

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of)	
)	
Applications for Consent to the)	
Transfer of Control of Licenses and)	
Section 214 Authorizations from)	
)	MB Docket No. 02-70
)	
AT&T Broadband L.L.C.)	
Transferor)	
)	
to)	
)	
Comcast Communications Inc.)	
Transferee)	

To: Chief, Media Bureau

PETITION TO DENY

Minority Television Project Inc., licensee of KMTP(TV), Channel 32, San Francisco, California, a non-commercial public television station (“KMTP”), by its attorneys, hereby requests the Commission to deny the above-captioned applications. As detailed below, KMTP submits that a grant of the assignment applications would not serve the public interest.

I. BACKGROUND STATEMENT

A. KMTP

KMTP is one of two African-American controlled public televisions stations in the country. KMTP's mission is multiculturalism, providing programming by and about African Americans, Asian Americans, Native Americans and other underrepresented groups. These groups make the San Francisco television market one of the most diverse in the country. KMTP's program schedule includes the market's only nightly locally-produced news in Korean, Vietnamese and Tagalog. KMTP also broadcasts the country's only nightly news show with a Pan-African focus.

In May 1993, a special task force, chaired by the President of Brown University and composed of eleven distinguished media professionals, including former FCC Commissioner Ervin Duggan, conducted a seminal study and issued a report on the status of public broadcasting entitled *Quality Time? The Report of the Twentieth Century Fund Task Force on Public Television* (distributed by Brookings Institution, 188 pages, 1993). This was the first major report examining the status of public television since the landmark Carnegie Report. The 1993 report, while criticizing many stations, which are the second and third public stations in their markets, for substantial duplication of programming, lauded three stations, including KMTP, for their distinctive program formats.¹

B. AT&T Broadband

AT&T Broadband L.L.C. ("AT&T") operates the vast majority of cable television systems within the San Francisco television market. According to Nielsen Media Research, AT&T controls at least 1,399,318 of the 1,586,737 or 88% of cable households in the San Francisco market.² Additionally, AT&T currently is the nation's largest cable operator.

C. Carriage Complaint

¹See, Chapter 6, "Weights and Measures," online at www.txf.org/Task-Forces.

²Cable On-Line Data Exchange, January 22, 2000. The numbers exclude recent acquisitions (e.g., Santa Rosa, Palo Alto), which push the total to more than 90%.

On February 3, 2000, KMTP filed a Complaint for Carriage against AT&T,³ demonstrating that AT&T (and its predecessors), since 1993, made concerted efforts to deny carriage of the signal of KMTP from AT&T's systems in violation of the Commission's Rules.⁴ Additionally, in a petition requesting sanctions against AT&T, KMTP demonstrated that, in deleting carriage, failing to restore carriage and denying on-channel carriage, AT&T engaged in an on-going, sustained pattern of rule violations.⁵ The response of AT&T is that, because (a) the rule violations are dated, and (b) AT&T believes that KMTP has broadcast sponsorship announcements in violation of the Commission's Rules, AT&T declines to provide carriage and should be excused from its violations.⁶

II. THE ASSIGNMENT APPLICATIONS

Under the Telecommunications Act of 1996,⁷ mergers, such as the one proposed herein, are subject to dual review by the Department of Justice and the Commission. This dual merger review is intended to further the Act's goal of opening all telecommunications markets to competition. The Commission independently reviews mergers to determine if the transfer of licenses would be in the public interest. In analyzing a merger, the Commission examines how the proposed transaction will affect all communications markets and balances the procompetitive effects with its anticompetitive effects. The Commission's cable television rules are designed, in part, to promote competition. And, the mandatory carriage rules are designed specifically to assure that local broadcast station voices, which are in competition with AT&T-owned cable program voices, are available to AT&T cable

³Complaint for Carriage File No. CSR-5524-M (pending).

⁴A copy of the Complaint is attached hereto.

⁵Petition To Initiate A Forfeiture Proceeding (CSR-5513-M), filed on February 15, 2002, is also attached.

⁶ See, Opposition to Complaint for Carriage, filed by AT&T on June 14, 2000.

⁷ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

subscribers.⁸

III. ARGUMENT

KMTP maintains that its complaint and AT&T's response, demonstrate that AT&T has a long-standing practice of willful non-compliance and willful manipulation of the carriage rules. KMTP notes that in its long standing practice of denial of carriage and denial of on-channel carriage to KMTP, AT&T has favored program services in which AT&T holds equity interests. AT&T should not be rewarded with the benefits of this merger for this pattern of flagrant disregard of the carriage rules. Importantly, this past practice of indifference to, and non-compliance with, the mandatory carriage rules, suggests strongly that the proposed merged entity will not comply with the mandatory carriage rules either.

⁸See Quincy Cable TV, Inc. v. FCC, 768 F.2d 1434, 1438-43 (D.C. Cir. 1985).

Viewpoint diversity is one of the ultimate goals of competition.⁹ AT&T has acted to defeat this goal. As demonstrated in the Complaint for Carriage, AT&T elected to carry KMTP in urban areas, such as San Francisco, Oakland and San Jose, but not in suburban areas, such as Napa, Portola Valley or Walnut Creek. Because the minority racial composition of the first group of cities is substantial, and the minority composition of the latter group of cities is insubstantial, AT&T's carriage practices raise a question of whether this is a case of intentional or unintentional discrimination, either of which would be inconsistent with the public interest.

⁹See, e.g., Associated Press v. United States, 326 U.S. 1, 20 (1995); see also Statement of Policy on Minority Ownership of Broadcast Facilities, 68 FCC 2d 979, 982 (1978); see also Diversity of Programming in the Broadcast Spectrum: Is there a Link between Owner Race or Ethnicity and News and Public Affairs Programming?, Christine Bachen, et al., December, 1999 at 37.

KMTP notes that AT&T also has used its monopoly power in the San Francisco television market to disadvantage a competing cable system. Seren Innovations Inc. is a new entrant offering an array of telecommunications services, including cable television. In testimony before the Commission on February 4, 2000¹⁰ – one day after KMTP filed its Complaint – Seren detailed for the Commission a pattern of abuses by AT&T, including collusion with AT&T local partners to deny Seren access to the program service, Bay TV, a joint venture of AT&T and the former licensee of KRON-TV, Channel 4, San Francisco. Seren noted that the crux of the problem was the enormous market power of AT&T. An enlargement of that market power by granting the captioned applications will only increase the merged entity’s potential for exclusionary behavior and give it more market power as it continues its practice of non-compliance with the mandatory carriage rules.

IV. CONCLUSION

KMTP maintains that given AT&T’s extended record of anticompetitive behavior, the grant of the merger applications would not serve the public interest. Thus, KMTP petitions the Commission to deny the captioned applications.

Respectfully Submitted,

MINORITY TELEVISION PROJECT INC.

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¹⁰Testimony of Peter M. Glass, Vice President, Seren Innovations Inc., Cable Services Bureau Forum On AT&T-Media One Merger Application, February 4, 2000.

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April 29, 2002

Declaration

I, Booker T. Wade, Jr., declare as follows:

I am the General Manager of KMTP-TV, Channel 32, San Francisco, California.

I have personal knowledge of the facts and events detailed in the Petition To Deny and have read the Petition to Deny.

I declare under penalty of perjury that the information contained therein is true to the best of my knowledge and belief.

April 29, 2002
San Francisco, California

Booker T. Wade, Jr.
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