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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Application of	)	
	)	
AT&T Corp. and Comcast Corp.	)	Docket No. MB 02-70
For Consent for Proposed	)	
Transfer of Control	)	

REPLY COMMENTS

Kansas City Cable Partners ("KCCP"), by its attorneys, hereby responds to the Comments of Everest Midwest Licensee, LLC d/b/a Everest Connections ("Everest") submitted in the above-captioned proceeding. In its Comments, Everest raises several tangential issues relating to KCCP's operation of cable systems in Kansas City, Missouri and Lenexa and Shawnee, Kansas. KCCP and Everest operate competing franchised cable systems serving these communities. In its Comments, Everest asks the Commission to impose conditions upon the merger of AT&T and Comcast that would restrict KCCP's ability to vigorously compete with Everest in attracting and retaining customers, and would therefore deny consumers of the benefits flowing from such competition. Because the allegations raised by Everest are unfounded and unrelated to the instant proceeding, the conditions requested by Everest must be denied.

The Commission should reject the allegations raised in Everest's complaint as irrelevant to the merger review being conducted in this proceeding. Indeed, Everest's filing is yet another example of an attempt by Everest to inject its requests for regulatory protection into an unrelated proceeding.[1] As explained in the relevant applications submitted to the FCC, although an affiliate of AT&T holds a partnership interest in KCCP, Time Warner Cable, a division of Time Warner Entertainment Company, L.P. ("TWE") is the General Manager of KCCP. In its capacity as General Manager, Time Warner Cable provides the overall day-to-day management of KCCP, and has exclusive responsibility for the management, operation, maintenance and supervision of KCCP's cable television systems, subject only to prior consent of the KCCP Management Committee with respect to any extraordinary matters requiring Management Committee approval.[2] On January 11, 2001, the Commission approved applications for transfer of control of all FCC licenses held or managed by TWE, including all licenses then held by KCCP, to AOL Time Warner Inc.[3] Based upon these showings, the Commission's Public Notice in this proceeding properly indicated that AT&T's interest in KCCP and associated licenses is to be treated as a pro forma transfer of control, thereby foreclosing objections such as those raised by Everest that specifically involve KCCP.[4]

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[1] See, e.g., Comments of Everest Connections Corporation in CS Docket No. 01-290 (filed Dec. 3, 2001).

[2] Certain extraordinary actions (such as material asset purchase or sale transactions and significant changes affecting KCCP) require the approval of the six-member KCCP Management Committee, consisting of three members designated by TWE and three members designated by the AT&T affiliate. Each member of the Management Committee has one vote, and all actions or decisions of the Management Committee must have unanimous approval. The powers of the Management Committee are consistent with the kinds of minority investor protections that have been found by the Commission not to confer control. News International, PLC, 97 FCC 2d 349 (1984).

[3] Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee, Memorandum Opinion and Order, 16 FCC Rcd 6547 (2001).

[4] See, e.g., 47 C.F.R. § 78.35(b). (Neither petitions to deny nor informal objections may be filed against pro forma transfer of control applications.)

In addition to the foregoing procedural infirmities, the matters raised by Everest are not properly addressed in a merger proceeding. Indeed, the issues raised in Everest's Comments have been fully responded to in other proceedings before the Commission. For example, the Kansas City rate uniformity issue raised by Everest on pages 3-4 of its Comments has been extensively responded to in a proceeding specifically dealing with the issue which is pending at the Media Bureau.[5] Likewise, Everest's complaints on page 5-6 regarding the terrestrially-distributed MetroSports programming service have been fully responded to in the recent Program Access – Sunset of Exclusive Contracts Prohibition rulemaking.[6] As the Commission has repeatedly stated, program access issues such as those raised by Everest are not merger specific and therefore not appropriately dealt with in the context of a merger review such as this.[7]

Everest also seeks to deprive consumers of the benefits of competition in Shawnee, Kansas. As does KCCP, Everest holds a franchise (which was granted on December 10, 2001) to provide cable service in Shawnee. Everest commenced construction of its cable system in Shawnee several months ago, began aggressively marketing its services in Shawnee in early March, and in fact activated its system during the first week of May. KCCP understands that Everest's plant currently passes approximately 1,500 homes in Shawnee, accounting for approximately 8% of the total

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[5] See Docket No. CSR-5845; Response of Kansas City Cable Partners in CSR-5845 (filed Feb. 21, 2002).

[6] See Reply Comments of AOL Time Warner Inc. in CS Docket No. 01-290 (filed Jan. 7, 2002) at 7-8.

[7] See, e.g., Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee, Memorandum Opinion and Order, 16 FCC Rcd 6547, ¶288 (2001).

households. Make-ready requests are pending with Kansas City Power & Light that would allow Everest to quickly expand to an additional 2,000 homes, extending its reach to over 18% of total Shawnee households. Everest's system is now operational and Everest is continuing its aggressive marketing campaign described on page 4-5 of its Comments.[8] In the first week or so of Everest's operation, KCCP has lost over 70 subscribers in Shawnee.

In light of Everest's ongoing construction activities, KCCP has dispatched customer care specialists to ensure that KCCP's plant has not been damaged or otherwise adversely affected. Where in-home visits can be arranged, KCCP facilities on the subscriber's premises are carefully inspected to ensure optimum picture quality. KCCP representatives also attempt to address any questions or concerns raised in an effort to maximize customer satisfaction and to explain the new services and technologies available from KCCP. If, in the course of these customer satisfaction visits, the subscriber indicates an intent to discontinue KCCP service and switch to either DBS or Everest, the customer care specialist will explain that various "Win-Back" promotional offers are available that may be of interest to the customer. Even then, the customer cannot sign up for the "Win-Back" promotion through the in-home specialist, but rather can only elect a "Win-Back" promotional package through a telephone call with a customer care representative at KCCP's offices, who will again confirm that the subscriber was poised to discontinue service from KCCP absent the "Win-Back" offer.

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[8] See Everest marketing materials attached as Exhibit A.

The "Win-Back" promotion has been carefully designed to fully comply with the geographic uniformity requirement.[9] Introductory and/or promotional rate packages are allowed under Commission rules as long as they are universally applied to an eligible class and not perpetual in length.[10] KCCP's "Win-Back" promotion is offered to anyone within the Shawnee franchise area who subscribes or intends to switch to any other MVPD, and the promotional rates remain in effect for a maximum of twelve months after election by the subscriber. Because this "Win-Back" promotion is available to any customer of a competing MVPD anywhere in Shawnee, the applicable discounts are in fact offered on a geographically uniform basis throughout the entirety of KCCP's franchise area.

Contrary to Everest's rhetoric, KCCP has not "targeted" Everest customers in its "Win-Back" promotion. Indeed, various "Win-Back" promotions have been offered uniformly throughout KCCP's metropolitan Kansas City service area long before the initiation of Everest's service. From its initiation, the campaign has been principally focused on DirecTV and EchoStar subscribers.[11] In fact, the bulk of customers electing to take advantage of KCCP's "Win-Back" promotion thus far have been former DBS subscribers.[12] But the "Win-Back" promotion is not limited just to DBS subscribers. Rather, it has been established in response to MVPD competition throughout the

[9] 47 U.S.C. § 543(d).

[10] See SBC Media Ventures, 9 FCC Rcd 7175, ¶¶ 9-10 (Cab. Serv. Bur. 1994); Report and Order and Further Notice of Proposed Rulemaking in MM Docket 92-266, 8 FCC Rcd 5631, ¶ 423 (1993).

[11] The fact that DBS subscribers are scattered throughout the City, in and of itself, demonstrates that KCCP's promotional offer is geographically uniform.

[12] Indeed, in Shawnee alone, over 80% of the customers taking advantage of a KCCP "Win-Back" offer have indicated that they were switching to KCCP from a DBS provider.

franchise area from any source, including Everest, DirecTV and EchoStar. KCCP's "Win-Back" campaign allows customers anywhere in Shawnee that have switched service to either a DBS provider or to Everest, or who indicate to a KCCP customer service representative that they are about to switch to an alternative provider, to receive service and programming discounts in connection with certain services provided by KCCP. This promotion is available to any such customer regardless of their location in the Shawnee franchise area.[13]

KCCP has determined that it is in everyone's interest to offer the "Win-Back" program under circumstances where the subscriber calls and expresses the intent to discontinue KCCP service, even if the subscriber has not yet actually discontinued service and commenced receiving service from a competing provider. This approach saves the competing provider the expense and inconvenience of conducting an unnecessary install, it saves KCCP the expense and burden of conducting an unnecessary disconnect, but most importantly it avoids imposition of any unnecessary inconvenience and expense on the consumer. Obviously, in the case of a customer considering a change to DBS, it saves them the trouble and cost associated with the purchase and installation of satellite dish equipment. But even in the case of an overbuilder like Everest, the

[13] Contrary to Everest's reckless and unsubstantiated claims, KCCP is not offering three months free service in Shawnee. Rather, Everest is apparently referring to a "Win-Back" offer available <u>only</u> in Lenexa where KCCP has been found subject to effective competition. <u>Kansas City Cable Partners</u>, DA 01-2439 (rel. Oct. 19, 2001) ("<u>KCCP</u>") (finding that the Everest overbuild of KCCP's cable system serving Lenexa, KS, a suburban community adjoining Kansas City, sufficient to satisfy the LEC-affiliated effective competition test). In Lenexa, where a customer is subscribing to a competing service (including DBS or Everest) or has stated an intention to switch to a competing service, they are eligible for the following "Win-Back" offer: upon up front payment for one month of service, they would receive the next three months of service for free. Again, this offer is available <u>only</u> in Lenexa.

customer is spared the inconvenience of arranging for an installation that typically requires the customer to remain at home during the applicable appointment window. After considering the details of KCCP's "Win-Back" offer, the customer can make a more fully informed decision regarding whether to continue to receive service from KCCP or switch to a competitor.

Everest disingenuously asserts that it "heartily believes that lower prices and customer choice are two of the hallmarks of competition." Yet, at every conceivable opportunity, it belabors the Commission's processes with a rehash of its pleas for regulatory protectionism designed to deny consumers the benefit of lower prices and enhanced choices flowing from vibrant competition. For the foregoing reasons, the Commission should decline to impose the conditions upon the AT&T-Comcast merger as requested by Everest.

Respectfully submitted,

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EXHIBIT A

Everest is bringing CHOICE to your neighborhood!

Everest, locally owned and operated by UtiliCorp United Inc., offers [illegible] Local Phone, High-Speed Internet and [illegible] Service all from one company.

Our mission is to provide [illegible] distance phone service and [illegible] Internet access [illegible] the best customer service [illegible] network serves thousands of customers in Lenexa and [illegible] neighborhood [illegible]

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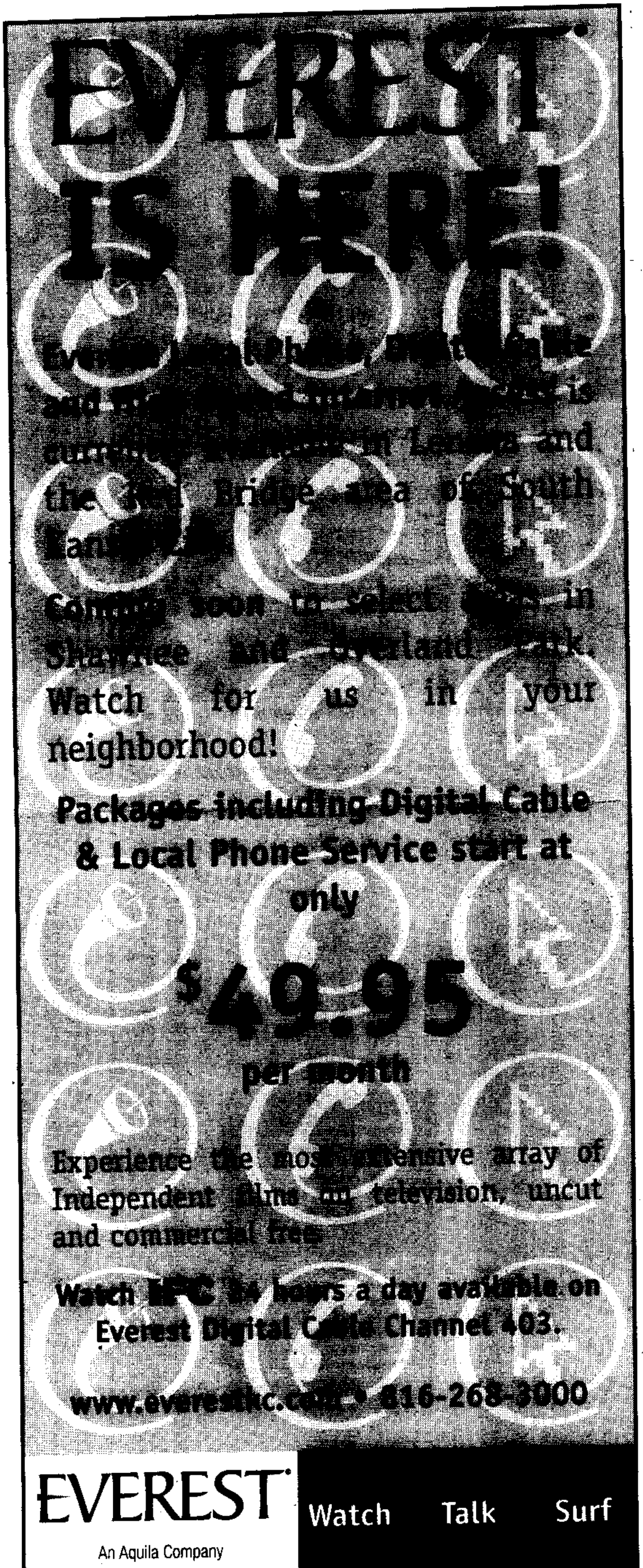
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