

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

In the Matter of	)	
APPLICATIONS FOR CONSENT TO THE	)	
TRANSFER OF CONTROL OF LICENSES AND	)	
AND SECTION 214 AUTHORIZATIONS FROM	)	
	)	
MEDIAONE GROUP, INC.	)	CS Docket No. 99-251
Transferor	)	
TO	)	
	)	
AT&T CORP.	)	
Transferee	)	
	)	

To: The Commission

**CONTINGENT SUPPLEMENT TO  
PETITION FOR RECONSIDERATION**

Pursuant to 47 CFR §1.106(f), Consumers Union, Consumer Federation of America, and the Media Access Project (collectively "CU, *et al.*" or "Petitioners") respectfully submit this *Contingent Supplement* to their July 6, 2000 *Petition for Reconsideration* in the above-captioned proceeding.<sup>1</sup>

At the same time that this supplement is filed Petitioners are also submitting an *Emergency Motion for Expedited Declaratory Ruling and to Waive Procedural Rules*. CU, *et al.* seek a ruling as to whether AT&T Corporation's December 15, 2000 letter purporting to comply with the Commission's directive that it elect "which one" of three options it would choose to achieve compliance with the ownership limitations of the 1992 Cable Act. *See Letter of James W. Cicconi, AT&T General Counsel, to Deborah Lathen, Chief, Cable Services Bureau, December 15, 2000* ("December 15, 2000 letter").

In the event the Commission finds that the December 15, 2000 letter satisfies the require

---

<sup>1</sup>Petitioners have submitted a motion requesting leave to submit this supplement.

ments set forth in the *AT&T/MediaOne Merger Order*, 15 FCCRcd 9816 (2000), Petitioners here supplement their *Petition to Deny* to show that *Merger Order* is arbitrarily vague and frustrates the expressed intent of the Commission to ensure compliance with the cable ownership limits.

## INTRODUCTION

Petitioners warned the Commission during the pendency of this proceeding that the grant of any stay of the horizontal ownership rules placed AT&T's eventual compliance with those rules in jeopardy. See, e.g., *Letter of Andrew Jay Schwartzman to David Goodfriend, Legal Adviser to Commissioner Ness*, May 8, 2000. Now, just as Petitioners predicted, AT&T again seeks to exploit the Commission's seeming unwillingness to stand up for its own rules.

Despite the fact that AT&T had taken no steps to comply with the Commission's rules, the Commission nonetheless granted AT&T the right to choose "one" of three ways to comply with the rules: divestiture of MediaOne's interest in Time Warner Entertainment, LP ("TWE"), divestiture of its interest in Liberty Media Group and compliance with the insulation criteria of the cable ownership attribution rules, or divestiture of a sufficient number of systems to drop below the 30% ownership limit as calculated by the rules now in effect.<sup>2</sup> *Merger Order*, 15 Rcd at 9849.

Recognizing that at least *some* benchmark of AT&T's compliance was necessary to respond to Petitioners' arguments, the Commission ordered that:

this grant IS CONDITIONED on our requirement that AT&T shall file with the Cable Services Bureau, within six months after the merger's closing, a written document stating which *one* of the three compliance options specified in the Video Condition

---

<sup>2</sup>Petitioners remind the Commission that, nearly a year later, Petitioners' *Petitions for Reconsideration* of the new ownership limits and attribution rules are *still* pending.

it has elected.

*Merger Order*, 15 FCCRcd at 9895 (emphasis added).

On December 15, 2000, AT&T submitted a letter purporting to comply. By its plain language, however, for the reasons set forth in Petitioners' *Emergency Motion for Expedited Declaratory Ruling and to Waive Procedural Rules*, AT&T's filing did not comply with the Commission's condition.

Instead of selecting "one of the three compliance options," AT&T selected two: *either* AT&T will divest its interest in Liberty Media *or* AT&T will divest its interests in TWE, depending upon whether the Internal Revenue Service (IRS) grants AT&T a favorable tax ruling.

If the Commission does not immediately reject the December 15, 2000 "election," it must reconsider the June 6, 2000 decision which established the election requirement. If the ambiguous and incomplete "election" AT&T has proffered does, indeed, comply with the Commission's directive, then AT&T will have defeated the purpose of requiring an election, and the June 6, 2000 Order must be reconsidered and reversed. Any directive which is so vague as to permit such evasion is arbitrary and capricious.

## **ARGUMENT**

Accepting AT&T's letter as complying with the Commission's order renders the language vague and arbitrary. The Commission imposed the requirement as a means of guaranteeing that AT&T will achieve compliance with the Commission's ownership rules by May 19, 2001, and in particular to insure that compliance is not delayed by stalling tactics. Permitting AT&T to sidestep this benchmark by appearing to chose one means of compliance while in reality continuing to cloud the issue makes the language of the *Merger Order* arbitrarily meaningless.

The Commission intended that AT&T make an "irrevocable election among three divestiture

options" six months after consummating the merger. *Merger Order*, 15 FCCRcd at 9906 (Statement of Chairman Kennard). AT&T's letter of December 15, 2000 makes no such "irrevocable election." To the contrary, AT&T reserves to itself the right to chose divestiture of TWE if it cannot "for any reason" insulate its interests in TWE. *December 15 Letter* at 2.

In short, all AT&T has done is narrow its range of choices from three to two. AT&T's letter does nothing to promote the certainty of compliance the Commission intended when it made this "irrevocable election" a "nonseverable condition" of the merger. To permit AT&T to evade its "irrevocable election" renders the condition arbitrarily vague.

If the Commission concludes that AT&T's letter does satisfy the letter, if not the spirit of the Commission's *Order*, the Commission is not helpless. Rather, this latest action reenforces Petitioners' arguments that AT&T will never comply with Commission's rules unless the Commission grants the *Petition for Reconsideration*. See *Reply to Opposition to Petition for Reconsideration* at 9-10 (filed July 27, 2000); *Petition for Reconsideration* at 17-20. Accordingly, the Commission should render its long overdue ruling on the pending *Petition*, lift the stay on enforcement of the ownership limits, and require AT&T to divest its interest in TWE immediately as a condition of the merger.

### **CONCLUSION**

WHEREFORE, for the above stated reasons, if the Commission concludes that AT&T's letter of December 15, 2000 satisfies the election requirement established in the *Merger Order*, the Commission should forthwith grant Petitioners' *Petition for Reconsideration* filed on July 6, 2000, lift its existing temporary waiver of the cable horizontal ownership limits, require immediate divestiture by AT&T of its interest in TWE as a non-severable condition of the merger, and grant

all such other relief as may be just and proper..

Respectfully submitted,

Harold Feld  
Andrew Jay Schwartzman  
Cheryl A. Lenza  
MEDIA ACCESS PROJECT  
Suite 220  
950 18th St., NW  
Washington, DC 20006  
(202) 232-4300  
*Attorneys for CU, et al.*

December 18, 2000

## CERTIFICATE OF SERVICE

I, Andrew Schwartzman certify that on December 18, 2000, I caused one copy of the attached *Contingent Supplement to Petition for Reconsideration* to be served by U.S. mail, and by facsimile, upon the parties listed below.

Mark C. Rosenblum  
Stephen C. Garavito  
Lawrence J. Lafaro  
**AT&T Corp.**  
Room 3252G1  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Betsy Brady  
**AT&T Corp.**  
1120 20th St., NW  
Suite 1000  
Washington, DC 2003

Howard J. Symons  
Michelle M. Mundt  
Mintz Levin Cohn Ferris Glovsky & Popeo, P.C.  
701 Pennsylvania Ave, N.W.  
Suite 900  
Washington D.C. 20004  
Counsel for AT&T Corp.

David W. Carpenter  
Mark D. Schneider  
David L. Lawson  
Lorrie M. Marcil  
C. Frederick Beckner  
Sidley & Austin  
1722 Eye St., N.W.  
Washington, D.C. 20006  
Counsel for AT&T Corp.

---

Andrew Jay Schwartzman