

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America
Antitrust Division
Department of Justice
1401 H Street
Washington, D.C. 20530,
Plaintiff,

v.

AT&T Corp. and
MediaOne Group, Inc.,
Defendants.

CASE NUMBER 1:00CV01176
JUDGE: Royce C. Lamberth
DECK TYPE: Antitrust
DATE STAMP: 05/25/2000

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to enjoin defendant AT&T Corp. ("AT&T") from acquiring defendant MediaOne Group, Inc. ("MediaOne"), in order to prevent and restrain a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

Unless blocked, AT&T's acquisition of MediaOne's interest is likely to lessen competition substantially in the market for the aggregation, promotion, and distribution of broadband content. Road Runner is an Internet service provider that offers high-speed access to content through cable lines nationwide. Broadband service is technology that allows users to

used telephone dial-up services. Road Runner competes with Excite@Home, in which AT&T owns a substantial equity interest and voting control, in aggregating, promoting and distributing broadband content. MediaOne holds a significant equity and management interest in Road Runner. Excite@Home and Road Runner serve a significant majority of the nation's residential broadband Internet users.

Through the proposed merger, concentration in the market for aggregation, promotion, and distribution of residential broadband content would be substantially increased. Competition between Excite@Home and Road Runner in the provision of these services may be substantially lessened or even eliminated. Through its control of Excite@Home and its substantial influence or control of Road Runner, AT&T would substantially increase its leverage in dealing with broadband content providers, enabling it to extract more favorable terms for such services. AT&T's ability to affect the success of individual content providers also could be used to confer market power on individual content providers favored by AT&T.

By exploiting its "gatekeeper" position in the residential broadband content market to extract anticompetitive terms and to disfavor certain content providers, AT&T could make it less attractive for content providers to invest in the creation of attractive broadband content thereby reducing the quality and quantity of broadband content in the future.

The United States therefore seeks equitable relief against the Defendants named herein and complains and alleges as follows:

I. JURISDICTION AND VENUE

1. This Complaint is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C.

§ 25, to prevent and restrain the violation by the Defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. AT&T and MediaOne are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and over the parties hereto pursuant to 15 U.S.C. §§ 22, 25 and 28 U.S.C. §§ 1331, 1337.

3. AT&T and MediaOne each transact business and are found in the District of Columbia. Venue is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II. DEFENDANTS AND THE PROPOSED ACQUISITION

4. AT&T is a corporation organized and existing under the laws of New York, with its principal office at 32 Avenue of the Americas, New York, New York. It is the nation's largest long-distance telephone company, one of the nation's largest wireless telephony providers, a growing local telephony provider with nationwide ambitions, one of the top ten narrowband Internet service providers, and the nation's second-largest cable multiple system operator ("MSO"). AT&T's 1999 revenues totaled approximately \$62.4 billion.

5. AT&T controls @Home Corp. a.k.a. Excite@Home ("Excite@Home"), the largest provider of residential broadband service. Excite@Home provided residential broadband service over cable systems to approximately 1.5 million end user subscribers as of the first quarter of 2000, and its subscriber base is growing rapidly. AT&T currently holds approximately a 26% equity interest in Excite@Home and over 50% of the voting stock through AT&T's ownership of TCI related companies. AT&T recently entered into an agreement which, if implemented, will significantly increase its voting control over Excite@Home.

6. Excite@Home has exclusive contract rights to provide residential broadband Internet service over the cable facilities of its three principal equity holders, AT&T, Comcast Corporation, and Cox Communications, Inc. These cable MSOs account for over 35% of the nation's approximately 63 million cable subscribers. Excite@Home also provides residential broadband service over the cable facilities of a number of other cable system operators nationwide.

7. MediaOne Group, formerly US WEST/MediaOne, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Englewood, Colorado. It owns numerous cable systems and is the nation's seventh largest cable MSO. MediaOne also holds a 25.51% equity interest in Time Warner Entertainment Company, L.P. ("TWE"). TWE owns and operates numerous cable systems, and holds interests in cable programming networks, including Home Box Office ("HBO") and CourtTV, and production companies such as Warner Brothers. MediaOne's 1999 revenues totaled approximately \$2.7 billion.

8. ServiceCo LLC, a limited liability company owned by several Time Warner related entities, MediaOne, and subsidiaries of Microsoft Corporation and Compaq Computer Corporation, is the second largest provider of residential broadband service in the United States, using the trade name "Road Runner." As of the first quarter of 2000, Road Runner provided residential broadband service over cable systems to more than 730,000 end user subscribers, and its subscriber base is growing rapidly. MediaOne owns approximately 34% of Road Runner: approximately 25% of Road Runner through a direct ownership interest in the holding company that owns Road Runner and additional indirect ownership through MediaOne's interest in TWE.

Certain Road Runner decisions require the consent of all of the Road Runner owners, but many important decisions require only the concurrence of MediaOne and Time Warner.

9. Road Runner has exclusive contract rights through December, 2001 to provide residential broadband service over the cable facilities of its two cable parents, MediaOne and Time Warner. Time Warner is the nation's largest cable MSO. MediaOne and Time Warner combined account for more than 25% of the nation's 63 million cable subscribers. Road Runner also provides residential broadband Internet service over the cable facilities of several other cable system operators.

10. Together Excite@Home and Road Runner serve a significant majority of the nation's residential broadband Internet users.

11. On May 6, 1999, AT&T entered into an Agreement and Plan of Merger with MediaOne pursuant to which AT&T agreed to purchase the stock and assets of MediaOne for approximately \$56 billion. Following the consummation of this transaction, AT&T will own an effective 34% equity stake in Road Runner and will have substantial management rights.

12. The activities of the Defendants are within the flow of, and substantially affect, interstate commerce.

III. RELEVANT MARKET

13. Internet access is an important service demanded by ever-increasing numbers of Americans. The vast majority of residential users of the Internet today access it via "dial-up" modems: their computer uses a standard telephone line to connect to an Internet Service Provider ("ISP") which in turn connects the user to the Internet and any proprietary or exclusive content

offered by the ISP as a part of its service. This service generally allows users to send and receive data at rates of 56 kilobits per second or less and is referred to as "narrowband" access.

14. A rapidly growing number of residential users are accessing the Internet through "broadband" networks and technologies. "Broadband" service allows users to send and receive data at rates substantially greater than are possible using narrowband service. Broadband users may receive data at rates up to 25 times faster than are currently provided by narrowband access using standard dial-up modems.

15. In order to provide residential broadband service, an ISP must have access to transmission facilities that are capable of carrying data at a high rate between the facilities of the ISP and the homes of individual subscribers. The two principal types of transmission facilities used today to provide this access to residential customers are the networks owned by cable companies and local telephone companies.

16. Cable companies originally designed their networks to provide one-way transmission of information (i.e., video programming) to customers' homes, but in recent years many cable companies have upgraded their networks to provide the capability of two-way data transmission needed for residential broadband service. Subscribers access the Internet over computers connected to a cable modem or, in some cases, over their televisions connected to a cable set-top box containing a cable modem. The cable modem sends and receives data over the cable company's transmission facilities to the facilities of the residential broadband service provider. Cable modem service generally offers downstream transmission (i.e., from the ISP to the residence) at rates of up to 1.5 Mbps-2 Mbps, 25 times faster than the fastest dial-up connections now available.

17. Digital subscriber line (“DSL”) technology is used to enhance the transmission capabilities of the existing copper wires (“loops”) which telephone companies have connected to homes to provide telephone service. DSL, which requires users to have a DSL modem attached to their personal computer, typically delivers downstream data transmission at rates between 256 Kbps and 1.5 Mbps. DSL service may be provided by local telephone companies or by other firms which contract with the local telephone company for the use of its loops. Because of technical limitations, and because upgrades of telephone networks which are needed to provide DSL service have not been completed in many areas, DSL service is available only to a portion of residences which have local telephone service.

18. Broadband transmission to residences is also provided through satellite technology, which uses a radio relay station in orbit above the earth to receive, amplify, and redirect signals. Satellite broadband services are provided by direct broadcast satellite (“DBS”) providers such as DIRECTV and may be provided within the next several years by low earth orbit (“LEO”) satellites deployed by firms such as Teledesic. At present, this technology provides only one-way broadband transmission; the satellite provider transmits data downstream to the consumer’s home, but the consumer must use telephone lines for the upstream transmission of data from the home. Although satellite providers are working to address this deficiency, two-way satellite broadband service to the home may not be available for several years.

19. Broadband transmission may also be provided through “fixed wireless” technologies, including local multipoint distribution systems (“LMDS”) and multichannel multipoint distribution systems (“MMDS”). Fixed wireless technology typically uses microwave transmission facilities to transmit data to and from residential consumers. Although firms are

investing significant sums of money to develop fixed wireless technology, residential broadband service using such technology is not yet available on a large scale to consumers, and likely will not be commercially deployed on a large scale in the immediate future.

20. As of early 2000, approximately 70% of the subscribers to residential broadband service use a cable modem service in which data is transmitted over the facilities of a cable company. DSL services are the second most frequently used, but though the number of DSL users is growing rapidly, DSL still lags substantially behind cable modem service in market penetration and acceptance. Satellite and fixed wireless services have only a very small portion of residential broadband subscribers.

21. Of the seven largest cable MSOs, five have contracted with Excite@Home or Road Runner to provide residential broadband service over their cable facilities. Excite@Home and Road Runner together serve a significant majority of the subscribers who receive residential broadband service over cable facilities, and a significant majority of all residential broadband subscribers.

22. Because of the rapid growth in the number of residential broadband subscribers, and the expectation that there will soon be very large numbers of such subscribers, many firms are developing content that will be particularly attractive to residential broadband consumers. The transmission capacity of residential broadband service allows customers to access content that contains much larger quantities of data, such as high quality "streaming" video and various forms of interactive entertainment. Much of this broadband content will not be readily accessible or attractive to narrowband users, because of the much longer times that are needed to transmit the data through narrowband facilities.

23. A large portion of the costs of producing residential broadband content are fixed costs, which do not vary whether the content is provided to a very small or very large number of consumers. Once this content has been produced, the incremental cost of making it available to additional consumers is very low. The revenue that can be earned by a content provider, on the other hand, is very much dependent on the number of consumers who use that content. Content providers may earn revenue in a variety of ways -- from the sale of advertising, from charging end users for access to the content, from the sale of products or services marketed through the Internet -- and most of the revenue opportunities are substantially enhanced in proportion to increased numbers of consumers who access the content or services. Content providers produce most broadband content with national distribution in mind, largely in order to maximize the potential number of consumers they will reach, thereby maximizing advertising and other revenues.

24. AT&T and Time Warner (a co-owner of Road Runner) are substantial providers of content and services which are or could be delivered to end users through residential broadband facilities.

25. A relevant product market affected by this transaction is the market for aggregation, promotion, and distribution of broadband content and services. The success or failure of content providers depends greatly on their ability to attract large numbers of consumers. Excite@Home, Road Runner, and other residential broadband service providers and "portals" can substantially enhance or detract from a content provider's ability to reach large numbers of customers. A portal generally is an Internet site containing a "first page" as well as several subsequent pages, that users see with a high degree of frequency. These pages aggregate links

to a variety of types of content and services, and facilitate users' efforts to find content and services by providing search engines, "tree and branch" indexes, and prominent links to Internet content and services, as well as proprietary content and services. Most ISPs, including Excite@Home and Road Runner, include the first page of their portal as the default "start page" (i.e., the first screen a user sees upon access). There are also portals independent of major ISPs such as Yahoo and Lycos. A large number of customers access content providers through portals and therefore content providers seek prominent links by which to promote their content and draw users to their sites. The more favorable the placement of a link (e.g., "first page" rather than subsequent pages, a link that includes a larger share of the screen, etc.), the greater the content provider's likely audience, advertising revenues, and profitability.

26. For providers of broadband content, i.e., content that either requires broadband speeds or is much superior when viewed at broadband speeds, links that will attract more broadband customers, and only broadband customers, are more valuable than links that will be seen predominantly by narrowband users who will not access broadband content. Therefore, links that will be viewed by the general mass of Internet users--a substantial majority of which today are narrowband users--are not a good substitute for links that will be widely and exclusively viewed by broadband users.

27. In addition, content providers seek network services such as caching that will facilitate the distribution of their data so as to enhance the quality and accessibility of their content. Caching stores a content provider's content at various locations throughout the country, closer to end users, thereby improving speed and performance. This is a particularly important service for broadband content providers who must rely on the rapid delivery of large quantities of data

in order to provide the most attractive content. Broadband content providers therefore seek favorable caching and data distribution arrangements, as well as favorable terms for aggregation and promotion of their content, in order to attract more customers.

28. The aggregation and promotion of content, and the efficient physical distribution of content, are valuable services to content providers that heavily influence their success or failure in the content market. Content providers typically contract on a nationwide basis with firms that provide such services. The relevant geographic market for the aggregation, promotion, and distribution of broadband content is the United States.

29. Excite@Home and Road Runner are positioned to become two of the most important providers of aggregation, promotion, and distribution of residential broadband content. By virtue of the large number of subscribers to their residential broadband services, both firms will be able to significantly assist or retard the competitive efforts of broadband content providers, by granting or withholding aggregation, promotion, and distribution services, or through the prices, terms, and conditions by which such services are provided. Moreover, because of their ownership affiliations and exclusive contracts with many of the largest cable MSOs, it is unlikely that other providers of residential broadband services will be able to enter and attract comparable numbers of subscribers in the near term.

IV. ANTICOMPETITIVE EFFECT

30. Upon consummation, the proposed acquisition would give AT&T complete ownership and control of the assets and holdings of MediaOne, including MediaOne's direct and indirect holdings in Road Runner and significant influence over Road Runner's operations and

management.

31. AT&T's post-merger ownership interest in Road Runner will entitle it to participate in the governance of Road Runner, to have effective veto power over many Road Runner management decisions, to be present at meetings of Road Runner's Members' Committee, and to obtain all information available to members of the Board of Directors, including competitively sensitive information.

32. AT&T's control over Road Runner and access to competitively sensitive information combined with its control over Excite@Home and access to competitively sensitive information could facilitate collusion and coordination between Excite@Home and Road Runner and substantially lessen competition in the market for aggregation, promotion, and distribution of residential broadband content. Financial benefits derived from this reduction in competition would accrue in part to AT&T through its equity interests in Excite@Home and Road Runner.

33. If the proposed merger were consummated, concentration in the market for aggregation, promotion, and distribution of residential broadband content and services would be substantially increased, and competition between Excite@Home and Road Runner in the provision of such services may be substantially lessened or even eliminated. Through its control of Excite@Home and substantial influence or control of Road Runner, AT&T would have substantially increased leverage in dealing with broadband content providers, which it could use to extract more favorable terms for such services.

34. The increased leverage that AT&T would acquire in this market could also be used to promote or retard the success of individual content providers and thereby confer market power on individual content providers favored by AT&T. AT&T could profit from the creation and

exercise of such market power either through direct ownership of a favored content provider, or by obtaining payments from favored content providers in exchange for favorable treatment by Excite@Home and Road Runner. By exploiting its "gatekeeper" position in the residential broadband content market AT&T could make it less profitable for unaffiliated or disfavored content providers to invest in the creation of attractive broadband content, and thereby reduce the quantity and quality of content available.

V. VIOLATION ALLEGED

35. Pursuant to a merger agreement dated May 6, 1999, AT&T and MediaOne intend to consolidate or merge their businesses.

36. The effect of the combination of AT&T and MediaOne may be substantially to lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in the following ways, among others:

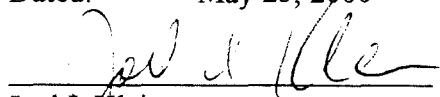
- a. actual and potential competition between Excite@Home and Road Runner in the aggregation, promotion, and distribution of broadband content will be eliminated;
- b. competition in the market for the aggregation, promotion, and distribution of broadband content will be lessened substantially;
- c. prices for the aggregation, promotion, and distribution of broadband content are likely to increase, and the quality and/or quantity of such services are likely to decrease.

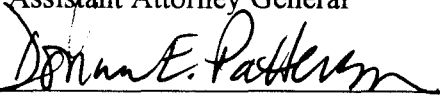
VI. REQUEST FOR RELIEF

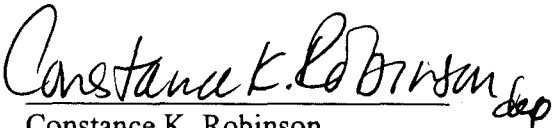
WHEREFORE, Plaintiff prays:

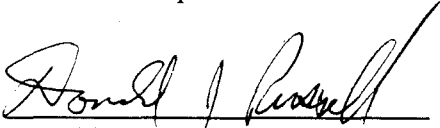
37. That AT&T's proposed consolidation and merger with MediaOne be adjudged a violation of Section 7 of the Clayton Act.
38. That a permanent injunction be issued preventing and restraining the Defendants and all persons acting on their behalf from consummating the merger agreement described in Paragraph 11 or from going forward with any other plan or agreement by which AT&T would merge with or acquire MediaOne, its capital stock, or any of its assets.
39. That the Court impose such additional equitable relief it deems necessary and proper.

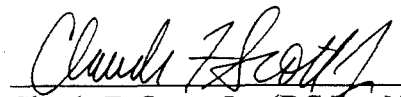
Dated: May 25, 2000


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