the right to choose any ISP when signing up for cable Internet service. The cable company might even be required to bill customers on behalf of the ISP, much like local phone companies do for some long-distance companies.

Access regulation theoretically might benefit consumers if cable companies had a monopoly on broadband communications. In such a situation, regulating the price the cable company charged to connect customers with ISPs, or regulating the prices the cable company charged ISPs to use parts of its network, could possibly lower customers' bills without impairing the cable companies' investment incentives. The wisdom of access regulation, therefore, depends largely on whether broadband communications is a monopoly.

Broadband is No Monopoly

The available evidence clearly indicates that broadband is far from monopolized. Multiple technologies and companies serve or will soon serve most of the country, even though the broadband market is in its infancy. Competitive price wars provide further evidence that competition is strong.

Customers Have Options

The FCC's 1999 Broadband Report revealed that, although cable companies have the lead in broadband subscribership, multiple companies and technologies are competing for residential consumers' business, including digital subscriber line (DSL) using phone lines, wireless, and satellite.[6] The most recent Broadband Report, issued in August 2000, confirms the robustness of residential broadband competition. Cable companies and DSL providers compete vigorously, with satellite and wireless options poised for major growth. The total number of broadband subscribers has risen seven-fold.

A better indication of competition than subscribership and market share statistics is the availability of competitive options. Incoming high-speed Internet service via satellite is available to most homes, provided a phone line is available for the uplink, and a new venture backed by Gilat Communications and Microsoft will soon offer two-way satellite broadband. Cable and DSL are expanding rapidly to cover more than 80 percent of U.S. homes. By 2004, wireless could be available to one-third of households, particularly in areas where cable or DSL technologies are too expensive to deploy.

Competition is even stronger than the figures in table 2 suggest, because many local areas have multiple providers offering one or more technologies. Cable "over-builders," or Broadband

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[6] Federal Communications Commission, *Broadband Report 1999*, CC Docket No. 98-146 (January 28, 1999). For more background on broadband and a more detailed discussion of the 1999 Broadband Report, see Jerry Ellig, "Broadband Forced Access: An Idea Whose Time Has Gone," CSE Foundation Issue Analysis No. 99, December 16, 1999.

Service Providers, have garnered more than $10 billion from Wall Street investors over the past two years and currently operate in New York, Los Angeles, Philadelphia, Boston, San Francisco, and Washington D.C. Such firms have targeted the largest 20 U.S. markets for entry.[7]

Table 2

	Subscribers 1998	**Subscribers 1999**	**Projected Subscribers 2004**	**Current Availability**	**Projected Availability 2004**
Cable	350,000	2.3 million	15.2 million	50 million U.S. households (49%)	84% of U.S. households
DSL	25,000	500,000	13 million	25.7 million households (25%)	80% of U.S. households
Satellite	Not avail.	60,000	1.2-4.6 million	National (1-way)	National (2-way)
Wireless	0	Not avail.	3-4.4 million	Largely under construction	13-34% of households

Source: Calculated from data in the FCC's 1999 and 2000 Broadband Reports.

Price Wars

The behavior of broadband companies in the marketplace also reveals strong competition. In September, Verizon and SBC Communications announced ambitious plans to attract broadband subscribers through substantial price reductions. Verizon announced price cuts of 20 percent or more for DSL service and a waiver of the $99 modem cost in 14 states. Similarly, SBC Communications announced a $20 a month reduction in its enhanced (1.5 megabits per second) DSL service and three free months of service for Prodigy PC and DSL subscribers.[8]

These price cuts follow a promotional campaign recently launched by BellSouth. This summer, BellSouth dropped its charge for DSL modems and now offers the first month of DSL service free. Also, current BellSouth ISP customers that upgrade from dial-up connection get their first two months of DSL at no charge.[9]

Further price reductions in the broadband market are expected in the near future. AT&T Broadband offered four promotional cable modem packages in its 17 markets this fall. The packages range from 2 or 3 months of free service to 6 months at $19.95 per month. It is likely that these offers will be available for both the Excite@Home and Road Runner cable modem networks.[10]

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[7] Alan Breznick, "New Broadband Service Providers Scare Cable Industry," *Communications Daily.* (September 13, 2000), p. 2.

[8] *Television Digest* (September 4, 2000). Warren's Publishing, Inc.

[9] *Communications Daily* (September 5, 2000). Warren's Publishing, Inc.

[10] *Ibid.*

Competitive Parity.

A final argument for forced access is that public policy should treat all competitors the same. One version of this argument arose in the context of merger approvals, when some forced access proponents suggested that forced access should be a condition attached to the AT&T/TCI and AOL/Time Warner mergers. Others argued that such a mandate should come only as a general policy applied to all cable companies. Still others suggest that since telephone companies are subject to forced access, a "level playing field" requires a similar mandate on cable companies – and, by implication, satellite and wireless broadband providers as well.

Advocates of a "level playing field" have a valid point; there is little justification for subjecting different players to different regulatory mandates. But given the highly competitive nature of the broadband market, the most appropriate policy would be to subject none of the players to forced access regulation. Rather than expanding this regulation to cable, satellite, and wireless, regulators should remove the forced access mandate that currently applies to telephone companies' DSL offerings.

The Results of Un-regulation are Encouraging

The purpose of forced access regulation is to control monopoly. Broadband today is anything but a monopoly. Telephone companies, cable TV companies, electric utilities, satellite firms, and wireless vendors are all positioning themselves to offer broadband service to residential customers. It is unlikely any one technology or company will dominate. Once all these firms have facilities in place, they will have little choice but to compete for customers if they want to make money on their investments. For this reason, there is little reason to impose forced access on any broadband provider.

Respectfully Submitted,

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