Testimony of

Mr. Mark Haverkate

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Mr. Chairman, members of the Committee, my name is Mark Haverkate, and I am the chief executive officer of WideOpenWest, a broadband communications company providing residents and small businesses in five states with cable television, high speed internet, and telephone services.

I appear today on behalf of my company, and also on behalf of the Broadband Service Providers Association ("BSPA"), an organization founded in October 2001, and consisting of thirteen pioneering companies committed to building competitive broadband networks in communities across the country.

We appreciate your invitation to participate in this hearing. We have great concerns about the proposed merger between AT&T and Comcast, and look forward to discussing them with you today.

Introduction

Ten years ago, neither my company, nor any of the members of the BSPA, existed in the form they do today. Their creation was in direct response to the Telecommunications Act of 1996 - which brought down barriers to competition among telephone, cable, and data service providers - and to advances in fiber optic and other technologies that made it possible to provide all of these services through "one wire."

Through this marriage of law and technology, the means has been borne to bring the great benefits of competition to consumers everywhere: as the FCC has proved, where consumers have a choice between providers of communications services, they pay lower prices, get better service, and have a greater range of more advanced offerings to choose from.

For example, WideOpenWest - or WOW as most of our customers call us - began operations in March of 2000, connecting our first customers in the Denver metropolitan market, where we continue to operate a digital cable and high speed Internet system in direct competition with AT&T Broadband. We are proud of the innovation we brought to the residential communications market, being the first cable television operator to champion the cause of open access for ISPs, the first company to offer flat rate unlimited long distance telephone service, and the first company to offer residential Internet customers a choice of three speed and price options.

In November of last year, WOW stepped forward when no one else would to acquire Ameritech's extensive competitive cable television systems in the Midwest markets of Chicago, Columbus, Cleveland, and Detroit. We are now adding digital and Internet services to those networks in order to bring residents there unprecedented - and much appreciated - consumer choice.

My company, and all the members of the BSPA, are bringing these benefits to consumers in dozens of communities around the country today.

Yet we are far from satisfied. Our goal is to expand much further, bringing the benefits of competition to every community that wants it.

To do so, however, we face significant challenges. As we build our systems it is imperative that we:

? Can count on vigorous enforcement of the nation's antitrust and communications laws, to

ensure that incumbents do not use their vast market power to stifle competition before it can become fully established.
? Have fair access to video programming that customers want to watch.
? Have fair access to utility poles and conduits.
? Have fair access to residents of multiple dwelling units - often the first toehold for competitors entering a market.
? Are not discriminated against in the application of franchising, tax and other laws.
The proposed merger between AT&T and Comcast has significant implications with respect to each of these areas. Whether that merger occurs, and under what conditions, will therefore have a major impact on whether the promise of the broadband industry is met, and consumers in other parts of the country have real choice in the purchase of cable television and other communications services in the future.
The Proposed Merger Would Reduce Competition
In many of our markets, the incumbent we face is either Comcast or AT&T Broadband. As a group, the members of the BSPA today have franchises to build systems in communities with more than 15 million households - nearly half which are now being provided service by either Comcast or AT&T. For some companies this number is much higher. In the case of WideOpenWest, for example, more than 75 percent of our territory is now being served by systems owned by either Comcast or AT&T. For other members of the BSPA, that percentage is even higher.
The members of the BSPA are highly concerned about the adverse effects of the proposed merger between Comcast and AT&T. I want to discuss two of the reasons for our position with you today.
First, the merger parties now control several key programming channels that all residential customers want access to. In the future, they will control more, including many sources of interactive and "on demand" programming. Yet they have already shown themselves willing to use their control over that programming for anticompetitive purposes. We fear the merger only will make this situation worse.
Second, the merger parties have shown that they are willing to resort to unfair and anticompetitive pricing tactics to prevent us from doing business in their communities. We fear that the merger would lead to even greater use of these tactics, in a targeted and coordinated way, with even more damaging results.
Merger Would Reduce Competitors' Access To Key Programming Services
As the Chairman of the FCC has recognized, "content is king" in the broadband world. Unless a competitor carries what subscribers want to watch, it cannot survive.
Comcast and AT&T today own numerous national and regional programming services that BSPA members need in order to compete. The merger parties have also announced their intention to use their combined resources to gain control over additional programming services. They have also shown that they will use their control over programming as a sword against competitors, and to undermine efforts to enter the merged entity's markets.
For example, Comcast owns, either in whole or in part, seventeen programming services carried by it and other cable television systems. These services comprise six percent of all those distributed nationally. Some of these services are extremely popular with certain segments of the population.
These services include three regional sports networks: Comcast SportsNet, which is carried on Comcast systems in the Philadelphia market; Comcast SportsNet Mid Atlantic, which is carried

on Comcast systems in the Washington and Baltimore markets; and Comcast Sports Southeast, which is carried on Comcast Systems in various markets in the Southeast. All three networks feature real time sporting events played by local professional and collegiate teams, as well as sports news and discussion shows. Comcast has exclusive rights to much of the programming carried on these networks.

Comcast also owns two other regional programming services, the Comcast Network and the Sunshine Network. Its other programming interests include QVC, E! Entertainment, Golf Channel, Discovery Health Channel, iN DEMAND, Outdoor Life, and style.

AT&T holds positions in three national programming services: E! Entertainment, style, and iN DEMAND. It also has equity in three regional ones: Fox Sports New England, New England Cable News, and Pittsburgh Cable News Channel. By virtue of its approximately 25 percent interest in Time Warner Entertainment, it has ownership interests in several more: Home Box Office, Cinemax, Comedy Central, and CourtTV.

BSPA members must have equal access to the programming services controlled by Comcast and AT&T if they are to compete effectively in their markets, and provide the benefits of that competition to consumers.

This is particularly true with respect to the regional sports programming networks, which have long been recognized as "must have" programming. Many potential customers care deeply about sports, and will not subscribe to the service of any competitor that does not carry the sports programming they want to watch. This fact has been borne out by hard data by BSPA member RCN: according to a survey it conducted, 40-58 percent of cable subscribers indicated that they would be less likely to subscribe to cable service if it lacked local sports programming.

For the same reason, iN DEMAND is considered an essential offering, since it features not only films and other entertainment programs, but sports packages as well. HBO, too, is considered a "marquee" programming service, and one that competitors must be able to offer their customers.

The other programming services owned by the merger parties are also of great importance to the competitiveness of BSPA members. QVC, in particular, is key because it is the most popular home shopping service on cable television today, and is also a source of revenue for systems that carry it. Others are as well - at least to certain segments of the population. To individuals in these groups, the ability to watch certain golf tournaments, or more extensive coverage of the Tour de France, is important enough to control their choice of broadband or cable service provider. While the number of such subscribers would vary among service areas, the experience of the BSPA members is that some number of customers in each would cancel their service if they could no longer watch this programming. If access to several such services were denied, the total number of customers lost could be highly significant.

Merger Parties Have Withheld Programming To Defeat Competition

The merger parties have previously shown they are willing to use their control over programming to suppress competition in the market for multichannel video distribution services. For example, it is well known that access to sports programming is crucial for any new entrant to this market. Comcast knows that, too, so in the late 1990s, when it was establishing Comcast SportsNet, it assiduously refused to allow RCN (or DirecTV or EchoStar) to carry that service on any of its systems in the Philadelphia area. The DBS providers both filed complaints against Comcast with the FCC, but because the programming service is not distributed by satellite, and is instead distributed by terrestrial means, neither was able to persuade the FCC to order Comcast to grant it access to this programming. RCN was able to avoid this fate but just barely - it now has access to SportsNet programming, but only for three months at a time.

AT&T, too, has not been above using its own exclusive access to programming as a sword against competition. For example, in Kansas City the incumbent cable operator - a joint venture between AT&T and AOL Time Warner called Kansas City Cable Partners ("KCCP") - has refused to allow BSPA member Everest Connections to carry Metro Sports, a local sports network KCCP has established. This service has exclusive rights to certain popular sports programming, such as the basketball games played by the University of Missouri, other college basketball and football games, professional soccer matches, high school sporting events, and more. Everest's efforts to gain access to this programming service have been stymied by the fact that KCCP distributes it by microwave transmission, not satellite.

Since Everest is not allowed to carry Metro Sports, it is effectively prevented from signing up residents for whom watching sports is a priority. This is true, as Everest's marketing staff has found out, even for residents who are otherwise dissatisfied with service from KCCP. To add insult to injury, KCCP allows Comcast - which provides service in several adjacent suburbs, but which does not compete with KCCP - to carry this programming.

The proposed merger could lead to an expansion of the programming tactics Comcast and, to a lesser extent, AT&T have used to impede competition in their markets, and increase the adverse impact of these tactics on both BSPA members and consumers. It would provide an incentive for both Comcast and AT&T to discriminate in the sale of their programming not only to benefit their own systems, but those of their new partner as well. It would also provide additional leverage to obtain exclusive access to programming owned by third parties, which the merged entity could use to pressure its competitors in multiple markets.

The merger parties have also expressed their intention to develop new programming services, which they have strongly implied they do not intend to share with competitors. As the parties have recently stated to the FCC,

Comcast's established expertise in producing local and regional programming will enhance the ability of the merged entity to offer AT&T Broadband customers the kinds of community-oriented coverage that Comcast already provides today to many of its customers. . . . [This programming] offers potential customers a reason to sign up for Comcast's services, and offers existing customers one more reason to continue to subscribe.

To the extent such services were the sole source for regional sporting events and other highly popular programming, new entrants could be denied access to the ingredients that are most critical to their success as competitors.

Secret, Selective Discounting

Over the past year many members of the BSPA have been subjected to extreme, targeted discounting by Comcast and AT&T in order to drive us out of business. These discounts are huge, and they are only offered to our customers or residents in our communities that want to switch to us from the incumbent. They are not advertised or made available generally - they are granted secretively over the telephone or in the doorways of our customers' homes. For example:

? Throughout southeastern Michigan, in markets where WideOpenWest competes with Comcast, residents we sign up for service are being offered rate discounts of between 33 and 50 percent to switch back to Comcast. They are also being offered free digital service, free pay per view, and other giveaways. Existing Comcast customers that try to cancel their service to sign up with us are being offered similar benefits not to do so. Importantly, these offers are not publicized, nor are they made available to anyone other than our existing customers and those Comcast customers who have asked to be disconnected in order to switch over to us.

? In Austin, Corpus Christi, and other markets in Texas, both Grande and ClearSource are being subjected to deep discounting by AT&T, through its joint venture with AOL Time Warner, Texas Cable Partners. In Austin, for example, TCP is offering discounts of between $16 to $28 per month to customers of these competitors in order to lure them back to the incumbents' own service.

? In Kansas City, Everest is being subjected to comparable tactics by AT&T, through its joint venture with AOL Time Warner, Kansas City Cable Partners. In that market, however, KCCP has gone even further than its Texas affiliate - promising Everest customers additional payments of $200 if they switch back to KCCP, and even more if they agree to write testimonials in favor of KCCP's service. KCCP has also made so-called customer "loyalty test" offers to residents in areas where Everest is building out its system, through which customers in these neighborhoods are guaranteed discounts on service prices if they agree to stay with KCCP for 12 months. To fund these discounts, KCCP has raised the price of service for other neighborhoods served by its system.

? In Augusta, Georgia, Comcast is offering discounts in excess of 50 percent for basic and digital cable, high speed data, and other services - but only in areas where Knology offers competitive services. These offers are not made generally throughout Comcast's service area, but are instead mailed directly to Knology customers and new residents in competitive neighborhoods.

Secret, selective discounting like this will destroy competition if it is allowed to continue. Giving big discounts to a chosen few is a cheap way for incumbents to exact the greatest possible toll on new entrants. And while that relative handful of customers gets a big financial benefit, once the competitor is forced from the market they - with the rest of their neighbors - will resume paying the pre-competition, monopoly rate: just like customers do in the communities where competitors have not yet entered.

In truth, the merger parties are waging a behind-the-scenes hostile take-over of our company and the entire competitive broadband industry - one customer at a time. It is a clever strategy, and one that is likely to work if it is allowed to continue. Moreover, once they achieve this goal, they will also have complete control over the huge market for cable modem Internet access, and again know no restraint in what they charge for it.

The Federal Communications Commission recognizes these facts, and publicly stated that secret and selective discounting threatens to destroy broadband competition. In its recent report on the state of competition in the cable television industry, the Commission reviewed these actions and concluded:

The vast resources of a large MSO may simply prove too much if brought to bear in a targeted fashion against a single system entrant. Moreover, we are concerned about the signal such targeting may send to others who would compete in the MVPD market, and particularly to the financial markets to which a new entrant may well be dependent for resources. . . . [S]uch practices . . . tend to limit competition and discourage new entry.

These tactics will only get worse if the merger is approved. Combining the resources of both AT&T and Comcast, without preventing the merged entity from targeting BSPA members in this manner, will allow the new company to coordinate and intensify these actions - with lethal effect on competitors. If this is allowed to happen, it will be too much for many of our companies to endure. The result would undermine competition in the market for broadband services across the country.

Merger Parties Engage In Other Anticompetitive Conduct

The selective discounting programs now being used by the merger parties against BSPA members are not the only means they are using to prevent entry, impede competition, and deny consumers choice. Numerous other tactics are also being employed, and are producing comparable results.

These tactics include efforts to prevent competitors from getting franchises, or to saddle them with onerous or unrealistic terms. They include securing exclusive contracts for certain programming services that they do not own - and that are not owned by other MSOs, or are not delivered by satellite, thereby making it impossible for the competitor to gain access through use of the FCC's program access rules. They include taking action to impede or slow competitors' ability to build their systems, get access to utility poles, and serve multiple dwelling units.

All of these tactics impose substantial financial burdens on BSPA members, and directly reduce the level of competition they are able to provide. The merger parties plainly pursue them to eliminate from the market the only competitor they have that can match them for quality and value, and can provide consumers with a more complete range of communication services than they themselves can.

BSPA members believe that, given the track record of the merger parties, combining their assets and management would lead to coordinated campaigns in multiple markets targeting one or more of them to achieve this goal. If that were to happen, competition would suffer - if not disappear altogether. Entry would be prevented, expansion would be delayed, consumers would be denied choice, prices would rise, and the market would be denied all the other benefits that competitive communications providers provide.

Conclusion

I want to be very plain that our company is ready for competition. So are all the members of the BSPA. That competition may well be bare-knuckled, and we expect that. But the tactics we are seeing today go well beyond a fair fight. They are the equivalent of a bully slipping on brass knuckles before the fight begins. No competitor can long stay in the ring under these circumstances.

Six years ago Congress adopted as federal policy the goal of bringing facilities-based competition to the national markets for multichannel video, telephony, and data services. WOW and the other members of the BSPA have answered this call, and are now in the process of bringing all of its benefits to consumers around the country. But we are now at a crossroads: If we cannot put a stop to the tactics Comcast, AT&T and other incumbents are using against us, and if we cannot get fair access to the programming customers want to watch, then this goal will either be long delayed in its achievement, or undermined altogether.

If this happens, then all your hard work, and of the FCC, and of the many, many local franchising authorities around the country with which we have worked to bring competition to their communities, will have been for nothing.

Thank you again for inviting me here today. We stand ready to work with this Committee in any way we can to ensure that the fruits of competition are within the reach of consumers everywhere.