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August 16, 2002

FILED BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20024

**Re: Notice of *Ex Parte* Presentation by RCN Telecom Services,
Inc., and Starpower Communications, LLC, for Filing in MB
Docket 02-70.**

Dear Secretary Dortch:

Pursuant to section 1.1206(b)(2) of the Commission's Rules, RCN Telecom Services, Inc., and its affiliate Starpower Communications, LLC (collectively, "RCN"), by their attorneys, submit for filing in the above-captioned docket the original and one copy of this notice of an *ex parte* meeting on August 15, 2002, to discuss the pending license transfer applications of AT&T Broadband and Comcast Corporation. Deborah M. Royster, General Counsel to Starpower Communications, and Andrew D. Lipman and L. Elise Dieterich, both with Swidler, Berlin, Shereff, Friedman, LLP, met with the following FCC personnel: Royce Sherlock, Roger Holberg, Erin Dozier, John Scott, Peter Alexander and Patrick Webre of the Media Bureau; and James Bird and Kimberly Reindl of the Office of the General Counsel.

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RCN discussed its written *ex parte* presentation, filed in this docket on August 14, 2002, and the accompanying Declaration of Ron Maier, which Declaration attests to two instances of predatory price promotions directed by Comcast exclusively to customers and potential customers of Starpower. Because the Maier Declaration directly rebuts Comcast's written statement in response to the Commission's June 11, 2002, Document and Information Request, wherein Comcast asserted that none of its marketing/sales promotions have geographic or customer-specific restrictions,¹ RCN requested that the Commission re-open the issue of Comcast's predatory pricing practices for further public comment. RCN also suggested that the Commission require Comcast to provide to the Commission all company documents pertaining to its marketing/sales promotions which, RCN indicated, RCN believes will reveal a specific promotional campaign naming Starpower, limited to Starpower customers and/or the geographic area in which Starpower provides service, and designated by a specific code number. RCN also requested that the Commission consider appropriate sanctions, including forfeiture, for Comcast's apparent violation of 47 CFR § 1.17, which provides that: "No applicant, permittee or licensee shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission." In view of Comcast's apparent misrepresentation in its response to the Commission's June 11, 2002, inquiry, RCN also expressed concern that the accuracy of the applicants' representations with regard to other material matters in this proceeding also may be called into question.

RCN made available, and the staff present viewed, a videotape showing that portion of the Montgomery County, Maryland, Council's public hearing on the transfer of Comcast's cable franchise to AT&T-Comcast, at which the issue of Comcast's promotions targeted to Starpower's customers and potential customers was discussed. A copy of the portion of the videotape viewed at the meeting is being filed herewith. RCN

¹ The unredacted portion of Comcast's answer reads, in full: "Comcast does not believe that any of its marketing/sales promotions have geographic or customer-specific restrictions of the sort contemplated by the question. Nonetheless, some explanation of Comcast's practices seems appropriate." The remainder of Comcast's response is redacted, and subject to the protective order in this proceeding, but does not contradict the public portion of Comcast's response. Although it appears that Comcast may have intended to qualify its answer by including the words "Comcast does not believe" that it has promotions "of the sort contemplated by the question," its answer clearly implies that it does not have marketing/sales promotions with geographic or customer-specific restrictions, and such legalese should not excuse Comcast's lack of candor. Comcast was obligated to conduct a good faith inquiry to determine whether any of its local marketing/sales promotions included geographic or customer-specific restrictions before stating its "belief." Moreover, in view of the concerns described on the record by RCN and other commenters in this proceeding with regard to the applicants' predatory price promotions targeted exclusively to the customers and potential customers of their overbuilder competitors, it is disingenuous for Comcast to imply that it did not think the anti-Starpower campaigns detailed in the Maier Declaration were "of the sort contemplated" by the Commission's request for a list of all promotions that included geographic or customer-specific restrictions, particularly in view of the Commission's query "whether any other competing terrestrial MVPD was providing or had an announced intention to provide service in the area targeted for the promotion."

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discussed the solution to the problem of targeted promotions imposed by the Montgomery County Council, which adopted language in connection with the franchise transfer that will require AT&T-Comcast to post its promotions on its website. Having substantiated that the targeted, predatory pricing that has been raised in this proceeding by multiple competitors of the applicants is, in fact, occurring, RCN requested, again, that appropriate merger conditions be imposed by the Commission to require AT&T-Comcast to charge uniform cable rates throughout any given franchise area.

RCN also reiterated briefly the other concerns it has raised in this proceeding, relevant to competition in the cable market, namely: (1) the merger partners' control over access to "must have" programming; and (2) the merger partners' control over access to third party vendors of goods and services. On the subject of program access, RCN noted that it still has been unable to negotiate a long-term contract to carry Comcast-owned SportsNet (Philadelphia), due to SportsNet's continued insistence on two non-standard terms: the requirement that RCN obtain SportsNet's consent before providing the programming to subscribers in newly-served communities, and the proviso that SportsNet can immediately terminate the agreement if a discrepancy of 5%+ is found upon an audit of RCN's books.

RCN responded to questions posed regarding the ways in which the proposed merger of AT&T Broadband and Comcast Corporation are likely to exacerbate these harms to competition, stating that the merger will increase each of the following anti-competitive market conditions: the clustering of systems and opportunity for the migration of programming to terrestrial delivery; the opportunity for concerted application of anti-competitive tactics in multiple markets simultaneously; the merger partners' market share and associated bargaining power with third-party vendors; the merger partners' financial resources, allowing them to amortize the cost of pursuing anti-competitive tactics against overbuilder competitors over a far larger subscriber base than currently exists; and, the loss of competing and/or independent cable operators in RCN's markets against whom AT&T Comcast's competitive conduct can be benchmarked. RCN discussed both the political and economic influence that AT&T and Comcast wield at the local level, and pointed out that the influence of the merged entity will be even greater. RCN also noted that resort to the antitrust laws in response to the harms posed by the proposed merger is an inadequate remedy, because the antitrust laws are designed for the resolution of disputes between established competitors in mature markets, whereas the cable and broadband markets in which RCN competes against AT&T and Comcast are newly emerging, still subject to regulatory oversight, and dominated by historical monopolists against whom competition has not yet fully taken root. In this nascent free market, RCN argued, the public interest requires that the Commission impose such conditions as are necessary to level the competitive playing field so that robust competition can develop.

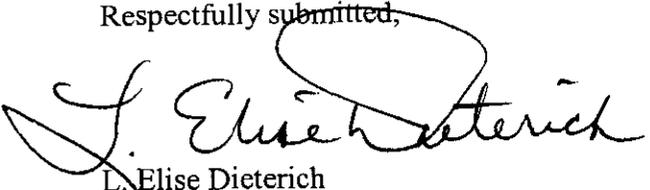
Pursuant to sections 1.1206(b)(2) of the Commission's rules, this *ex parte* notice is being filed for inclusion in the public record for the above-referenced docket and a

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copy served on the meeting participants listed below. Pursuant to the Public Notice, DA 02-733, issued on March 29, 2002, regarding filings in MB Docket No. 02-70, we are providing an electronic copy of the filing by e-mail (without the enclosed videotape) to the additional recipients listed. Please direct any questions concerning this filing to the undersigned.

Respectfully submitted,



L. Elise Dieterich
*Counsel for RCN Telecom
Services, Inc. and
Starpower Communications, LLC*

Enclosure (videotape)

cc (w/ encl.): Royce Sherlock
Roger Holberg
Erin Dozier
John Scott
Peter Alexander
Patrick Webre
James Bird
Kimberly Reindl

cc (by e-mail
w/out encl.): David Sappington
Donald Stockdale
William Dever
Cynthia Bryant
Jeff Tobias
Qualex International

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