

ORIGINAL

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

DOCKET FILE COPY ORIGINAL

In the Matter of)
)
Applications for Consent to the)
Transfer of Control of Licenses)
)
MediaOne Group, Inc.,)
Transferor)
)
To)
)
AT&T Corp.,)
Transferee)

CS Docket No. 99-251
RECEIVED

AUG 23 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF DIRECTV, INC.

On July 7 and 15, 1999, AT&T Corp. ("AT&T") and MediaOne Group, Inc. ("MediaOne") filed joint applications under Sections 214 and 310(d) of the Communications Act, requesting Commission approval of the transfer of control to AT&T of licenses and authorizations held by subsidiaries of MediaOne and entities controlled by MediaOne.¹ The transfer would take place as a consequence of the proposed merger between AT&T and MediaOne, with AT&T becoming the parent company of MediaOne.

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/MediaOne merger transaction, and the organizational structure that will emerge if the transaction is approved.

¹ See Public Notice, AT&T Corp. And MediaOne Group, Inc. Seek FCC Consent For A Proposed Transfer of Control, DA 99-1447 (rel. Aug. 23, 1999).

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

AT&T, its affiliates and subsidiaries, including Liberty Media Group, are today required to comply with the provisions of Section 628 of the Communications Act,³ which governs access to programming by multichannel video programming distributors (“MVPDs”), and the FCC’s regulations implementing the program access law. AT&T’s proposed acquisition of MediaOne’s cable systems does not change that fact. Consistent with the Commission’s Order approving AT&T’s recent acquisition of TCI,⁴ confirming that the program access law and rules apply to AT&T, its affiliates and subsidiary entities, DIRECTV urges AT&T, MediaOne, and the Commission here to reaffirm this point.

DISCUSSION

DIRECTV has reviewed the description of the proposed AT&T/MediaOne merger transaction included either in the narrative of, or as an Exhibit to, most of the transfer applications. Under the terms of the proposed merger, MediaOne will be merged into a wholly-owned subsidiary of AT&T. The licenses and authorizations currently held by MediaOne thus will be controlled by AT&T. Although the distribution of the MediaOne assets and businesses is not provided in the Description of the Transaction, presumably, these will be divided between two business units, as in AT&T’s previous merger with TCI.⁵ The first unit is the Liberty Media Group, which holds, among other things, Liberty Media’s current video programming business. The second unit, TCI, holds the AT&T/TCI cable television, telephone and Internet businesses.

³ 47 U.S.C. § 548.

⁴ *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 98-178, FCC 99-24, Memorandum Opinion and Order ¶¶ 31-40 (rel. Feb. 18, 1999) (“AT&T/TCI Order”).

⁵ *Id.* at ¶ 10.

The Merger Parties have gone to great lengths to emphasize that Liberty Media Group's video programming business will remain "independent," both operationally and structurally, from AT&T's cable and other businesses.⁶ The Merger Parties also emphasize that the proposed transaction "does not result in a combination of the Liberty and MediaOne programming interests."⁷ The Commission must make clear, however, that these assertions, even if demonstrated, do not insulate either Liberty Media Group specifically, or AT&T or its affiliate cable companies generally, from the applicability of the Commission's program access rules. These rules are critically important 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 MediaOne that AT&T proposes to acquire. These rules are more important than ever, given the degree of concentration in cable ownership today and the further concentration in cable ownership the Merger Parties are asking the Commission to approve.

With AT&T's acquisition of TCI, AT&T became the nation's largest cable multiple system operator ("MSO"). If approved, the instant transaction will further augment AT&T's position in the MVPD market. It has been estimated that AT&T's common ownership of TCI and MediaOne will give AT&T ownership interests in cable systems serving approximately 60% of all households in the United States.⁸ The Commission has recognized that concentration of ownership among cable operators increases the buying power of the major cable MSOs and

⁶ *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, Applications and Public Interest Statement, Description of the Transaction, Public Interest Showing, and Related Demonstrations, at 44.

⁷ *Id.*

⁸ Blumenstein and Cauley, "As Worlds Collide, AT&T Grabs a Power Seat," *Wall Street Journal*, p. B1 (May 6, 1999).

facilitates their ability to engage in anticompetitive conduct.⁹ Vigorous enforcement of the program access law is necessary to prevent, or at least to dilute, the anticompetitive effects of such concentration. Should the Commission approve AT&T's acquisition of MediaOne, it is crucial that the Commission ensure that AT&T/TCI/MediaOne and their subsidiary and affiliate companies remain subject to program access obligations, regardless of the ultimate corporate structure of the combined entity.

As the Commission recognized in its authorization of the transfer of control of cable systems and other licenses from TCI to AT&T, and as AT&T and TCI conceded during that proceeding, the program access law applies to AT&T and its subsidiaries.¹⁰ Indeed, the Merger Parties assert that existing regulations, such as the program access rules, prevent AT&T from impairing the programming marketplace through vertical foreclosure, thereby appearing to concede here as well that AT&T and its affiliates and subsidiaries remain subject to the rules.¹¹ Accordingly, DIRECTV urges the Merging Parties and the Commission to confirm that, if the proposed transaction is approved, AT&T and its affiliates and subsidiaries, including Liberty

⁹ *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifth Annual Report, 13 FCC Rcd 24284, 24362 (1998) (“Although cable operators usually do not compete to serve the same subscribers in local downstream markets, they may have an incentive to coordinate their decisions in the upstream market for the purchase of programming on a national or regional level. Concentration of ownership among buyers in this market is one indicator of the likelihood that coordinated behavior among buyers will be successful.”).

¹⁰ AT&T/TCI Order at ¶¶ 34-35; *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 98-178, Merger Parties Reply at 59 (confirming that “following the merger as presently proposed, Liberty will remain vertically integrated and subject to the program access rules”).

¹¹ *See Application* at 59.

Media, will remain subject to the Commission's program access rules. Such a confirmation is essential in evaluating whether the proposed transaction is in the public interest.

Respectfully submitted,

DIRECTV, Inc.

By:



Gary M. Epstein

James H. Barker

Kimberly S. Reindl

LATHAM & WATKINS

1001 Pennsylvania Ave., NW, Suite 1300

Washington, D.C. 20004

(202) 637-2200

August 23, 1999