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17 GTE INTERNETWORKING INCORPORATED and
GTE INTELLIGENT NETWORK SERVICES INCORPORATED

18
19 **UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

20 GTE INTERNETWORKING) CASE NO.
21 INCORPORATED, a Delaware corporation,)
and GTE INTELLIGENT NETWORK)
22 SERVICES INCORPORATED, a Delaware) COMPLAINT
corporation)
23) Jury Trial Demanded
Plaintiffs,)
24 v.)
25 TELE-COMMUNICATIONS, INC., a)
Delaware corporation; COMCAST)
26 CORPORATION, a Pennsylvania corporation;)
and AT HOME CORPORATION, a Delaware)
27 corporation.)
28 Defendants.)

1 For its complaint, plaintiffs GTE Internetworking Incorporated and GTE
2 Intelligent Network Services Incorporated (collectively, “GTE”) allege, based on personal
3 knowledge as to their own actions and on information and belief as to the actions of others, as
4 follows:

5 1. This is an action to prevent two of the nation’s largest cable companies
6 from illegally exploiting their market power to restrict residential customers’ high-speed, high-
7 capacity access to the Internet. The defendant cable companies control the dominant technology
8 that allows American residential customers to connect at high speeds and with high capacity to
9 the Internet. Rather than offering this technology in an open and nondiscriminatory manner that
10 allows Americans to choose whichever Internet Service Provider — such as GTE, America
11 Online, Mindspring, and the like — they prefer, the defendants are engaged in concerted and
12 illegal activity that forces customers to purchase a package that includes service provided by
13 defendant At Home Corporation (“At Home”), which is substantially owned and controlled by
14 the cable company defendants. Through this illegal conduct, defendants are not only harming
15 unaffiliated Internet Service Providers, like plaintiff GTE, they are also harming residential
16 consumers and denying them meaningful high-speed access to the Internet Service Provider of
17 their choosing.

18 2. This action, which is brought under section 1 of the Sherman Act, 15
19 U.S.C. § 1, seeks to restrain, and recover damages resulting from, the anticompetitive actions of
20 At Home and its cable company owners. As described more fully below, defendants have
21 expressly tied the sale of high-speed data transport over cable facilities between residences and
22 an Internet Service Provider’s (“ISPs”) point of presence with the sale of At Home’s ISP service.
23 Residential customers can obtain high-speed data transport over cable facilities to an ISP’s point
24 of presence only if they purchase a package that includes the At Home ISP service. Customers
25 who prefer to purchase ISP service from plaintiff GTE or another unaffiliated ISP must pay
26 twice -- once for the package that includes the unwanted At Home ISP service, and a second time
27 for the service provided by the ISP of their choosing — and may still not be able to access all of
28 the content otherwise available from the ISP of their choosing. The defendant cable companies’

1 mandatory bundling of their high-speed data transport services with the At Home ISP service is
2 an unlawful tie. In addition, the arrangements between the defendant cable companies and At
3 Home are unlawful exclusive dealing contracts. Finally, the defendants have entered into a
4 concerted refusal to deal by agreeing that the defendant cable companies will not provide high-
5 speed data transport services over their cable facilities to unaffiliated ISPs.

6 **Parties**

7 3. Plaintiff GTE Internetworking Incorporated (“GTE”) is a corporation
8 organized under the laws of Delaware with its principal place of business in Massachusetts.
9 Plaintiff GTE Internetworking is a wholly-owned subsidiary of GTE Corporation, a publicly-
10 traded corporation organized under the laws of New York with its principal place of business in
11 Texas. Plaintiff GTE Internetworking is a national Internet “backbone” provider, as described
12 below. Plaintiff GTE Intelligent Network Services Incorporated is a wholly-owned subsidiary of
13 Plaintiff GTE Internetworking Incorporated. Plaintiff GTE Intelligent Network Services
14 Incorporated is a corporation organized under the laws of Delaware with its principal place of
15 business in Texas. Plaintiff GTE Intelligent Network Services Incorporated competes in the
16 provision of ISP services to residential customers throughout the United States. GTE’s ISP
17 service is called gte.net.

18 4. Defendant Tele-Communications, Inc. (“TCI”) is a corporation organized
19 under the laws of Delaware with its principal place of business in Englewood, Colorado. Until
20 recently, TCI was a publicly-traded corporation. TCI is now a wholly-owned subsidiary of
21 AT&T Corporation. TCI directly and indirectly owns and operates cable systems throughout the
22 United States.

23 5. Defendant Comcast Corporation (“Comcast”) is a publicly-traded
24 corporation organized under the laws of Pennsylvania with its principal place of business in
25 Philadelphia, Pennsylvania. Comcast directly and indirectly owns and operates cable systems
26 throughout the United States.

27 6. Collectively, TCI and Comcast are referred to herein as the “Cable
28 Company Defendants.”

1 7. Defendant At Home Corporation (“At Home”) is a publicly-traded
2 corporation organized under the laws of Delaware with its principal place of business in
3 Redwood City, California.

4 8. Each Cable Company Defendant has substantial equity in and voting
5 control over At Home. Collectively, the Cable Company Defendants own a majority of equity of
6 At Home and exercise voting control over At Home.

7 **Jurisdiction and Venue**

8 9. The jurisdiction of this Court is based on 28 U.S.C. § 1331 and 1337.
9 Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15, 22, and 26 because
10 defendants are found or do business in this district. Specifically, all defendants can be found in
11 this district because they conduct business, including provision of broadband internet transport
12 and ISP service over cable, within this judicial district. Moreover, Comcast resides in this
13 judicial district because it is incorporated in the State of Pennsylvania. Venue is also proper in
14 this district under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions
15 giving rise to the claim occurred in this judicial district, or a substantial part of the property that
16 is the subject of this action is situated in this judicial district.

17 **Common Allegations**

18 **Introduction**

19 10. In order to gain access to the Internet, an individual must be able to
20 transmit data to and from an ISP. ISPs can provide a number of services. First, ISPs have
21 specialized communication devices, known as routers, that recognize the destination of data
22 transmitted from or to a customer. An ISP's router recognizes, for example, data transmitted by a
23 customer indicating that the customer wishes to examine a particular page on the WorldWide
24 Web, and the router likewise recognizes that the WorldWide Web content sent in response
25 should be delivered to the requesting customer. An ISP also transports the data between the
26 ISP's point of presence ("POP"), which is typically the ISP's nearest location to the customer, and
27 the interconnection point where the data enters some other ISP's network, if required. Most ISPs
28 provide news and mail to the individual. Some ISPs (such as America Online) provide

1 additional content to the user; if so, they may either create their own proprietary content, or else
2 repackage content created by others. Finally, some ISPs provide "web hosting", i.e., the ability
3 of a customer to maintain its own web page on the ISP's facilities.

4 11. The quality of an individual's access to the Internet -- in terms of both the
5 speed of access and the form of information that can be accessed (such as video streaming) -- is
6 dependent in large part on the quality of the connection between the user's home and the ISP's
7 POP.

8 12. As explained more fully below, the defendants in this case control the
9 dominant new technology that provides for high-speed access from an individual's residence to
10 an ISP's POP. This case is brought to stop defendants' unlawful exploitation of their economic
11 power in the provision of high-speed, high-capacity access to the Internet in order to gain an
12 unlawful competitive advantage in the provision of ISP services and to prevent consumers from
13 having a meaningful choice of ISPs.

14 **Market Definition**

15 **Product Markets**

16 13. The transportation of data between residential customers and ISPs' POPs
17 at high speeds is a relevant product market. In the past, most residential consumers obtained data
18 transport services over traditional narrowband phone lines provided by local exchange carriers.
19 In such an arrangement, a residential customer's computer modem "dials up" the ISP's modem.
20 Once the ISP verifies the customer's identity, it connects the customer to the Internet in the
21 manner described above. The technical characteristics of the existing telephone network greatly
22 limit the speed at which data can be transmitted between the customer and the ISP's POP.
23 Accordingly, such dial up customers connect to the Internet at maximum speeds of between
24 28800 and 56000 bits per second ("bps").

25 14. Data can now be transported over cable systems at speeds advertising as
26 being up to 100 times faster than dial up connections. These higher speeds allow residential
27 customers to use the Internet in ways that are simply impractical over lower-speed dial up
28 connections. Such high-speed connections allow customers to obtain real-time video

1 transmission, conduct commercial transactions, and play interactive games. In addition, the
2 high-speed connections provided over the cable systems remain “on” at all times, thus
3 eliminating the delay associated with connecting to an ISP’s modem in a typical dial-up
4 configuration. Because of these distinct advantages, high-speed transportation of data between
5 residential customers and ISPs’ POPs is a distinct product market. Low-speed dial-up transport
6 is not an adequate substitute for high-speed transport.

7 **Geographic Markets**

8 15. Defendants provide high-speed transport of data to residential customers
9 over cable facilities in a number of locations throughout the United States. The Cable Company
10 Defendants’ upgraded cable facilities capable of providing high-speed data transport currently
11 pass millions of homes in the United States, and the Cable Company Defendants plan to upgrade
12 the majority of systems passing more than 25 million homes within five years.

13 16. Each local community in which the defendants provide high-speed data
14 transport between residential customers and ISP POPs is a separate geographic market. A
15 residential Internet user can procure high-speed transport to and from an ISP only from those
16 firms that have facilities in the area where the customer lives. The customer’s economic choice
17 is limited to the firms offering the relevant product in the narrow geographic area in which that
18 customer resides.

19 17. In some but not all areas in which the defendants provide high-speed data
20 transport between residential customers and ISP POPs, unaffiliated firms offer alternative data
21 transport services at speeds in excess of dial-up access. Each local area in which the defendants
22 provide high-speed data transport between residential customers and ISP POPs, and in which
23 such alternatives are not available, is a separate geographic market.

24 **Description of the Market and Defendants’ Economic Power**

25 18. Defendants hold a dominant position in the national market for provision
26 of high-speed transport of data between residential customers and ISPs, and their dominance is
27 complete in a large number of local geographic markets. Currently, approximately 1.2 million
28 residential customers purchase high-speed transport services, and this market is growing rapidly.

1 Approximately 90% of such customers are served by cable systems, while only 10% receive
2 service from a non-cable-based system.

3 19. Nationally, about 60% of the residential customers that subscribe to high-
4 speed transport services purchase such services from the Defendant Cable Companies or from
5 other cable operators that have exclusive contracts with At Home. Another 30% of the
6 residential customers that subscribe to high-speed transport services purchase such services from
7 cable companies that have exclusive contracts with another ISP, such as Road Runner. In local
8 geographic markets, however, only one cable operator provides high-speed transport services. In
9 many such local markets, the Defendant Cable Companies' share of the market for the provision
10 of high-speed transport of data between residential customers and ISPs is 100%.

11 20. Alternatives to high-speed transport provided over cable systems are not
12 currently offered in many areas in which high-speed transport over cable systems is offered. In
13 addition, such alternative services will not be offered, at least in the reasonably near future, in a
14 number of areas in which high-speed transport is provided over cable systems, due to technical
15 and cost considerations. Finally, even where such alternatives are offered, they are often much
16 more costly to deploy than are the cable companies' high-speed offering.

17 **Defendants' Unlawful Tying Scheme**

18 21. The Cable Company Defendants have agreed with each other and with At
19 Home to an unlawful scheme to tie the sale of high-speed transport between residential
20 customers and ISPs' POPs to the sale of the At Home ISP service. Each of the Cable Company
21 Defendants, as well as a number of other cable operators, has agreed with At Home not to supply
22 high-speed transport to residential customers except as part of a package that includes the At
23 Home ISP service (with certain narrow exceptions).

24 22. In this manner, defendants have forced a substantial number of residential
25 customers to purchase the At Home ISP service, even though such customers would have
26 preferred to purchase ISP services from GTE or another unaffiliated vendor.

27 23. Defendants' conduct has seriously damaged GTE and other unaffiliated
28 ISPs by denying them of the opportunity to compete fairly to provide superior ISP services by

1 means of the defendants' high-speed cable facilities. Defendants' conduct will cause even more
2 serious damage in the future as larger numbers of customers decide to purchase high-speed data
3 transport over Cable Company Defendants' facilities and find that they must purchase At Home
4 even to reach their preferred ISP. As a result, consumers will face fewer choices for ISP
5 providers and will pay higher prices to obtain the services of an ISP than they would in a fully
6 competitive market.

7 **First Claim for Relief**

8 **Tying — Per Se Violation (Sherman Act, Section 1)**

9 **(Against All Defendants)**

10 24. Plaintiff incorporates by reference the allegations set forth above.

11 25. The provision of high-speed transport of data between residential
12 customers and ISPs is a separate product from the provision of ISP services.

13 26. The defendants have conditioned the sale of high-speed transport of data
14 between residential customers and ISPs on the sale of the At Home ISP service.

15 27. The defendants have appreciable economic power in the relevant
16 geographic markets for the provision of high-speed transport of data between residential
17 customers and ISPs.

18 28. The defendants' tying has affected a not insubstantial amount of interstate
19 commerce in the provision of ISP services.

20 29. The defendants' tying harms GTE and other unaffiliated ISPs, which
21 either cannot offer residential customers high-speed data transport, or can do so only at a high
22 cost that places them at a significant competitive disadvantage compared to the At Home
23 package.

24 30. The defendants' tying is per se unlawful under section 1 of the Sherman
25 Act.

1 **Second Claim for Relief**

2 **Tying — Rule of Reason Violation (Sherman Act, Section 1)**

3 **(Against All Defendants)**

4 31. Plaintiff incorporates by reference the allegations set forth above.

5 32. If the defendants' tying is not per se unlawful, it is unlawful under the rule
6 of reason, in that the anticompetitive consequences of defendants' conduct outweigh any pro-
7 competitive effects thereof. Residential customers who obtain high-speed data transport over
8 cable systems operated by the Cable Company Defendants cannot obtain service from another
9 ISP without paying twice for ISP service, and even then the residential customers may not be
10 able to access all content otherwise available from the other ISP. The defendants' conduct harms
11 GTE and other unaffiliated ISPs, which either cannot offer residential customers high-speed data
12 transport, or can do so only at a high cost that places them at a significant competitive
13 disadvantage compared to the At Home package. As a result of this restriction of competition
14 among ISPs, consumers will pay higher prices to obtain the services of an ISP than they would in
15 a fully competitive market.

16 **Third Claim for Relief**

17 **Exclusive Dealing (Sherman Act, Section 1)**

18 **(Against All Defendants)**

19 33. Plaintiff incorporates by reference the allegations set forth above.

20 34. Each of the Cable Company Defendants has entered into an agreement
21 with At Home, pursuant to which the Cable Company Defendants have agreed to offer their
22 residential customers the At Home ISP service exclusively in conjunction with high-speed data
23 transport over the Cable Company Defendants' cable systems, with certain narrow exceptions.
24 At Home also has entered into similar exclusive arrangements with a number of other cable
25 operators. At Home itself characterizes these arrangements as "exclusive."

26 35. The exclusive agreements lessen competition substantially and
27 unreasonably restrain trade by foreclosing At Home's ISP competitors from a significant
28 segment of the relevant markets. The exclusive agreements harm GTE and other unaffiliated

1 ISPs, which either cannot offer residential customers high-speed data transport, or can do so only
2 at a high cost that places them at a significant competitive disadvantage compared to the At
3 Home package. As a result of this restriction of competition among ISPs, consumers will pay
4 higher prices to obtain the services of an ISP than they would in a fully competitive market.

5 **Fourth Claim for Relief**

6 **Concerted Refusal to Deal -- Per Se Violation (Sherman Act, Section 1)**

7 **(Against All Defendants)**

8 36. Plaintiff incorporates by reference the allegations set forth above.

9 37. The Cable Company Defendants are horizontal competitors. The Cable
10 Company Defendants are authorized by law to compete against one another. A cable company
11 may, for example, construct new cable facilities to provide cable services as well as data
12 transport services in competition with the incumbent cable company in a particular geographic
13 area.

14 38. Each of the Cable Company Defendants has agreed with At Home not to
15 provide high-speed data transport between residential customers and ISPs, except as part of the
16 At Home package, with certain narrow exceptions. The intent and effect of these provisions,
17 which At Home itself calls “exclusive,” is that the Cable Company Defendants refuse to provide
18 such high-speed data transport services to GTE or any other unaffiliated ISP.

19 39. These agreements with At Home reflect and were the product of an
20 agreement among the Cable Company Defendants.

21 40. The Defendants’ actions constitute a concerted refusal to deal (also known
22 as a “group boycott”), which is unlawful per se under Section 1 of the Sherman Act.

23 41. The Defendants’ actions have harmed GTE and other unaffiliated ISPs,
24 who would have benefited from increased competition in the provision of high-speed transport of
25 data between residential customers and ISPs.

1 **Fifth Claim for Relief**

2 **Concerted Refusal to Deal — Rule of Reason Violation (Sherman Act, Section 1)**

3 **(Against All Defendants)**

4 42. Plaintiff incorporates by reference the allegations set forth above.

5 43. If the Defendants' concerted refusal to deal with unaffiliated ISPs is not
6 per se unlawful, it is unlawful under the rule of reason, in that the anticompetitive effects of
7 defendants' conduct outweigh the pro-competitive effects. The concerted refusal to deal harms
8 GTE and other unaffiliated ISPs, which either cannot offer residential customers high-speed data
9 transport, or can do so only at a high cost that places them at a significant competitive
10 disadvantage compared to the At Home package. As a result of this restriction of competition
11 among ISPs, consumers will pay higher prices to obtain the services of an ISP than they would in
12 a fully competitive market.

13 **Prayer For Relief**

14 WHEREFORE, plaintiff GTE Internetworking prays for relief, as follows:

15 1. For damages according to proof, with interest, trebled pursuant to 15
16 U.S.C. § 15;

17 2. For a declaration that (a) the defendants may not require customers to
18 purchase the At Home ISP service in order to obtain high-speed data transport, i.e., customers
19 may obtain high-speed data transport without also purchasing ISP service from At Home; (b) the
20 exclusive contract between the Cable Company Defendants and At Home is unlawful; and (c) the
21 Cable Company Defendants may not agree to refuse to deal with non-affiliated ISPs with respect
22 to the provision of high-speed data transport to residential customers.

23 3. For an appropriate injunction pursuant to 15 U.S.C. § 26, Fed. R. Civ. P.
24 65 and the Court's inherent power permanently enjoining defendants from engaging in the
25 anticompetitive conduct set forth herein and enforcing the declarations prayed for above.

26 4. For attorney's fees and recoverable costs and other expenses.

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5. For such further relief as the Court may deem just and proper.

DATED: October 27, 1999

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