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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Applications for Consent to the Transfer of Control of Licenses	)	
	)	
MediaOne Group, Inc., Transferor	)	CS Docket No. 99-251
	)	
To	)	
	)	
AT&T Corp., Transferee	)	

Directed to: The Commission and the Cable Services Bureau

RESPONSE OF BELLSOUTH CORPORATION,
BELLSOUTH ENTERTAINMENT, INC.,
BELLSOUTH INTERACTIVE MEDIA SERVICES, INC., AND
BELLSOUTH WIRELESS CABLE, INC.
TO COMMENTS

BellSouth Corporation and its subsidiaries, BellSouth Entertainment, Inc., BellSouth Interactive Media Services, Inc., and BellSouth Wireless Cable, Inc. (hereinafter referred to collectively as "BellSouth"), by their attorneys, hereby respectfully file their response to comments, pursuant to the Cable Services Bureau's Public Notice in the above-captioned proceeding involving the proposed merger of AT&T Corp. ("AT&T") and MediaOne Group, Inc. ("MediaOne").[1]

[1] *See* Public Notice, *AT&T Corp. and MediaOne Group, Inc. Seek FCC Consent for a Proposed Transfer of Control,* CS Docket No. 99-251, DA 99-1447 (rel. July 23, 1999).

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I. AT&T/MEDIAONE WOULD HAVE SUBSTANTIAL MARKET POWER AS A BUYER OF VIDEO PROGRAMMING

As a number of comments filed in this proceeding demonstrate, a merged AT&T/MediaOne would possess substantial market power as a buyer of video programming.[2] Those comments support and reinforce the comments submitted by BellSouth in this proceeding.[3]

As a starting point, in keeping with the Commission's cable attribution rules, an appropriate assessment of AT&T/MediaOne's market power should encompass those cable multiple system operators ("MSOs") in which the merged entity would have a substantial ownership interest. Contrary to AT&T/MediaOne's position, this assessment should not be artificially limited merely to those MSOs in which AT&T/MediaOne would have at least a 50 percent ownership interest.[4] When the appropriate ownership interests are taken into account (most importantly, MediaOne's 25.51 percent interest in Time Warner Entertainment, and AT&T's 33 percent interest in Cablevision Systems

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[2] *See* Comments of Ameritech at 7-11, CS Docket No. 99-251 (filed Aug. 23, 1999) [hereinafter Ameritech Comments]; Comments and Request for Imposition of Conditions of the Wireless Communications Ass'n Int'l at 1-2, 4-5, CS Docket No. 99-251 (filed Aug. 23, 1999) [hereinafter WCA Comments]; Petition of SBC Communications Inc. to Deny Application at 20-27, CS Docket No. 99-251 (filed Aug. 23, 1999) [hereinafter SBC Petition]; Declaration of Prof. Jerry A. Hausman at 6-12, Appendix A to SBC Petition [hereinafter Hausman Declaration]; Comments of EchoStar Satellite Corp. at 8-9, CS Docket No. 99-251 (filed Aug. 23, 1999) [hereinafter EchoStar Comments].

[3] *See* Comments of BellSouth Corp., et al. at 5-7, CS Docket No. 99-251 (filed Aug. 23, 1999) [hereinafter BellSouth Comments].

[4] *See* Ameritech Comments at 7-9; WCA Comments at 12-13; SBC Petition at 22 n.65; Hausman Declaration at 7-8. Nevertheless, even if the Commission were to limit its analysis to those MSOs in which AT&T/MediaOne would have a majority ownership interest, the merged entity would still have substantial monopsony power (i.e., market power as a buyer). *See, e.g.,* Hausman Declaration at 6, 8 n.19.

Corporation), the merged AT&T/MediaOne would clearly have significant market power as a buyer of video programming.[5]

The submitted comments also demonstrate that AT&T/MediaOne would be able to exercise this market power in two respects. First, a merged AT&T/MediaOne would be able to exercise this market power unilaterally. That is, the importance of the merged entity to video programmers would enable AT&T/MediaOne by itself to demand and obtain exclusivity arrangements and other concessions from programmers.[6] Second, the additional consolidation resulting from an AT&T/MediaOne merger would permit the merged entity to exercise market power as a buyer of programming on a coordinated basis with the small and dwindling number of other MSOs.[7] The MSOs have a strong incentive to coordinate their programmer negotiations because the MSOs do not compete with each other and share a common interest in obtaining programming concessions to the disadvantage of multichannel video programming distributor ("MVPD") competitors.[8]

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[5] *See* Ameritech Comments at 8-11; WCA Comments at 2, 5; EchoStar Comments at 8-9; SBC Petition at 26-27; Hausman Declaration at 7.

[6] *See* Ameritech Comments at 8-11; WCA Comments at 2, 5; EchoStar Comments at 8-9; SBC Petition at 26-27; Hausman Declaration at 8-10.

[7] *See* WCA Comments at 4 & n.4; Hausman Declaration at 7 & n.17.

[8] *See* Hausman Declaration at 7 & n.17. Stated another way, because the MSOs do not compete with each other, the market conditions that could otherwise act to hinder coordinated activity are inapplicable (i.e., in a market where the coordinated actors compete, a firm often has an incentive to "cheat" on the coordinated activity). *Id.* at 7 n.17.

II. AT&T/MEDIAONE WOULD HAVE THE INCENTIVE AND ABILITY TO ENTER INTO ANTICOMPETITIVE EXCLUSIVITY ARRANGEMENTS WITH VIDEO PROGRAMMERS

A number of comments submitted in this proceeding provide abundant evidence that a merged AT&T/MediaOne would have the incentive and ability to exercise its substantial market power as a buyer of video programming to demand and obtain exclusivity arrangements from programmers not subject to the program access rules.[9] The effect of such exclusivity arrangements would be to seriously impair the development of meaningful competition from alternative MVPDs.[10]

In its comments, the Wireless Communications Association International, Inc. ("WCA") provides two dramatic examples of the stranglehold that MSOs have over video programmers. The first example involves the Petition for Exclusivity filed by the Outdoor Life and Speedvision Networks ("Networks") (both of which are partially owned by MediaOne).[11] In attempting to justify their Petition, the Networks demonstrated both the critical importance of the MSOs to the viability of programmers and the strong emphasis that the MSOs place on exclusivity arrangements with programmers.[12]

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[9] *See* WCA Comments at 5-12; Ameritech Comments at 10-11, 17-19; SBC Petition at 25-27; EchoStar Comments at 8-9.

[10] *See* BellSouth Comments at 5-9.

[11] WCA Comments at 6-9. In its comments, BellSouth stated that its concerns were directed at programming that is outside the scope of the Commission's program access rules. *See* BellSouth Comments at 7-8. It should be recognized that if the Networks were outside the scope of the program access rules, then no Petition for Exclusivity would have been filed and the Networks would have been able to enter into the exclusivity arrangements without any Commission scrutiny.

[12] WCA Comments at 7-8. The WCA comments also highlight the glaring inconsistencies between the arguments currently being made by AT&T/MediaOne in this proceeding and the realities described by the MediaOne affiliated Networks in their Petition for Exclusivity. *See id.*

The second example in WCA's comments involves Fox's initial attempt to enter the MVPD business through a joint venture with EchoStar Satellite Corporation ("EchoStar"), a direct broadcast satellite ("DBS") distributor that is completely independent of the MSO industry.[13] Fox abandoned its prospective alliance with EchoStar, however, after the MSOs made it clear that they would refuse to carry Fox programming if the EchoStar deal was consummated.[14]

Additional evidence of the incentive and ability of MSOs to demand and obtain exclusivity arrangements with video programmers was provided in the comments of Ameritech.[15] In addition to describing existing programming exclusivity arrangements involving AT&T as well as an AT&T affiliate, Ameritech explained that it was nearly forced to stop carrying the popular Classic Sports Network as a result of an exclusivity arrangement with MSOs including MediaOne and Time Warner.[16] The situation was only resolved after Ameritech filed a program access complaint with the Commission and the MSOs agreed not to enforce the exclusivity provisions against Ameritech.[17]

The various comments cited throughout this response, combined with the initial comments submitted by BellSouth, convincingly demonstrate that a merged AT&T/MediaOne would have substantial market power as a buyer of video programming, and would have the incentive and ability to enter into anticompetitive

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[13] WCA Comments at 9-11.

[14] *See* WCA Comments at 10-11 & n.25.

[15] *See* Ameritech Comments at 17-19. *See also* WCA Comments at 11.

[16] Ameritech Comments at 17-18.

[17] *Id.* at 18.

exclusivity arrangements with programmers not subject to the program access rules. It is therefore appropriate that as a condition of approving the merger, the Commission should prohibit AT&T/MediaOne from entering into such exclusivity arrangements absent appropriate justification. Thus, as stated in its initial comments, BellSouth respectfully requests that the following provision be imposed as a condition of the Commission's approval of the license transfers in connection with the proposed AT&T/MediaOne merger: that AT&T/MediaOne shall not enter into an exclusivity arrangement with any video programmer that is not subject to the program access rules, unless AT&T/MediaOne can first demonstrate, in a "Petition for Exclusivity" that complies with 47 C.F.R. § 76.1002(c)(5), that such exclusivity arrangement meets the public interest criteria of 47 C.F.R. § 76.1002(c)(4).[18]

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[18] *See* BellSouth Comments at 9-10.

I. CONCLUSION

For the reasons stated above and the reasons stated in its initial comments, BellSouth respectfully urges the Commission to condition its approval of the subject license transfers in connection with the merger of AT&T and MediaOne on the imposition of the provision sought by BellSouth relating to programming exclusivity.

Respectfully submitted,

BELLSOUTH CORPORATION
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September 16, 1999

CERTIFICATE OF SERVICE

I, Nelle Williams, hereby certify that I caused true copies of the foregoing RESPONSE OF BELLSOUTH CORPORATION, BELLSOUTH ENTERTAINMENT, INC., BELLSOUTH INTERACTIVE MEDIA SERVICES, INC., AND BELLSOUTH WIRELESS CABLE, INC. TO COMMENTS to be served this 16th day of September, 1999, on the following by U.S. mail or hand delivery (hand delivery indicated by **):

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