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**VIA HAND DELIVERY**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Joint Application of AT&T/TCI for Transfer of Control of TCI  
Licenses to AT&T, Ex Parte Notice, CS Docket No. 98-178**

Dear Ms. Salas:

This letter is in response to an inquiry from Commission staff concerning the assertions by certain parties in the above-referenced proceeding that the relationship between Liberty Media Corporation ("Liberty") and AT&T Corp. ("AT&T") subsequent to the merger of AT&T and Tele-Communications, Inc. ("TCI"), will violate the FCC's program access rules, 47 C.F.R. §§ 76.1000-1003, or the FCC's program carriage rules, 47 C.F.R. §§ 76.1300-1302. These assertions are entirely unfounded and should not delay the Commission's approval of the merger.

Pursuant to the Merger Agreement, the post-merger AT&T will use "reasonable efforts" to provide digital distribution for new services created by Liberty and its affiliates on a mutual most-favored nations basis that is otherwise "consistent with industry practices," an arrangement that merely ensures access and services on terms no less favorable than those provided to other programmers or services.<sup>1</sup> The Merger Agreement also contains provisions related to the renewal of existing affiliation agreements of Liberty and its affiliates and arrangements for the distribution of interactive video services.<sup>2</sup> These

<sup>1</sup> AT&T Corp. and Tele-Communications, Inc. Agreement and Plan of Restructuring and Merger, June 23, 1998, at Schedule 7.14.

<sup>2</sup> Id.

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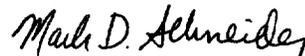
provisions are all common in the industry and in no way constitute the discrimination prohibited by the program access or program carriage rules.

Moreover, the program access and program carriage rules are enforced through a complaint process. Any party that believes AT&T/TCI or Liberty is in violation of the program access or program carriage rules subsequent to the merger may file a complaint pursuant to those rules, just as they can at the present time. In its Reply Comments in this proceeding, AT&T/TCI acknowledged that following the merger as presently proposed, Liberty would remain vertically integrated and subject to the program access rules.<sup>3</sup> Likewise, AT&T/TCI will be subject to the program carriage rules.

Thus, it is abundantly clear that the mere relationship between AT&T/TCI and Liberty, without any specific showing by an aggrieved party in a complaint proceeding, cannot constitute a violation of either the program access or the program carriage rules. In the case of the program access rules, an aggrieved multichannel video programming distributor ("MVPD") must file a complaint and demonstrate that a vertically integrated satellite cable programming vendor has discriminated in favor of a competing MVPD.<sup>4</sup> In the case of the program carriage rules, a video programming vendor must show in its complaint that an MVPD has restrained its ability to compete by discriminating on the basis of affiliation or non-affiliation in the selection, terms, or conditions for carriage.<sup>5</sup> Raising the program access and program carriage issues in the context of the AT&T/TCI merger is entirely inappropriate.

If you have any additional questions concerning this matter, please do not hesitate to contact the undersigned.

Sincerely,



Mark D. Schneider

cc: Royce Dickens

<sup>3</sup> See AT&T/TCI Joint Reply Comments, filed in CS Docket No. 98-178 on November 13, 1998, at 59.

<sup>4</sup> See 47 C.F.R. § 76.1003.

<sup>5</sup> See 47 C.F.R. § 76.1302.