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July 2, 2002

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Re: Applications for Consent to the Transfer of Control of Licenses From Comcast Corporation and AT&T Corp. to AT&T Comcast Corporation  
MB Docket No. 02-70

Dear Ms. Dortch:

This letter provides notice for the public record that undersigned counsel to Comcast Corporation ("Comcast") filed today certain confidential material under seal and subject to the Protective Order, DA 02-734, in the above-referenced docket.

The confidential material filed under seal provides the narrative response of AT&T Corp. and Comcast to the Document and Information Request (the "Request") attached to the letter dated June 11, 2002, from Royce D. Sherlock to James R. Coltharp, Comcast, and Betsy J. Brady, AT&T. This response is being provided pursuant to the Request as clarified in our June 17, 2002 meeting with the Commission staff and in subsequent telephone conversations with the Commission staff regarding the procedures for responding to the Request. The unredacted, confidential version of this filing is being hand delivered to you, as well as to Roger Holberg and Linda Senecal of the Media Bureau, as required by the Protective Order. The confidential version will be made available for inspection pursuant to the terms of the Protective Order at the office of Davis Polk and Wardwell, 1300 Eye Street NW, Washington, DC 20005. Arrangements may be made by contacting the undersigned at 202-777-7700.

Two copies of the filing, as redacted, are submitted herewith pursuant to the Protective Order. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,



A. Renée Callahan  
Counsel to Comcast

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cc: Roger Holberg  
Linda Senecal

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RESPONSE OF AT&T CORP. AND COMCAST CORPORATION  
TO JUNE 11, 2002 DOCUMENT AND INFORMATION REQUEST  
MB Docket No. 02-70

A. **Headend-in-the-Sky (“HITS”)**

- A.1. **A supporting declaration states that HITS provides programming to “cable systems serving 7.2 million digital subscribers’ homes.”<sup>1</sup> How were “digital subscribers” defined for purposes of this calculation? Does the subscriber figure refer to the number of subscribers for whom a digital tier is available, or to the number of subscribers who actually subscribe to a digital tier?**

The term “digital subscribers,” as used in the May 17, 2002 Declaration of Gregory Braden (“Braden Declaration”),<sup>2</sup> refers to a household that actually subscribes to some tier of digital service (*i.e.*, has at least one set-top box authorized to receive digital signals).

- A.2. **How many multichannel video programming distributors (“MVPDs”) receive HITS programming for use on some or all of their systems? How many subscribers receive HITS programming from MVPDs that contract directly with HITS? How many subscribers receive HITS programming from MVPDs that obtain it from resellers or through the National Cable Television Cooperative contract?**

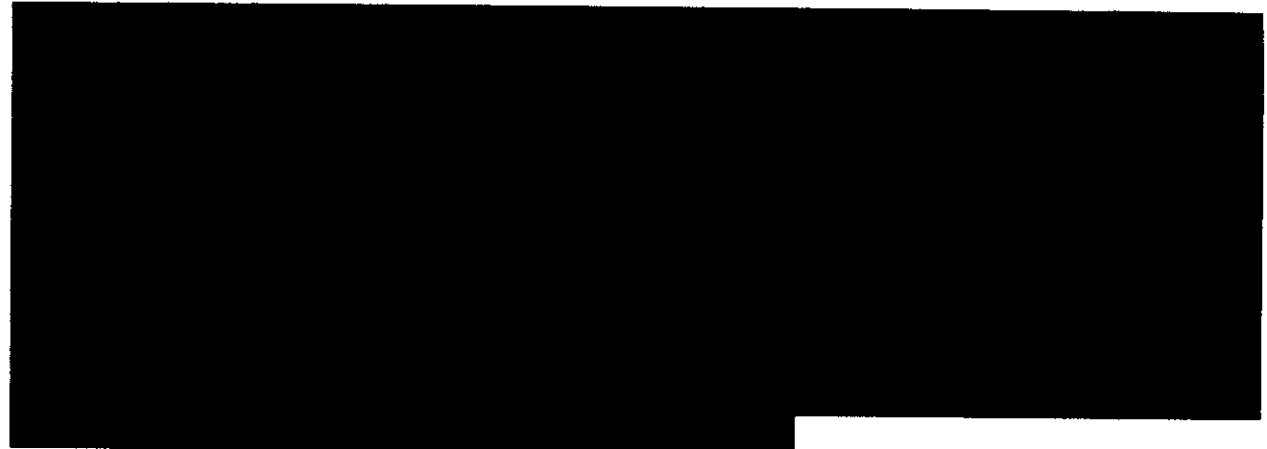
HITS has 299 active agreements with MVPDs to deliver “HITS programming” to one or more headends. As explained in the Braden Declaration, however, “HITS programming” is not owned by, or exclusive to, HITS. Rather, HITS uses commercially-available equipment and software and leased satellite transponders to package and transport programming owned by video programming suppliers (from which each HITS “affiliate” must separately obtain a license to distribute the programming). The programming delivered by HITS generally is also available directly from the owners of that programming.



<sup>1</sup> Braden Declaration ¶ 19. [Footnote in original FCC request.]

<sup>2</sup> Attached as Appendix 2 to Reply to Comments and Petitions to Deny Applications for Consent to Transfer Control, MB Docket 02-70 (filed May 21, 2002) (“Reply Comments”).

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Moreover, the Applicants acknowledge the importance of continued access by smaller cable systems serving rural markets and their customers to digital programming provided via HITS, including many current AT&T Broadband systems in rural areas; American Cable Association noted the importance of such access in its comments in this proceeding. As the parties indicated in their Reply Comments, AT&T Comcast intends to continue to provide the HITS service for the foreseeable future, to honor all existing service contracts, and to communicate in advance to HITS' customers any substantial changes in the service relationship.

**A.3. Are there any entities to which AT&T (or any HITS reseller) has denied a request for HITS service? If so, please provide any documents explaining the reasons for any such denial, including any contractual provisions that restrict the availability of HITS.**

As a general matter, HITS' services are available to MVPDs using compatible technologies, either through globally-negotiated agreements (such as the NCTC model agreement) or through individually-negotiated agreements on a case-by-case basis. The HITS service was developed for distribution on traditional cable delivery technologies and has also been tested, and is commercially available, over SMATV, MDS, and MMDS systems. HITS was not developed for, and has not been tested on, DSL, VDSL, or C-band satellite technology. Although AT&T Broadband would not necessarily know whether WSNet has denied a request for service, WSNet's HITS contract does prohibit WSNet from reselling the HITS service to other MVPDs in AT&T Broadband's service areas. However that limitation expressly excludes systems that become part of the AT&T Broadband footprint pursuant to a major merger. Thus, WSNet is free (pre-merger and post-merger) to resell the HITS service to other MVPDs in Comcast service areas. *See Braden Declaration ¶ 23.*



[REDACTED]

[REDACTED]

**A.4. Does AT&T currently offer HITS service to entities that compete with Comcast in Comcast's service territories? If so, what is the duration of those service agreements?**

AT&T Broadband does currently offer HITS service to MSOs that compete with Comcast in Comcast's service territories. Upon information and belief, several overbuilders currently subscribe to HITS and provide cable service in Comcast territories. Neither Comcast

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<sup>3</sup> A list of names and titles of the individuals whose files were searched in response to the June 11, 2002 Document and Information Request is appended as Attachment 1.

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nor AT&T Broadband has access to complete and accurate information regarding the boundaries of the service areas of cable overbuilders. Based upon the data publicly reported by the *Warren Communications Television and Cable Fact Book 2002* and information from web sites of overbuilders, however, it appears that at least two overbuilders (Hart Cable, Inc. and Knology) take the HITS service in Comcast service areas.



**A.5. How many of the MVPDs that receive HITS programming (directly or indirectly) are overbuilders in AT&T's service territories? In Comcast's service territories?**

Based upon the *Warren Communications Television and Cable Fact Book 2002* and information from web sites of overbuilders, of the various MVPDs that receive HITS-delivered programming either directly or indirectly, at least five (Alameda Power, Cable and Communications Corp. d/b/a Mid-Rivers, Click!net, Spanish Fork City Corporation, and WINFirst a/k/a Western Integrated Networks) are overbuilders in AT&T Broadband's service territories, and at least two others, Hart Cable and Knology, are overbuilders in Comcast's service territories. In addition, Knology was overbuilding in AT&T Broadband territories when it contracted for HITS service; however, AT&T has since sold the systems it owned in those particular territories. AT&T Broadband notes that it does not have complete and accurate information regarding the boundaries of the service areas of cable overbuilders.

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**B. Concentration and Program Access**

- B.1. For purposes of this request, a “cluster” consists of two or more cable systems which are in close geographic proximity and share personnel, management, marketing, and/or technical facilities. Provide: (1) maps showing all of the geographic areas in which additional clustering would result from the proposed merger; and (2) data which quantify the magnitude of the additional clustering, including: (a) how many of each Applicant’s systems will comprise each cluster; (b) how many of each Applicant’s subscribers will be served by the cluster; and (c) the number of subscribers served by competitors of the cluster, if there are competitors. Please respond to part (2) of this question in an electronic spreadsheet format.**

In response to subpart (1) of this request, the Applicants are providing (i) a map of the United States showing the locations of systems owned and operated by Comcast and AT&T Broadband, which is being concurrently filed under separate cover with the Commission and bears bates number “Comcast-FCC-B.1-0000001” and (ii) maps of those states where both Comcast and AT&T Broadband own and operate cable systems, which are appended as Attachment 2. As explained below, the proposed merger will not result in additional clustering in most of the states covered by these maps.

In response to subpart (2) of this request, the Applicants are producing an electronic spreadsheet identifying potential additional clustering that may result from the proposed transaction, which is appended as Attachment 3. With respect to this spreadsheet, the Applicants note the following. *First*, as a general matter, the proposed transaction will not have a significant effect on the level of clustering in systems operated by AT&T Broadband and Comcast. Accordingly, the attached spreadsheet likely overstates the potential clustering effects of the proposed transaction. The Applicants are aware of only a few cases where the proposed transaction could be said to create or enlarge a cluster or merge pre-existing clusters:

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

*Second*, the Applicants note that they do not have a common definition of what constitutes a “system” in response to subpart 2(a). Comcast divides its operations into cable “systems” that serve defined areas and often include multiple headends. AT&T Broadband organizes its cable operations around cable headends. Accordingly, Comcast identifies a number of “systems” in response to subpart 2(a) that may include multiple headends, while AT&T Broadband identifies a number of headends in response to subpart 2(a).

*Third*, the Applicants do not consistently maintain detailed or reliable data concerning the number of subscribers served by competitors in any given area. Accordingly, the Applicants’ response to subpart 2(c) is necessarily incomplete and imprecise. In order to generate a response to subpart 2(c), the parties have attempted to determine the number of DBS subscribers in each

[REDACTED]

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This response addresses AT&T Broadband's owned and operated and consolidated systems. AT&T Broadband does not have relevant information for systems in Parnassos Communications, L.P., CC VIII, L.L.C., Insight Midwest L.P., Kansas City Cable Partners, Texas Cable Partners, L.P., US Cable of Coastal - Texas, L.P., Midcontinent Communications, and Century - TCI California Communications, L.P.

**B.3. Provide all documents discussing any proposals or plans for the terrestrial delivery of programming by: (a) each Applicant to its cable systems; and (b) the merged entity to its cable systems.**

For purposes of this request, and consistent with clarifying discussions with Commission staff, Applicants are limiting the answer to services that are currently delivered via satellite or services that have not yet been launched; Applicants have not searched for documents pertaining to systems that are already delivered terrestrially (*e.g.*, in the case of Comcast, CN8 and CSN). In responding to this document request, the Applicants searched the relevant files of the following individuals: for AT&T – Allan Singer, Sue Hamilton, and David Grain; for Comcast – Amy Banse, Jordan Nadell, and Russ Chandler. AT&T and Comcast each believes that the individuals it has designated are the most likely to have custody of documents responsive to this request.

**Comcast Response:** Comcast has entertained no proposals, nor made any plans, regarding the pre- or post-merger terrestrial delivery of services that are currently delivered by satellite or of new programming services, and accordingly no documents responsive to this request are available. In this regard, Comcast wishes to underscore that it is particularly mindful of the importance of continued access to diverse programming by smaller market cable systems and their customers.

**AT&T Broadband Response:** No responsive documents.

**B.4. Does either Applicant currently have exclusive contracts with any video programmers? If so, please list the locations (by franchise area) where such exclusive programming is offered to subscribers as well as the following terms of each contract: (a) the name of the network or programming service at issue; (b) the contract's duration and expiration date; and (c) the scope and extent of exclusivity afforded by the contract, including the geographic area covered by the exclusivity provision.**

Consistent with clarifying discussions with Commission staff, both AT&T and Comcast are providing this information by system or headend, not franchise area.



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**Comcast Response:** Comcast has a limited number of video programming contracts that contain exclusivity provisions, some of which have been waived. Details are provided in Attachments 9-15.

**AT&T Broadband Response:** *See* Attachments 16-25.

This response addresses AT&T Broadband's owned and operated and consolidated systems. AT&T Broadband does not have relevant information for systems in Parnassos Communications, L.P., CC VIII, L.L.C., Insight Midwest L.P., Kansas City Cable Partners, Texas Cable Partners, L.P., US Cable of Coastal - Texas, L.P., Midcontinent Communications, and Century - TCI California Communications, L.P.

**B.5. Provide a chart indicating: (a) the top 25 Designated Market Areas (“DMAs”) in which each Applicant currently provides cable television service; (b) each Applicant’s subscribership in each DMA; and (c) the percentage of households in each DMA that subscribe to each Applicant’s service.**

The joint response to this request was previously submitted under separate cover on June 27, 2002.

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**C. Time Warner Entertainment (“TWE”)**

**C.1. Explain the mechanism by which it is intended that the rights and obligations of the parties to the TWE Partnership Agreement, including its non-compete provisions, will be maintained and enforced if TWE is converted into a corporation.**

[REDACTED]

[REDACTED]

[REDACTED]

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**D. Competition Among Multichannel Video Programming Distributors (“MVPDs”)**

- D.1. Has either Applicant within the last five years considered or evaluated the feasibility of expanding its cable operations into the franchise territories of the other Applicant? If so, provide all documents relating to or referring to such considerations or evaluations.**

In responding to this document request, the Applicants searched the relevant files of the following individuals: for AT&T – Ron Cooper, Trey Smith, and Kevin Casey; for Comcast – Steve Burke, Mike Tallent, and Dave Watson. AT&T and Comcast each believes that the individuals it has designated are the most likely to have custody of documents responsive to this request.

**Comcast Response:** Comcast has not considered or evaluated the feasibility of expanding its cable operations in the franchise territories of AT&T Broadband.

**AT&T Broadband Response:** AT&T Broadband has not considered or evaluated the feasibility of expanding its cable operations in the franchise territories of Comcast.

- D.2. Have any complaints been filed against either Applicant by actual or potential cable overbuilders, alleging discrimination or other anticompetitive conduct? Provide a list of: (1) all complaints that have been filed with federal, state, or local regulators; (2) all lawsuits whether filed in state or federal court; and (3) all complaints that were referred to mediation or arbitration.**

**Comcast Response:**

Complaints by Overbuilders Filed at the FCC

1. *Philadelphia Choice Television, Inc. d/b/a Popvision v. Comcast Cablevision of Philadelphia*, CSR 5034

On June 5, 1997, Popvision filed a petition for special relief with the FCC alleging violations of the uniform rate structure requirements of 47 U.S.C. § 543(d) and 47 C.F.R. § 76.984, through allegedly predatory pricing practices, with regard to Bakers Bay, a 424-unit MDU in Philadelphia. Comcast answered that complaint on July 17, 1997. On May 31, 2001, Popvision filed a letter moving to dismiss its complaint. Five days later, the Consumer Protection and Competition Division of the Cable Services Bureau dismissed the petition. *Philadelphia Choice Television, Inc. d/b/a Popvision v. Comcast Cablevision of Philadelphia*, 16 FCC Rcd. 11,903 (2001).

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### 2. *Knology Holdings, Inc. v. WB Television Network*, CSR-5458-P

On November 24, 1999, Knology Holdings, Inc. (“Knology”) filed a program access complaint against the WB Television Network, Time Warner Entertainment, L.P., Time Warner, Inc., AT&T Broadband and Interactive Services, Comcast Corporation, Acme Television Holdings, LLC, AVN, Inc., Benedek Broadcasting Corp., and Lewis Broadcasting Corp. The complaint alleged that defendants were parties to exclusive programming contracts and that they engaged in unfair methods of competition. On March 12, 2001, Knology filed a motion to dismiss with prejudice, requesting dismissal on the grounds that the matter had been resolved by settlement among all parties. On March 28, 2001, the Consumer Protection and Competition Division of the FCC’s Cable Services Bureau dismissed the complaint with prejudice. *Knology Holdings, Inc. v. WB Television Network*, 16 FCC Rcd. 7093 (2001).

### 3. *Complaint Against Comcast Corporation*, CSR \_\_\_\_-R

On May 22, 2002, WideOpenWest Holdings, LLC (“WOW”) filed a complaint with the FCC alleging that Comcast’s promotional pricing practices violate the Commission’s customer service rules. Comcast filed an answer to that complaint on June 11, 2002. WOW was expected to file its reply on June 28.

#### Complaints by Overbuilders Filed with State or Local Regulators

After due inquiry, Comcast has not identified any complaints filed by overbuilders with state or local authorities.

#### Lawsuits by Overbuilders Filed in Federal or State Courts

After due inquiry, Comcast has not identified any lawsuits brought in federal or state courts by overbuilders against Comcast.

#### Complaints by Overbuilders That Were Referred to Mediation or Arbitration

After due inquiry, Comcast has not identified any overbuilder complaints that have been referred to mediation or arbitration.

#### **AT&T Broadband Response:**

#### Complaints by Overbuilders Filed at the FCC

### 1. *Everest Midwest Licensee v. Kansas City Cable Partners*, CSR-5845

On February 5, 2002, Everest Midwest Licensee (“Everest”) filed a complaint against Kansas City Cable Partners (“KCCP”), a partnership controlled by AOL Time Warner, in which

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AT&T Broadband owns a limited partnership interest. The complaint alleges that KCCP is violating the uniform rate rule by offering promotional discounts in select areas it serves. KCCP has responded to Everest's Complaint and submitted documentation showing that its discounted offerings are promotions consistent with the FCC rules. The case is pending before the FCC's Media Bureau.

2. *Knology Holdings, Inc. v. WB Television Network*, CSR-5458-P

On November 24, 1999, Knology filed a program access complaint against the WB Television Network, Time Warner Entertainment, L.P., Time Warner, Inc., AT&T Broadband and Interactive Services, Comcast Corporation, Acme Television Holdings, LLC, AVN, Inc., Benedek Broadcasting Corp., and Lewis Broadcasting Corp. The complaint alleged that defendants were parties to exclusive programming contracts and that they engaged in unfair methods of competition. On March 12, 2001, Knology filed a motion to dismiss with prejudice, requesting dismissal on the grounds that the matter had been resolved by settlement among all parties. On March 28, 2001, the FCC's Cable Services Bureau dismissed the complaint with prejudice. *See Knology Holdings, Inc. v. WB Television Network*, 16 FCC Rcd. 7093 (2001).

3. *Ameritech New Media, Inc. v. MediaOne, Inc.*, CSR-5273-P

In 1998, Ameritech New Media, Inc. ("Ameritech") filed a program access complaint against MediaOne, Inc. ("MediaOne") and Time Warner Cable ("Time Warner"). The complaint alleged that MediaOne and Time Warner entered into exclusivity agreements with a cable-affiliated video programmer, Classic Sports Network, in violation of Section 628(b) of the Communications Act and Section 76.1001 of the FCC's rules. MediaOne, Time Warner, and Ameritech filed Joint Stipulations of Dismissal in light of MediaOne's and Time Warner's waiver of their exclusivity rights. On September 2, 1998, the Cable Services Bureau dismissed the complaint with prejudice. *See Ameritech New Media, Inc. v. MediaOne, Inc.*, 13 FCC Rcd. 17748 (1998).

4. *Corporate Media Partners v. FX Networks, LLC*, CSR-5235-P

In 1998, Corporate Media Partners d/b/a Americast ("Americast") and its telephone company partners filed a program access complaint against FX Networks, LLC ("FX"), Fox/Liberty Networks, and TCI. The complaint alleged that FX refused to provide its programming to Americast on the grounds that it had exclusive programming agreements with incumbent cable operators including TCI. On April 22, 1998, the Cable Services Bureau issued an order finding that FX violated the program access rules and noting that it need not address allegations against TCI. *See Corporate Media Partners v. FX Networks, LLC*, 13 FCC Rcd. 8573 (1998). In a subsequent order, the Cable Services Bureau clarified its previous order to indicate that, as of April 9, 1998, TCI had agreed to relinquish any exclusive rights that it may have had with respect to its exclusivity agreements with FX. *See Corporate Media Partners v. FX Networks, LLC*, 13 FCC Rcd. 9312 (1998).

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### Complaints by Overbuilders Filed with State or Local Regulators

After due inquiry, AT&T Broadband has found no complaints by overbuilders or potential overbuilders filed with state or local regulators.

### Lawsuits by Overbuilders Filed in Federal or State Courts

1. *Conestoga Enters., Inc., v. AT&T Media Servs.*

On December 11, 2000, Conestoga Enterprises, Inc. (“Conestoga”) filed suit against AT&T Media Services (“AMS”) for AMS’s alleged refusal to air Conestoga’s advertising on AMS’s cable systems in State College and Altoona, Pennsylvania. In August 2001, the case was settled when AMS agreed to air Conestoga’s advertising.

### Complaints by Overbuilders That Were Referred to Mediation or Arbitration

After due inquiry, AT&T Broadband has found no complaints by overbuilders or potential overbuilders that were referred to mediation or arbitration.

This response addresses AT&T Broadband’s owned and operated and consolidated systems and Kansas City Cable Partners. AT&T Broadband does not have relevant information for systems in Parnassos Communications, L.P., CC VIII, L.L.C., Insight Midwest L.P., Texas Cable Partners, L.P., US Cable of Coastal - Texas, L.P., Midcontinent Communications, and Century - TCI California Communications, L.P.

- D.3. Has either Applicant ever included geographic or customer-specific restrictions in marketing/sales promotions with respect to any of its cable franchises? If so, please provide a list of all instances where such promotions occurred. With respect to each such instance, please identify, state or describe: (1) the particular cable franchise where such promotion occurred; (2) the starting and ending dates of such promotion; (3) the nature of the promotion, including its geographic and/or customer-specific restrictions; (4) an explanation or rationale for the promotion; and (5) whether any other competing terrestrial MVPD was providing or had an announced an intention to provide service in the area targeted for the promotion.**

**Comcast Response:** Comcast does not believe that any of its marketing/sales promotions have geographic or customer-specific restrictions of the sort contemplated by the question. Nonetheless, some explanation of Comcast’s practices seems appropriate.

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[REDACTED]

[REDACTED]

[REDACTED]

**AT&T Broadband Response:** AT&T Broadband likewise does not believe that any of its marketing/sales promotions have geographic or customer-specific restrictions of the sort contemplated by the question.

[REDACTED]



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[REDACTED]

[REDACTED]

[REDACTED]

This response addresses AT&T Broadband's owned and operated and consolidated systems. AT&T Broadband does not have relevant information for systems in Parnassos Communications, L.P., CC VIII, L.L.C., Insight Midwest L.P., Kansas City Cable Partners, Texas Cable Partners, L.P., US Cable of Coastal - Texas, L.P., Midcontinent Communications, and Century - TCI California Communications, L.P.

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**E. Broadband**

- E.1. Please list the following for each Applicant: (a) each franchise area in which its customers may currently select an unaffiliated Internet service provider (“ISP”) as their primary ISP; (b) the names of the unaffiliated ISPs providing service or with which either Applicant has reached an agreement to enable the unaffiliated ISP to provide service, using the Applicant’s cable facilities in that franchise area; (c) the date on which each ISP’s service was made available; (d) the number of subscribers served by each Applicant’s systems in that franchise area; and (e) of the total number of customers in that franchise area for whom broadband cable modem service is available, the percentage who have the ability to select an unaffiliated ISP. Please respond to this question in an electronic spreadsheet format.**

**Comcast Response:** An electronic spreadsheet responsive to this request is appended as Attachment 26. Comcast notes that it does not possess subscriber information responsive to subpart (d) on a franchise-by-franchise basis. Instead, Comcast possesses this information only on a system basis.<sup>6</sup> Accordingly, the electronic spreadsheet contains subscriber information on a system-wide basis.

**AT&T Broadband Response:** AT&T Broadband has executed contracts with three unaffiliated ISPs (EarthLink, NET1Plus, and Internet Central), is actively negotiating with other ISPs, and is moving quickly to begin rolling out its “Broadband Choice” initiative later this year. Currently, there are no AT&T Broadband franchise areas in which customers can select an unaffiliated ISP as their primary ISP.

- E.2. Please provide a narrative description of each Applicant’s plans, if any, to provide customers the ability to select an unaffiliated ISP as their primary ISP in the future and a schedule of when and where that service will be deployed. Please submit documentation necessary to support your response.**

**Comcast Response:** As a general matter, Comcast is committed to negotiating mutually beneficial commercial arrangements with independent ISPs because Comcast believes that such

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<sup>6</sup> Comcast maintains most financial and operational data on a system level. Each system may include multiple “franchises,” which are defined by local municipalities and are not relevant in most respects to Comcast’s business planning or operations (except to the extent that they define the outer limits of a system’s service area). Comcast currently operates approximately 140 systems.

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arrangements are desirable for Comcast's customers and likely to bring new subscribers and revenues to Comcast's broadband network.

Prior to December 2001, Comcast's relationship with At Home Corp. ("At Home") restricted its ability to enter into agreements with unaffiliated ISPs. Even prior to that time, however, Comcast had initiated technical trials with EarthLink and Juno for a multiple ISP network. In February 2002, within a few weeks of the end of its relationship with At Home, Comcast executed an agreement with United Online, Inc. ("United Online"), pursuant to which United Online markets and sells a high speed ISP service to residential customers using Comcast's broadband network. United Online launched this service in Indianapolis, Indiana and Nashville, Tennessee in May 2002.

Based upon the experience Comcast and United Online gain in this initial launch, and in accordance with the agreement between them, Comcast expects that it will negotiate with United Online to launch United Online's ISP services in other cities. Comcast also expects to enter into agreements with other independent ISPs for these ISPs to offer high speed Internet services to residential customers using Comcast's network. Comcast has had discussions with a number of other independent ISPs in this regard. The precise terms and conditions, as well as the technical details, of agreements between Comcast and other independent ISPs remain to be determined. Moreover, as noted in the Application,<sup>7</sup> Comcast has entered into an agreement that, post-merger, would require Comcast to offer to the Microsoft Network the same terms that United Online received in the United Online agreement (as well as any terms that Comcast may subsequently agree to with another ISP).

Comcast continues to believe that it makes commercial sense to pursue arrangements with independent ISPs.<sup>8</sup> As explained in the Declaration of Mark A. Coblitz (¶¶ 31-32) (attached as Exhibit 6 to the Reply Comments), unaffiliated ISPs have customer relationships and marketing expertise that can be used to attract new customers and revenues to Comcast's network. If Comcast were to forego commercially reasonable arrangements with independent ISPs, it would put itself at a competitive disadvantage versus other providers of Internet services, particularly DSL providers. Comcast President Brian Roberts has also explained (in connection with the announcement of the Comcast/United Online agreement) that "the more points of presence you have where people can learn from different creative marketers how to get the benefit of your product, in the long run that's the best way for your business to compete and for your business to succeed."<sup>9</sup>

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<sup>7</sup> Applications and Public Interest Statement, MB Docket 02-70, at 8 & n.9 (filed Feb. 28, 2002) ("Application").

<sup>8</sup> See generally Reply Comments 93-94.

<sup>9</sup> See Comcast-FCC-E.2-0000040.

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Documents supporting this response are being concurrently filed under separate cover with the Commission and bear bates numbers starting with the prefix “Comcast-FCC-E.2.”

**AT&T Broadband Response:** AT&T Broadband maintains a strong commitment to providing customers a choice of ISPs through commercially-negotiated, customer-friendly arrangements with unaffiliated ISPs. AT&T Broadband has made very substantial investments to upgrade its cable systems in order to provide cable Internet services and believes that properly-designed commercial arrangements with other ISPs will increase the customers for, and revenues from, those services, for at least two reasons. First, some customers may prefer the services of particular ISPs, and different ISPs may target particular market segments. In either case, the universe of potential purchasers of cable Internet services delivered over the AT&T Broadband network may be increased by commercially-negotiated multiple ISP access. Second, AT&T’s “Broadband Choice” initiative should allow AT&T Broadband to benefit not only from the demand generated by its own marketing efforts, but also those of the unaffiliated ISPs.

Late last year, AT&T Broadband constructed a robust cable Internet network specifically designed to accommodate multiple ISP access. When the At Home network was shut down in December 2001, former At Home subscribers were transferred to the new AT&T Broadband Network over a six-day period. AT&T Broadband is now completing the consolidation of subscribers served by the former MediaOne cable systems (which previously used the “RoadRunner” cable modem network) to the AT&T Broadband network (which is operating with greater than 99.98% reliability). Unlike the At Home network, which required significant upgrades to handle multiple ISP arrangements, the new AT&T Broadband network was designed from the ground up to be ISP-choice capable. It uses different software and processes, was designed to support policy-based routing requirements, and eliminates the need to backhaul traffic to a centralized location.

With the new network up and running, AT&T Broadband continued intensive negotiations with a number of unaffiliated ISPs. AT&T reached an agreement with EarthLink in March 2002. Pursuant to that agreement, EarthLink is expected to offer Internet services over AT&T Broadband’s cable systems in the greater Boston and Seattle areas. In April 2002, AT&T Broadband signed a contract with NET1Plus, a regional ISP that will provide Internet access over the AT&T Broadband network in the greater Boston service area. And in early May, AT&T Broadband reached an agreement with Internet Central, a Seattle-based ISP that will provide Internet access in the portions of the greater Seattle area served by AT&T Broadband. Under the terms of those agreements, each of the unaffiliated ISPs will market and set the price and other terms for its own cable Internet service offering.

AT&T Broadband Choice is scheduled to be deployed first in AT&T Broadband’s Boston and Seattle service areas, where cable Internet service is currently available to 2.3 million and 1.1 million homes, respectively. Boston and Seattle were logical choices as initial markets for the roll-out of Broadband Choice: both cities have a high percentage of cable systems upgraded and high PC penetration, and both markets were of interest to unaffiliated ISPs.

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Although much work remains to be done – AT&T Broadband and EarthLink, for example, identified a number of operational and implementation issues that require resolution before service rollout – AT&T Broadband expects that Broadband Choice will be rolled out in the Boston and Seattle areas in the third quarter of this year. Based upon their actual commercial experiences in Boston and Seattle, the parties to the existing contracts may mutually agree to extend their arrangements to other AT&T Broadband service areas (or, if experience dictates, to negotiate other terms and conditions for the provision of service in other areas). AT&T is also actively negotiating with additional ISPs and expects that it will enter into other arrangements with unaffiliated ISPs which will enable those ISPs to offer cable Internet services over AT&T Broadband's network. Documents supporting this response are being concurrently filed under separate cover with the Commission and bear bates numbers starting with the prefix "ATT BB-FCC-E.2."

**E.3. Does either Applicant have exclusive agreements with providers of Internet content or applications? If so, please identify the content provider and describe the nature of the agreement and the exclusivity provision.**

**Comcast Response:** Comcast has not entered into exclusive agreements with providers of Internet content or applications in connection with its high speed Internet service. In particular, Comcast has not entered into any agreements pursuant to which it has the exclusive right to display Internet content or applications on its high speed Internet "home page" ([www.comcast.net](http://www.comcast.net)) or any other website maintained as part of its high speed Internet service. Moreover, with respect to the content currently distributed in connection with Comcast's high speed Internet service, any Internet user can access Comcast's high speed Internet home page simply by typing in or bookmarking its URL, regardless of whether he or she is a subscriber to Comcast's high speed Internet service.

Comcast notes that certain affiliates, such as E! Entertainment, The Golf Channel, and Comcast Spectacor, maintain their own websites. These websites operate primarily as promotional vehicles for other non-Internet businesses (such as The Golf Channel cable television network or certain Comcast-owned sports arenas in Philadelphia). These websites may be accessed by any person with an Internet connection, irrespective of whether they subscribe to Comcast's high speed Internet service; in fact, Comcast understands that the vast majority of Internet users who access these sites are not subscribers to Comcast's Internet service.

Comcast has surveyed these affiliates and has identified a few instances (detailed below) where the affiliates have entered into exclusive agreements with providers of Internet content or applications. None of the identified agreements relates to so-called "broadband" content – that is, content that is customized for viewing or use over a broadband Internet connection. Comcast notes that the websites maintained by these affiliates are constantly being modified and updated

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and Comcast cannot say with complete certainty that it has identified all arguably exclusive agreements executed by these affiliates for Internet content or applications.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**AT&T Broadband Response:**

[REDACTED]

**REDACTED – FOR PUBLIC INSPECTION**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**REDACTED – FOR PUBLIC INSPECTION**

[REDACTED]

**E.4. Please state whether the Internet services of either Applicant currently use caching, blocking, filtering or other technologies to prioritize or block delivery of Internet content. Please explain how each such technology used by either Applicant operates and the purpose served by the technology.**

**Comcast Response:**

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

**AT&T Broadband Response:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**E.5. Please state whether either Applicant has limited, currently limits, or plans to limit the type or amount of content, applications, or technology, including video streaming, that its cable modem customers, unaffiliated ISPs, or the cable modem customers of an unaffiliated ISP, may use or access. Please describe any restrictions that apply to cable modem subscribers directly or to unaffiliated ISPs. Is either Applicant considering implementing such a policy? Please describe the nature of any policy or practice that has been implemented or is being considered and the purpose of such a policy.**

**Comcast Response:**

[REDACTED]

[REDACTED]

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[REDACTED]

**REDACTED – FOR PUBLIC INSPECTION**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**REDACTED – FOR PUBLIC INSPECTION**

[REDACTED]

[REDACTED]

**AT&T Broadband Response:**

[REDACTED]

[REDACTED]

[REDACTED]

**REDACTED – FOR PUBLIC INSPECTION**

