

proposed modification of the Final Judgment (in the form attached as the Notice of the Proposed Termination of the Final Judgment entered against AT&T Corporation and Tele-Communications, Inc. on August 23, 1999, Exhibit A) in two consecutive issues of (a) *The Wall Street Journal* and (b) *Wireless Week* and file proof of such publication with the Court;

- b. that the United States publish a notice in the *Federal Register* of the proposed termination of the Final Judgment, the reasons for terminating the Final Judgment, and the opportunity to file comments;
- c. that copies of all comments received by the United States within sixty (60) days after the last publication of the notices described in paragraphs 2(a) and the United States' responses be filed with this Court by the United States within a reasonable period of time after the conclusion of the sixty (60) day comment period, and:
- d. that this Court will not rule upon the joint motion of the United States, AT&T and Liberty until at least the seventieth (70th) day after the last publication of the notices described in paragraph 2(a).

3. The United States did [not] receive any comments within the 60-day comment period and therefore [did not file any responses to comments] [filed the comments and a response to comments with this Court on _____].

4. As of the date of this motion, all of the foregoing conditions have been fulfilled.

A proposed Order Modifying the Final Judgment is attached.

Respectfully submitted,

FOR PLAINTIFF THE
UNITED STATES OF AMERICA

R. Hewitt Pate
D.C. Bar # 473598
Deputy Assistant Attorney General

Nancy M. Goodman
D.C. Bar # 251694
Chief
Telecommunications and Media
Enforcement Section

Constance K. Robinson
D.C. Bar # 244806
Director of Operations

Peter A. Gray
PA Bar # 57628
Attorney
Telecommunications and Media
Enforcement Section

U.S. Department of Justice
Antitrust Division
1401 H. Street, N.W., Suite 8000
Washington, D.C. 20530
Telephone: (202) 514-5636

Dated: _____

FOR DEFENDANT AT&T CORPORATION

Ilene Knable Gotts
NY Bar #
Wachtell, Lipton, Rosen, & Katz
51 West 52nd Street
New York, New York 10019
Telephone: (212) 403-1247

Dated: _____

FOR LIBERTY MEDIA CORPORATION

Kathryn M. Fenton
D.C. Bar # 250-944
Jones, Day, Reavis & Pogue
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3746

Dated: _____

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. 1:98CV03170
)	Judge Emmet G. Sullivan
v.)	
)	
AT&T CORPORATION and)	
TELE-COMMUNICATIONS, INC.,)	
)	
Defendants.)	
_____)	

**MOTION TO ESTABLISH
PROCEDURES FOR TERMINATION OF FINAL JUDGMENT**

Plaintiff United States of America and Defendant AT&T Corporation ("AT&T," the successor in interest to Tele-Communications, Inc.) and Liberty Media Corporation ("Liberty") move this Court to enter an order establishing procedures for the termination of the Final Judgment entered in this case, and in support of this motion, state as follows:

1. Plaintiff United States of America and Defendant AT&T and Liberty have entered into a Stipulation to terminate the Final Judgment entered by this Court on August 23, 1999. The United States has provisionally agreed to the termination. However, the United States as a matter of policy does not consent to the termination of judgments without public notice and an opportunity for public comment.

2. Therefore, the parties have agreed in the Stipulation to procedures providing all potentially interested persons with adequate notice that a proposed termination of this Final Judgment is pending, adequate notice of the reasons in support of the proposed termination, and an adequate opportunity to comment. See United States v. Swift & Co., 1975-1 Trade Cas. (CCH) ¶ 60,201 at 65,703 (N.D. Ill. 1975) (identifying these as minimum requirements when considering judgment modification).

3. The United States, AT&T and Liberty have agreed that AT&T and Liberty will publish notice at their expense.

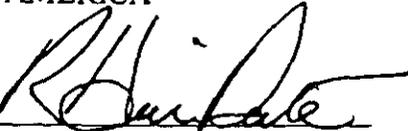
Therefore, the United States, AT&T and Liberty move the Court to order:

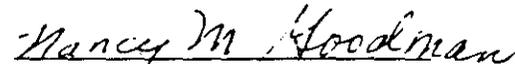
- a. that AT&T and Liberty shall publish at their own expense a notice of the proposed termination of the Final Judgment (in the form attached as the Notice of Proposed Termination of the Final Judgment entered against AT&T Corporation and Tele-Communications, Inc. on August 23, 1999, Exhibit A) in two consecutive issues of (a) *the Wall Street Journal* and (b) *Wireless Week*, and file proof of such publication with the Court;
- b. that copies of all comments received by the United States within sixty (60) days after the last publication of the notices required by this Order and the United States' responses be filed with this Court by the United States within a reasonable period of time after the conclusion of the sixty (60) day comment period, and;

c. that this Court will not rule upon the joint motion of the United States and AT&T and Liberty until at least the seventieth (70th) day after the last publication of the notices required by this Order.

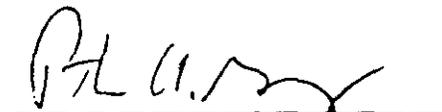
Respectfully submitted,

FOR PLAINTIFF THE UNITED STATES
OF AMERICA


R. Hewitt Pate
DC Bar # 473598
Deputy Assistant Attorney General


Nancy M. Goodman
DC Bar # 251694
Chief
Telecommunications and Media
Enforcement Section


Constance K. Robinson
DC Bar # 244806
Director of Operations


Peter A. Gray
PA Bar # 57628
Attorney
Telecommunications and Media
Enforcement Section

U.S. Department of Justice
Antitrust Division
1401 H. Street, N.W., Suite 8000
Washington, D.C. 20530
Telephone: (202) 514-5621

Dated: 2/21/02

FOR DEFENDANT AT&T CORPORATION

Ilene Knable Gotts

Ilene Knable Gotts
DC Bar # 384740
Wachtell, Lipton, Rosen, & Katz
51 West 52nd Street
New York, New York 10019
Telephone: (212) 403-1247

Dated: 2/27/02

FOR LIBERTY MEDIA CORPORATION

Kathryn M. Fenton

Kathryn M. Fenton
D.C. Bar # 250-944
Jones, Day, Reavis & Pogue
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3746

Dated: 2/21/02

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AT&T CORPORATION and
TELE-COMMUNICATIONS, INC.,

Defendants.

No. 1:98CV03170

Judge Emmet G. Sullivan

**NOTICE OF THE PROPOSED TERMINATION
OF THE FINAL JUDGMENT ENTERED AGAINST AT&T CORPORATION
AND TELE-COMMUNICATIONS, INC. ON AUGUST 23, 1999**

PLEASE TAKE NOTICE that the United States, and both Liberty Media Corporation ("Liberty"), and AT&T Corporation ("AT&T," the successor in interest to Tele-Communications, Inc.) the Defendant in the Final Judgment entered by the Court on August 23, 1999 in the matter of United States v. AT&T Corporation and Tele-Communications, Inc., No. 1:98CV03170 (D.D.C.), have filed a Stipulation with the Court providing for the termination of the Final Judgment in this matter. At the same time, the parties filed a motion with the Court to establish procedures for terminating the Final Judgment. The United States has provisionally consented to the termination of the Final Judgment, pending its review of all public comments on

the proposed termination.

The United States filed a complaint in this case alleging that the merger between AT&T and Tele-Communications, Inc., which would result in the indirect acquisition by AT&T of 23.5% of the shares of Sprint PCS, a competitor of AT&T in the mobile wireless telephone business, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Final Judgment ordered the divestiture of the Sprint PCS interest by a trustee over a five-year period and includes various provisions to ensure that AT&T's indirect partial ownership of Sprint PCS would not create anticompetitive incentives. These provisions, among others, required that all economic benefits of Liberty's Sprint PCS holdings must inure exclusively to the holders of the Liberty Media Group tracking stock, forbade AT&T from transferring any of these benefits to AT&T shareholders, required certain amendments to the Liberty certificate of incorporation and bylaws, and imposed certain restrictions on Liberty's Board of Directors. Liberty also was restricted in its ability to acquire any interest in AT&T's wireless business.

The parties have filed with the Court a memorandum setting forth the reasons why it believes that termination of the Final Judgment would serve the public interest. Copies of the Stipulation containing the United States' provisional consent to terminate the Final Judgment, the United States' memorandum, and all additional papers filed with the Court in connection with the proposed modification are available for inspection at the Antitrust Documents Group of the Antitrust Division, U.S. Department of Justice, 325 7th Street N.W., Room 215 North, Liberty Place Building, Washington, D.C. 20530, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C. 20001. Copies of these materials may be obtained from the Antitrust Division upon request and

payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Final Judgment to the United States. Such comments must be received by the Antitrust Division within sixty (60) days of the completion of publication of this notice and similar notice published in the *Federal Register* and will be filed with the Court by the United States. Comments should be addressed to Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H. St., N.W., Suite 8000, Washington, D.C. 20530 (telephone: 202-514-5621). Comments may also be sent via electronic mail to TEL.COMMENTS@USDOJ.GOV or faxed to the attention of Peter Gray at 202-514-6381.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AT&T CORPORATION and
TELE-COMMUNICATIONS, INC.,

Defendants.

No. 1:98CV03170
Judge Emmet G. Sullivan

**ORDER ESTABLISHING NOTICE AND PUBLIC COMMENT
PROCEDURES FOR MOTION TO TERMINATE FINAL JUDGMENT**

Plaintiff United States of America and Defendant AT&T Corporation ("AT&T," the successor in interest to Tele-Communications, Inc.) and Liberty Media Corporation ("Liberty") have moved this Court to establish procedures to terminate the Final Judgment entered by this Court on August 23, 1999. The United States has tentatively consented that the Final Judgment be terminated after a suitable period for public notice and comment. The parties have agreed that AT&T and Liberty will publish at their expense notice of the motion to terminate and the United States' provisional consent and that all interested persons will be given an opportunity to submit

comments concerning the proposed termination of the Final Judgment. Because it appears to the Court desirable to invite such comments, and in consideration of the Stipulation of the parties dated _____, 2002, it is:

ORDERED that AT&T and Liberty shall publish at their own expense a notice in the form attached hereto as Exhibit A of the proposed termination of the Final Judgment in (a) two consecutive issues of *The Wall Street Journal*, and (b) two consecutive issues of *Wireless Week*, and file proof of such publication with the Court; and it is;

FURTHER ORDERED, that copies of all comments received by Plaintiff within sixty (60) days after the last publication of the notices required by this Order, together with the Plaintiff's response to those comments, shall be filed with this Court by Plaintiff within a reasonable period of time after the conclusion of the sixty (60) day comment period; and it is;

FURTHER ORDERED, that this Court will not rule upon the motion of the United States, AT&T and Liberty until at least the seventieth (70th) day after the last publication of the notices required by this Order.

DONE, this ____ day of _____, 2002.

UNITED STATES DISTRICT JUDGE

FEDERAL REGISTER NOTICE

Department of Justice
Antitrust Division

United States v. AT&T Corporation
and Tele-Communications, Inc., No. 1:98CV03170 (D.D.C. August 23, 1999)

United States' Notice of Proposed Termination of the Final Judgment

Notice is hereby given that the United States and both AT&T Corporation ("AT&T") defendant in the above-captioned matter, and Liberty Media Corporation ("Liberty"), have entered into a Stipulation to terminate the Final Judgment entered by the United States District Court for the District of Columbia on August 23, 1999. In this Stipulation filed with the Court, the United States has provisionally consented to termination of the Final Judgment, but has reserved the right to withdraw its consent pending receipt of public comments.

On December 30, 1998, the United States filed the complaint in this case alleging that the merger between AT&T and Tele-Communications, Inc., which would result in the indirect acquisition by AT&T of 23.5% of the shares of Sprint PCS, a competitor of AT&T in the mobile wireless telephone business, would substantially lessen competition in the provision of mobile telephone service in many geographic areas of the United States and thus violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. At the same time as it filed the Complaint, the United States filed a proposed Final Judgment to resolve the competitive concerns alleged in the Complaint, and a stipulation by defendants and the United States consenting thereto.

The Final Judgment, which was entered by consent of the parties on August 23, 1999,

ordered the divestiture of the Sprint PCS interest by a trustee over a five-year period and includes various provisions to ensure that AT&T's indirect partial ownership of Sprint PCS would not create anticompetitive incentives. These provisions, among others, required that all economic benefits of Liberty's Sprint PCS holdings must inure exclusively to the holders of the Liberty Media Group tracking stock (which was created after the consummation of the merger between the defendants), forbade AT&T from transferring any of these benefits to AT&T shareholders, required certain amendments to the Liberty certificate of incorporation and bylaws, and imposed certain restrictions on Liberty's Board of Directors. Liberty also was restricted in its ability to acquire any interest in AT&T's wireless business.

On August 10, 2001, having received a favorable letter ruling from the Internal Revenue Service, AT&T spun off the businesses represented in the Liberty Media Tracking stock of AT&T into a separate, publicly traded company, Liberty Media Corporation ("Liberty").

The United States, defendant AT&T and Liberty have provisionally agreed to terminate the Final Judgment because of the above-noted changed circumstances in the relationship between AT&T and Liberty. The legal and economic separation of AT&T and Liberty as a result of the August 10, 2001 spin-off, have changed the circumstances under which the parties entered into the Final Judgment, which is no longer needed to protect competition in the mobile wireless telephone business. Therefore, terminating the Final Judgment is in the public interest.

The United States has filed a memorandum with the Court setting forth the reasons it believes termination of the Final Judgment would serve the public interest. Copies of the joint motion of the United States, AT&T, and Liberty to establish procedures to terminate the Final Judgment, the stipulation containing the United States' provisional consent to termination of the Final Judgment, the supporting memorandum, and all additional papers filed with the Court in

connection with this motion are available for inspection at the Antitrust Documents Group of the Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W., Room 215 North, Liberty Place Building, Washington, D.C. 20530, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C. 20001. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the duplicating fee set out in Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination to the Department of Justice. Such comments must be received by the Antitrust Division within sixty (60) days of the last publication of notices appearing in the Wall Street Journal and Wireless Week, and will be filed with the Court by the Department. Comments should be addressed to Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H. St., N.W., Suite 8000, Washington, D.C. 20530 (telephone: 202-514-5621). Comments may also be sent via electronic mail to TEL.COMMENTS@USDOJ.GOV or faxed to the attention of Peter Gray at 202-514-6381.

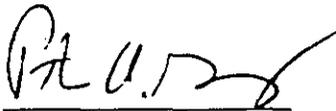
Constance K. Robinson
Director of Operations

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Plaintiff's Federal Register Notice were served via U.S. Mail, first-class postage paid, on this 22nd day of February, 2002, upon each of the parties listed below:

Ilene Knable Gotts
NY Bar #
Wachtell, Lipton, Rosen, & Katz
51 West 52nd Street
New York, New York 10019
Telephone: (212) 403-1247

Kathryn M. Fenton
D.C. Bar # 250-944
Jones, Day, Reavis & Pogue
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3746



Peter A Gray
PA Bar # 57628
Counsel for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. 1:98CV03170
)	Judge Emmet G. Sullivan
v.)	
)	
AT&T CORPORATION and)	
TELE-COMMUNICATIONS, INC.,)	
)	
Defendants.)	

**MEMORANDUM IN SUPPORT OF JOINT MOTION
TO TERMINATE THE FINAL JUDGMENT**

The United States, AT&T Corporation ("AT&T") and Liberty Media Corporation ("Liberty") file this Memorandum in Support of the Joint Motion to Terminate the Final Judgment entered in this matter on August 23, 1999. Changed circumstances mean that the relief provided is no longer required to achieve the purposes of the Final Judgment and that termination of the Final Judgment is in the public interest.

I. Background

The Final Judgment at issue arose from the June 1998 agreement between Defendants Tele-Communications, Inc. ("TCI"), the then-parent of Liberty, and AT&T pursuant to which TCI would be merged into a wholly owned subsidiary of AT&T. The merger agreement also contemplated the indirect acquisition by AT&T of Liberty's 23.5% equity interest in Sprint Corporation's mobile wireless telephone business ("Sprint PCS Holdings"), a competitor of AT&T in the provision of mobile wireless telephone business in many geographic areas of the

United States. Following an investigation, the U.S. Department of Justice Antitrust Division ("the Department") concluded that AT&T's incentives to compete with Sprint PCS would be lessened significantly as a result of this ownership interest.

Accordingly, on December 30, 1998, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, seeking to enjoin the TCI-AT&T merger on the grounds that it would substantially lessen competition in the provision of mobile wireless telephone services in many geographic areas throughout the country. Simultaneously with the filing of its Complaint, the United States also submitted a proposed Final Judgment, a Competitive Impact Statement, and a Stipulation signed by the Defendants consenting to the entry of the Final Judgment. Following compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, the Final Judgment was entered by this Court on August 23, 1999.

II. The Final Judgment

In order to preserve competition in the sale of mobile wireless telephone services, the Final Judgment ordered the complete divestiture by Liberty of its Sprint PCS Holdings over a period of five years. (Final Judgment, Section V). This divestiture was intended to prevent AT&T from recapturing through Liberty any of the revenues that might hypothetically be diverted from AT&T to Sprint PCS as a result of an increase in the price of AT&T's mobile wireless telephone services. The Final Judgment mandates that Liberty's Sprint PCS Holdings be reduced to 10% or less of the outstanding Sprint PCS stock by May 23, 2002; Liberty's interest must be divested completely by May 23, 2004.

Pending the completion of this divestiture, the Final Judgment imposed other measures to ensure that AT&T's partial ownership of Sprint PCS through Liberty would not create

anticompetitive incentives. These provisions, among others, required that all economic benefits of Liberty's Sprint PCS Holdings inure exclusively to the holders of the Liberty Media Group tracking stock, forbade AT&T from transferring any of these benefits to AT&T shareholders, required certain amendments to the Liberty certificate of incorporation and bylaws, and imposed certain restrictions on Liberty's Board of Directors. (Id., Section VI.B). In order to ensure ongoing separation between Liberty's Sprint PCS Holdings and AT&T's wireless business, Liberty also was restricted in its ability to acquire any interest in AT&T's wireless business. (Id., Section VI.F). Finally, prior to the closing of the AT&T merger, TCI was required to (and did) establish an independent trust, and appoint a trustee, approved by the Department, who had the obligation and sole responsibility to divest the Sprint PCS Holdings in a manner calculated to maximize the value of the Sprint PCS Holdings to the Liberty Media shareholders. (Id., Section V.B).

Section IX of the Final Judgment provides that the district court will retain jurisdiction and permits application to the Court for any order necessary or appropriate for the modification of the Final Judgment. If a motion to terminate the Final Judgment in which the Department has joined has been filed and is pending before the Court, the trustee is not required to proceed with the mandated divestiture until the motion to terminate the Final Judgment has been decided by the Court. (Id., Section V.A).

III. Termination of the Final Judgment is in the Public Interest

A. Standard for Modification or Termination

This Court has jurisdiction to modify the Final Judgment under both Section IX of the Final Judgment ("Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and

directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment [and] for the modification of any of the provisions hereof") and Federal Rule of Civil Procedure 60(b)(5). When considering an uncontested motion to modify an existing Final Judgment in which the United States has joined, the Court's role is limited to determining whether the proposed modification is within the "zone of settlements" consistent with the public interest. As the D.C. Circuit has held:

[T]he "public interest test," as applied to a modification assented to by all parties to a decree, "directs the district court to approve an uncontested modification so long as the resulting array of rights and obligations is within the zone of settlements consonant with the public interest today." That formation made clear that it was not up to the court to reject an agreed-on change simply because the proposal diverged from its view of the public interest. Rather, the court was bound to accept any modification that the Department (with the consent of the other parties we repeat) reasonably regarded as advancing the public interest.

United States v. Western Electric Co., 993 F.2d 1572, 1576 (D.C. Cir. 1993) (citation omitted); see also United States v. Microsoft Corp., 56 F.3d 1448, 1460 (D.C. Cir. 1995) (court's function in reviewing agreed-upon decree modification is "not to determine whether the resulting array of rights and liberties 'is one that will best service society,' but only to confirm that the resulting settlement is 'within the reaches of the public interest'"). The proposed termination of the Final Judgment meets this standard.

B. Termination is within the Zone of Settlements which will Advance the Public Interest

The possibility that changes in the legal and economic relationship between AT&T and Liberty as the holder of Sprint PCS stock would completely resolve the competitive concerns posed by the TCI/AT&T merger was recognized by the United States at the time the proposed

Final Judgment was submitted to the Court. The Competitive Impact Statement ("CIS") filed in this matter on December 30, 1998, stated:

In the Department's view, complete legal and economic separation between AT&T's wireless business and the Sprint PCS Holdings would constitute a material change in circumstances that would justify termination of the divestiture obligation.

CIS at 16.

On August 10, 2001, Liberty was spun off from AT&T and became a separate, publicly traded company.¹ AT&T no longer owns any Liberty Media Corporation stock or has any other legal or economic interest in Liberty.²

The spin off of Liberty from AT&T has dissolved the legal and economic relationships between AT&T and Liberty on which the Final Judgment was premised. The competitive harm sought to be addressed by the Final Judgment rested on those shared interests – through Liberty – between Sprint PCS and AT&T's wireless business. The Final Judgment's divestiture obligation (and the creation of a trust and appointment of a trustee pending divestiture) sought to separate these interests in order to ensure competition. With the spin-off establishing Liberty as a separate company, there is no longer any conceivable means for AT&T or AT&T Wireless to direct or to recoup the benefits of an anticompetitive strategy with respect to Sprint PCS' wireless telephone business through Liberty.

¹ Liberty Media Corporation, SEC 10-Q filing (8/14/01).

² Id. In addition, Liberty's chairman Dr. John C. Malone, resigned from the AT&T Board of Directors. See July 10, 2001 AT&T News Release (visited 2/5/02) <<http://www.att.com/press/item/0,1354,3909,00.html>>. Also, on July 9, 2001, AT&T Wireless Services, Inc. ("AT&T Wireless") was spun off from AT&T and became a separate, publicly traded company. See AT&T Corporation, SEC 10-Q filing (8/14/01).

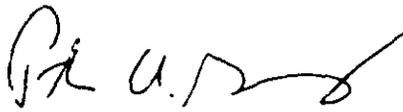
Therefore, the Final Judgment is no longer necessary to preserve the public interest in competition in the provision of mobile telephone services and should be terminated.

IV. Conclusion

For the reasons set forth above, the Court should enter the accompanying proposed Order and terminate the Final Judgment.

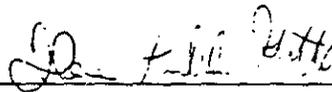
Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA



Peter A. Gray
PA Bar # 57628
Attorney
Telecommunications and Media
Enforcement Section
U.S. Department of Justice
Antitrust Division
1401 H Street, N.W., Room 8116
Washington, D.C. 20530
(202) 514-5636

FOR DEFENDANT AT&T CORPORATION



Ilene Knable Gots
DC Bar # 384740
Wachtell, Lipton, Rosen, & Katz
51 West 52nd Street
New York, New York 10019
Telephone: (212) 403-1247

FOR LIBERTY MEDIA CORPORATION

Kathryn M. Fenton

Kathryn M. Fenton
DC Bar # 250944
Jones, Day, Reavis & Pogue
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3746

Dated: 2/20/02, 2002

RECEIVED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

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MAYOR
MAYOR WASHINGTON
CLERK

TRUST AGREEMENT

This Trust Agreement (this "Agreement") of the Liberty PCS Trust (the "Trust") is entered into as of March 9, 1999 between TCI Wireless Holdings, Inc. (the "Grantor", which term shall include any successor grantor as provided in paragraph (b) of Section 10), a Delaware corporation and an indirect wholly owned subsidiary of Tele-Communications, Inc. ("TCI"), and M. LaVoy Robison, an individual residing in Littleton, Colorado (in his capacity as the trustee hereunder, the "Trustee," which term shall include any successor Trustee as provided in paragraph (h) of Section 7).

WHEREAS, AT&T Corp. ("AT&T"), Italy Merger Corp., and TCI, have entered into an Agreement and Plan of Restructuring and Merger, dated as of June 23, 1998, pursuant to which, upon consummation of the merger contemplated thereby (the "Merger"), TCI will become a wholly owned subsidiary of AT&T;

WHEREAS, following discussions with the United States Department of Justice, Antitrust Division (the "DOJ"), AT&T and TCI have agreed with the DOJ to the form of Final Judgment in *United States of America v. AT&T Corp. and Tele-Communications, Inc.* attached as Exhibit A (as the same may be amended, supplemented or modified from time to time, the "Final Judgment"), which Final Judgment is hereby incorporated by reference into this Agreement and made a part of this Agreement for all purposes;

WHEREAS, certain capitalized terms used herein but not otherwise defined herein have the meanings given to such terms in the Final Judgment;