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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Applications of AT&T Corporation) CS Docket No. 98-178
and Tele-Communications, Inc.)
for Commission Consent)
to a Transfer of Control)

COMMENTS OF DIRECTV, INC.

INTRODUCTION

On September 14, 1998, AT&T Corporation ("AT&T") and Tele-Communications, Inc. ("TCI") filed joint applications under Sections 214(a) and 310(d) of the Communications Act requesting Commission approval of the transfer of control to AT&T of licenses and authorizations controlled by TCI or its affiliates or subsidiaries.¹ The transfer would take place as a consequence of the proposed merger between AT&T and TCI, subsequent to which TCI would become a wholly-owned subsidiary of AT&T.

DIRECTV, Inc. ("DIRECTV")² takes no position at this time as to whether the proposed merger is in the public interest, but offers the following brief comments on the proposed transfers. DIRECTV has reviewed the description of the proposed AT&T/TCI merger transaction, and the organizational structure that will emerge if the transaction is approved. While a clear picture of the final organizational structure is not readily obtainable from the

¹ See Public Notice, "AT&T Corporation and Tele-Communications, Inc. Seek FCC Consent for a Proposed Transfer of Control," DA 98-169 (rel. Sept. 29, 1998).

² DIRECTV is a wholly-owned subsidiary of DIRECTV Enterprises, Inc., a licensee in the DBS service and wholly-owned subsidiary of Hughes Electronics Corporation.

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applications, DIRECTV has concluded that, if the proposed transfers are approved, AT&T, its affiliates and subsidiaries, including Liberty Media Group, will be required to comply with the provisions of Section 628 of the Communications Act,³ which govern access to programming by multichannel video programming distributors (“MVPDs”), as a consequence of AT&T’s acquisition of TCI’s cable systems. DIRECTV urges AT&T and TCI, and the Commission, to confirm this conclusion.

DISCUSSION

DIRECTV has reviewed the description of the proposed AT&T/TCI merger transaction included either in the narrative of, or as an Exhibit to, most of the transfer applications.⁴ Under the terms of the proposed merger, TCI will merge with a newly created AT&T Merger Sub, and the assets of the businesses of AT&T and TCI (the “Merger Parties”) will be attributed to either of two groups. The first of these is the Liberty Media Group, which will be chaired by John Malone, and which will hold, among other things, Liberty Media’s current video programming business.⁵ The second group, designated as the Common Stock Group, initially would hold what is now AT&T and TCI’s cable television, telephone and Internet businesses. A third group, the AT&T Consumer Services Company, also is

³ 47 U.S.C. § 548.

⁴ *See, e.g.*, Application for Authority to Transfer Control of TCI Section 214 Authorizations to Provide International Resold Services (“Sample Application”).

⁵ *Id.* at 11-13. Through the Liberty Media Group, TCI today holds interests in various companies that provide video programming, including Discovery Communications, Inc.; USA Networks; BET Holdings, Inc.; Fox/Liberty Networks, LLC; QVC, Inc.; MacNeil/Lehrer Productions and Encore Media Group. *Id.* at 9. Liberty Media Group “has interests in more than 100 individual channels of programming.” TCI 1997 Stockholder Report.

contemplated, which would eventually hold the cable television, local residential phone, domestic long-distance residential telephone, international residential telephone and residential Internet businesses, along with AT&T's consumer residential wireless mobile communications business.⁶

The Merger Parties have gone to great lengths to emphasize that one of their chief intentions in structuring the transaction is to “separate the performance” and “facilitate the ... operational independence” of the Liberty Media Group’s video programming businesses from AT&T’s cable and other businesses.⁷ While the precise objective of creating this purportedly separate and distinct business group is not specified in the applications, the Merger Parties and the Commission should make it clear that such “independence” will in no way insulate either Liberty Media Group specifically or AT&T or its affiliated cable companies generally from the applicability of the Commission’s program access rules.⁸ These rules are vitally important and are designed to ensure that non-cable MVPDs, such as DIRECTV, can obtain the programming necessary to compete with market-dominant cable operators, such as the cable systems currently owned by TCI that AT&T proposes to acquire.

There is no exemption from the program access law or the Commission’s rules for “insulated” programming operations. Liberty Media Group will be a wholly-owned subsidiary of AT&T, which will become the nation’s largest cable multiple system operator (“MSO”) if the transaction is approved. That fact alone should answer dispositively -- and negatively -- any

⁶ Sample Application at 12.

⁷ *Id.* at 13.

⁸ See 47 C.F.R. §§ 76.1000-1004; 47 U.S.C. § 548.

suggestion by the Merger Parties that the asserted "operational independence" of the Liberty Media Group from AT&T's cable businesses could relieve AT&T or Liberty Media Group from their obligations to comply with program access requirements.⁹

Accordingly, DIRECTV urges the Merger Parties and the Commission to confirm that if the proposed transaction is approved, AT&T and its affiliates and subsidiaries, including Liberty Media, will be required to comply with the Commission's program access rules. Such a confirmation is essential in evaluating whether the proposed transaction is in the public interest.

Respectfully submitted,

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⁹ Moreover, although various factors are listed in the applications as intended to facilitate the operational independence of the Liberty Media Group from AT&T, the applications also state that there will be an additional seat created on AT&T's board post-merger to reflect issues of concern to the Liberty Media Group and holders of the Group's AT&T tracking stock. Sample Application, at 13-14. This seat will be held initially by John Malone as chairman of Liberty Media Group, a fact which clearly means that the Liberty Media Group will *not* exhibit the independence that the Merger Parties assert. To the contrary, the Merger Parties acknowledge that AT&T will be "the legal owner of the assets and the businesses of the Liberty Media Group." *Id.* at 12, n.19.