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August 1, 2002

Ex Parte Notice

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: 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

Dear Ms. Dortch:

On July 31, representatives of Comcast Corporation (“Comcast”) and AT&T Corp. (“AT&T”) met with William P. Cox, Erin Dozier, Roger D. Holberg, Thomas L. Horan, William H. Johnson, John I. Scott, Royce D. Sherlock, and Patrick Webre of the Media Bureau; James R. Bird, Nandan Joshi, and Kimberly Reindl of the Office of General Counsel; and Simon Wilkie of the Office of Plans and Policy. AT&T was represented by Betsy J. Brady and Michael H. Hammer, Willkie Farr & Gallagher, outside counsel to AT&T. Comcast was represented by James R. Coltharp and the undersigned.

The discussion mainly focused on various allegations made by RCN Corporation. We summarized the responses that AT&T and Comcast previously filed on the record, most particularly in pages 54-58, 97-105, 107, 112-115, and 116-120 of the Reply Comments filed on May 21 and Paragraphs 106-113 of the accompanying Ordover Declaration. We also reviewed material submitted on July 2 in response to the Bureau’s request for additional information and documentation. Information provided during the meeting that had not previously been reflected in record filings included the following:

- The process of obtaining a franchise in Philadelphia took Comcast approximately four years. RCN chose to abandon its effort to secure a franchise after a significantly shorter period of effort.
- RCN’s most recent 10-K filing with the Securities and Exchange Commission references the Comcast-AT&T Broadband merger in benign terms (page 14), with no reference to the complaints RCN has presented to the FCC. The 10-K provides a lengthy list of risks and uncertainties facing RCN (pages 24-30), including a history of negative cash flow and operating losses, heavy indebtedness, limited ability to

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borrow under an existing credit facility and limited access to other sources of capital, potential inability to meet franchise requirements, potential NASDAQ delisting, difficulties of competing in extremely competitive markets for voice, video, and data services, changes in regulations, access to programming, and management's conflicts of interest. Only one of these, access to programming, is even remotely relevant to RCN's allegations in this merger review, and as to that, although RCN's 10-K complains about a problem in obtaining access to sports programming (page 21), the reference tellingly does *not* pertain to a market served by or programming owned by Comcast or AT&T Broadband.

- With regard to RCN's allegations regarding construction and installation contractors, we noted that Chairman Powell had testified before the Senate on July 30 that nearly 500,000 workers in the U.S. telecommunications industry have lost their jobs in the last two years. One consequence of this is to vastly increase the pool of construction and installation personnel available to any market participant, including RCN. (We also noted that Comcast is generally consolidating its work among a smaller number of contractors.)
- Concerning building access, we clarified that provisions for exclusive access to a building tend to arise in the context of commercial and bulk contracts, while arrangements with MDU owners tend to be marketing exclusives only.

We also explained that there would be no need or basis for post-merger application to AT&T Comcast of the safeguards relating to video programming adopted in the AT&T-MediaOne Merger Order, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, 15 FCC Rcd 9816 (Appendix B) (2000), because, at or prior to closing, the applicants will have taken steps necessary and appropriate, including the use of a trust mechanism as noted in our *ex parte* filings of July 2 and July 17, to ensure that AT&T Comcast will not be able to influence Time Warner Entertainment ("TWE") prior to the ultimate sale of AT&T's TWE interest. In addition, we pointed out that the underlying purposes of the safeguards are no longer applicable given that AT&T has significantly reduced its ownership in programming and the court in *Time Warner Entm't Co. v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001), *cert. denied sub nom. Consumer Fed'n of Am. v. FCC*, 12 S. Ct. 644 (2111), reversed and remanded the Commission's cable horizontal ownership rules.

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This letter is submitted pursuant to section 1.1206(b)(2) of the Commission's rules. Copies of this letter are also being sent to all of the FCC employees who participated in the meeting. Please let me know if you have any questions.

Sincerely,

James L. Casserly

cc: James R. Bird, FCC - Office of General Counsel
William P. Cox, FCC - Media Bureau
Erin Dozier, FCC - Media Bureau
Michael H. Hammer, Willkie Farr & Gallagher
Roger D. Holberg, FCC - Media Bureau
Thomas L. Horan, FCC - Media Bureau
William H. Johnson, FCC - Media Bureau
Nandan Joshi, FCC - Office of General Counsel
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John I. Scott, FCC - Media Bureau
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Betsy J. Brady, AT&T Corporation
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