

June 4, 2002

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: MB Docket No. 02-70

Dear Ms. Dortch:

This letter is in response to AT&T/Comcast's May 21, 2002 reply to the Federal Communications Commission (FCC) regarding comments opposing its planned merger. Specifically, we are commenting on pages 126-130 of AT&T/Comcast's reply, which relate to the Black Education Network (BEN). After reviewing the reply, we continue to assert the following:

- The proposed merger fails to adequately consider and provide for minority participation in ownership of cable systems in the United States.
- The proposed merger fails to adequately consider and provide for consumers' access to diversity of content.

We believe that AT&T has failed in its response to adequately address the issue of minority cable system ownership, particularly ownership by African Americans, and more than likely cannot name one minority company to whom it has sold cable systems. Our opposition does not relate to special programs and treatment, but more significantly to the issue of ethical business practices and fair treatment of minority businesses, neither of which AT&T has demonstrated in its dealing with the Black Education Network.

We have been harmed by the unethical business practices of AT&T Broadband and are fearful that allowing this merger to go forward will allow AT&T Broadband to use its monopolistic powers to further undermine healthy competition, eliminate cable system ownership opportunities for African Americans, and decrease diversity of content as well.

BEN is not alone in its understanding of the implications of this merger and the harm that a combined AT&T/Comcast will bring to the market. The American Cable Association filed comments with the Federal Communications Commission on April 29, 2002. In the Summary section of page ii, paragraph 2 the American Cable Association writes, "...Therefore, the proposed merger threatens harm to three well-established public interests under the Commission's jurisdiction:

- *The preservation and promotion of program diversity*
- *The rapid deployment of facilities-based broadband services*
- *Maintaining viable local communication businesses that can respond to community needs and interests in smaller markets.*

BEN's experiences with AT&T Broadband go to the core of concerns for many who object to the AT&T/Comcast merger: ownership and program diversity and how the merged AT&T/Comcast will deal with competing programmers.

BEN agrees with the conclusion reached by author Kristal Brent Zook in her article, *"All Hype, No Action: Why Black-owned TV Networks Can't Seem To Get Off The Ground"*, in which she asserts that "Cable systems operators are reluctant to do that, partly because of racism and partly because of a desire to maintain monopolistic control."¹

AT&T attempts to bolster its argument by delineating all of the "household name" programmers they carry that are "targeted" to African-American audiences. These include several BET channels and VH1 Soul. ATT's assertion is erroneous and culturally arrogant. First because minorities, including African-Americans, do not own these channels, and second because African-Americans would like to have the opportunity to broadcast diverse programs that go beyond music videos.

In our initial comment, we addressed the issue of minority-owned programming services and cable system owners. AT&T replied that it has been working together to find ways to increase the audience reach of several independent networks focused on African American affairs. One of the networks AT&T points out—The Word Network—is a Michigan based non-profit programming service owned by Frank Adell, who is not a minority individual. Another network AT&T cites—New Urban Entertainment, which counts Quincy Jones as one of its founding shareholders—has not been broadcast since early 2001, when according to industry sources, it effectively ceased operation. The other network—Major Broadcasting Company—is looking to add more distribution to the small amount it has garnered so far, and we wish them well in their endeavors. In its reply (page129) AT&T points out that it has seven Spanish language broadcast services, with three Spanish language cable services on its basic tier. The same rationale and demand applies for more than one African American-owned programming service, with different programming goals.

BEN takes extreme exception with ATT's assertion that the reason BEN is not on the air is "because its product quality is inferior to other services preferred by AT&T

¹ *CRISIS Magazine*. March/April 2002, NAACP. The article poses the question why have so many Black networks failed even with celebrity support and respectable amounts of investment capital.

Broadband customers.” AT&T Broadband officials viewed examples of BEN programming before they signed a carriage agreement with BEN. In addition, AT&T Broadband customers could not demonstrate a preference with respect to BEN programming because AT&T has never aired one minute of BEN programming on any of its cable systems. Negotiations started in November of 1999 and we had a basic agreement before AT&T merged with MediaOne. After the Federal Communications Commission approved the merger, AT&T changed the terms and gave us a take it or leave mandate.

AT&T attempts to give short shrift to BEN’s assertions by arguing “These unsubstantiated attempts to exploit this merger proceeding in order to seek private gain in commercial or litigation contexts occurring far outside the parameters of this proceeding should be given no credence.”

The fact is that BEN has consistently endeavored to deal in good faith with AT&T on several programming and transaction matters. At each step, AT&T has demonstrated disregard for BEN’s good faith efforts because AT&T did not believe that a minority company (1) deserved to purchase its divested subscribers and (2) could not finance the purchase of those subscribers. When BEN demonstrated adequate financing and proffered a superior bid, AT&T resorted to bad faith tactics that, once again, denied opportunity to a minority business entity who sought to bring diverse programming to the marketplace.

AT&T has given much lip service to the principle of diversity, but when presented with several legitimate opportunities to implement diversity, it has failed miserably. Moreover, its failure has been enwrapped in an odious pattern of dealing with the “good ole boys” to the exclusion of new, minority entrants, and to the detriment of the public.

AT&T’s behavior in its pre-merger form will only become emboldened if allowed to merge into a larger, more powerful entity. If this merger is approved, even capable, capitalized and committed minority businesses seeking entry will be denied market opportunities. A company such as AT&T that demonstrates such disregard for minority business serves neither the consuming public, nor the market, and should not be allowed in the public interest.

**Sincerely,
Stephen E. Davis
President/CEO**

**c: Board of Directors, BEN Asset Group, Inc.
Michele Clark Jenkins, President/CEO, Black Education Network, Inc.
Commissioner Michael K. Powell, Chairman, FCC
Members, Congressional Black Caucus
Kweisi Mfume, President NAACP
Hugh Price, President, National Urban League**