CHAIRMAN

Federal Communications Commission

Washington, D.C.

29 November, 2001

The Honorable Thomas Carlson
United States Bankruptcy Court
Northern District of California
San Francisco Division
235 Pine Street, 23rd Floor
San Francisco, CA 94104

Re: In re At Home Corporation, et al., Debtors, Case No. 01-32495 TC

Dear Judge Carlson:

It has come to my attention that, in the course of the Excite@Home bankruptcy litigation now before you, you may be asked to permit or perhaps order the service to be discontinued. I write to urge you to balance not just the interests of one debtor and its creditors, but also those of millions of customers and the American public as you consider these requests. In particular, in the event that you permit service to be discontinued, I respectfully urge you, at a minimum, to provide for an orderly transition rather than a precipitous shutdown of Excite@Home, to avoid disrupting broadband service to a significant percentage of U.S. customers.

Let me first note that the Federal Communications Commission has a strong interest in the provision of high-speed Internet services to the American public. As part of the Telecommunications Act of 1996 (Pub. L. No. 104-104, § 706(a)) Congress directed the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." Pursuant to Congress's directive, the Commission has devoted considerable resources to the goal of promoting the deployment of high-speed (or "broadband") services.

The technologies used to provide high-speed services have achieved varying degrees of deployment in the marketplace. As of September 30, 2001, a review of various SEC filings and industry sources indicates that there were approximately 9.8 million residential and business subscribers to high-speed services in the United States. Cable industry sources indicate that, as of that date, cable Internet providers were responsible for serving approximately 6.4 million (or 65%) of those subscribers. Our understanding is that approximately 2.7 million of those customers – more than 40% of the cable Internet consumers and more than 27% of the total broadband consumers - are subscribers to cable Internet services jointly provided by cable companies and Excite@Home.

Given these circumstances, an immediate shutdown of Excite@Home would disrupt broadband service to a significant percentage of the subscribers in the U.S. These customers, including numerous schools, libraries, public institutions, and residential consumers, would be left without high-speed Internet access unless and until their cable operator completes alternative arrangements or they initiate service with another high-speed provider (which could take weeks or longer), if one is available. This would be highly disruptive and could harm broadband deployment, contrary to the goals of Congress and the FCC.

I respectfully urge you to consider these factors as you weigh the motions before you. There is abundant case law for the proposition that a bankruptcy court acts in equity and can and should consider the interests of consumers and the public at large. *See, e.g., In re Huang*, 23 B.R. 798, 801 (B.A.P. 9th Cir. 1982) (noting that the application of the business judgment rule to a debtor's decision to reject an executory contract "may involve a balancing of interests"); *In re Midwest Polychem*, 61 B.R. 559, 562 (Bankr. N.D. Ill. 1986) ("Since the bankruptcy court is a court of equity, this court believes that it is appropriate to always consider the equities of the situation and measure the relative effects of rejection before granting approval") (citing *Huang*).

It would be ideal to find some way to continue the service without negatively impacting the bankruptcy estate. If for some reason that is impossible, then at a minimum I hope an orderly transition could be arranged to avoid the impairments described above.

I appreciate your willingness to consider these views. I stand ready to provide additional information at your request.

Sincerely,

Michael K. Powell