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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications for Consent to the Transfer of Control of Licenses	)	MB Docket No. 02-70
	)	
From	)	
	)	
Comcast Corporation and AT&T Corp., Transferors,	)	
	)	
To	)	
	)	
AT&T Comcast Corporation, Transferee	)	

PROTECTIVE ORDER

Adopted: March 28, 2002 **Released: March 29, 2002**

By the Chief, Media Bureau:

1. Beginning on February 28, 2002,[1] Comcast Corporation ("Comcast") and AT&T Corp. ("AT&T") (collectively, the "Applicants") filed applications, pursuant to sections 214 and 310(d) of the Communications Act, as amended, 47 U.S.C. §§ 214 and 310, asking the Federal Communications Commission ("Commission") to approve the transfer of control of licenses and authorizations currently held or controlled, directly or indirectly, by them in connection with the proposed merger of AT&T and Comcast and related agreements.

2. The Commission anticipates that it may seek documents in this proceeding from the Applicants and others that are or that may become parties in this proceeding (individually, each a "Submitting Party") that contain proprietary or confidential information, and that, therefore, such documents should be made available pursuant to a Protective Order. Consequently, the Media Bureau hereby adopts the attached Protective Order (*see* Appendix A) to ensure that any confidential or proprietary documents submitted by a Submitting Party are afforded adequate protection. We note that

[1] On February 28, 2002, the Applicants filed a Public Interest Statement and associated applications for consent to the transfer of control of certain licenses and authorizations. On various subsequent dates, up to and including March 26, 2002, the Applicants filed additional, related transfer of control applications, re-filed certain applications, and filed supplemental information or amendments to the applications to make them acceptable for filing.

this Protective Order is similar to the protective orders adopted in other mergers reviewed or presently under review by the Commission.[2]

3. Under the Protective Order, one copy of each document that a Submitting Party claims is confidential or proprietary must be delivered in person to (1) Roger Holberg and (2) Linda Senecal, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The documents should be accompanied by a cover letter stating "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN MB DOCKET NO. 02-70." Each page of the confidential or proprietary document should be stamped "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN MB DOCKET NO. 02-70 before the Federal Communications Commission" (the "Confidential Filing"). In addition a Submitting Party must file with the Secretary's Office one copy of the Confidential Filing and two copies of the Confidential Filing in redacted form (the "Redacted Confidential Filing"). The two copies of the Redacted Confidential Filing and their accompanying cover letters should be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing should state that the Submitting Party is filing redacted version of such documents.

4. The Submitting Party shall make the confidential or proprietary documents available for review at the offices of the Submitting Party's outside counsel or, if the Submitting Party has not retained outside counsel, at the offices of the Submitting Party's in-house counsel.[3] Parties reviewing these documents will be provided the following alternatives: (1) parties will be provided adequate opportunity to inspect the documents on site; (2) parties may inspect the documents on site with the ability to request copies, at cost, of all or some of the documents, other than those marked as "Copying Prohibited"; or (3) parties may request a complete set of the documents at cost, other than those marked "Copying Prohibited," allowing two days after the request is made for receipt of the copies. If a complete set of documents will be requested, parties are encouraged to make such requests at the time they submit the Acknowledgment of Confidentiality (*see* Appendix B). This will allow parties the opportunity to begin reviewing the documents at the end of the five-day period referenced in paragraph 8 of the Protective

[2] *See, e.g., Applications of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation*, CS Docket No. 01-348, Order Adopting Protective Order, (rel. Jan. 9, 2002); *Applications of Voicestream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Order Adopting Protective Order, 15 FCC Rcd 24042 (2000); *Applications of Intermedia Communications Inc., Transferor, and WorldCom, Inc., Transferee*, CC Docket No. 00-206, Order Adopting Protective Order, 15 FCC Rcd 21563 (2000); *Applications of Sprint Corporation, Transferor, and MCI WorldCom, Inc., Transferee*, CC Docket No. 99-333, Order Adopting Protective Order, 15 FCC Rcd 15622 (2000); *Applications of Sprint Corporation, Transferor, and MCI WorldCom, Inc., Transferee*, CC Docket No. 99-333, Order Modifying Protective Order, 15 FCC Rcd 12444 (2000); *Applications of America Online, Inc. and Time Warner, Inc. for Transfers of Control*, CS Docket No. 00-30, Order Adopting Protective Order, 15 FCC Rcd 6117 (2000); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from US West, Inc., Transferor, to Qwest Communications International Inc., Transferee*, CC Docket No. 99-272, Order Adopting Protective Order, 14 FCC Rcd 19362 (1999); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 99-251, Order Adopting Protective Order, 14 FCC Rcd 12286 (1999); *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, CC Docket No. 98-184, Order Adopting Protective Order, 13 FCC Rcd 22751 (1998).

[3] In the cover letter accompanying a Redacted Confidential Filing, the Submitting Party shall specify the name, address and phone of the in-house counsel or outside counsel who will make the confidential or proprietary documents available for review.

Order. All copies of documents that are removed from the Submitting Party's counsel's office will be stamped as described above in paragraph 3 and must be returned in accordance with the terms of the Protective Order.

5. Any party seeking access to confidential documents subject to the Protective Order shall request access pursuant to the terms of the Protective Order.

6. *Authority*. This Order is issued pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 310(d),Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

APPENDIX A

Protective Order

MB Docket No. 02-70

1. *Introduction.* Beginning on February 28, 2002,[1] Comcast Corporation ("Comcast") and AT&T Corp. ("AT&T") (collectively, the "Applicants") filed applications, pursuant to sections 214 and 310 of the Communications Act, as amended, 47 U.S.C. §§ 214 and 310, asking the Federal Communications Commission ("Commission") to approve the transfer of control of licenses and authorizations currently held or controlled, directly or indirectly, by them to AT&T Comcast Corporation. The Commission anticipates that it may seek documents in this proceeding from the Applicants and others that are or that may become parties in this proceeding (individually, each a "Submitting Party" and collectively, the "Submitting Parties") that contain proprietary or confidential information, and that, therefore, such documents should be made available pursuant to a Protective Order. Consequently, the Media Bureau ("Bureau") has adopted this Protective Order to ensure that any confidential or proprietary documents submitted by the Submitting Parties are afforded adequate protection. This Protective Order does not constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Commission upon a proper request under the Freedom of Information Act ("FOIA") or otherwise.

2. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

"Confidential Information" means information contained in Stamped Confidential Documents or derived therefrom that is not otherwise available from publicly available sources;

"Counsel" means In-House Counsel and Outside Counsel of Record;

"In-House Counsel" means the attorney or attorneys employed by a party to these proceedings or who is employed by an affiliated entity and who are actively engaged in the conduct of this proceeding, *provided that*, such counsel are not involved in competitive decision-making, *i.e.*, In-House Counsel's activities, association, and relationship with a client are not such as to involve such counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor; and

"Outside Counsel of Record" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings.

3. *Use of Confidential Information.* Persons obtaining access to Confidential Information (including Stamped Confidential Documents (as hereinafter defined)) under this Protective Order shall use the information solely for preparation and the conduct of this proceeding as delimited in this paragraph and paragraphs 5, 10, and 11, and any subsequent judicial proceeding arising directly from this

[1] On February 28, 2002, the Applicants filed a Public Interest Statement and associated applications for consent to the transfer of control of certain licenses and authorizations. On various subsequent dates, up to and including March 26, 2002, the Applicants filed additional, related transfer of control applications, re-filed certain applications, and filed supplemental information or amendments to the applications to make them acceptable for filing.

proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Confidential Documents or Confidential Information in its decision in this proceeding, it will do so in the same manner in which it maintained the confidentiality of similar protected information in the *Bell Atlantic/NYNEX Order*, 12 FCC Rcd 19985 (1997).

4. *Non-Disclosure of Stamped Confidential Documents.* Except with the prior written consent of the Submitting Party, or as hereinafter provided under this Protective Order, neither a Stamped Confidential Document nor any Confidential Information may be disclosed by a reviewing party to any person other than the Commission and its staff. A "Stamped Confidential Document" shall mean any document, or part thereof, that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN MB DOCKET NO. 02-70 before the Federal Communications Commission" to signify that it contains information that the Submitting Party believes should be subject to protection under FOIA and the Commission's implementing rules, unless the Commission determines, *sua sponte* or by request pursuant to Sections 0.459 or 0.461 of its rules, that any such document is not entitled to confidential treatment. For purposes of this Protective Order, the term "document" means all written, recorded, electronically stored, or graphic material, whether produced or created by the reviewing party or another person.

5. *Permissible Disclosure.* Subject to the requirements of paragraph 8, Stamped Confidential Documents may be reviewed by Counsel. Subject to the requirements of paragraph 8, Counsel may disclose Stamped Confidential Documents and other Confidential Information to: (1) outside consultants or experts retained for the purpose of assisting Counsel in this proceeding, *provided, that,* the outside consultants or experts are not involved in the analysis underlying the business decisions of any competitor of any Submitting Party nor do they participate directly in those business decisions; (2) paralegals or other employees of such Counsel not described in clause 3 of this paragraph 5 assisting Counsel in this proceeding; (3) employees of such Counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (4) employees of third-party contractors performing one or more of the functions set forth in clause 3 of this paragraph 5. Individuals who have obtained access to Stamped Confidential Documents and Confidential Information in accordance with the provisions of this paragraph 5 and paragraph 8 may discuss and share the contents of the Stamped Confidential Documents and Confidential Information with any other person who has also obtained access in accordance with the provisions of this paragraph 5 and paragraph 8, and with the Commission and its staff.

6. *Protection of Stamped Confidential Documents and Confidential Information.* Persons described in paragraph 5 shall have the obligation to ensure that access to Stamped Confidential Documents and Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that: (1) Stamped Confidential Documents and Confidential Information are used only as provided in this Protective Order; and (2) Stamped Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 10 below.

7. *Prohibited Copying.* If, in the judgment of the Submitting Party, a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend

"Copying Prohibited," and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to Outside Counsel of Record for the Submitting Party.

8. *Procedures for Obtaining Access to Confidential Documents.* In all cases where access to Stamped Confidential Documents and Confidential Information is permitted pursuant to paragraph 5, before reviewing or having access to any Stamped Confidential Documents or Confidential Information, each person seeking such access shall execute the Acknowledgment of Confidentiality ("Acknowledgment") (*see* Appendix B) and file it with the Bureau, on behalf of the Commission, and serve it upon each Submitting Party through its Outside Counsel of Record so that the Acknowledgment is received by each Submitting Party at least five business days prior to such person's reviewing or having access to such Submitting Party's Stamped Confidential Documents or Confidential Information. Where the person seeking access is one described in either clause 3 or 4 of paragraph 5, the Acknowledgment shall be delivered promptly prior to the person's obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Confidential Documents to any such persons. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 3 or 4 of paragraph 5, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Confidential Documents or Confidential Information. The Submitting Party shall make available for review the Stamped Confidential Documents of such party at the offices of such party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's In-House Counsel. Confidential AT&T documents can be inspected at the law offices of Sidley Austin Brown and Wood, LLP, 1501 K Street, N.W., Washington, DC 20005. Confidential Comcast documents can be inspected at the law offices of Davis Polk and Wardwell, 1300 Eye Street, N.W., Washington, DC 20005.

9. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this Protective Order, requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

10. *Filings with the Commission.* Persons described in paragraph 5 may, in any documents that they file in this proceeding, reference Confidential Information, but only if they comply with the following procedure:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;

b. The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;

c. Each page of any party's filing that contains or discloses Confidential Information subject to this order must be clearly marked: "Confidential Information included pursuant to Protective Order, MB Docket No. 02-70;" and

d. The confidential portion(s) of the pleading shall be served on the Secretary of the Commission, the Bureau, and each Submitting Party. Such confidential portions shall be served under

seal, and shall not be placed in the Commission's public file. A party filing a pleading containing Confidential Information shall also file redacted copies of the pleading containing no Confidential Information, which copies shall be placed in the Commission's public files. Parties should not provide courtesy copies of pleadings containing Confidential Information to Commission Staff unless the Bureau so requests. Any courtesy copies shall be submitted under seal.

11. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Confidential Documents or Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Stamped Confidential Documents or Confidential Information.

12. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

13. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Confidential Documents or Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

14. *Violations of Protective Order.* Should a person that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.

15. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 5 shall destroy or return to the Submitting Party Stamped Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Confidential Documents may be retained by any person having access thereto, except Counsel (as described in paragraph 5) may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing Confidential Information prepared on behalf of that party. All Counsel shall make certification of compliance herewith

and shall deliver the same to Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding. The provisions of this paragraph 15 regarding retention of Stamped Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

APPENDIX B

Acknowledgment of Confidentiality

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents or Confidential Information except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as Counsel or consultant to a party or other person described in paragraph 5 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I hereby certify that I am not involved in "competitive decision-making" as that term is used in the definition of In-House Counsel in paragraph 2 of the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Stamped Confidential Documents and Confidential Information are used only as provided in the Protective Order; and (2) Stamped Confidential Documents are not duplicated except as specifically permitted by the terms of paragraph 10 of the Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Stamped Confidential Documents or Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed at _____ this ___ day of _____, ____.

_____
[Name]
[Position]

[Address]
[Telephone]