

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

REPLY COMMENTS OF THE



I. Introduction

The American Cable Association submits these Reply Comments on behalf of more than 930 independent cable companies located in smaller markets and rural areas. These Reply Comments focus on one issue in the record. A letter filed today by ACA President, Matthew M. Polka, addresses ACA's broader concerns with the proposed combination and the parties' responses to those concerns.¹ Specifically, these Reply Comments respond to SBC Communication's call to condition the AT&T Comcast merger on AT&T's divestiture of its Headend-in-the-Sky ("HITS") division. This demand is untenable and threatens substantial harm to the public interest in smaller markets. The Commission should reject it.

¹ Letter from ACA President Matthew M. Polka, MB Docket No. 02-70 (filed May 21, 2002) ("Polka Letter").

The American Cable Association. ACA represents more than 930 independent cable companies, serving about 7.5 million cable subscribers, primarily in smaller markets and rural areas. ACA member systems are located in all 50 states, and in virtually every congressional district. ACA members range from family-run cable businesses serving a single town to multiple system operators that focus on smaller systems and smaller markets. About half of ACA's members serve less than 1,000 subscribers. All ACA members face the challenges of building, operating, and upgrading broadband networks in lower density markets. Approximately 200 ACA member companies already rely on AT&T's HITS to deliver digital cable services, with more launching HITS services each quarter.

II. The Commission must reject SBC's demand for divestiture of HITS as a condition of consent to the Applications.

A. Stability of HITS ownership brings important public interest benefits to smaller market cable systems and the consumers they serve.

As described in ACA's Comments, AT&T's HITS is by far the dominant digital cable distributor for smaller market cable operators.² Through digital compression technology and solutions specifically designed for smaller headends, HITS has enabled an increasing number of smaller systems to substantially expand service offerings, providing smaller market consumers with access to much more diverse program offerings.

² Comments of the American Cable Association, MB Docket No. 02-70, (filed April 29, 2002) ("ACA Comments"), pp. 8-10.

Accordingly, the continued availability of HITS services implicates well-established public interests in smaller markets.³ These include:

- The preservation and promotion of program diversity.
- The rapid deployment of facilities-based broadband services.
- Maintaining a viable small cable sector that can respond to local community needs and interests in smaller markets.

In short, for many small systems, continued access to HITS is vital to meeting consumer demand for more services and to responding to intense DBS competition. Without continued access to digital cable via HITS, the near-term viability of many small cable business is at risk.

ACA has expressed substantial concern over the parties' intentions for HITS following the merger.⁴ The parties have responded, acknowledging the public interest issues raised by ACA and communicating their intention to continue to provide HITS services to smaller market cable operators for the foreseeable future.⁵ With AT&T Comcast adhering to these assurances, the merger can serve the public interest in smaller markets by providing continuing stability for this critical service.

³ See ACA Comments, pp. 5-8.

⁴ *Id.*, pp. 8-10.

⁵ Polka Letter, p. 3.

B. SBC's call for divestiture for HITS has no basis in the record and would threaten substantial public interest harm in smaller markets.

SBC's comments address HITS as well.⁶ Those comments validate the importance of HITS as the digital cable solution for smaller headends:

HITS aggregates 150 digital programming channels from a variety of different satellites and delivers them in a signal transmission path and in digitized format. This service allows MVPDs to reduce significantly their investment in head-end equipment; indeed, HITS can reduce a cable systems operator's investment from \$500,000 to about \$30,000.⁷

From this statement alone, the importance of HITS to small cable systems and smaller market consumers is self-evident. But SBC ignores smaller market public interest issues entirely, and instead calls for AT&T to divest HITS.

According to SBC, AT&T should spin off HITS because of the *potential* that AT&T Comcast could refuse the service to any cable overbuilder. "Because AT&T/Comcast would own HITS, the combined company *could* refuse to offer its video programming services to any cable overbuilder that would compete with AT&T/Comcast."⁸ As "evidence", SBC provides its recount of "recent discussions" with WSNet as a "possible supplier" for an SBC video venture.⁹ As a result of these "recent discussions," SBC advocates a complete ownership change for HITS.

Nowhere amidst this conjecture and hearsay does SBC mention the interests of the current customers of HITS - at least two hundred small cable companies and their

⁶ Comments of SBC Communications Inc., MB Docket No. 02-70, (filed April 29, 2002) ("SBC Comments").

⁷ SBC Comments, p. 13.

⁸ *Id.*

⁹ *Id.*, pp.13-14.

digital cable customers. Notably, this group includes small cable operators that compete with AT&T in overlapping franchise areas.¹⁰

ACA members report that under AT&T ownership, HITS has generally been a good actor, dealing fairly with small cable companies and their buying cooperative, the National Cable Television Co-op. Moreover, HITS has continued to develop digital solutions for even smaller headends, such as HITS Quick Take. Going-forward, the parties have acknowledged the importance of HITS to the small cable sector and have communicated their intention to continue to distribute HITS services for the foreseeable future.¹¹

The parties have offered certainty in the continuing delivery of HITS to smaller market cable operators. SBC's divestiture demand would instead impose substantial uncertainty on the future of HITS. This would raise the risk of substantial public interest harms for hundreds of small companies and the customers they serve.

No serious public interest analysis supports SBC's divestiture demand, and the Commission should reject it.

¹⁰ For example, ACA member Millennium Digital Media distributes HITS services and competes with AT&T systems in some portions of Seattle.

¹¹ Polka Letter, p. 3.

III. Conclusion

Based on representations of the parties, AT&T Comcast will preserve important public interest benefits in smaller markets by continuing the distribution of HITS for the foreseeable future. Nothing on the record supports disrupting the continued distribution of HITS by a forced sale as a condition of Commission consent to the Applications.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

By: _____ /s/ _____

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