

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

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

**RCN Telecom Services, Inc.,
Written *Ex Parte* Presentation
Proposing Condition**

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Introduction

The purpose of this written *ex parte* presentation is to propose to the Commission a simple solution to the problem of predatory pricing by the merger partners, a problem raised by RCN and other commenters in this proceeding, namely: a requirement that AT&T-Comcast post on the company's website all promotions and discounts as soon as they are offered to any customer within a franchise area, thereby making nature and amount of the promotion or discount known.

Background

In the Petition of RCN Telecom Services, Inc., to Deny Applications or Condition Consent, filed in the above-captioned docket on April 29, 2002, RCN raised the problem of highly aggressive discounts offered by the applicants only to those subscribers to whom competitive service is available. Other commenters in this proceeding have echoed the same concern.¹ However, information regarding targeted deep discounts by the applicants typically comes from individual customers who have received such offers and, accordingly, the information is anecdotal and extremely difficult to document. On August 14, 2002, RCN submitted its written *ex parte* presentation and accompanying Declaration, providing the Commission with further, specific evidence from Montgomery County, Maryland, of predatory pricing by Comcast, whereby highly aggressive discounts and promotions are offered only to those subscribers to whom competitive service offered by RCN's affiliate, Starpower Communications, is available. While these targeted discounts and promotions are intensively

¹ See Reply Comments of RCN Telecom Services, Inc., dated May 21, 2002, in MB Docket No. 02-70, citing Comments of Everest Midwest Licensee, LLC, DBA Everest Connections, dated April 29, 2002, in MB Docket No. 02-70, at 3; Comments of the Broadband Service Providers Association, dated May 21, 2002, in MB Docket No. 02-70, at 10-11.

marketed to Starpower's customers and potential customers, they generally are not made known to subscribers outside Starpower's service area.²

The Montgomery County Council, in connection with its approval of the transfer of Comcast's cable franchise to AT&T-Comcast, addressed the problem of predatory discounts targeted only to a competitor's customers and potential customers, by requiring that AT&T-Comcast immediately post on the company's website all promotions and discounts offered to any subscriber within the franchise area, so that all consumers in the County may see the discounts and promotions being offered.³ RCN's affiliate in Montgomery County, Starpower, has agreed to do the same. RCN submits that this straightforward solution be adopted by the Commission, should the Commission approve the pending license transfer applications of Comcast and AT&T, and imposed as a condition of that approval.

Predatory Pricing Poses a Merger-Specific Harm to the Public Interest

The predatory pricing practices complained of by RCN and other competitors clearly harm the public interest. Those cable customers to whom competitive service is not yet available and who, accordingly, are not offered the deep discounts targeted against the applicants' competitors, end up paying higher cable rates that, in effect, subsidize the applicants' efforts to defeat nascent cable and broadband competition. Ultimately, if these efforts are allowed to

² See, Declaration of Ron Maier, attached to RCN Telecom Services, Inc., Written Ex Parte, filed August 14, 2002, in MB Docket No. 02-70, at ¶¶ 6, 11.

³ Montgomery County also has in place a local ordinance requiring uniformity of cable rates throughout a franchisee's franchise area. RCN has proposed separately, in its Petition and Reply Comments in this proceeding, that the Commission consider imposing a uniform pricing requirement as an additional remedy to the problem of predatory pricing, sales and marketing tactics. Website posting of discounts and promotions, however, offers significant pro-consumer and pro-competitive benefits, as outlined herein, irrespective of whether it is coupled with a uniform pricing mandate.

succeed and competition is driven out of the cable market, all consumers will be harmed by the return to monopoly markets and the monopoly prices that accompany them.

The proposed merger of AT&T and Comcast, and the transfer of each entity's existing licenses to the merged entity, will, unless conditioned, exacerbate the harm to the public interest caused by predatory deep discounts in several ways. First, the merger will enable AT&T-Comcast to target competitors through concerted action in multiple markets. Whereas RCN currently faces various predatory discounts and promotions offered at the local level by AT&T or Comcast in certain of its markets, it has not heretofore had to contend with an orchestrated, simultaneous, nationwide campaign. With a presence in 41 states, AT&T-Comcast will have the ability, if unchecked, to undercut the overbuilders' return on investment in all, or nearly all, of the jurisdictions in which any given overbuilder does business. The anticipated clustering of AT&T-Comcast's systems means that the merged entity will have an ever greater ability to market to all or a large majority of its competitors' customers, affording competitors no quarter from their predation. Second, because cable competition is still developing, 100% of the cable competitors' customers still often represent only a small fraction of the incumbent's customer base, with the incumbent retaining its historical monopoly over those cable customers whom the competitors' physical plant has not yet reached. This disparity enables the incumbents to offer predatory discounts to competitors' customers that they would be unwilling or unable to offer, but for the fact that they can subsidize the discounts by charging monopoly rates to the balance of their subscriber base. The larger the incumbent's customer base, and the deeper its pockets, the greater the discounts it can sustain against its overbuilder competitors. If allowed to merge, AT&T-Comcast will have enormous resources to support predatory discounts and a vast customer base over which to amortize the cost.

**The Proposed Condition Would Remedy This Merger-Related Harm,
And Benefit the Public Interest**

Requiring AT&T-Comcast to immediately post on its website promotions and discounts offered to any customer, thereby allowing all customers within a franchise area to see the promotions and discounts that are available, offsets the public interest harm inherent in the applicants' current predatory pricing tactics in several ways. First, it serves as a "sunshine" measure. Free and competitive markets function best when both customers and competitors have ready access to market information. By definition, promotions and discounts offered to a customer already have been made public – website posting merely ensures that this information is made accessible to the whole public.⁴ Second, website posting of promotions and discounts will enable those consumers to whom competition has not yet come to see the benefits being offered to those consumers to whom competitive service is available, thus reinforcing the demand for cable competition. Third, and most importantly, website posting will help to deter unsustainable, predatory discounts designed for the purpose of eliminating competition, while still promoting pro-consumer discounts and promotions that are set at sustainable, pro-competitive levels. This is so because, if deep discounts are being offered to competitors' customers and potential customers, once information regarding those discounts is made known to the entire customer base within a franchise area, AT&T-Comcast presumably will face pressure from their other subscribers, with respect to whom they have a cable monopoly, for similar price concessions.⁵ In this way, website posting will help to ensure that all consumers have the

⁴ Indeed, many local franchise agreements already require the franchisee to provide the franchise authority with copies of rate sheets and promotional materials.

⁵ Alternatively, if, as they have represented, AT&T and Comcast do not impose geographic or customer-specific limitations on their promotions, then the requirement to post their discounts and promotions on the merged company's website should be innocuous to them. The

benefits of competition-driven cable rates, and will help to reduce the problem of monopoly-subsidized discounts and promotions targeted to eliminate competitive cable services.

Respectfully submitted,

s/

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Commission, in the Document and Information Request attached to the June 11, 2002, letter to the applicants, posed the following question: “Has either Applicant ever included geographic or customer-specific restrictions in marketing/sales promotions with respect to any of its cable franchises?” Both AT&T and Comcast responded, in relevant part, as follows: “[The applicant] does not believe that any of its marketing/sales promotions have geographic or customer-specific restrictions of the sort contemplated by the question.”

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Written *Ex Parte* Presentation Proposing Condition of RCN Telecom Services, Inc., were served on August 21, 2002, on the following parties, via e-mail, as indicated below:

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