

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

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

MOTION FOR NEW PLEADING CYCLE

The undersigned parties hereby respectfully submit this *Motion for New Pleading Cycle* in the above-captioned matter to provide opportunity for the public to receive notice of, and comment upon, AT&T/MediaOne’s December 21, 1999 request for waiver of the Commission’s horizontal ownership rules.

Throughout this proceeding, AT&T and MediaOne have boldly – but without factual support – proclaimed that the merger would comply with the Commission’s cable horizontal ownership rules. The most recent round of comments in this proceeding was initiated by the Commission’s request that AT&T and MediaOne actually demonstrate how the merged entity would be in compliance with the Commission’s recently announced revisions to those rules.¹ Now, buried on page thirty of their *ex parte* reply comments, in this supplemental proceeding necessitated by their own refusal to fully address the evident obstacles to the proposed merger – in a

¹*Public Notice*, “AT&T Corp. and MediaOne Group, Inc. File Submission on Compliance with New Cable Ownership Rules,” DA 99-2661 (Nov. 30, 1999).

pleading not even labeled as a petition for waiver, and submitted on the eve of the holidays – AT&T and MediaOne have added to their proposal a long overdue request for a waiver of the horizontal ownership cap mandated by 47 U.S.C. §613(f)(1). As demonstrated below, in light of this significant modification of the merger applications, the public interest requires that a new pleading cycle be established so that members of the public and other interested parties are provided with adequate notice and a reasonable opportunity to comment on these pending applications in their substantially revised form.

I. THE LONG OVERDUE REQUEST FOR WAIVER OF THE COMMISSION’S HORIZONTAL OWNERSHIP RULES SUBSTANTIALLY ALTERS THE AT&T AND MEDIAONE MERGER APPLICATIONS

Since the proposed merger was announced, it has been widely recognized – by all but the merger parties in their FCC filings – that the Commission’s cable horizontal ownership rules, and the public interest concerns they embody, pose a serious obstacle to approval of the proposed AT&T/MediaOne merger. Yet, as commenters in the merger proceeding pointed out,² the Public Interest Statement filed in July by AT&T and MediaOne failed to address directly the merged entity’s ability to comply with the horizontal ownership rules. As a result, the Commission found it necessary to initiate this most recent round of pleadings in order to force AT&T and MediaOne to finally face up to this issue. Still, in their initial response to the Commission’s request, AT&T and MediaOne steadfastly refused to address the true significance of their merger. Indeed, as comments filed in response³ to AT&T/MediaOne’s *ex parte* submission demonstrated,

²See, e.g., Motion to Dismiss of Consumers Union, *et al.*; Petition of SBC Communications, Inc. To Deny Application, CS Docket No. 99-251 (Aug. 23, 1999).

³See, e.g., Comments of Consumers Union, *et al.*; Comments of U S WEST; Comments of SBC.

AT&T/MediaOne's attempt to demonstrate compliance with the FCC's rules as written had serious flaws. It is only now, at the close of a *supplemental* pleading cycle above and beyond the long-since completed initial comment period, that the merger parties have deigned to acknowledge that – to the extent the Commission is actually going to insist on “technical compliance” with its recently revised rules – a waiver of the Commission's horizontal ownership rules is necessary.⁴ As discussed below, however, the Commission should not countenance the merger parties' continued attempts to preclude public review of that proposal by refusing to supply pertinent information in a timely fashion. Rather, an opportunity must be provided for all members of the public and other interested parties to address these new arguments before the Commission can fully assess whether a waiver of these new rules is warranted.

II. INTERESTED PARTIES DESERVE REASONABLE NOTICE AND AN OPPORTUNITY TO COMMENT ON THE MERGER IN ITS CURRENT FORM

The long overdue waiver request by AT&T and MediaOne warrants an opportunity for full briefing by interested parties.⁵ Throughout this proceeding, AT&T and MediaOne have demonstrated an unwillingness to provide information necessary to allow for a meaningful review of their merger application. Now, even as it provides a long-awaited acknowledgment of the Commission's horizontal ownership rules, their belated waiver request it embodies, substantially modifies the originally-filed applications. A broad range of parties submitted petitions to deny and comments with respect to the original application. These interested parties have the right to be

⁴ AT&T Reply Comments (filed Dec. 21, 1999).

⁵ Given the specific facts of this proceeding and the significance of this request for waiver, the public interest mandates an opportunity for the public to address these novel issues fully. *Cf.* 47 U.S.C. §309(d).

heard on the important issues presented, but many of them, or their counsel, may not even become aware of the new pleading until January 3, 2000. That day is the commencement of the brief oral *ex parte* window established by the Commission.

The need for the establishment of a period for additional comment is further compelled by the restrictive and delimited *ex parte* meeting schedule previously established by the Cable Services Bureau, which otherwise allows little more than the week after New Year's for opponents of this merger to weigh in on not only on the merger as a whole, but on the waiver request and important new public policy issues it presents. No one can dispute that the public interest is best served when the Commission processes this and other merger applications in a timely fashion. In this instance, however, any delays resulting from this needed round of briefing are caused solely by the merger parties' own actions. All issues raised, finally, in their reply could – and, indeed, *should* – have been presented to the Commission and the public months ago. It is only the merger parties' own dilatory tactics that necessitate this remedial action.

III. CONCLUSION

For the reasons stated above, it is respectfully requested that the Commission establish a new thirty day pleading cycle in this proceeding to provide all members of the public and other interested parties with meaningful notice and a fair opportunity to address the public interest consequences of this substantially revised application. It is further requested that the Commission delay the limited *ex parte* meeting schedule adopted by the Cable Services Bureau until the end of that new pleading cycle.

Respectfully submitted,

CONSUMERS UNION, et al.

**SBC COMMUNICATIONS INC.
U S WEST, INC.**

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December 23, 1999

CERTIFICATE OF SERVICE

I, Andrew Jay Schwartzman, certify that, on this 23rd day of December, 1999, I caused copies of the foregoing *Motion for New Pleading Cycle* to be sent via first class United States mail, postage prepaid, unless otherwise indicated, to the following:

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