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By Electronic Delivery

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

Ex Parte Notice

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 Ms. Dortch:

On August 27, representatives of Comcast Corporation (“Comcast”) and AT&T Corp. (“AT&T”) met with Royce D. Sherlock, Roger D. Holberg, Erin Dozier, and Patrick Webre of the Media Bureau; James R. Bird, Nandan Joshi, and Kimberly Reindl of the Office of General Counsel; Simon Wilkie of the Office of Plans and Policy; and Lauren Kravetz Patrich of the Wireless Telecommunications Bureau. During that meeting, AT&T was represented by Michael H. Hammer, Willkie Farr & Gallagher, outside counsel to AT&T. Comcast was represented by Arthur R. Block, Senior Vice President and General Counsel of Comcast; James L. Casserly, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., outside counsel to Comcast; and Richard Metzger and the undersigned, Lawler, Metzger & Milkman, LLC, outside counsel to Comcast.

During the meeting, the representatives of AT&T and Comcast addressed a number of questions raised by the Commission staff regarding AT&T Broadband’s interest in Time Warner Entertainment Company, L.P. (“TWE”) and the Proposed Material Terms and Conditions to Govern Establishment of Trusts to Hold AT&T’s Limited Partnership Interests in TWE (“Proposed Trust Terms”), which was filed in the above-referenced proceeding on August 8, 2002. In addressing these questions, the following issues were discussed:

- Upon the closing of the AT&T Comcast merger, AT&T Broadband's interest in TWE would be placed in trust, and the Trustee will have the sole and exclusive power to manage the TWE partnership interests and to exercise the rights thereunder. This would include the right under the non-compete clause of the current TWE partnership agreement to prevent AOL Time Warner Inc. ("AOLTW") from acquiring cable systems outside of TWE. Mr. Block explained that this right will be eliminated upon the closing of the agreement that AT&T, Comcast, and AOL Time Warner have recently entered into to restructure TWE ("TWE Restructuring Agreement"). Mr. Block further explained that AOLTW is likely to have little incentive to acquire cable systems outside of TWE prior to this closing because such systems would in any event be contributed to Time Warner Cable, Inc. ("TWC"), the company formed under the TWE Restructuring Agreement to hold TWE's existing cable systems and additional cable properties to be contributed by AOLTW.
- In response to a question concerning communications between the Grantors and the Trustee, it was noted that under section 12 of the Proposed Trust Terms, the Grantors would be permitted to communicate with the Trustee to facilitate the Trustee's efforts to sell the TWE partnership interest and regarding the mechanics of selling the interest. The Grantors would also be able to communicate with the Trustee regarding the Trustee's fiduciary obligations. Permitting both types of communications is consistent with Commission precedent. The Grantors, however, would be prohibited from communicating with the Trustee regarding the management or operation of TWE or TWE cable systems. The representatives of AT&T and Comcast stated that the Trusts would make clear that this prohibition covers both direct and indirect communications and would therefore ensure that the Trustee and the Grantors do not communicate with the Trustee regarding TWE's operations indirectly through their attorneys, investment bankers, or other agents. In addition, the Trusts will require the Grantors and Trustee to direct any attorneys, investment bankers, or other agents they retain regarding TWE to take appropriate steps to ensure that they do not act as a conduit of prohibited communications between the Trustee and the Grantors.
- Section 3 of the Proposed Trust Terms provides that if the TWE partnership interests are not completely divested at the end of five years from the closing of the AT&T Comcast merger, "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." Mr. Metzger stated that AT&T and Comcast are prepared to shorten this 2 year period to six months, so that the quoted language would state: "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 6 months thereafter." The relevant provisions of the Trust agreements will reflect this change.

- Under section 4 of the Proposed Trust Terms, the Trustee will have the exclusive power to manage the TWE partnership interests and to exercise all of the rights thereunder. Mr. Block also explained that, upon the closing of the AT&T Comcast merger, the directors appointed by AT&T Broadband to the TWE board will resign. The Trustee will then exercise any right to appoint replacement directors when, in the Trustee's sole judgment, doing so is necessary or required to protect the value of the interests in TWE held in the Trusts (*e.g.*, where a transaction proposed for approval by the TWE Board requires the approval of the non-AOLTW directors because the transaction presents a potential or actual conflict of interest between AOLTW and TWE).
- Upon the closing of the TWE Restructuring Agreement, AT&T (or, after the AT&T Comcast merger has closed, AT&T Comcast) will receive interests in AOLTW, TWC, and a restructured TWE.¹ An overview of the TWE Restructuring Agreement, including the ownership, capital structure, and governance of these entities, is set forth in a presentation AOLTW has made available on its website.² Mr. Block described these three interests and explained that they will be held by the Trustee as provided in section 5 of the Proposed Trust Terms. Under section 4 of the Proposed Trust Terms, the Trustee will have the exclusive power to manage these three interests and exercise the rights thereunder including, without limitation, the right to exercise any voting, consent or management rights (which include the right to vote for directors and to be reasonably satisfied with at least 50% of the nominees for independent directors prior to the initial public offering). Mr. Block noted that the Trustee will have no ability to appoint any members of TWC's board because TWC will be structured in a way to give AOLTW control over the selection of all the members of this board at the closing of the TWE Restructuring Agreement, which is expected to take place in four to six months. Although at least 50% of the independent directors of TWC must be reasonably satisfactory to AT&T Comcast at the time of their nomination, this right would exist only prior to the initial public offering of TWC and would in any event be exercised only by the Trustee. Mr. Block further noted that the Trustee will not have the power to appoint any directors of the restructured TWE.

¹ AT&T Broadband will also receive \$2.1 billion in cash upon the closing of the TWE Restructuring Agreement. This payment will be distributed to the Grantors as provided in section 5 of the Proposed Trust Terms.

² http://www.aoltimewarner.com/investors/slides_twe_restruct/

- Section 5 of the Proposed Trust Terms will enable the Trustee to distribute to the Grantors non-cash, non-Restricted Consideration upon approval by the Media Bureau. Mr. Metzger explained that the Trusts will require the Trustee to seek any such approval through a written submission to the Media Bureau, with this submission styled as a “Request to Distribute Non-Cash, Non-Restricted Consideration.” As provided in section 5, such a request shall be deemed approved unless the Media Bureau notifies the Trustee, in writing and within 30 days of receipt of the request, that it objects to such distribution.
- In response to a staff question, Mr. Hammer stated that Kansas City Cable Partners has approximately 314,000 subscribers and Texas Cable Partners, L.P. has approximately 1,137,000 subscribers. Section 11 of the Proposed Trust Terms would generally bar the Grantors from having any involvement in the management of TWE cable systems with the exception that the Grantors would be permitted to exercise their rights and obligations governing their interest in Kansas City Cable Partners and Texas Cable Partners, L.P. These partnership interests should be treated differently from other cable systems in which TWE holds an interest because AT&T Broadband owns 50% of the partnerships in its own name, as well as an additional interest through TWE. *See* Public Interest Application at 19, 51 n.95, & Appendix 7.
- Section 14 of the Proposed Trust Terms provides that the Grantors and the Trustee may not make “substantial modifications” to the Trusts without first obtaining the approval of the Media Bureau. Mr. Hammer stated that the FCC has previously approved trust agreements that use similar language. The Proposed Trust Terms in fact define this term with more specificity than prior trusts approved by the Commission in that section 14 states that “substantial modifications” include, but are 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).” To provide further specificity, this provision of the Trusts will state that any “substantial or material modifications” to the Trusts will require prior approval of the Media Bureau.
- The representatives of AT&T and Comcast discussed the process for selecting the Trustee and the appropriate time to submit the Trust agreements to the Commission. The representatives of AT&T and Comcast pointed out that the Proposed Trust Terms provide a comprehensive summary of all the material terms and conditions of the proposed Trusts.

In addition to these issues, Mr. Casserly stated that the allegations raised by RCN in a series of *ex parte* filings in this proceeding are without merit, and, in any event,

unrelated to the proposed AT&T Comcast merger. He stated that Comcast will be filing a written response to these allegations, to the extent they have not already been addressed in the Applicants' Reply Comments and *ex parte* submissions.

Pursuant to section 1.1206(b)(2) of the Commission's rules, this letter is being filed electronically with the Office of the Secretary. If you have any questions, please contact me.

Very truly yours,

/s/ Charles W. Logan
Charles W. Logan

cc: Erin Dozier
Roger D. Holberg
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