

Document and Information Request

A. Headend-in-the-Sky (“HITS”)

1. A supporting declaration states that HITS provides programming to “cable systems serving 7.2 million digital subscribers’ homes.”¹ 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?
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?
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.
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?
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?

B. Concentration and Program Access

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.
2. Please identify and describe all programming that each Applicant currently distributes to its cable systems terrestrially that, were it distributed via satellite, would be subject to the prohibition on exclusivity in the Commission’s program access rule, 47 C.F.R. § 76.1002(c)(2). Identify each cable system to which such programming is delivered and provide the number of subscribers in each area that receive such programming. Please respond to this question in an electronic spreadsheet format.

¹ Declaration of Gregory Braden (Attachment to Reply Comments) at ¶ 19.

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.
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.
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.

C. Time Warner Entertainment ("TWE")

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.

D. Competition Among Multichannel Video Programming Distributors ("MVPDs")

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.
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.
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.

E. Broadband

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.
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.
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.
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.
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.

F. Technical Standards and Interactive Television (“ITV”)² Services/Equipment

1. With what retailers has each of the Applicants reached agreements for in-store sales of cable modems? Please describe in detail how retailers are compensated under such agreements. Do subscribers that provide their own cable modem receive a lower monthly charge for cable modem service?

² For purposes of this request, interactive television services are services that support subscriber-initiated choices or actions that are related to one or more video programming streams, including, but not limited to, electronic program guides (“EPGs”) and video-on-demand (“VOD”) services.

2. What steps has each Applicant taken to conform to the Open Cable Applications Platform (“OCAP”) standard? Please describe the current status of each Applicant’s vendors’ conversion of proprietary software to the OCAP standard.
3. The Application states that, in connection with the exchange agreement between Comcast, AT&T, AT&T Comcast and Microsoft (the “QUIPS Exchange Agreement”), Comcast and Microsoft have agreed to a binding term sheet which provides that the parties will conduct a trial of an ITV platform, including set-top box middleware.³ Please provide a copy of the term sheet.
4. Please provide a copy of any other contract, agreement or term sheet which grants Microsoft powers or rights in exchange for its financial support of the Applicants or the merged entity.
5. Please describe Comcast’s ownership interest in, and ability to control the operations of SeaChange International, Inc. and/or its affiliates (“SeaChange”). Please describe any agreements with SeaChange for the provision of ITV content, services, or equipment.
6. Please describe Comcast’s ownership interest in, and ability to control the operations of TVGateway, LLC and/or its affiliates (“TVGateway”). Please describe any agreements with TV Gateway for the provision of ITV content, services, or equipment. Please describe the TV Gateway service and competitive alternatives, if any, to that service.
7. Provide copies of all contracts or agreements which either Applicant has entered into with providers of video-on-demand services or equipment and/or electronic program guide products that contain clauses preventing such provider from providing the service or product(s) to competitors.

G. Telephony

1. For any AT&T cable system in which cable telephony was available to any subscribers as of December 1, 2001, please provide the following information in an electronic spreadsheet form:
 - a) The number of homes passed by such system;
 - b) The number of homes passed to which circuit-switched cable telephony services are offered; and
 - c) The number of such homes passed that subscribe to circuit-switched cable telephony services.

³ *Applications for Consent to the Transfer of Control of Licenses, Comcast Corporation and AT&T Corp., Transferors, To AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Applications and Public Interest Statement at 8 (filed Feb. 28, 2002) (“Application”).

⁶ *Declaration of Robert Pick* (Attachment to Reply Comments) at ¶ 17.

2. For each cable system included in the scope of your answer to Question 1 of this Section, please explain whether AT&T intended, prior to entering into the merger agreement, to upgrade such system to offer cable telephony services to additional homes passed by that system, and, if so, provide the schedule for completion of those upgrades. Please explain (i) the extent to which such scheduled upgrades will enable the provision of circuit-switched or Internet protocol ("IP") telephony and (ii) any changes or modifications that have been made or may be made to such schedule or to the type of technology to be deployed as a result of or in contemplation of the proposed transaction.
3. Please provide all documents created on or after June 30, 2000 that discuss each Applicant's plans and schedules for deployment of both circuit-switched and IP cable telephony. Please show planned deployment on both a pre-merger and post-merger basis.
4. Please provide a map showing current and planned deployment of circuit-switched and IP cable telephony services in AT&T and Comcast service areas.
5. For each cable system in which either Applicant is providing or plans to provide cable telephony services, please describe the extent to which it will rely on (a) unbundled network elements or resale services obtained from the incumbent local exchange carrier or (b) network elements or services obtained from other telecommunications carriers, including AT&T Corp. (other than network elements that AT&T Corp. will assign to AT&T Broadband in connection with the Separation and Distribution Agreement).
6. A supporting declaration estimates that the proposed merger will achieve \$600-800 million in additional earnings before interest, tax, depreciation and amortization ("EBITDA") within three years through the provision of cable telephony services in Comcast's service areas. Please explain the assumptions and projections that underlie this estimate, including, if applicable, the number of additional cable telephony customers and the projected average revenue per customer that the proposed merger would produce.
7. Please describe (a) the business case for making investments in cable telephony rather than in other new services, and (b) the impact on any planned deployment of cable telephony services on the merged company's ability to deploy other new services over the cable plant.
8. To date, no cable operator has successfully deployed IP telephony on a commercial basis. Please provide a narrative explaining (a) what factors have impeded the commercial deployment of IP telephony, and (b) to the extent that the Applicants expect that the merged entity will deploy IP telephony on a commercial basis, how and when the merged entity would overcome such factors. Please include in your narrative any IP telephony trials that either Applicant has conducted or scheduled.

H. Benefits/Efficiencies to be Realized by Merger

1. The Applicants estimate that the proposed merger will achieve \$100-200 million in additional EBITDA within five years through the provision of new products and

services.⁶ Please explain the assumptions and projections that underlie this estimate, including, if applicable, what new services and products it assumes will be deployed.

2. A supporting declaration estimates that the proposed merger will achieve \$250-450 million in additional EBITDA through programming cost savings. Please explain the assumptions and projections that underlie this estimate, including, if applicable, a comparison of current programming rates and the programming rates that the Applicants expect AT&T Comcast to receive. Please submit documentation to support your response.
3. The Application states that the merger will accelerate deployment of ITV services.⁷ How many of the cable systems subject to the merger are offering ITV services (as defined at Section F herein)? Please list the services and the locations where such services are being offered. Please describe in detail how such deployment will be facilitated by the merger, and provide all projections, memoranda, analyses, etc. in your possession relating to how the merger will facilitate expansion of such services.
4. The Application states that the merger will accelerate deployment of certain services, including digital video.⁸ How many of the cable systems subject to the merger are offering a digital service tier to subscribers? Please list the locations where such services are being offered. Please describe in detail how such deployment will be facilitated by the merger. Provide all projections, memoranda, analyses, etc. in your possession relating to how the merger will facilitate expansion of such services.
5. The Application states that the merger will accelerate deployment of certain services, including High Definition Television (“HDTV”).⁹ How many of the cable systems subject to the merger are offering HDTV to subscribers? Please list the programming being carried and the locations where such services are being offered. Please describe in detail how such deployment will be facilitated by the merger. Provide all projections, memoranda, analyses, etc. in your possession relating to how the merger will facilitate expansion of such services.
6. The Applicants have stated that the merged entity “will have strong incentives to reduce prices” (Reply Comments, p. 22). What specific evidence supports a view that the proposed merger will result in reduced prices?
 - a. Did AT&T lower rates or hold down rate increases for any services after its merger with Media One? If so, please quantify these merger-related rate effects and explain how they resulted directly from the merger.
 - b. Please provide any documents, memoranda, or analyses in your possession which project consumer rates subsequent to the merger and discuss the merger’s potential effect on consumer rates.

⁷ Application at 33.

⁸ *Id.* at 35.

⁹ *Id.*

L. Section 652 Compliance

1. The Applicants have stated that the proposed merger complies with Sections 652(a) and (b) of the Communications Act of 1934, as amended, and the Commission's rules implementing these provisions of the Act. Please provide a map or other data which will allow us to verify compliance with these provisions of the Act and the Commission's rules.