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May 21, 2002

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

**Re: Applications for Consent to the Transfer of Control of Licenses  
from Comcast Corporation and AT&T Corp. to AT&T  
Comcast Corporation,  
MB Docket No. 02-70**

Dear Ms. Dortch:

Prime Communications, Inc. ("Prime"), an independent advertising agency in Eastern Massachusetts and Southern New Hampshire ("Boston DMA"), hereby files reply comments in regard to the proposed merger of AT&T Corp. and Comcast Corporation ("Comcast") and the proposed transfer of control of the licenses held by each company. Based upon comments already filed in this proceeding and previous anticompetitive actions undertaken by AT&T Corp., AT&T Broadband, LLC, and AT&T Media Services (collectively "AT&T"), Prime believes that the merger of AT&T and Comcast has the potential to stifle competition, promote a tendency towards monopoly in the provision of local cable advertising and ancillary services, and allow for the abuse of monopoly positions in cable distribution in other competitive markets.

Accordingly, Prime urges the Commission to condition the AT&T/Comcast merger on the surviving corporate entity's ("AT&T Comcast") adoption of strict nondiscrimination policies in regard to purchases of advertising availabilities by independent advertising agencies. Prime believes that such a condition is necessary to ensure that the benefits of vigorous competition in local cable advertising markets and in local markets for ancillary services are maintained. Unless the Commission ensures that the surviving merged company cannot discriminate against independent advertising agencies, the merger will be contrary to the public interest.

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**The Commission Should Condition the Merger of AT&T and Comcast to Prevent Anticompetitive Conduct and Abuse of Cable Franchise Monopolies**

A. Advertising Market Highlighted by Commenters

The merger of AT&T and Comcast involves the transfer of licenses for many cable systems across the nation. In many areas, each company's cable interests make up a sizeable portion of the market for the provision of cable services. As Qwest Communications ("Qwest") stated in its comments in this proceeding, AT&T Comcast will be the "leading cable provider in 8 of the nation's top 10 designated market areas (DMAs)."<sup>1</sup> Of concern to Qwest and others is that AT&T Comcast's dominance in these top markets will severely reduce a "programming network's ability to advertise nationally."<sup>2</sup> Basically, in order to be attractive to purchasers of advertising, programming must reach the top DMAs, which non-AT&T Comcast favored programming will not do if the merger is allowed to proceed.<sup>3</sup>

Furthermore, the Consumer Federation of America ("CFA"), along with its co-commenters, pointed out that "monopoly rent collected by cable companies in the form of inflated sales prices" for advertising and advanced service revenues have doubled since the passage of the Telecommunications Act of 1996.<sup>4</sup> CFA pointed to cable industry concentration as a driver of the cost increases. The fact that such rates have exceeded inflation, combined with high barriers to entry, suggests continued strong monopoly power.

B. Anticompetitive Conduct in the Local Advertising Market

In a local variation on the advertising paradigm outlined by Qwest, AT&T is using its dominance of the local cable market in the Boston DMA to harm competitors in adjacent markets. Such activity is not naturally confined to the Boston DMA and could easily expand to other areas of the country by virtue of this merger, especially given AT&T Comcast's increased size and scope, its control of 8 of the top 10

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<sup>1</sup> Comments of Qwest Communications International, Inc. at 11.

<sup>2</sup> Id.

<sup>3</sup> See also id. Appendix 1 at 10.

<sup>4</sup> Petition to Deny of Consumer Federation of America et al. at 13.

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American markets, and the increased concentration in the provision of cable services in other areas of the country.

Basically, AT&T has unilaterally refused to allow Prime to purchase cable television spots for Prime's customers, which are mainly automobile dealers in the Boston area. As an independent advertising agency, Prime must be able to offer its customers access to the entire spectrum of media, including cable television, for the purchase of ads. Prime is an independent advertising agency that competes directly with AT&T Media Services, AT&T's "in house" agency, in several non-cable franchise products, including the production of cable advertising and the purchase of local advertising "avails" or spots on AT&T's cable television programming. Prime, through its web portal CableCars.com—a site that promotes auto dealerships, describes their services, and enables customers to search inventory of participating dealers—also competes with an offering of AT&T called Vehix.com. Finally, Prime offers Prime IQ, a web-based management tool that evaluates the effectiveness of different kinds of advertising. AT&T's Vehix does not track consumer responses to different types of advertising.

AT&T's discriminatory refusal to allow Prime to purchase cable television spots for Prime's customers is an attempt to drive Prime out of these ancillary businesses where Prime competes with AT&T and is clearly meant to be a warning to all other advertising agencies that dare to compete with an offering by the AT&T conglomerate. AT&T has articulated no legitimate pro-competitive justification for its actions; instead, it has offered pretextual excuses for what is a naked attempt to force Prime out of business. Not only has AT&T barred Prime from purchasing spots, but it is also tying Vehix.com to its cable advertising and participating in other exclusionary conduct. (The exclusion of Prime from purchasing spots came immediately after Prime turned down AT&T's exceptionally low offer to buy Prime IQ.) Even when Prime has employed the services of a third-party advertising buyer, AT&T has interfered with Prime's relationship with its retail clients.

This exclusionary and discriminatory conduct gives AT&T an unfair competitive advantage in the production of cable advertising, the sale of cable advertising, the sale and marketing of web-based automobile local websites, and the marketing of advertising-related, web-based management tools. AT&T is abusing its monopoly position in the distribution of cable programming and minimizing competition in related markets such as the provision of local car web sites. Thus, independent advertising agencies like Prime are placed at a great disadvantage and unable to

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compete effectively at the same time that AT&T increases the reach of its cable franchise monopoly.

C. Condition Will Prevent Further Abuse

The Commission can prevent further abusive tactics such as the ones described above by placing a condition on the merger of AT&T and Comcast. For the above reasons, the Commission should condition the AT&T/Comcast merger on the surviving company's allowing independent advertising agencies to purchase cable television spots on AT&T's and Comcast's programming on a nondiscriminatory basis. Only through such a condition will a level playing field return to local advertising markets.

Respectfully submitted,

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