

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Applications for Consent to the)	
Transfer of Control of Licenses)	
)	
COMCAST CORPORATION and)	
AT&T CORP.,)	
)	
Transferors,)	MB Docket No. 02-70
)	
To)	
)	
AT&T COMCAST CORPORATION,)	
)	
Transferee.)	
_____)	

DECLARATION OF DENNIS W. CARLTON

1. I, Dennis W. Carlton, am Professor of Economics at the Graduate School of Business of The University of Chicago. I have served on the faculties of the Law School and the Department of Economics at The University of Chicago and the Department of Economics at the Massachusetts Institute of Technology. I specialize in the economics of industrial organization, which is the study of individual markets and includes the study of antitrust and regulatory issues. I am co-author of Modern Industrial Organization, a leading textbook in the field of industrial organization, and I also have published numerous articles in academic journals and books. In addition, I am Co-Editor of the Journal of Law and Economics, a leading journal that publishes research applying economic analysis to industrial organization and legal matters. In addition to my academic experience, I am a consultant for and former President of Lexecon Inc., an economics consulting firm that specializes in the application of economic analysis to legal and regulatory issues.

2. I have been asked by SBC Communications Inc. and Qwest Communications International to review and comment on the declaration filed in this proceeding by Prof. Robert Gertner of the Graduate School of Business of the University of Chicago regarding the potential harm to competition resulting from the proposed merger of AT&T Broadband and Comcast, in light of my previous testimony in support of the elimination of regulation faced by ILECs in the provision of DSL services.¹

3. I understand that:

- The proposed transaction combines the first and third largest operators of cable systems, which together will account for 32 percent of cable television subscribers and 26 percent of subscribers to paid video programming services in the United States.
- The proposed transaction creates the single largest provider of residential broadband Internet access services in the United States, accounting for 34 percent of cable residential broadband subscribers and 23 percent of combined cable and DSL subscribers.

4. Since the AT&T and Comcast cable franchise areas do not overlap, the transaction does not reduce the number of providers of video programming services or broadband Internet services available to any consumer and so raises no antitrust concerns regarding horizontal competition. However, even if a transaction raises no antitrust concerns regarding horizontal competition, it is well understood that it could raise vertical concerns that translate into a reduction in competition and a harm to consumers.

1. Declaration and Reply Declaration of Kenneth Arrow, Gary Becker and Dennis Carlton, *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*: Before the Federal Communications Commission, Washington DC, Docket No. 00-185, December 1, 2000 (Declaration), and January 10, 2001 (Reply Declaration) (submitted on behalf of Verizon).

5. Professor Gertner's declaration clearly explains the economic theories under which vertical concerns could arise in this case. Professor Gertner explains how the transaction may harm competition by creating the incentive and ability of AT&T/Comcast to foreclose or otherwise disadvantage suppliers of video programming services and/or broadband Internet content services that are unaffiliated with the merged cable systems. This, in turn, can adversely affect competition in the provision of multichannel video distribution services and/or broadband Internet access services.

6. As an example of the theory explained by Professor Gertner, a transaction could adversely affect competition where carriage by a large cable operator is required for a supplier of video programming and/or broadband Internet content to realize important scale economies. Such a cable operator could be able to determine which firms will succeed in the provision of video or broadband content and can extract some of the resulting monopoly profits. By creating market power in the provision of video content, behavior of this type can raise the cost of content to other cable systems and thus harm consumers served by these systems. Similarly, such behavior can create market power in the provision of broadband Internet content. This, in turn, can disadvantage suppliers of DSL services, such as SBC and Qwest, that compete with cable modem services supplied by AT&T/Comcast.

7. The foreclosure theories of the type discussed by Professor Gertner are well-recognized in the economic literature and are the focus of substantial concern among antitrust enforcement agencies.² An empirical assessment of the potential adverse effect of the transaction on competition, given the limitations of available data, likely requires access to non-

2. See, for example, M. Winston, "Tying, Foreclosure, and Exclusion," 80 *American Economic Review* 1 (1990); D. Carlton, "A General Analysis of Exclusionary Conduct and Refusal to Deal – Why Aspen and Kodak are Misguided," 68 *Antitrust Law Journal* 659 (2001); and J. Choi and C. Stefandis, "Tying, Investment and Dynamic Leverage Theory," 32 *Rand Journal of Economics* 52 (2001).

public information. I urge the Commission to use its investigatory powers to analyze carefully the empirical importance of the issues raised by Professor Gertner.

8. If the Commission determines that the transaction raises legitimate foreclosure-related concerns, then relaxation of regulations now faced by ILECs in the provision of DSL services is likely to reduce vertical antitrust concerns by making DSL a more potent competitive force. While I have advocated elimination of these regulations in the past for entirely different reasons, a conclusion by the FCC that the proposed transaction raised significant foreclosure concerns would only serve to heighten the rationale for elimination of these regulations.

9. Despite competition from cable modem services, which account for roughly two-thirds of mass market broadband Internet services, ILECs face a variety of FCC regulations relating to their provision of DSL services. Among other things, these regulations require ILECs to share local loops with competitive DSL providers at favored rates, provide DSL service on a wholesale basis for resale, and establish tariffs with cost-based rates.

10. Such regulations are likely to deter investment in DSL services and are likely to harm competition between DSL and cable modem services. As I have explained in other testimony before the Commission (co-authored with Kenneth Arrow and Gary Becker), elimination of the regulations that apply to DSL but not to cable modem services would likely promote competition between DSL and cable modem services. By making DSL a more potent force, foreclosure concerns associated with this transaction are mitigated. In that statement, we concluded that:

The potential harm from application of these rules in the presence of competition between technologies is heightened due to rapid innovation in the provision of broadband Internet access. These circumstances complicate the design of efficient regulation and risk delay in the development and deployment of new services, which are important contributors to improvements in consumer welfare. Under these circumstances, competition, not regulation,

should determine which technologies and services succeed in the marketplace.³

11. Elimination of these regulations would be likely to enhance the ability of ILECs to compete in the provision of broadband Internet services without raising significant risks of harm to competition. A finding by the FCC that the proposed transaction raises risk of harm to competition further reinforces the need to eliminate these rules.

12. This concludes my declaration.

3. Declaration of Kenneth Arrow, Gary Becker and Dennis Carlton, December 1, 2000, ¶37.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on April 26, 2002.

A handwritten signature in cursive script, appearing to read "Dennis W. Carlton". The signature is written in black ink and is positioned above a horizontal line.

Dennis W. Carlton

CERTIFICATE OF SERVICE

I, Daniel McCuaig, do hereby certify that on this 29th day of April, 2002, I have caused true and correct copies of the foregoing Comments of Qwest Corporation to be served by hand delivery upon the following parties:

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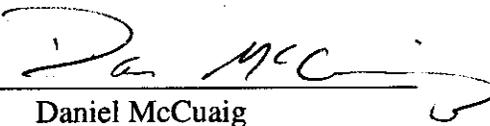
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