



PUBLIC NOTICE

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Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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AUG 19 2002

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DA 02-1987
August 9, 2002

MEDIA BUREAU ACTION

MEDIA BUREAU SEEKS COMMENT ON PROPOSED INSULATION AND DIVESTITURE OF AT&T'S INTEREST IN TIME WARNER ENTERTAINMENT, L.P.

MB DOCKET NO. 02-70

Comment Date: August 30, 2002

Beginning on February 28, 2002,¹ the Commission received applications (collectively, the "Application") requesting consent to transfer to AT&T Comcast Corporation ("AT&T Comcast"), control of (1) licenses and authorizations held by Comcast Corporation ("Comcast") and (2) licenses and authorizations held by AT&T Corp. ("AT&T") associated with the operation of their respective cable systems. The Application was filed pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended. In the Public Interest Statement filed with the Application, the Applicants stated that AT&T planned to divest its interest in Time Warner Entertainment, L.P. ("TWE") prior to the closing of the proposed merger.² The Applicants further stated that, if AT&T was unable to divest its TWE interest by the closing date of the merger, the interest would be insulated consistent with the Commission's attribution rules.³ However, the Application did not specify the mechanism by which the interest would be insulated.

On August 8, 2002, the Applicants filed supplemental information concerning a proposed means of insulating the TWE interest until it can be divested (the "TWE Proposal"). The Applicants assert that their proposed means of insulating the TWE interest is consistent with prior Commission decisions regarding insulation of attributable ownership interests.

We have reviewed the TWE Proposal and find that, upon initial review, it is acceptable for filing as an amendment to the Application. Because the TWE Proposal addresses a question left open by the Application, it is directly relevant to our evaluation of whether the proposed license transfer will serve the public interest. Input from interested parties will assist the Commission in analyzing the TWE Proposal.

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.

² *Public Interest Statement* at 4, 19, 53-64.

³ *Id.* at 64.

By this Public Notice, we establish a 21-day period to receive comments on the TWE Proposal from interested parties. Commenters should not use this pleading cycle as an opportunity to reiterate arguments they have already made in this proceeding, or to discuss matters that pertain to the proposed merger generally, but not to the TWE proposal in particular.

To accommodate the pleading cycle, we will stop the clock on the 180-day review period that governs this proceeding.⁴ At the close of the pleading cycle, we will re-start the clock unless intervening events dictate otherwise.

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **August 30, 2002**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). All filings regarding any aspect of the TWE Proposal should reference the docket number assigned to this proceeding, **MB Docket No. 02-70**.

Given recent changes in the mail delivery process, we strongly urge commenters to use the Commission's Electronic Comment Filing System (ECFS). Procedures for filing through ECFS are described below in the "General Information" section. The *ex parte* status of this proceeding will remain permit-but-disclose, as established in the initial Public Notice in this proceeding⁵ and as described below in the "Ex Parte Status of this Proceeding" section.

EX PARTE STATUS OF THIS PROCEEDING

Because this proceeding involves broad public policy issues, the proceeding will be treated as "permit but disclose" for purposes of the Commission's *ex parte* rules. See generally 47 C.F.R. §§ 1.1200-1.1216. *Ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission's rules applicable to non-restricted proceedings.⁶ Should circumstances warrant, this proceeding or any related proceeding may be designated as restricted.

Parties making oral *ex parte* presentations are directed to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.⁷ More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written

⁴ The Commission has committed to expeditiously review proposed transactions by establishing an aggressive 180-day review period.

⁵ See *AT&T Corp. and Comcast Corp. Seek FCC Consent for a Proposed Transfer of Control*, Public Notice, DA 02-733 (rel. March 29, 2001), as modified by *Applications for Consent to the Transfer of Control of Licenses, Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Erratum and Order Extending Filing Deadline, DA 02-1033 (rel. May 3, 2002).

⁶ An *ex parte* presentation is any communication (spoken or written) directed to the merits or outcome of a proceeding made to a Commissioner, a Commissioner's assistant, or other decision-making staff member, that, if written, is not served on other parties to the proceeding or, if oral, is made without an opportunity for all parties to be present. 47 C.F.R. § 1.1201.

⁷ See *Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings*, Public Notice, FCC 00-358, 15 FCC Rcd 19945 (2000).

presentations are set forth in Section 1.1206 (b) as well. We urge parties to use ECFS to file *ex parte* submissions. See "General Information" section below.

GENERAL INFORMATION

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, we request that parties serve the following with either one electronic copy via e-mail or two paper copies of each pleading or *ex parte* submission: (1) Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or email at qualexint@aol.com; (2) Roger Holberg, Media Bureau, 445 12th Street, S.W., Room 2-C262, Washington, D.C. 20554, rholberg@fcc.gov; (3) Erin Dozier, Media Bureau, 445 12th Street, S.W., Room 2-C221, Washington, D.C. 20554, edozier@fcc.gov; (4) Simon Wilkie, Chief Economist, Office of Plans and Policy, 445 12th Street, S.W., Room 7-C452, Washington, D.C. 20554, swilkie@fcc.gov; (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554, jbird@fcc.gov; (6) William Dever, Common Carrier Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554, wdever@fcc.gov; (7) Cynthia Bryant, International Bureau, 445 12th Street, S.W., Room 6-C807, cybryant@fcc.gov; (8) Jeff Tobias, Wireless Telecommunications Bureau, 445 12th Street, S.W., Room 2-C828, Washington, D.C. 20554, jtobias@fcc.gov; and (9) Lauren Kravetz Patrich, Wireless Telecommunications Bureau, 445 12th Street, S.W., Room 4-A163, Washington, D.C. 20554, lkravetz@fcc.gov.

Alternate formats of this public notice (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or e-mail at bmillin@fcc.gov.

The media contacts for this proceeding are Margo Domon Davenport, (202) 418-2949, and Michelle Russo, (202) 418-2358. The Media Bureau Contact is Roger Holberg, (202) 418-2134.

- FCC -

August 8, 2002

By Hand Delivery

W. Kenneth Ferree, Chief
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, MB Docket No. 02-70

Dear Mr. Ferree:

From the outset, AT&T Corp. ("AT&T") and Comcast Corporation ("Comcast") (collectively, "Applicants") have emphasized their intent to divest AT&T's minority limited partnership interest in Time Warner Entertainment Company, L.P. ("TWE"). As the Applicants stated in their initial Public Interest Statement (at 61):

In the event that the sale of the TWE interest to a third party or parties has not been completed when the Applicants are ready to close the merger, AT&T, if it has not already done so, is prepared to take the steps that may be necessary to insulate the interest under the Commission's rules before it transfers that interest to AT&T Comcast. In addition, Comcast and AT&T Broadband will take such additional steps, if any, as may be appropriate to ensure that AT&T Comcast would not be able to influence TWE prior to its ultimate sale.

Consistent with that commitment and to minimize any possible concerns associated with AT&T Comcast's ownership of the TWE interest, the Applicants propose to place the TWE interest in trust at the closing of the merger if the interest has not been divested by that date. Attached hereto is a detailed description of the material terms and conditions that would govern the trust mechanism.

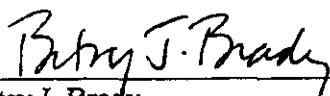
As noted above, this trust proposal is *in addition to* the steps that the Applicants have committed to take to insulate the limited partnership interest. To further allay any conceivable concerns, the Applicants will agree unilaterally to have the conditions set forth in Paragraphs 3 through 5, inclusive, of the Safeguards Relating to Video

W. Kenneth Ferree
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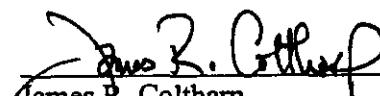
Programming appended to the Commission's AT&T-MediaOne merger order¹ apply to AT&T Comcast and govern its relationship with TWE after the merger closes.

The Applicants are eager to close their merger as soon as possible and to begin to deliver the public interest benefits described in the record in this proceeding. We believe that the attached strongly reaffirms the Applicants' commitment to divesting AT&T's interest in TWE. The proposal also provides additional assurance, if any were needed, that AT&T Comcast will not have any ability to influence TWE pending its sale. The Applicants, therefore, respectfully request that the Commission promptly approve their merger.

Respectfully submitted,



Betsy J. Brady
AT&T CORP.
1120 20th Street, NW
Suite 1000
Washington, DC 20036



James R. Coltharp
COMCAST CORPORATION
2001 Pennsylvania Avenue, NW
Suite 500
Washington, DC 20006

Attachment

cc: Marlene H. Dortch
Royce Sherlock
Roger Holberg
Erin Dozier
David Sappington
James Bird
Donald Stockdale
William Dever
Cynthia Bryant
Jeff Tobias
Qualex International

¹ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc. to AT&T Corp.*, 15 FCC Rcd 9816, Appendix B (2000).

**Proposed Material Terms and Conditions to Govern
Establishment of Trusts to Hold
AT&T's Limited Partnership Interests in TWE**

1. Trust Entities

AT&T Broadband's interests in Time Warner Entertainment Company, L.P. ("TWE") are currently held as follows: An approximately 2.1% interest is held by MediaOne of Colorado, Inc. ("MOC"), which is an indirect wholly-owned subsidiary of AT&T Corp. ("AT&T"). An approximately 25.5% interest is held by MediaOne TWE Holdings, Inc. ("MOTH"), which in turn is wholly-owned by MOC. Upon closing (the "Closing") of the proposed transaction (the "AT&T Comcast Transaction") to combine AT&T Broadband with Comcast Corporation ("Comcast"), MOC will be an indirect wholly-owned subsidiary of AT&T Comcast Corporation ("AT&T Comcast"), the new parent company of the combined businesses.

Following a series of internal transactions designed to provide maximum future flexibility in the possible restructuring of TWE and the sale of interests received in connection therewith, immediately prior to Closing the interest in TWE now held by MOC will be held by a newly-formed Delaware limited liability company that is indirectly wholly-owned by MOC ("LLC 1"), MOTH will be indirectly wholly-owned by MOC, and the interest in TWE now held by MOTH will be held by a newly-formed Delaware limited liability company that is wholly-owned by MOTH ("LLC 2"). At Closing, LLC 1 and LLC 2 will be converted into Delaware business trusts (the "MOC Trust" and the "MOTH Trust," respectively, and together, the "Trusts"). MOC (or a wholly-owned subsidiary of MOC) will be the grantor of the MOC Trust and MOTH (or a wholly-owned subsidiary of MOTH) will be the grantor of the MOTH Trust (such grantors together, "Grantors"). The operation of the Trusts will be governed by the terms described below, as well as by the applicable rules and orders of the Federal Communications Commission (the "FCC"). The same trustee (the "Trustee") will be named for both Trusts. The terms of the Trusts will be identical in all material respects, and both will conform fully to the description provided herein.

2. Contribution of TWE Partnership Interests

All of Grantors' TWE partnership interests will reside in the Trusts at Closing.

During the Trusts' term, the Trustee will have legal and record ownership of the contributed TWE partnership interests.

If any additional interest in TWE is acquired by AT&T Comcast or any of its subsidiaries during the terms of the Trusts, such interest will be delivered to the Trustee and become subject to the Trusts.

3. Term of the Trusts; Irrevocability

The Trusts will provide a 5-year period for divestiture of the TWE partnership interests in accordance with Section 5. If the TWE partnership interests are not completely divested

by the end of this period, the Trustee will have the authority and be directed to divest whatever portion of the interest remains as quickly as possible, and in all events within 2 years thereafter. The Trusts may terminate prior to the end of the periods described above in accordance with the termination provisions set forth in Section 13. The Trusts will be irrevocable by Grantors.

4. Trustee Control of the TWE Partnership Interests

The Trustee will have sole and exclusive power and authority to manage the TWE partnership interests and to exercise the rights thereunder including, without limitation, the right to exercise any voting, director appointment, consent or management rights under the TWE partnership agreement or otherwise, in a manner intended to maximize the value thereof. Grantors will not retain any such rights with respect to the TWE partnership interests. As used herein, the term "affiliates" shall have the definition given in 47 U.S.C. § 153(1). The Trustee will retain and hold the interests, and will have the authority to sell the interests, in accordance with the terms of the Trusts and the TWE partnership agreement.

5. Divestiture of the TWE Partnership Interests

During the 5-year period commencing with the Closing (the "5-Year Period"), the Trustee will have the authority and be directed to pursue applicable registration rights provisions, in a manner intended to maximize the value received by Grantors, consistent with the goal of concluding a complete sale of the TWE partnership interests by the end of the 5-Year Period. The Trustee will be authorized to engage in such litigation as may be necessary to effect any registration rights. In addition, if any of the TWE partnership interests are saleable in the public market under an already effective registration statement or without the requirement of a registration statement being effective under Federal and state securities laws, then the Trustee may also seek to effect a sale thereof in the manner described above. A sale by the Trustee in the manner permitted in this paragraph is referred to herein as a "Public Sale." The Trustee will not otherwise have the power to dispose of any of the TWE partnership interests during the 5-Year Period, unless pursuant to one or more Alternate Dispositions or a Private Sale (as such terms are defined in this Section 5).

At any time during the 5-Year Period, Grantors and/or their affiliates may propose any one or more of the following transactions directly or indirectly with respect to all or part of the TWE partnership interests (an "Alternate Disposition"), which the Trustee would be obligated to use reasonable best efforts to effect (including by becoming a party thereto, subject to appropriate indemnification from Grantors and their affiliates). If necessary to effect an Alternate Disposition, the Trustee will discontinue (and not initiate) any efforts to effect a Public Sale of the part of the TWE partnership interests which is the subject of the Alternate Disposition until the Alternate Disposition is closed or terminated without closing.

Alternate Dispositions are:

- (i) A sale or other transfer, conversion or exchange to a person or persons unaffiliated with Grantors for cash.
- (ii) A sale or other transfer, conversion or exchange to a person or persons unaffiliated with Grantors for any consideration other than cash that is not Restricted Consideration. "**Restricted Consideration**" is an interest in AOL Time Warner or an entity that, directly or indirectly, owns interests in cable systems or cable programming networks which are attributable under then current FCC rules to AOL Time Warner.
- (iii) A sale or other transfer, conversion or exchange to a person or persons unaffiliated with Grantors for Restricted Consideration. (For example, the conversion of TWE to a corporation in connection with the registration rights process under the existing TWE partnership agreement would be an Alternate Disposition for Restricted Consideration.)
- (iv) A transaction with a person or persons unaffiliated with Grantors the result of which is that all or a portion of the economic interest underlying all or part of the TWE partnership interests is converted to cash, while the legal and record ownership of such TWE partnership interests remains in the Trusts (a "**Derivative Transaction**").

If an Alternate Disposition results in Restricted Consideration, the Restricted Consideration received will remain in the Trusts, subject to the same provisions regarding sale by the Trustee and Alternate Dispositions as applied to the TWE partnership interests. Accordingly, unless the context requires otherwise, as used herein the term "**TWE**" refers to TWE as well as any entity which is the issuer of Restricted Consideration, the term "**TWE partnership interests**" refers to the TWE partnership interests as well as any Restricted Consideration received on account of the TWE partnership interests in an Alternate Disposition, and the term "**TWE partnership agreement**" refers to the TWE partnership agreement and the governing documentation applicable to any such Restricted Consideration.

If an Alternate Disposition does not result in Restricted Consideration, (x) cash consideration will be distributed to Grantors, and (y) non-cash consideration will remain in the Trusts unless its distribution to Grantors is approved by the Media Bureau. The Trustee will notify the Media Bureau in writing of any such non-cash consideration that it receives. The distribution of such non-cash consideration to the Grantors shall be deemed approved unless the Media Bureau notifies the Trustee, in writing and within 30 days of receipt of such notice from the Trustee, that it objects to such distribution. If at any time after an Alternate Disposition any Restricted Consideration received in such Alternate Disposition ceases to be Restricted Consideration, the consideration will be treated as set forth in this paragraph.

Following an Alternate Disposition, and subject to the limitations contained in the following paragraph, the Trustee will retain the power for the remainder of the 5-Year Period to dispose of any remaining TWE partnership interests, other than that which is

the subject of a Derivative Transaction, in a Public Sale. Following an Alternate Disposition which is a Derivative Transaction, the Trustee will not take any action during the 5-Year Period to effect a Public Sale of the part of the TWE partnership interests which is the subject of the Derivative Transaction (for the period of time of the Derivative Transaction).

The Trustee acknowledges that at Closing, AOL Time Warner, AT&T and Comcast may be parties to a binding agreement (which will be an Alternate Disposition) pursuant to which, among other things, TWE is to be restructured (the "TWE Restructuring"), and pursuant to which, pending its closing (the "Restructuring Closing"), the registration rights process provided for in the existing TWE partnership agreement has been stayed. In such event, and provided such agreement requires that in the event of its termination (without the Restructuring Closing having occurred) the stay of the registration rights process under the existing TWE partnership agreement will be lifted and such process will be reinstated at the same point at which it was stayed (with the exception that the appraisal will be redone following such termination pursuant to the existing registration rights provisions thereunder), then the Trustee agrees that the following will apply following the Restructuring Closing:

- (A) If the consideration received includes the publicly traded common stock of AOL Time Warner, then the Trustee will not take any action to dispose of any such stock in a Public Sale during the 90-day period following the Restructuring Closing.
- (B) If the consideration received includes stock in a new private holding company for TWE or its assets ("Holdco"), then the Trustee will not take any action to effect any initial public offering of Holdco pursuant to any applicable registration rights during the 180-day period following the Restructuring Closing.
- (C) If: (1) the consideration received includes a partnership interest in TWE (or a successor holder of its assets); (2) a new TWE partnership agreement restricts the right of Grantors to sell or otherwise transfer such interest for a period of time following the Restructuring Closing not to exceed 2 years; (3) the new TWE partnership agreement contains provisions providing for the private sale of such partnership interest thereafter; and (4) within 3 years following the Restructuring Closing the Grantors have not effected such a sale as an Alternate Disposition; then the Trustee will have the right to effect a private sale thereof (a "Private Sale") pursuant to such provisions.

Neither Grantors nor any of their affiliates will be permitted to be a purchaser in a Public Sale or a Private Sale or a counterparty in a Derivative Transaction.

If any of the TWE partnership interests remain at the end of the 5-Year Period, the Trustee thereafter will have the authority and be directed to dispose of it in any manner it

chooses, with the goal of disposing of the remaining interests as quickly as possible, and in all events within 2 years thereafter.

6. Distribution of Proceeds of Sale

The Trustee shall cause to be distributed to Grantors as soon as practicable following receipt (i) any cash, and (ii) following any approval thereof by the Media Bureau, any assets which do not constitute Restricted Consideration. Such amounts may be reduced by the amount of fees or expense reimbursements then owed by Grantors to the Trustee.

7. Trustee Obligations, Fees and Indemnification

The Trustee will administer the Trusts in accordance with the terms of the Trusts and all applicable FCC rules and orders. The Trustee is required to maintain appropriate records, books and files.

The Trusts will provide for payment by Grantors of all documented charges, taxes and expenses that are "reasonable, necessary and proper" arising from the Trustee's performance of duties. Grantors will pay customary fees to the Trustee.

Grantors will indemnify the Trustee against claims and liabilities arising from the Trustee's performance, including claims and liabilities arising from any actions taken by the Trustee in furtherance of its obligation to sell promptly any of the TWE partnership interests that remain after the 5-Year Period, except for those incurred as a result of the Trustee's "malfeasance," i.e., bad faith, gross negligence or willful misconduct, or other action inconsistent with the terms of the Trusts.

8. Trustee Selection

The Trustee will be appointed by Grantors after notice to the FCC. The Trustee will have experience and expertise in acquisitions and divestitures of media or media-related assets. The Trusts will impose limitations, consistent with FCC rules, that bar Grantors from designating a Trustee and any successor Trustee who has certain types of relationships with Grantors or their affiliates, including their officers, directors, managers, agents or employees, as well as individuals who have an extratrust business, personal or familial relationship with any of the foregoing individuals or entities.

9. Trustee Removal, Resignation and Replacement

Consistent with FCC rules, Grantors may not remove or replace the Trustee at will. The Trustee may resign, with 60 days written notice to Grantors, and be replaced with a successor Trustee chosen by Grantors in compliance with FCC rules and written notice to the Commission.

10. Trustee Advisors

The Trustee may retain accountants, attorneys, investment bankers, managing underwriters and other advisors, so long as (i) their fees and expenses are reasonable and

customary, and (ii) they do not have any material business relationship with AOL Time Warner or its affiliates during the term of the Trusts. In order to facilitate an expeditious divestiture, the Trustee may retain any accountants, investment bankers, managing underwriters and other advisors retained prior to Closing by AT&T, Comcast or their respective affiliates, provided that such advisors are solely accountable to the Trustee in respect of advice or services rendered to the Trustee in connection with divestiture of the TWE partnership interests. The Trustee will be required to provide to Grantors notice and documentation of fees and expenses incurred in connection with retention of advisors pursuant to this Section.

Grantors may also retain advisors to assist the Trustee with the divestiture of the TWE partnership interests (including any accountants, attorneys, investment bankers, managing underwriters and other advisors retained by AT&T or Comcast prior to Closing to the extent they have not been retained by the Trustee pursuant to the previous paragraph), provided that the Trustee is free to accept or reject their advice and is privy to any instructions they are given by Grantors or their affiliates.

11. Grantors' Involvement in TWE Management

Except as provided in the terms of the Trusts, as described in Section 12, the Trusts will bar Grantors and their affiliates from having an interest in, control of or involvement in the management of TWE, or seeking to influence the management of TWE or any cable system in which TWE has an interest (other than Kansas City Cable Partners and Texas Cable Partners, L.P., on account of AT&T Broadband's 50% general partnership interest therein outside of TWE).

12. Communications Between Grantors and Trustee

Communication between the Trustee and Grantors will be governed by the following:

- i. *Communication Regarding Operation And Management Of TWE.* The Trusts will bar the Trustee from providing any information to Grantors or their affiliates concerning the operation or management of TWE or any cable system in which TWE has an interest, except that the Trustee may provide Grantors with financial statements and tax information required for compliance with SEC and IRS requirements. The Trusts will also bar Grantors or their affiliates from communicating with the Trustee regarding the operation or management of TWE or any cable system in which TWE has an interest.

The Trusts will give the Trustee access to Grantors' personnel, books, records and facilities relating to the TWE partnership interests, in order to fulfill its obligations under the Trusts.

- ii. *Communication Regarding Public Sale, Private Sale Or Alternate Disposition.* The Trusts will allow the Trustee to engage in communications with Grantors or their affiliates to facilitate sale of the TWE partnership interests. Grantors or their affiliates will be permitted to

communicate with the Trustee in connection with the Trustee's efforts to divest the TWE partnership interests through a Public Sale, a Private Sale or an Alternate Disposition. In addition, the Trustee will be required to provide periodic reports (no less frequently than quarterly during the 5-Year Period and no less frequently than monthly thereafter) to Grantors (with a copy to the Media Bureau), describing the Trustee's efforts to divest the TWE partnership interests through any such means.

Grantors will use their reasonable best efforts, consistent with the Trusts and applicable orders and rules of the FCC, to assist the Trustee in accomplishing the divestiture of the TWE partnership interests, including using their reasonable best efforts to provide such information as is required by the Trustee to effect such divestiture.

- iii. *Communication Regarding Fiduciary Matters.* The Trusts will permit communications at any time between the Trustee and Grantors regarding the fiduciary obligations owed by the Trustee to Grantors.

13. Termination

The Trusts will terminate upon the first to occur of the following: (i) divestiture of all of the TWE partnership interests and the payment of all proceeds to Grantors; or (ii) expiration of the 2-year period following the 5-Year Period, unless the term of the Trusts is extended to comply with the terms of any applicable FCC order. Upon termination of the Trusts, the Trustee will be required to deliver all property then held by the Trustee to Grantors. The Trustee will be given a reasonable period to conclude administration of the Trusts.

In addition, the MOTH Trust may terminate at the time of the Restructuring Closing, provided that a new trust on the same terms as the MOTH Trust is formed simultaneously, the grantor of which is an entity wholly-owned by MOC (provided MOC then remains wholly-owned by AT&T Comcast), and provided further that the grantor then owns and contributes (or causes to be contributed) to the new trust all of the Restricted Consideration received in the TWE Restructuring by the grantor and its affiliates in exchange for the TWE partnership interests that were held in the MOTH Trust.

14. Modification

The Trusts shall not be modified except by an instrument in writing executed by each of the parties. No substantial modification in the Trusts, including, but not limited to, modifications that affect the Trusts' compliance with any FCC rule or order (including any order adopted by the FCC in connection with the AT&T Comcast Transaction), shall be made unless approved by the Media Bureau. A request for substantial modification to the Trusts shall be deemed approved unless the Media Bureau notifies the Trustee, in writing and within 14 days of receipt of such request from the Trustee, that it objects to such modification. A copy of any insubstantial modification in the Trusts shall be filed

with the FCC within ten days following the execution thereof, with copies to the Media Bureau.

15. Assignment

The Trusts will not be assignable by the Trustee. The Trusts will allow Grantors to assign their rights to AT&T Comcast or its affiliates, as well as any person who becomes the direct or indirect beneficial owner of the TWE partnership interests as a result of a merger, asset transfer or other business combination involving AT&T Comcast or its affiliates.

16. Confidentiality

The Trusts and all matters concerning the performance, enforcement and interpretation thereof will be kept in strict confidence by the parties, except where disclosure is required by law, rule or regulation (e.g., FCC or SEC disclosure requirements) to carry out the express purposes and terms of the Trusts or in connection with any claims or actions relating to the Trusts.

17. Miscellaneous

The Trusts will include typical provisions relating to the treatment of headings, governing law, execution in counterparts, survivability, integration and waiver.