

**DISSENTING STATEMENT
OF COMMISSIONER MICHAEL J. COPPS**

*Order In the Matter of Applications for Consent to the Transfer of Control of Licenses
from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast
Corporation, Transferee
MB Docket No. 02-70*

I respectfully dissent from the Commission's decision to deny the motions of the Consumer Federation of America and Earthlink, Inc. (Petitioners) to compel AT&T Corp. and Comcast Corporation (Applicants) to file certain exhibits into the record of this proceeding. I believe it would have been better as a matter of procedure to put the requested material into the record pursuant to a protective order and allow Petitioners an opportunity to comment on it.

The documents Petitioners sought to have entered into the record are two Internet service provider access agreements that Applicants have negotiated with an unaffiliated provider, AOL. In the course of this proceeding, Applicants have pointed to the accelerated deployment of facilities-based high-speed internet service, digital video, and other broadband services, particularly to residential customers, as one of the major public interest benefits of the proposed merger. Applicants have also pointed to their existing agreements with unaffiliated Internet service providers as evidence of their willingness to offer consumers choices with respect to the Internet service they receive over Applicants' systems. Petitioners thus contend that Applicants have placed matters pertaining to Internet access into issue in this proceeding.

Section 309 of the Act contemplates that interested members of the public will have a full opportunity to challenge license transfer applications. In addition, the Commission has recognized, in its policy governing the treatment of confidential information, that petitioners to deny generally must be afforded access to "all information submitted by licensees that bear upon their applications." Under this policy, even confidential information must be produced, pursuant to a protective order, with an opportunity for petitioners to comment.

My lodestar in all of our decisions is serving the public interest. In that vein, I believe the public interest is served when government actions and processes are conducted, to the maximum extent possible, "in the sunshine." I feel we could have served that interest, and the goals of Section 309 – while still protecting Applicants' interests in an expeditious process and preserving the confidentiality of their business information – by allowing for limited review and comment.

I recognize that Commission staff have reviewed the documents at issue and have concluded that they are not relevant to our merger analysis. By dissenting here, I do not intend to impugn Commission staff's abilities. We are quite lucky to have the quality of public servants we have here working with us at the FCC. In this situation, however, I believe the Commission's interest in the transparency and fairness of its processes would

have been better served by allowing Petitioners to review and comment on the agreements at issue, under the terms of a protective order. I further believe that interest outweighs the concerns raised by the Applicants that placing the requested agreements into the record could briefly delay our decision on the merger and might jeopardize the confidentiality of sensitive business information. I therefore respectfully dissent.