

internet access and digital phone service to the mass market.¹⁵⁹ Time Warner Cable's Roadrunner high-speed cable internet access service currently serves 4.8 million subscribers, representing 25% of the company's service-ready homes.¹⁶⁰ The company's Digital Phone VoIP service has been increasingly popular, growing by 880,000 subscribers in 2005 to a total of 1.1 million subscribers, representing 7% of eligible homes.¹⁶¹

In attracting enterprise customers, the company highlights its expertise in establishing Metro Ethernet networks within the states in which it has a presence. Time Warner's broadband network offerings feature point-to-point connectivity, point-to-multipoint connectivity, teleworker aggregation, or Internet access to business customers.¹⁶² Time Warner has aggressively targeted enterprise customers, especially through a variety of Ethernet business services, such as private line, private LAN and broadband Internet connections. Time Warner's products take advantage of its extensive metropolitan fiber networks, which are independent of existing telecom providers.¹⁶³ Some of its products, such new storage solutions, cater to the specific disaster recovery needs of the financial sector.¹⁶⁴ Cable companies like Time Warner are increasingly seen by others in the industry as viable competitors, especially for business

¹⁵⁹ *Id.*

¹⁶⁰ Press Release, Time Warner, Time Warner Inc. Reports Results for 2005 Full Year and Fourth Quarter (Feb. 1, 2006), *available at* <http://ir.timewarner.com/downloads/4Q05earnings.pdf>.

¹⁶¹ *Id.*

¹⁶² Time Warner Cable: Products and Solutions: Enterprise Technology, *available at* <http://www.twcbbroadband.com/solutions/enterprise.cfm>.

¹⁶³ International Telecommunications, Intelligence Telecommunications, ESPICOM Business Intelligence Ltd. (Feb. 8, 2005.) ("Time Warner Cable of New York and New Jersey offers Optical Ethernet and Storage Services using Nortel Solutions.").

¹⁶⁴ *Id.*

data.¹⁶⁵ Time Warner Cable's broadband networking solution for business provides service to approximately 500 enterprise customers and the company claims over 211,000 business customers in total as of the fourth quarter 2005.¹⁶⁶

Similarly, **Cox Communications** is a strong competitor for both enterprise customers and the mass market, with an overall customer base of 6.6 million including 6.3 million basic cable subscribers.¹⁶⁷ Cox claims to have been the first company to offer a bundle of telephone (both VoIP and circuit-switched), high-speed internet and digital cable television over a single broadband network, and currently over 1 million Cox customers have subscribed to their "triple play" package.¹⁶⁸ Cox added online accessibility at no extra charge to its VoIP service in its Middle Georgia, Florida Gulf Coast and Central Florida markets allowing customers to listen to voice mails online, view their call log of incoming and outgoing calls, save voice messages on their PC, and forward voice mails as an e-mail attachment.¹⁶⁹ In addition to Florida and Georgia,

¹⁶⁵ Communications Daily, Nov. 12, 2004, *available at* 2004 WL 60707756 ("To the contrary, cable companies are actively competing in the high-speed data market for business customers,' BellSouth said: 'Cable companies are presently providing high-speed data services to several hundred thousand business customers across the nation ranging from one-employee home offices to Fortune 500 companies and are actively expanding their range of data services to small, medium and enterprise business customers'.").

¹⁶⁶ Press Release, Time Warner Cable, Road Runner Business Class Further Penetrating Growing Business Market With Customized Offerings (July 8, 2004), *available at* <http://www.timewarnercable.com/InvestorRelations/PressReleases/TWCPressReleaseDetail.aspx?PRID=139&MarketID=0>; Press Release, Strong Continued Customer Growth for Time Warner Cable Business Services (Feb. 8, 2006), *available at* <http://www.rrbiz.com/RoadRunner/docs/2000/1955.pdf>.

¹⁶⁷ Cox Comm.: Corporate Profile, *available at* <http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-homeProfile>.

¹⁶⁸ Press Release, Cox Communications, Cox Communications Serves Over One Million Triple Play Customers (Nov. 7, 2005), *available at* <http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=779540&>.

¹⁶⁹ Press Release, Cox Communications, Cox Digital Telephone Customers Enjoy New Features, Functionality: Cox Converges Telephone and Internet Technology to Enhance Phone Customers'

Footnote continued on next page

Cox's telephony markets in the BellSouth region also include New Orleans, Baton Rouge and Lafayette, Louisiana.¹⁷⁰

Cox competes to supply voice and data services to the enterprise segment through its Cox Business Solutions organizations, and like other competitors, touts its nationwide IP network.¹⁷¹ It provides local and long distance voice, toll-free services, and data services (including Internet access) to over 100,000 businesses.¹⁷² Cox has added 40,000 business customers since 2003 and now has 140,000; business revenues jumped 26 percent last year to \$395 million.¹⁷³ While it has

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Functionality (Nov. 29, 2005), *available at* <http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=790926&>.

¹⁷⁰ *Id.*

¹⁷¹ Cox Comm., More Reasons to Choose Cox: More Reliability, *available at* <http://www.coxbusiness.com/index.html>.

¹⁷² Frost & Sullivan, Cable Telephony Services Markets at 1-29 (2004) For example, Cox recently won contracts with Technical Software Services, Lane Construction, and America Family Online. *See Cox Case Study on Medium Business: Technical Software Services, Pensacola, Fl, available at* <http://www.coxbusiness.com/casestudies/mdbusiness/techsoft.html> ("There is no provider with communications more reliable and stable than Cox," said [Internet and Application Software Provider, Techsoft's Dan Shanholtz]. "Their fiber-based communications give us the reliability and stability we need to maintain critical operations for ourselves and our clients."); Cox Case Study on Large Business: Lane Construction/Virginia Department of Transportation, Chantilly, Virginia, *available at* <http://www.coxbusiness.com/casestudies/lgbusiness/vadot.html> ("Cox Business Services [presented to Lane Construction and VDOT] the Wireless Plant Extension, which delivered Cox Business Internet service over wireless transport. This 'last mile' wireless solution was enthusiastically received by both Lane and VDOT. . . 'Not only do we enjoy the ease of access to advanced technology Cox gives us, but also the convenience of getting one bill and dealing with one company for customer care and technical questions.' Glenn D. Gorman, Job Engineer Lane Construction); Cox Case Study on Small Business: America Family Online, Niceville, Fl, *available at* <http://www.coxbusiness.com/casestudies/smbusiness/americanfamily.html> ("American Family Online (AFO) is one of America's original national filtered Internet service providers... 'Prior to partnering with Cox,' said [founder, Stephen] Ensley, 'we had several other providers, and we were not satisfied at all in terms of service or response. Like a lot of smaller businesses, we're trying to build and grow by making good business decisions, by not spending too much, and by choosing the right partners. We saw Cox Business Services as such a partner.'").

¹⁷³ *See Not Just TV: Cable Competes For the Office Domain*, N.Y. Times, Sept. 27, 2005, *reprinted at* <http://www.coxbusiness.com/pressroom/recentmedia/09-27-05-nytimes.html>.

traditionally focused on small and mid-sized business customers, it has increasingly focused on larger customers.¹⁷⁴ Like others, Cox also offers VoIP service to enterprises.

Comcast has 21.5 million cable customers in 35 states, and has been particularly aggressive in rolling out VoIP service to its subscriber base.¹⁷⁵ In 2005, Comcast launched Comcast Digital Voice, its IP-enabled phone service that provides unlimited local and domestic long distance calling as well as Voice Mail, Caller ID and Call Waiting features to 25 markets serving 16 million homes.¹⁷⁶ Comcast expects that by the end of 2006, its Digital Voice service will add 1.0 million new subscribers and the service will be available in approximately 27 million homes.¹⁷⁷ Comcast currently has 1.3 million phone customers (including both circuit-switched and Digital Voice subscribers)¹⁷⁸ and plans to roll out discount “triple-play” bundles of video, data and voice products nationwide in 2006.¹⁷⁹ The aggressive VoIP rollout “gives Comcast a big competitive edge on such Baby Bell rivals as AT&T and Verizon, now furiously building new fiber-rich networks over which to deliver cable-like video and next-generation broadband solutions.”¹⁸⁰

¹⁷⁴ See Press Release, Cox Business, Cox Enterprise Presents Even “Bigger” Opportunity for Cox Business Services in 2004 (Mar. 29, 2004), available at <http://www.coxbusiness.com/pressroom/pressreleases/2004-0329.html>.

¹⁷⁵ Comcast: Product Fact Sheet, available at <http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-factsheet>.

¹⁷⁶ SEC Form 10-K, Comcast Corp. (2005).

¹⁷⁷ See *id.*; Press Release, Comcast, Comcast Reports Fourth Quarter and Year End 2005 Results (Feb. 2, 2006), available at <http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=811813&highlight=>.

¹⁷⁸ See Press Release, Comcast, Comcast Reports Fourth Quarter and Year End 2005 Results (Feb. 2, 2006), available at <http://www.cmcsk.com/phoenix.zhtml?c=147565&p=irol-newsArticle&ID=811813&highlight=>.

¹⁷⁹ Communications Daily, Feb. 6, 2006, available at 2006 WLNR 1940955.

¹⁸⁰ *Id.*

Comcast's business offerings focus on its network capability. It offers Internet access, managed network services, VPN to connect smaller offices, branch locations, and off-site employees.¹⁸¹ Comcast's network delivers service in 41 states, including presence in 22 of the top 25 MSAs, and has over 90,000 miles of fiber-optic cable nationwide.¹⁸²

Like other cable providers, **Charter Communications** has been "leveraging digital technology by offering bundled video, data and voice services — commonly referred to as the 'triple play.'" ¹⁸³ Indeed, "[g]rowth in Charter's telephone customer base accelerated throughout 2005, with a 35% increase in customers during the fourth quarter."¹⁸⁴ As of the end of 2005, the company had 121,500 telephone customers and had expanded its telephone service footprint to over 25% of total homes passed to a total of 2,918,000 homes, and the Company currently plans to pass 6 million to 8 million homes by year end 2006.¹⁸⁵ Charter Business, a subsidiary of Charter, provides a broad range of communications services to businesses of all sizes, including Internet access services, digital video services, and LAN and VPN networking solutions.¹⁸⁶

¹⁸¹ Comcast: Medium and Large Enterprises: Robust and Reliable Internet and Network Services, *available at* <http://www.comcastcommercial.com/index.php?option=content&task=view&id=20&Itemid=96>.

¹⁸² Comcast: Our Network: Leading-Edge Network From A Trusted Provider, *available at* <http://www.comcastcommercial.com/index.php?option=content&task=view&id=4&Itemid=34>.

¹⁸³ Charter Communications 2004 Annual Report, *available at* <http://library.corporate-ir.net/library/11/112/112298/items/161654/ar04.pdf>.

¹⁸⁴ Press Release, Charter, Charter Reports Fourth-Quarter and Full-Year 2005 Financial and Operating Results; The Company Added 133,400 Revenue Generating Units During the Fourth Quarter as a Result of Targeted Marketing Efforts (Feb. 28, 2006), *available at* <http://phx.corporate-ir.net/phoenix.zhtml?c=112298&p=irol-newsArticle&ID=823074&highlight=>.

¹⁸⁵ *Id.*

¹⁸⁶ *See* Charter Business: The Ability to Help You Excel, *available at* <http://www.charter-business.com/AboutUs.aspx>; Charter Business: The Ability to Help Your Business, *available at* <http://www.charter-business.com/ProductsAndServices.aspx>.

Georgia-based **Knology** offers a full suite of video, voice and data services to residential and business customers including digital cable TV, local and long distance digital telephone service with enhanced voice messaging features, and high-speed Internet access.¹⁸⁷ The company announced a 27.7% increase in triple-play bundle customers in 2005 to over 65,000.¹⁸⁸ Knology provides video, voice and data services in Huntsville and Montgomery, Alabama; Panama City and Pinellas County, Florida; Augusta, Columbus and West Point, Georgia; Charleston, South Carolina; and Knoxville, Tennessee.¹⁸⁹ The company also provides IP-based products for businesses including Passive Optical Network with segmented voice and data bandwidth, and Managed Integrated Network Solutions for converged voice and data.¹⁹⁰ Knology reported 15% growth in business connections in 2005 to 44,738 with 36% growth in business revenue.¹⁹¹

Mediacom Communications is the nation's eighth-largest MSO, focused in the South and Midwest, serving 2.7 million homes in 23 states, with 1.5 million basic cable subscribers.¹⁹² Like the larger MSOs, Mediacom has had notable success in launching a VoIP service as part of

¹⁸⁷ See Press Release, Knology, Knology Reports Fourth Quarter and Full Year 2005 Results (Feb. 22, 2006), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=130221&p=irol-newsArticle&ID=820803&highlight=>.

¹⁸⁸ *Id.*

¹⁸⁹ See Knology: Corporate Overview, available at <http://phx.corporate-ir.net/phoenix.zhtml?c=130221&p=irol-homeProfile&t=&id=>.

¹⁹⁰ See Press Release, Knology, Knology Reports Fourth Quarter and Full Year 2005 Results (Feb. 22, 2006), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=130221&p=irol-newsArticle&ID=820803&highlight=>.

¹⁹¹ See *id.*; see also Press Release, Knology Named One of Top 50 Fastest Growing Technology Firms in Georgia (Oct. 19, 2005), available at <http://www.knology.com/content/aboutus/pressroom.details.cfm?pkey=308>.

¹⁹² Mediacom: An Unyielding Commitment, available at http://www.mediacomcc.com/corporate_aboutus.html.

a “triple play” bundle. Mediacom added 20,000 VoIP subscribers in the fourth quarter of 2005 alone (to a total of 22,000) and ended 2005 marketing its triple-play bundle of video, data and voice in over half of the total homes in their markets.¹⁹³ Mediacom “anticipate[s] that the phone business will be a meaningful contributor to revenue growth in 2006”¹⁹⁴ Mediacom also provides advanced data and communications services to the business market, including LAN services, VPNs, and high-speed data access. For larger enterprise customers, Mediacom emphasizes their high-capacity fiber optic network, with nearly 9,000 route miles of fiber.¹⁹⁵

System Integrators

EDS is a leading independent systems management and global technology services firm.¹⁹⁶ EDS focuses mostly on large business customers, such as the communications, financial services, healthcare, energy, manufacturing, transportation and consumer and retail industries; and also foreign governments.¹⁹⁷ EDS offers IT outsourcing, business process outsourcing, custom applications, operations solutions and consulting. EDS is also a pioneer in the VoIP arena and controls the world’s largest private network converging voice, video and data.¹⁹⁸ EDS is presently involved in transforming Bank of America’s legacy voice carrier systems to VoIP

¹⁹³ Press Release, Mediacom Communications, Mediacom Communications Reports Results for Fourth Quarter and Full Year 2005 (Feb. 23, 2006), *available at* http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=mccc&script=410&layout=-6&item_id=820994.

¹⁹⁴ *Id.*

¹⁹⁵ SEC Form 10-K, Mediacom Communications Corp. at 7 (2004).

¹⁹⁶ SEC Form 10-K, Electronic Data Systems Corp. at 2 (2004).

¹⁹⁷ *Id.*

¹⁹⁸ EDS Offering Brief, EDS Converged Network Services (2005), *available at* <http://www.eds.com/services/convergednetwork/downloads/convergednetwork.pdf>.

technology and will transition the bank's 180,000 phones nationwide to VoIP by 2007.¹⁹⁹ EDS and Motorola also recently launched Mobile Workplace Services to help enterprise customers effectively integrate mobile solutions into their existing IT infrastructure.²⁰⁰ EDS also announced a major deal with Royal Ahold.²⁰¹ AT&T frequently encounters EDS as a serious competitor on significant bids.

IBM Global Services is the leading IT services company in the world (based on revenue), and generated \$46.2 billion in revenues in 2004, up 8% from the prior year.²⁰² IBM describes its business as helping its clients redesign their business processes and structures to become "on demand" businesses, and has focused on enterprise customers, making acquisitions and investments in emerging business opportunities important to enterprise customers.²⁰³ In 2004 alone, IBM completed 14 acquisitions, all in the IT services or software segments, which will enable the company to further expand its enterprise capabilities.²⁰⁴

Similarly, **SAIC** is a major telecom consultant, with over 30 years of consulting and systems integration experience to the telecommunications market: "SAIC helps enterprises and service providers realize the power of converging voice, data, and video across a single

¹⁹⁹ *Id.*

²⁰⁰ EDS Services: Motorola Alliance, *available at* <http://www.eds.com/services/alliances/motorola/>.

²⁰¹ See Press Release, EDS, *EDS Signs \$500 + Million IT Services Contract With Royal Ahold, One of the Largest Global Retailers* (Nov. 14, 2005), *available at* http://www.eds.com/news/news.aspx?news_id=2728.

²⁰² IBM Annual Report at 2 (2004).

²⁰³ *Id.* at 13.

²⁰⁴ *Id.* at 11, 57-8; *see also* Press Release, IBM, *IBM Completes Acquisition of Micromuse Inc.* (Feb. 15, 2006), *available at* <http://www-03.ibm.com/press/us/en/pressrelease/19247.wss>.

communications network.”²⁰⁵ SAIC achieved revenues of \$7.2 billion in FY 2005, up 23 percent from the prior year.²⁰⁶ SAIC offers a wide variety of services ranging from value assessment, IT strategy and planning. It is a leading provider of systems integration, engineering, and R&D services to the U.S. government.²⁰⁷

Accenture is a global provider of management consulting, technology and outsourcing services for high-performance businesses and governments.²⁰⁸ The company generated \$15.55 billion in net revenues for fiscal year 2005, an increase of 14 percent and “well ahead of the industry average.”²⁰⁹ On February 2, 2005, Accenture and BT entered a 10-year, \$575 million business process outsourcing (BPO) and transformation contract for human resource administration resources.²¹⁰ According to David Clinton, president of Accenture Services, this deal represents “a tremendous vote of confidence in the industry, in the business value of outsourcing, and in Accenture’s ability to deliver a consistent level of global support to multinational clients aiming to achieve high performance in their businesses.”²¹¹ Accenture also offers its clients a range of solutions aimed at migrating their telephony services to VoIP and

²⁰⁵ SAIC: Value Assessment for the Next Generation, *available at* <http://www.saic.com/telecom/telephony/ValueAssess.pdf>; *see also* SAIC: Feature Articles: SAIC Provides Converged Voice and Data Solutions to Enterprise Customers, *available at* <http://www.saic.com/cover-archive/telecom/ngin.html>.

²⁰⁶ About SAIC: Company Overview, *available at* <http://www.saic.com/about/overview.html>.

²⁰⁷ SAIC: Services, *available at* <http://www.saic.com/business/services/>.

²⁰⁸ Accenture 2005 Annual Report at 1.

²⁰⁹ *Id.* at 4.

²¹⁰ Press Release, Accenture, BT and Accenture Sign 10-Year Outsourcing Contract to Transform and Expand HR Services, (Feb. 2, 2005), *available at* http://www.accenture.com/xd/xd.asp?it=enweb&xd=_dyn\dynamicpressrelease_802.xml.

²¹¹ *Id.*

developing end-to-end “Triple Play” services, integrating voice, video and data on a single broadband connection.²¹²

Computer Sciences Corporation provides telecommunications solutions including front-end consulting and planning; systems design and integration; IT and business process outsourcing; applications software development; Web and application hosting; and management consulting.²¹³ CSC has positioned itself to meet the specific challenges of the government as well as large businesses and was recognized as the top systems integrator to the U.S. federal government.²¹⁴ To serve large businesses, CSC has secured global alliance partnerships with leading Enterprise Resources Planning providers – SAP and Oracle.²¹⁵ The company reported

²¹² Accenture Communications Solutions: Migrate to IP and Develop Broadband Value-Added Services, *available at* http://www.accenture.com/Global/Services/By_Industry/Communications/AccentureServices.htm.

²¹³ SEC Form 10-K, Computer Sciences Corp. (2005); CSC Fact Book (Feb. 2006), *available at* <http://www.csc.com/aboutus/uploads/newfactbook.pdf>.

²¹⁴ CSC 2005 Annual Report at 4, *available at* http://www.csc.com/investorrelations/uploads/CSC_AR05.pdf; *see also* Press Release, CSC, CSC Wins \$62.4 Million in Air Force Contracts to Continue Technology Support (July 28, 2005), *available at* <http://www.csc.com/newsandevents/news/4273.shtml> (“CSC will provide project support, IT operations and maintenance services, software design and development, document imaging and data warehousing services” including “AFOSI services and network systems implementation and modernization; the AFOSI repository and digitization project; call center operation; legacy applications maintenance; and the development of new Web-based technologies”; Press Release, CSC, CSC Wins \$384 Million Contract to Support Centers for Medicare and Medicaid Services (Sept. 28, 2005), *available at* <http://www.csc.com/newsandevents/news/4549.shtml> (“Under the terms of the new agreement, CSC will provide the CCRx program with support services, including call center operation, enrollment processing and financial management.”); Press Release, CSC, CSC Wins \$150 Million Contract to Support U.S. Department of Treasury, *available at* <http://www.csc.com/newsandevents/news/5009.shtml> (“CSC will support legacy and production applications, maintain information systems, conduct systems security and provide strategic business services to the Treasury and its bureaus, including the Internal Revenue Service, to help the organizations implement initiatives for e-government and system modernization.”).

²¹⁵ *See* CSC: Enterprise Solutions, *available at* <http://www.csc.com/solutions/enterprisesolutions/>.

\$16 billion in new business awards from continuing operations in 2005 - a new record - closely divided between commercial and government customers.²¹⁶ CSC has also developed a converged network solution to integrate VoIP and business applications onto a single network, which has “proved to be successful in delivering data, voice and video content to multiple locations while maintaining a high standard of service.”²¹⁷ CSC’s network offering takes advantage of the company’s remote access service network consisting of some 33,000 points of presence and 20,000 Wi-Fi hotspots in more than 180 countries.²¹⁸

Equipment Manufacturers and Value-Added Resellers

Cisco is a leading IP-telephony vendor. A recent Synergy Research Group report named Cisco the revenue leader in 2005 for the worldwide voice market for large, small and medium-sized enterprises, including both IP telephony as well as traditional circuit-switched systems.²¹⁹ With respect to IP-telephony equipment, a 2004 Yankee Group report noted: “Cisco dominates the market because enterprises have chosen to deploy and manage VoIP networks internally. Enterprise testing VoIP are doing so within the enterprise data network department – the domain of Cisco. This has given Cisco a tremendous head start.”²²⁰ Cisco has sold 7.5 million Cisco IP

²¹⁶ CSC 2005 Annual Report at 2.

²¹⁷ CSC Features: Innovative CSC Network Brings Data Together, *available at* <http://www.csc.com/features/2005/31.shtml>.

²¹⁸ *Id.*

²¹⁹ Press Release, Cisco, Cisco Leads Enterprise & Small-Medium Voice Market for All of 2005 (Feb. 15, 2006), *available at* http://newsroom.cisco.com/dlls/2006/prod_021506b.html.

²²⁰ *The Promising Outlook for Managing Enterprise VoIP, Part 2*, Yankee Group, at 5 (May 25, 2004) (“Enterprises are also intrigued by the ability to run Cisco Call Manager on a Windows or Linux environment within the enterprise network. Although this requires careful management, it also offers unique flexibility and a more apparent path to complete voice and data convergence.”).

phones globally to date, and is shipping more than twice as many IP phones as its nearest competitor.²²¹

Cisco recently announced a new suite of voice, video and data products and applications to enable their customers to integrate their communications system with their IT infrastructure.²²² Cisco's chief development officer hailed the system as, "the first true second-generation Internet Protocol (IP) Communications system providing not just telephone services, but rather a rich communications environment that seamlessly integrates voice, video and data collaboration in one system."²²³

Cisco has also been involved in bringing VoIP solutions to the mass market. Linksys, a division of Cisco, recently announced an effort with Skype to launch a new cordless VoIP handset to enable consumers to place Internet calls while at home or in the office.²²⁴

²²¹ Press Release, Cisco, Cisco Leads Enterprise & Small-Medium Voice Market for All of 2005 (Feb. 15, 2006), *available at* http://newsroom.cisco.com/dlls/2006/prod_021506b.html.

²²² Press Release, Cisco, Cisco Introduces New Unified Communications System to Streamline Business Processes, Drive Productivity (Mar. 6, 2006), *available at* http://newsroom.cisco.com/dlls/2006/prod_030606.html?CMP=ILC-001. These offerings are already resulting in new business for Cisco. *See e.g.*, Press Release, Cisco, Cisco's CRS-1 Core Routing Platform Selected by MTS Allstream for Expansion of National Network (Feb. 9, 2006), *available at* http://newsroom.cisco.com/dlls/2006/prod_020906b.html ("Cisco Systems® today announced that MTS Allstream has selected the Cisco CRS-1 Carrier Routing System to further enhance its national IP/MPLS backbone network and drive the company's expansion of next generation services The Cisco IP NGN architecture enables its service provider customers to deliver enterprise and consumer services over a single unified IP/MPLS network, enabling service continuity across multiple forms of network access and facilitate network, service and application convergence.").

²²³ *Id.*

²²⁴ Press Release, Linksys, Linksys and Skype Team Up To Launch New Cordless Handset To Drive Internet Phone Calling (Oct. 11, 2005), *available at* http://www.linksys.com/servlet/Satellite?childpagename=US%2FLayout&packedargs=c%3DL_News_C2%26cid%3D1127783452527&pagename=Linksys%2FCommon%2FVisitorWrapper.

Avaya is also a leading IP-based telephony vendor, having recently shipped its 7 millionth IP telephony line in the fourth quarter of 2005.²²⁵ Avaya was recently awarded the 2006 Frost & Sullivan Enterprise Communications Applications Company of the Year Award in recognition of its achievements.²²⁶ Frost & Sullivan noted, “Avaya is one the leading established voice vendors that understands the dynamics of the evolving telephony market and is addressing market challenges appropriately... Avaya was also the leader in the North American IP-PBX market in terms of revenues and shipments, in 2004. The company has consistently grown its market share in the IP telephony market by leveraging its installed base of legacy systems, and migrating it to IP telephony options.”²²⁷ While Avaya focuses on enterprise customers, the company also pursues small business clients, introducing a “plug-and-play” IP

²²⁵ Avaya 2005 Annual Report at I-1 (Dec. 21, 2005).

²²⁶ Press Release, Avaya, Awards: 2006 Enterprise Communications Applications Company of the Year Award, *available at* http://www.avaya.com/master-usa/en-us/resource/assets/awards/frost%20eca%20award_2006.pdf.

²²⁷ *Id.*; *see also* SEC Form 10-Q, Avaya, (Feb. 9, 2006) (“A key component of our strategy is to leverage our substantial experience and expertise in traditional voice communications systems to capitalize on the transition of these traditional voice systems to Internet Protocol (“IP”) and the adoption of IP telephony solutions We offer customers the flexibility to implement new IP telephony solutions or ‘IP-enable’ their existing voice communications systems, thereby preserving some of their existing communications technology investments and allowing them to implement IP telephony at their own pace.”); Press Release, Avaya, Avaya IP Telephony Solution Helps One of the Leading Providers of Floral Products and Services Deliver “Good As Gold” Customer Service (Nov. 7, 2005), *available at* <http://www.avaya.com/gcm/master-usa/en-us/corporate/pressroom/pressreleases/2005/pr-051107.htm> (“When FTD, one of the world’s leading providers of floral products and services, decided to launch a new contact center to improve customer service and accommodate growth in its operations, the company turned to an Internet protocol (IP) telephony solution from Avaya Inc., a leading global provider of business communications applications, systems and services.”); Press Release, Avaya, Avaya IP Telephony Solution Helps NBC Olympics Deliver Uninterrupted Coverage of the Torino Olympic Winter Games (Jan. 31, 2006), *available at* <http://www.avaya.com/gcm/master-usa/en-us/corporate/pressroom/pressreleases/2006/pr-060131a.htm>. (“When the Torino Olympic Winter Games get underway next month, NBC Olympics will be using an Avaya IP telephony solution to provide communication capabilities linking the International Broadcast Center and NBC’s Field Shop with sports venues in Torino, Italy, NBC Olympics headquarters in Stamford, Conn., and NBC Studios at 30 Rockefeller Center in New York, N.Y.”).

telephony solution aimed at “very small businesses,” along with other successes.²²⁸ Avaya has also collaborated with Nokia on enterprise fixed mobile convergence applications, recently unveiling new technology enabling a Nokia mobile phone to be transformed into a “fully featured virtual office phone... extend[ing] the reach of enterprise IP telephony by integrating the ubiquity of mobile communications with the reliability and features of enterprise telephony services.”²²⁹ Similarly, Avaya is partnering with Sprint Nextel to develop and deliver hosted VoIP telephony wireline and wireless services for the North American marketplace.²³⁰

Nortel is a major vendor of broad-based networking solutions, and like Cisco is a direct competitor for large business customers: “Leveraging the skills it honed serving carriers, Nortel continues to provide strong service and support to large enterprises.”²³¹ “Like most of its competitors, Nortel’s long-term enterprise strategy is focused on data, voice and application

²²⁸ Press Release, Avaya, Avaya One-X Quick Edition Brings Intelligent IP Communications to Very Small Businesses and Small Branches of Enterprises; Simple plug-and-play IP telephony solution reduces costs and complexity while providing quick access to the most commonly used telephony features (Mar. 6, 2006), *available at* <http://www.avaya.com/gcm/master-usa/en-us/corporate/pressroom/pressreleases/2006/pr-060306b.htm&cid=AVHN2>; *see also* Press Release, Avaya, Small and Medium Hispanic Businesses in Florida Benefit from Avaya, Tallard Relationship to Deliver Business Communications Systems (Dec. 7, 2005), *available at* <http://www.avaya.com/gcm/master-usa/en-us/corporate/pressroom/pressreleases/2005/pr-051207b.htm> (“Avaya [and] Tallard Technologies, a reseller that provides communications solutions to companies in Latin America, the Caribbean and Florida, are working together to bring Avaya’s secure, reliable, and easy-to-use communications systems to small and medium businesses in Florida.”).

²²⁹ Press Release, Avaya, Avaya Announces Global Availability of First Enterprise Fixed Mobile Convergence Applications Jointly Developed with Nokia (Sept. 7, 2005), *available at* <http://www.avaya.com/gcm/master-usa/en-us/corporate/pressroom/pressreleases/2005/pr-050907a.htm>.

²³⁰ Press Release, Avaya, Sprint and Avaya Link for VoIP and Wireless Solutions for Businesses (Sept. 20, 2005), *available at* <http://www.avaya.com/gcm/master-usa/en-us/corporate/pressroom/pressreleases/2005/pr-050920a.htm>.

²³¹ *Enterprises Should Keep Nortel on Their Network Infrastructure Vendor Short Lists*, Yankee Group, at 1 (Sept. 29, 2004).

convergence.”²³² Nortel is “currently focused on developing products that support the continuing evolution of voice and data communications systems towards converged or combined data, voice and multimedia applications...”²³³ Nortel’s recently completed acquisition of Tasman Networks, a networking company that sells high-performance enterprise routers targeted at larger enterprises, will only strengthen Nortel’s position: “Nortel’s commitment to the enterprise is evidenced by this acquisition and complete convergence solution offering to the market -- one network that enables business communications, including voice, video, data and applications.”²³⁴ Nortel is also a leading provider of cable-based VoIP solutions to cable system operators including Cox, Adelphia and Charter, winning seven new cable VoIP customers in 2005 alone.²³⁵ In a recent example, Patriot Media recently deployed cable VoIP technology from Nortel to offer Patriot’s Digital Phone service to more than 115,000 homes in central New Jersey.²³⁶

²³² *Id.*

²³³ SEC Form 10-K, Nortel Networks Corp. (2004) at 12; *see also* Press Release, Nortel, Christensen Corp.'s New High Rise Offers Tenants Advanced IP Communications Services Based on Nortel Technology (Feb. 21, 2006), *available at* http://www2.nortel.com/go/news_detail.jsp?cat_id=-8055&oid=100195860&locale=en-US (“Christensen Corporation, a real estate development firm based in Idaho, is deploying a converged IP communications solutions from Nortel to become its own communications service provider to tenants in its new Banner Bank building. Christensen plans to provide affordable, advanced voice, data and multimedia communications services to its small to large professional business tenants.”).

²³⁴ Nortel Top News: Nortel Acquires Tasman Networks, Strengthens End-to-End Secure Convergence Portfolio, *available at* http://www2.nortel.com/go/news_detail.jsp?cat_id=-9721&oid=100192604&locale=en-US.

²³⁵ Nortel Feature Article: To VoIP - Or Not to VoIP? Answer is ‘Yes’ for Cable Operators (Jan. 2006), *available at* http://www.nortel.com/corporate/pressroom/feature_article/2006a/01_26_06_cable_voip.html.

²³⁶ Press Release, Nortel, Patriot Media Launches Digital Phone Service Using Nortel Cable VoIP Solution (Nov. 14, 2005), *available at* http://www2.nortel.com/go/news_detail.jsp?cat_id=-8055&oid=100190756.

Alcatel develops and integrates technologies, applications and services to offer advanced communications solutions to businesses and governments, focused on enabling the delivery of multimedia content (voice, video, data) over broadband.²³⁷ In 2004, Alcatel consolidated its leadership position in the communications technology market, including in broadband access, fiber optic networks and IP-based technologies.²³⁸ Alcatel recently announced having cumulatively shipped 80 million DSL lines to customers worldwide by year-end 2005, fueled by a 10 percent increase over the past year, centered around Alcatel's suite of products which the company claims to be "the market's first true 100% triple play broadband access platform."²³⁹ Alcatel's enterprise division is rapidly moving in the direction of IP; during 2004 over 30 percent of the telephone lines Alcatel delivered and installed were IP-based.²⁴⁰ Products and services Alcatel provides to enterprises include converged IP telephony and contact center solutions as well as a comprehensive suite of network solutions.²⁴¹ Alcatel also develops and supplies mobile phone products, applications and services for the consumer segment as well as satellite based communications systems.

²³⁷ Alcatel Business Highlights (2004), *available at* [http://www.eu.home.alcatel.com/IR/IR.nsf/va_EmbedResultatsEN/84AFA8C35AD7FE96C125700000656ED8/\\$FILE/BusinessHighlight2004.pdf](http://www.eu.home.alcatel.com/IR/IR.nsf/va_EmbedResultatsEN/84AFA8C35AD7FE96C125700000656ED8/$FILE/BusinessHighlight2004.pdf).

²³⁸ *Id.*

²³⁹ Press Release, Alcatel, Alcatel Achieves Major Milestone With 80 Million DSL Lines Shipped (Mar. 9, 2006), *available at* http://www.alcatel.com/vpr/?body=http://www.home.alcatel.com/vpr/vpr.nsf/DateKey/09032006_1uk.

²⁴⁰ Alcatel Business Highlights (2004).

²⁴¹ *Id.*

Lucent's "market vision is converged services"²⁴² with particular strength in the areas of next-generation optical, VoIP and mobile high-speed data technologies.²⁴³ Effective October 1, 2005, the company combined its wireless and wireline business units to form a single unified organization "squarely focused on delivering the vision, architectures, portfolio and solutions needed to enable the rapid, cost-effective delivery of application solutions that blend voice, data, video and other multimedia content to subscribers, anytime, anywhere."²⁴⁴ Lucent develops and supplies DSL services, enhanced business services, enhanced frame Relay and ATM Services, Ethernet over SONET ("EoS"), IP Centrex Services, managed contact center and managed wavelength services.²⁴⁵ The company's customer base includes communications service providers, governments and enterprises worldwide. Lucent has partnered with Sprint Nextel in developing VoIP products for enterprises, using the Lucent Converged Voice for Enterprise Solution to provide subscribers all of the features of their office PBX system on their mobile phones.²⁴⁶

Siemens Communications Group supplies enterprises, carriers and service providers a broad range of telecommunications products and services for wireless, fixed and enterprise

²⁴² Lucent Company Information: Mission Statement, *available at* <http://www.lucent.com/corpinfo/>.

²⁴³ Lucent Business Profile: Network Solutions Group, *available at* <http://www.lucent.com/corpinfo/nsg.html>.

²⁴⁴ *Id.*; *see also* Lucent Tech Annual Report 2005 at F-3, *available at* <http://www.lucent.com/investor/annual/05/pdf/annual.pdf>.

²⁴⁵ *See* Lucent Techs: Solutions for Enterprises, *available at* <http://www.lucent.com/enterprise/> (discussing Lucent services); *see also* Lucent Tech. Enterprise Convergence Solutions, *available at* http://www.lucent.com/enterprise/pdf/ent_convergence_brtr_060105.pdf.

²⁴⁶ Press Release, Sprint Nextel, Sprint IP Voice Connect Simplifies Business Communications (Mar. 9, 2006), *available at* <http://www.lucent.com/press/0306/060309.coa.html>.

networks.²⁴⁷ Siemens Enterprise Networks, a division of Siemens Communications, is a strong competitor for converged communications solutions with over 1 million business customers globally - including over 70 percent of the Fortune 500.²⁴⁸ In January 2005, the company aligned with Microsoft in a multi-year agreement to deliver enterprise-grade, presence-enhanced calling, video and Web conferencing, and collaboration solutions to business customers in the U.S. and abroad.²⁴⁹ According to analysts, “this is a smart move that can help a very broad customer base transition smoothly to next generation Voice over IP solutions.”²⁵⁰ In March 2006, Siemens announced a collaborative effort with Intel to “optimize enterprise communications” by developing technologies to use Siemen’s VoIP telephony applications in Intel Centrino wireless laptops.²⁵¹

²⁴⁷ See Siemens Communications - Profile, available at http://www.siemens.com/index.jsp?sdc_p=cfi1210365lmo1217925ps4t4u1436z3&sdc_bcpath=1210375.s_4%2C&sdc_sid=5833205619&sdc_m4r=.

²⁴⁸ See Siemens Corporate Overview, available at <http://enterprise.usa.siemens.com/company/news/corporate.html> (Siemens enterprise networks corporate overview); see also Press Release, Siemens Enterprise Solutions, The New IP Switch HiPath 2000 From Siemens: Voice and Data Communication Over IP for SMEs (Nov. 7, 2005), available at http://www.siemens.com/index.jsp?sdc_p=i2lmno1326536pHPLcfs8t2u0z3&sdc_sid=6593865216&sdc_ggid=17&sdc_embedded=true& (“The Siemens Operating Group Communications is further expanding its portfolio for business customers with a new IP switch: HiPath 2000 is tailor-made for small and medium-sized enterprises (SMEs). The system offers all the benefits of IP communication with minimum overhead for installation and administration. HiPath 2000 enables the smooth setup of an integrated data and communications infrastructure for networks with up to 30 users, including WLAN support. The cost-effective IP system is now available directly from Siemens or from specialist dealers.”).

²⁴⁹ Press Release, Siemens, Siemens and Microsoft Announce Worldwide Alliance to Bring Real-Time Communication and Collaboration Solutions to Market (Jan. 11, 2005), available at http://www.siemens.com/index.jsp?sds_p=c23su001237202pHPnflmi1171893&sdc_bcpath+1077883.s_0%2c&.

²⁵⁰ *Id.* (quoting Dr. Brent Kelly, a senior partner at Boston-based Wainhouse Research).

²⁵¹ Press Release, Siemens, Siemens Works with Intel to Enhance the Quality of Laptop Telephony over Wireless Networks (Mar. 7, 2006), available at http://enterprise.usa.siemens.com/company/press/press2006/press_030706.html.

Other VoIP Providers

In the past year, several companies that are traditionally thought of as internet or software companies have begun providing voice services by introducing VoIP products or have announced plans to do so, while other providers like Vonage have continued to build VoIP subscribership. **Microsoft** has taken a number of recent steps demonstrating a commitment to become a player in internet telephony. Microsoft is the leading software and technology firm in the world, with 2005 revenues of \$39.79 billion, and offers a wide range of products and services aimed at both the mass market and enterprise customers.²⁵² In August 2005, Microsoft acquired Teleo, a provider of VoIP software and services and “expects to combine the technology and expertise of Teleo with the existing VoIP investments of MSN to further develop products and services....”²⁵³ In November 2005, Microsoft acquired a second VoIP company, media-streams.com AG, “to accelerate the delivery of its unified communications vision, bringing together various modes of communication (e-mail; instant messaging; short message service; voice/telephony; and audio, video and Web conferencing), breaking down the silos of communication....”²⁵⁴ Microsoft plans to use media-streams.com’s technology to deliver an improved integrated VoIP product based on the Microsoft Office Live Communications enterprise server platform.

²⁵² See Microsoft 2005 Annual Report, *available at* http://www.microsoft.com/msft/ar05/downloads/MS_2005_AR.doc.

²⁵³ Press Release, Microsoft, Microsoft Acquires Teleo, Innovative VoIP Technology Company (Aug. 30, 2005), *available at* <http://www.microsoft.com/presspass/press/2005/aug05/09-30MSNTeleoPR.msp>.

²⁵⁴ Press Release, Microsoft, Microsoft to Acquire media-streams.com AG: Technologies to Integrate Voice Communications Into Microsoft Office System (Nov. 2, 2005), *available at* <http://www.microsoft.com/presspass/press/2005/nov05/11-02MSHanoverPR.msp>.

Microsoft unveiled Microsoft Office Live and Windows Live - two new internet-based software services aimed at businesses and the mass market respectively in November 2005.²⁵⁵ Currently in beta testing, Microsoft's Windows Live Messenger, the next generation of Microsoft's MSN Messenger instant-messaging program, enables domestic and international calls to mobile and landline telephones through MCI Web Calling as well as free PC-to-PC calls to other Messenger users.²⁵⁶ Microsoft also announced its entry into the enterprise wireless VoIP market with Microsoft Office Communicator Mobile, a service to integrate Windows Mobile-based cellular devices and "enterprise-grade, real-time communications tools" including security-enhanced instant messaging, presence awareness, integrated VoIP telephony, and wireless access through Wi-Fi hotspots.²⁵⁷ Microsoft is also collaborating with Avaya on improving the voice capabilities of Microsoft Office Communicator to enable calls through Avaya telephony endpoints and the ability to conduct calls from the PC or an Avaya desk phone.²⁵⁸ With Microsoft's vast resources and broad customer base - for example, 200 million

²⁵⁵ Press Release, Microsoft, Microsoft Previews New Windows Live and Office Live Services: Company Outlines Software-Based Services Strategy (Nov. 1, 2005), *available at* <http://www.microsoft.com/presspass/press/2005/nov05/11-01PreviewSoftwareBasedPR.mspx>.

²⁵⁶ Windows Live Messenger Beta, *available at* <http://www.ideas.live.com/programpage.aspx?versionId=0eccd94b-eb48-497c-8e60-c6313f7ebb73>.

²⁵⁷ Press Release, Microsoft, Microsoft Office Communicator Goes Mobile (Feb. 14, 2006), *available at* <http://www.microsoft.com/presspass/press/2006/feb06/02-14MOCMobilePR.mspx> (stating that the service "is expected to be available for download for Live Communicator Server customers within 60 days"); Steve Ballmer, 3GSM World Congress Keynote (Feb. 14, 2006), *available at* <http://www.microsoft.com/presspass/exec/steve/2006/02-143GSM.mspx>.

²⁵⁸ Press Release, Microsoft, Avaya and Microsoft Announce Intent to Expand Their Strategic Relationship to Integrate Business Communications Solutions (Mar. 7, 2006), *available at* <http://www.microsoft.com/presspass/press/2006/mar06/03-07AvayaPR.mspx>.

users of its MSN Instant Messenger software worldwide²⁵⁹ - the company can be expected to quickly become a very significant competitor for internet telephony.

America Online (AOL) has already begun offering a VoIP service. AOL, a division of Time Warner, is the nation's leading ISP, with approximately 20 million U.S. subscribers.²⁶⁰ The company launched its TotalTalk VoIP service in October 2005: "The TotalTalk service transforms any high-speed Internet connection into a quality phone service that is simple to use and affordable, with savings of up to 40% off monthly phone bills, compared to traditional landline service."²⁶¹ TotalTalk users can use their existing phone (only requiring a phone adapter) and do not need to be a subscriber to AOL.²⁶² TotalTalk offers an unlimited local calling plan for only \$18.99 per month.²⁶³

eBay began offering internet telephony service with its acquisition of VoIP provider **Skype Technologies SA** (Skype), completed in October 2005.²⁶⁴ eBay is an online marketplace where users buy and sell a wide variety of products, reporting 2005 net revenues of \$4.552 billion (a 39% increase over 2004) and 71.8 million active users (180.6 million total registered

²⁵⁹ Steve Ballmer, 3GSM World Congress Keynote (Feb. 14, 2006), *available at* <http://www.microsoft.com/presspass/exec/steve/2006/02-143GSM.msp>.

²⁶⁰ AOL: Who We Are, *available at* <http://corp.aol.com/whoweare/index.shtml>.

²⁶¹ Press Release, AOL, AOL To Begin New VoIP Service Roll-Out On October 4 (Sept. 20, 2005), *available at* http://media.timewarner.com/media/newmedia/cb_press_view.cfm?release_num=55254444.

²⁶² TotalTalk, It's Easy to Get Started, *available at* <http://www.totaltalk.com/getstarted.adp>.

²⁶³ See TotalTalk, <http://www.totaltalk.com/>.

²⁶⁴ Press Release, eBay, eBay Completes Acquisition of Skype (Oct. 14, 2005), *available at* <http://investor.ebay.com/ReleaseDetail.cfm?ReleaseID=176402&FYear=>.

users).²⁶⁵ The company purchased Skype for total up-front consideration of approximately \$2.5 billion (including approximately \$1.3 billion in cash), demonstrating a significant commitment on the part of eBay to the telephony business with the goal of “creat[ing] an unparalleled ecommerce and communications engine.”²⁶⁶ Skype claims 54 million members in 225 countries and territories, adding approximately 150,000 users per day.²⁶⁷ As of the end of the fourth quarter 2005, eBay reported 74.7 million total registered Skype users.²⁶⁸ Skype offers free calling to other Skype users as well as an add-on service to enable users to make domestic and international calls to any landline or mobile phone.²⁶⁹ Skype claims that when their service is used to call France, Germany and United Kingdom, the caller saves “up to 56% per minute” compared with AT&T CallVantage.²⁷⁰

²⁶⁵ Press Release, eBay, eBay Inc. Announces Fourth Quarter and Full Year 2005 Financial Results (Jan. 18, 2006), *available at* <http://investor.ebay.com/news/Q405/EBAY0118-123321.pdf>.

²⁶⁶ Press Release, eBay, eBay Completes Acquisition of Skype (Oct. 14, 2005), *available at* <http://investor.ebay.com/ReleaseDetail.cfm?ReleaseID=176402&FYear=>; Press Release, eBay to Acquire Skype (Sept. 12, 2005), *available at* http://investor.ebay.com/downloads/eBay_pressrelease.pdf. Skype is also targeting business customers. Olga Kharif, *Skype Dials for Business Dollars*, Bus. Week Online, Mar. 9, 2006, *available at* http://www.businessweek.com/technology/content/mar2006/tc20060309_564273.htm.

²⁶⁷ Press Release, eBay, eBay to Acquire Skype (Sept. 12, 2005), *available at* http://investor.ebay.com/downloads/eBay_pressrelease.pdf; eBay Acquisition of Skype Presentation, *available at* <http://investor.ebay.com/downloads/050912ebay.pdf>.

²⁶⁸ Press Release, eBay, eBay Inc. Announces Fourth Quarter and Full Year 2005 Financial Results (Jan. 18, 2006), *available at* <http://investor.ebay.com/news/Q405/EBAY0118-123321.pdf>.

²⁶⁹ See Skype Fact Sheet (Sept. 2005), *available at* http://investor.ebay.com/downloads/Skype_FactSheet-3843hd.pdf; Skype, SkypeOut, *available at* <http://www.skype.com/products/skypeout/>.

²⁷⁰ Skype, SkypeOut, *available at* <http://www.skype.com/products/skypeout/>.

Similarly, **Google** launched a VoIP service, Google Talk, last year in August 2005.²⁷¹ Google operates the world's largest search engine, responding to more search queries than any other service online, and reported 2005 revenues of \$1.919 billion (an increase of 86% compared with 2004).²⁷² Google Talk enables users of Google's Gmail email service to talk to one another for free over the PC, requiring only a microphone and speaker or a headset.²⁷³

Atlanta-based **EarthLink** is a successful ISP - with over 5 million subscribers - but has taken a number of recent steps to become a significant competitor in a wide range of telecommunications services including wireless, VoIP, line-powered voice and small and medium-sized business services by reinvesting its earnings in a number of strategic initiatives.²⁷⁴ In March 2005, EarthLink entered into a wireless joint venture with SK Telecom, Korea's leading mobile communications provider, to market wireless voice and data services in the U.S. market utilizing a non-facilities-based nationwide mobile virtual network operator (MVNO) network.²⁷⁵ In voice services, EarthLink launched a plug-and-play VoIP solution in October 2005 offering caller ID, call waiting, call forwarding, voicemail and other features.²⁷⁶ This was followed in January 2006 by the rollout of EarthLink's line-powered voice service in select

²⁷¹ Press Release, Google, Google Launches Open, Instant Communications Service (Aug. 24, 2005), *available at* <http://www.google.com/press/pressrel/talk.html>.

²⁷² Press Release, Google, Google Announces Fourth Quarter and Fiscal Year 2005 Results (Jan. 31, 2006), *available at* http://www.google.com/press/pressrel/revenues_q405.html; Google Corporate Information: Quick Profile, *available at* <http://www.google.com/corporate/facts.html>.

²⁷³ Press Release, Google, Google Launches Open, Instant Communications Service (Aug. 24, 2005), *available at* <http://www.google.com/press/pressrel/talk.html>; Google Talk: What is Google Talk?, *available at* <http://www.google.com/talk/about.html>.

²⁷⁴ See EarthLink 2006 Investment Community Meeting (Feb. 23, 2006), *available at* <http://phx.corporate-ir.net/phoenix.zhtml?c=77594&p=irol-presentations>.

²⁷⁵ Earthlink, 2005 Highlights, *available at* <http://www.earthlink.net/about/history/>.

²⁷⁶ *Id.*

markets, merging phone service with high-speed broadband data access utilizing an innovative technology developed in collaboration with Covad.²⁷⁷ EarthLink took a significant step into the business segment with its December 2005 acquisition of New Edge Networks, a national provider of VPNs and secure multi-site managed data networks. EarthLink plans to “package their voice, data, protection, and security tools to meet the rapidly growing demand for high-speed access and VPN services by both small office and home office (SOHO) users as well as small and medium enterprise (SME) customers.... [representing a] tremendous growth platform for EarthLink to compete in the rapidly expanding SME networking market.”²⁷⁸

Vonage is a leading broadband telephony provider, with an extensive service area covering more than 150 global markets and 44 U.S. states, including every state in the BellSouth region.²⁷⁹ As of March 1, 2006, the company claims over 1.5 million active lines, over 2 billion completed calls, and over 42 million calls completed per week.²⁸⁰ Vonage offers residential

²⁷⁷ Press Release, Earthlink, Introducing Earthlink DSL and Home Phone Service (Feb. 6, 2006), available at http://www.earthlink.net/about/press/pr_home_phone/; Press Release, Earthlink, Earthlink and Covad Announce Market Trial of Innovative Bundle of Home Phone Service and High-Speed Internet (June 6, 2005), available at http://www.earthlink.net/about/press/pr_voip_trial/.

²⁷⁸ Press Release, Earthlink, Earthlink to Acquire New Edge Networks (Dec. 13, 2005), available at http://www.earthlink.net/about/press/pr_newedge/; see also *Earthlink to Telecom World: Watch Us Now*, Telephony Online, Feb. 23, 2006, available at http://telephonyonline.com/broadband/marketing/earthlink_dayton_provider_022306/; see also Carol Wilson, *Competitive VPN Players Benefit From Consolidation*, Telephony Online, Feb. 24, 2006, available at http://telephonyonline.com/broadband/news/VPN_EarthLink_Netifce_022406/ (“reporting that EarthLink officials said . . . that they plan to pump significant resources into New Edge, particularly in sales and marketing, to grow sales to SMBs on its national network”).

²⁷⁹ See Vonage, *Redefining Communications: Vonage Network*, available at <http://www.vonage.com/corporate/index.php> (“Network Map” showing active markets); see also About Vonage: Fast Facts, available at http://www.vonage.com/corporate/aboutus_fastfacts.php (listing service areas).

²⁸⁰ About Vonage: Fast Facts, available at http://www.vonage.com/corporate/aboutus_fastfacts.php.

VoIP as well as VoIP service for small businesses. For residential customers, Vonage offers an unlimited local and long distance calling plan to anywhere in the U.S. (including Puerto Rico) and Canada for \$24.99 per month, including a wide range of services associated with traditional landline phones such as Call Waiting, Call Forwarding, Caller ID, 3-Way Calling, Voicemail and 911 Service.²⁸¹ The company currently offers a cordless 5.8 GHz broadband VoIP phone, and is working with Panasonic to develop a new 5.8 GHz cordless phone that permits direct telephone hookup to a customer's broadband connection, eliminating the need for a stand-alone adaptor.²⁸²

Fixed Wireless Broadband Service Providers

Founded in October 2003, **Clearwire** operates a wireless broadband network based on the WiMax technology ("pre-WiMax"), providing "off-the-shelf" broadband solutions to consumers without the need to purchase or install additional equipment.²⁸³ Clearwire launched its pre-WiMax service in its first commercial market, Jacksonville, Florida in August 2004, and has been aggressively deploying its network across the U.S., Mexico and Europe - with service in over 200 cities worldwide.²⁸⁴ It currently boasts service in 27 U.S. markets, including - in the BellSouth region - the Jacksonville and Daytona Beach markets in Florida and Winston-Salem, Greensboro and Burlington in North Carolina.²⁸⁵ Clearwire has also been successful in attracting

²⁸¹ Vonage: Products, *available at* http://www.vonage.com/corporate/products_index.php.

²⁸² Press Release, Vonage, Panasonic and Vonage® Team Up To Develop 5.8GHz Cordless Broadband Phone System (Jan. 3, 2006), *available at* http://www.vonage.com/corporate/press_index.php?PR=2006_01_03_2.

²⁸³ Clearwire: Clearwire Facts, *available at* <https://www.clearwire.com/company/facts.htm>.

²⁸⁴ *Id.*

²⁸⁵ *See* Clearwire: Coverage Areas, *available at* https://www.clearwire.com/store/service_areas.htm; Press Release, Clearwire, Clearwire Brings Wireless Broadband Internet Service to Reno-Sparks and Frees Customers from Confines of Traditional Internet Access (Mar. 14, 2006),

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venture capital funding to further develop and expand its pre-WiMax network, having raised at least \$720 million in funding, including investment by Intel.²⁸⁶

Foreign-Based Carriers

Equant is part of the France Telecom Group, and asserts that it is the world leader in communications solutions for multinational business.²⁸⁷ Equant is also positioned in Gartner's "Magic Quadrant" for network providers in 2005.²⁸⁸ It claims to operate the world's largest global network in terms of geographic coverage, extending to 164 countries and territories, 967 cities and towns, and 1,468 POPs worldwide.²⁸⁹ Although Equant's network density is greatest in Europe, greater penetration of the North American marketplace is one of the company's top priorities and "is a focal point for its growth and expansion."²⁹⁰ Equant offers a host of managed services, VPN, Internet connectivity, security, and consulting products. Equant claims to offer the market-leading IP VPN solution, recently delivering an IP VPN solution to connect the 264

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available at https://www.clearwire.com/company/news/03_13_06.htm (stating coverage now in 27 U.S. markets).

²⁸⁶ See VentureWire Professional, Clearwire Quietly Keeps Up Impressive Pace With \$360M More In Funding (Mar. 14, 2006).

²⁸⁷ Equant, Communications Solutions to Enable Global Business (2004), *available at* http://www.equant.com/content/pdf/Com/Library/Corporate/corporate_brochure.pdf.

²⁸⁸ See Press Release, Equant, Equant Positioned in Leaders Quadrant (Jan. 4, 2006), *available at* http://www.equant.com/content/xml/pr_gartner_04_01_06.xml (President and CEO of Equant Barbara Dalibard stated that "[w]e believe Equant leads the market with what we call double-edge convergence: IP convergence plus IT/Telecom convergence. We bring real value to customers and help them improve the way they do business by supporting double edge-convergence with innovation.").

²⁸⁹ Equant, About Equant, Network Coverage, *available at* http://www.equant.com/content/xml/about_network.xml.

²⁹⁰ Equant, Around the World: North America, *available at* http://www.equant.com/content/xml/north_america.xml; see also Matt Hamblen, *Equant Pushes to Win More Network Deals in U.S.* Computerworld, Oct. 17, 2005, *available at* <http://www.computerworld.com/networkingtopics/networking/story/0,10801,105416,00.html>.

retail stores of the U.S.-based Stride Rite Corporation.²⁹¹ Because of its global reach, Equant is an attractive option for an enterprise business with international needs.²⁹²

British Telecom (“BT”) is one of Europe’s leading providers of telecommunications services. Its principal services include local, national, and international telecommunications, higher-value broadband and Internet products and services, and IT solutions.²⁹³ BT’s global IP-enabled network spans 72 countries with over 1,000 POPs worldwide.²⁹⁴ BT significantly expanded its network footprint in the United States and strengthened its ability to provide IT and networking services to U.S.- based enterprises with its acquisition of Infonet (now BT Infonet), completed in February 2005. Infonet is one of the world’s leading providers of international

²⁹¹ Equant, About Equant, *available at* http://www.equant.com/content/xml/who_we_are.xml; Press Release, Equant, Stride Rite to deliver superior in-store customer service with Equant and GoRemote Small Office Solution (Aug. 29, 2005), *available at* http://www.equant.com/content/xml/pr_stride_rite_goremote_29_08_05.xml. In addition, Equant has recently announced a number of new contracts. *See* Press Release, France Telecom, Equant Signs Global IP VPN Deal With Dutch Specialty Chemicals Giant DSM (Dec. 15, 2005), *available at* http://www.francetelecom.com/en/financials/journalists/press_releases/CP_old/cp051215-2.html. (“Equant has signed a multi-million dollar deal with DSM, the Dutch specialty chemicals producer of life science products and performance materials, to provide and manage a global IP VPN covering 180 sites. Equant will provide a MPLS-based network to link DSM’s offices and production facilities globally, while a DSL network will also connect satellite offices, giving users easy access to the corporate network and business-critical applications, such as Sap. In total, the IP VPN will connect 45 countries and 23,000 staff.”); *see also* Press Release, Equant, Leading Global Law Firm Extends Contract with Equant to Ensure Seamless Service (Jan. 10, 2006), *available at* http://www.equant.com/content/xml/pr_bakermckenzie_10_01_06.xml (“As a truly global firm, we are committed to a seamless, secure, and reliable global infrastructure that ensures our attorneys worldwide are always connected to their clients and guarantees their needs are well-served,” said Sue Hall, chief technology officer, Baker & McKenzie.”).

²⁹² *See* Press Release, Equant, Equant Signs Multi-Year Communications Outsourcing Deal with Universal Music Group (Mar. 13, 2006), *available at* http://www.equant.com/content/xml/pr_umg_13_03_06.xml.

²⁹³ BT Group plc, An Overview at 3 (Nov. 2004), *available at* <http://www.btplc.com/thegroup/companyprofile/investorinsight.pdf>.

²⁹⁴ Growth Through Transformation: Annual Report and Form 20-F, BT Group plc, at 13 (2005), *available at* <http://www.btplc.com/report/Report05/pdf/AnnualReport05.pdf>.

managed voice and data network services and has a global backbone network reaching 170 countries with POPs in over 3,000 cities including a wide-ranging network of POPs in the United States, and was recently named Frost & Sullivan's Business Services Communications Company of the year.²⁹⁵ BT is also making significant investments in transitioning its legacy network architecture to MPLS which will improve BT's ability to deploy multimedia content - voice, video, and data - through its network and "dramatically increase the scale and capacity of BT's global voice capability."²⁹⁶ BT's strategy is to target multi-site global organizations in the Americas, particularly U.S.-based multinational corporations with global requirements and extensive operations throughout Europe. This strategy is resulting in success.²⁹⁷

²⁹⁵ See Press Release, BT Group plc, BT Infonet Named Frost & Sullivan's Business Services Communications Company of the Year (Jan. 26, 2006), *available at* http://www.bt.infonet.com/about/newsroom/press_release.asp?month=0126&year=2006 ("The award was presented for operational excellence and outstanding market performance in the global communications industry in 2005.").

²⁹⁶ See Press Release, BT Group plc, BT Deploys Global IP-Based Voice Platform (Feb. 20, 2006), *available at* <http://www.btplc.com/News/Articles/Showarticle.cfm?ArticleID=6f698d77-ff67-4d56-8624-e73b83958e15>.

²⁹⁷ See Press Release, BT Group plc, BT to Deliver and Manage Global IP Network for Infor (Feb. 7, 2006), *available at* <http://www.btplc.com/News/Articles/Showarticle.cfm?ArticleID=fadcc395-18b6-4168-a185-95370d9441f4> ("BT today announced that it has signed an agreement to provide global IP-based network services to Infor, Atlanta-headquartered global provider of enterprise business solutions to select manufacturing and distribution industries. Under the terms of the contract, BT will provide MPLS network services to 60 Infor sites in the U.S., Europe, and Asia/Pacific."); Press Release, BT Group plc, BT To Provide Microsoft With Global Call Routing Solution (Jan. 26, 2006), *available at* <http://www.btplc.com/News/Articles/Showarticle.cfm?ArticleID=2329a854-59c1-4d2a-8e7d-0bc831d351d5> ("BT today announced that it has signed a contract over 2 years to manage Microsoft's global OneCall call center routing initiative. Under the agreement, BT will design, build, deploy and manage a solution to unify and manage Microsoft's contact centers throughout the world into a single network-based contact center environment."); *see also* Press Release, BT Infonet, BT and BT Infonet Deliver Managed IP MPLS and Conferencing Services for Epicor Software Corporation (Jan. 19, 2006), *available at* http://www.bt.infonet.com/about/newsroom/press_release.asp?month=0119&year=2006 ("BT Infonet's multi-class, MPLS based IP VPN Secure service will be used to manage both voice and data traffic for Epicor sites in the U.S., Mexico, Asia-Pacific and Europe.").

Deutsche Telekom (DT), a Fortune Global 100 company, is one of Europe's largest telecommunications companies and asserts that it is "a truly global player with a presence in about 50 countries on six continents, in all major markets,"²⁹⁸ including Europe, the Middle East, Asia, and North and South America. Although DT's network density is greatest in Europe, it has achieved significant penetration of the North American marketplace with its **T-Systems** and **T-Mobile** subsidiaries. T-Systems offers many managed information and communications technology services tailored to the specific needs of Global and Enterprise customers within and without North America, including infrastructure, industry-specific solutions or entire business processes. T-Systems "provides single-source information technology and telecommunications convergence solutions for Global 2000 corporations, . . . [offering] a portfolio of integrated solutions including network and carrier services, managed services, hosting, desktop and asset management services, systems integration as well as business process and continuity consulting, enabling companies to increase profits, improve performance and increase productivity."²⁹⁹

On January 1 2005, DT carried out a strategic realignment of its operations in which all of its business customer services were consolidated under its T-Systems subsidiary "to better serve the continued demand for integrated solutions."³⁰⁰ T-Systems Enterprise Services serves

²⁹⁸ Deutsche Telekom, Company Worldwide: Around the Globe, *available at* <http://www.telekom3.de/en-p/comp/home/cc-startseite.html>.

²⁹⁹ T-Systems, Company Profile, *available at* <http://www.t-systemsus.com/coremedia/generator/www.t-systemsus.com/en/Home/Company/property=blobContent/id=44298/CompanyprofileofT-Systems.pdf> ("As an international powerhouse with presence around the globe, T-Systems is uniquely positioned at the intersection of network and IT to deliver a truly converged solution anywhere in the world.").

³⁰⁰ SEC Form 20-F, Deutsche Telekom AG (Mar. 15, 2005).

the needs for its global business accounts while T-Systems Business Services serves small, medium-sized and large business customers.

Also in 2005, Level 3 became T-System's primary broadband transport provider in North America in order to "enable [T-Systems] to continue serving our U.S.-based enterprise customers with industry-leading levels of efficiency, operational excellence and customer care."³⁰¹ In the previous year, T-Systems partnered with Level 3 to provide T-System's MPLS-based service portfolio to customers across the entire Level 3 fiber network, spanning approximately 30,400 km in North America, including multi-conduit metropolitan networks in 27 American cities and over 100 points-of-presence in 68 U.S. cities.³⁰² T-Systems claims that its MPLS data service allows corporate customers to use a complete solution for a variety of applications, including corporate WANs, voice applications, disaster recovery networks, data overflow networks, video distribution networks and IP backbones, and is "ideal" for building multi-location, point-to-point networks that are scalable, secure, reliable and cost-effective.³⁰³

Telefónica is one of the largest European telecommunications companies, and asserts that it is "a multi-domestic operator" and a "world leader in the telecommunication sector."³⁰⁴

³⁰¹ Press Release, Level 3, Level 3 Acquires 360networks' Nationwide Long-Haul Transport Business, T-Systems Will Now Use Level 3 As Its Primary Broadband Transport Provider in North America (Mar. 8, 2005), *available at* <http://www.level3.com/press/5755.html>.

³⁰² Press Release, T-Systems, T-Systems Expands Reach of MPLS-Based Network (Mar. 4, 2004), *available at* <http://www.t-systems.com/en/Home/templateId=renderNormal/iPageContentID=139060/id=126898.html>.

³⁰³ *Id.*

³⁰⁴ Telefónica, About Telefónica: Description of the Group: International Presence, *available at* <http://www.telefonica.es/acercadetelefonica/eng/1descripcion/presencia.shtml>; Telefónica, About Telefónica: Description of the Group: Our Activities, *available at* <http://www.telefonica.es/acercadetelefonica/eng/1descripcion/actividad.shtml>.

Telefónica is present on three continents, and its global IP fiber-optic network has “worldwide coverage” in more than 70 countries with more than 1,500 POPs worldwide.³⁰⁵ Although Telefónica’s presence is concentrated on Spanish and Portuguese speaking countries, it provides enterprise services in the United States through its subsidiary **Telefónica U.S.A.**, headquartered in Miami, Florida. Telefónica USA delivers business solutions for U.S. and Puerto Rico-based multinational firms requiring network connectivity services in throughout Latin America and the Caribbean.

Telefónica’s KeyCenter, located in Miami, is one of the company’s globally interconnected Data Centers, providing telecommunications connectivity between the U.S., Latin America and Europe, permitting customers to locate data at a central location while enhancing the users’ global network reach, bandwidth, and data access.³⁰⁶ Connected to Telefonica's 16,000-mile self-healing undersea fiber optic ring to Latin America, the KeyCenter provides “massive, dedicated bandwidth” to Latin American markets.³⁰⁷ Through relationships with other IP network providers such as Level 3, Sprint, Savvis, Progress Telecom and Cogent, the company extends its IP bandwidth reach for its business customers.³⁰⁸ Specific solutions offered by the company include MPLS IP VPN, ATM, Frame Relay, Roaming IP, VoIP VPN and managed telephony services as well as business continuity, disaster recovery and managed data

³⁰⁵ Telefónica, *available at* <http://www.us.telefonica.com/>; Telefónica, International Services, *available at* http://www.us.telefonica.com/international_home.htm.

³⁰⁶ Telefónica, Our KeyCenter and Globally Interconnected DataCenter, *available at* http://www.us.telefonica.com/aboutus/key_center.htm.

³⁰⁷ *Id.*

³⁰⁸ Telefónica Managed Services: Hosting: IP Bandwidth, *available at* http://www.us.telefonica.com/man_services_hosting_ip.htm.

security solutions.³⁰⁹ Telefónica's managed telephony services include deployment of PBX and VoIP systems, including the company's Voiceplus+ VoIP solution "designed for Enterprises with multiple offices and/or a high volume of voice traffic."³¹⁰

In 2005, Nortel selected Telefónica USA to provide its IP backbone network in Latin America, including deployments in Argentina, Brazil, Peru, Puerto Rico, Chile and the United States.³¹¹ As part of the agreement, Telefónica will migrate Nortel's current network infrastructure and suppliers to ATM and Private Line circuits while interconnecting Nortel's office communications infrastructure.

Nippon Telegraph and Telephone (NTT) is the largest telecommunications company in the world.³¹² NTT operates a global Tier 1 IP backbone, which it claims provides the industry's largest dedicated bandwidth of 24.4 Gpbs between the U.S. and Japan.³¹³ The company recently expanded its network reach by entering an agreement with Telefónica to allow the interconnection of their global data networks, thus extending NTT's capabilities between the U.S. into Latin America.³¹⁴ NTT was the first Asian telecommunications carrier to be

³⁰⁹ Telefónica, Global Solutions: International Services, *available at* http://www.us.telefonica.com/international_home.htm.

³¹⁰ Telefónica, Global Solutions: Managed Telephony, *available at* http://www.us.telefonica.com/man_telephony_home.htm.

³¹¹ Press Release, Telefónica, Nortel Selects Telefonica USA to Provide IP Backbone Network to Latin America (Mar. 8, 2005), *available at* <http://www.us.telefonica.com/press/05.htm>.

³¹² NTT America, Our Company, *available at* <http://us.ntt.net/about/company/> (noting that NTT has "grown to become the largest telecommunications company in the world"). The Japanese government holds an interest in NTT, but does not exercise its voting rights. *Id.*

³¹³ NTT America, What is the NTT Com Global IP Network?, *available at* <http://us.ntt.net/about/network/>.

³¹⁴ Press Release, NTT America, NTT Communications and Telefonica Wholesale Agree to Interconnect Data Networks to Provide Enhanced Global Network Capabilities for Customers (Jan. 19, 2006), *available at* <http://www.nttamerica.com/news/2006/060119.html>.

recognized as the “Best Global Carrier” at the World Communications Awards 2004, in part due to its high-capacity global network, expanding network coverage and provision of MPLS IP VPN services to multinational businesses.³¹⁵

NTT’s presence in the U.S. is through two subsidiaries in the United States: NTT America and Verio. NTT recently reorganized its U.S. operations by shifting its Global IP Network and Enterprise Hosting businesses (previously operated by Verio) to NTT America, which offers its own private network services portfolio.³¹⁶ “By combining the offerings under one roof, NTT America will be in a position to provide integrated data networking, IP, and hosting solutions through a single resource to its growing global customer base.... reemphasizing NTT Communications’ leadership position as a comprehensive enterprise solutions provider.”³¹⁷ Verio, on the other hand, will focus instead on providing hosting and managed network services to small and mid-sized business customers.³¹⁸

NTT America provides a wide range of telecommunications and managed network services to business customers, and has introduced innovative new products to enhance its IP capabilities. The company recently launched a high-speed point-to-point wide area Ethernet

³¹⁵ Press Release, NTT America, NTT Comm Named “Best Global Carrier” at World Communications Awards 2004 (Oct. 13, 2004), *available at* <http://www.nttamerica.com/news/2004/041013.html>.

³¹⁶ See Press Release, NTT Communications, NTT Com Announces Reorganization of Global Operations (Nov. 9, 2005), *available at* http://www.ntt.com/release_e/news05/0011/1109_2.html (“In the increasingly competitive U.S. market . . . NTT Com will strengthen operations by shifting Verio’s global IP network services and dedicated hosting for large and midsize enterprises to NTT America.”).

³¹⁷ Press Release, NTT America, NTT Communications Global IP Network and Enterprise Hosting Business in the U.S. Moves to NTT America (Dec. 1, 2005), *available at* <http://www.nttamerica.com/news/2005/051201.html>.

³¹⁸ *Id.*

solution which “provides the flexibility and scalability of Layer 3 (IP) technology while incorporating the dedicated traffic paths and management capabilities associated with Layer 2 technologies...[and] targets a ultra high bandwidth solution (100Mbps to 1Gbps) for U.S. domestic needs.”³¹⁹ NTT also introduced commercially the new Internet Protocol - IP version 6 (IPv6) - which provides many benefits over IPv4 (the current IP standard): more flexible support for mobile devices; more support for secure communications; and improves on QoS support to allow time-sensitive applications like VoIP and video to be prioritized over less critical applications.³²⁰ NTT was the first company to offer IPv6 services in the U.S. and operates the world’s largest IPv6 Tier 1 backbone (running “dual-stack” to permit both IPv4 and IPv6 traffic).³²¹ With the June 2005 announcement that the U.S. federal government will be transitioning its’ agencies network backbones to IPv6 by June 2008,³²² the pace of IPv6 adoption by government customers will no doubt accelerate and NTT’s early adoption of IPv6 will give it a competitive edge.

³¹⁹ Press Release, NTT America, NTT America Launches Ultra High Speed, Wide Area Ethernet Solution (Mar. 8, 2006), *available at* <http://www.nttamerica.com/news/030806.html>.

³²⁰ NTT America: IPv6, *available at* <http://us.ntt.net/products/ipv6/>.

³²¹ *See id.*

³²² *See* Office of Management and Budget, Memorandum to Chief Information Officers RE: Transition Planning for Internet Protocol Version 6 (IPv6) (Aug. 2, 2005) (noting June 29, 2005 testimony setting June 2008 transition date to IPv6), *available at* <http://www.whitehouse.gov/omb/memoranda/fy2005/m05-22.pdf>.