September 20, 2002

By Electronic Delivery

W. Kenneth Ferree, Chief
Media Bureau
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 Mr. Ferree:

AT&T and Comcast (the "Applicants") submit this letter in the above-captioned proceeding to underscore that the term of the proposed trust for the disposition of AT&T Broadband's (and AT&T Comcast's post-merger) interest in Time Warner Entertainment Company, L.P. (the "TWE Interest") is reasonable and consistent with the approach the Commission has taken to disposition trusts.

The proposed trust provides, at the maximum, five and one-half years for the divestiture of the TWE Interest.[1] This period is necessary to permit the TWE Interest to be divested on an

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1 The Commission placed on public notice the proposed material terms and conditions of the trust, including the proposed five and one-half year divestiture period. Public Notice, "Media Bureau Seeks Comment on Proposed Insulation and Divestiture of AT&T's Interest in Time Warner Entertainment, L.P.," DA 02-1987, MB Docket No. 02-70 (Aug. 9, 2002). Not a single party filed comments objecting to the proposed trust.

economically rational and efficient basis, particularly given the size and complexity of the TWE Interest, the current state of the capital markets, and the significant adverse effects that would result from "dumping" the interest on the market. Moreover, a rational, efficient divestiture of the TWE Interest, by strengthening AT&T Comcast's financial position, will allow the company to more rapidly bring the significant benefits of the merger, including completing the upgrade of AT&T Broadband's cable systems and promoting the deployment of digital video, high-speed data, local telephony and other advanced broadband services, to millions of American consumers.

The proposed divestiture period is tailored to the specific circumstances surrounding the TWE Interest, consistent with precedent in which the Commission has "recognize[d] that [its] case-by-case review of trusts intended to avoid attribution of ownership interests may result in the imposition of different conditions, as might be warranted in different circumstances."[2] Indeed, in the AT&T-TCI merger proceeding, the Commission utilized this "case-by-case" approach and concluded that, in light of "unusual circumstances," it was appropriate to approve a trust term of five years and two months to divest the interest in Sprint PCS that AT&T acquired as a result of the merger.[3] That period is comparable to the trust duration proposed by the

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2 *In re Lorimar Telepictures Corp. (Transferor) & Anne P. Jones, Trustee (Transferee) for Transfer of Control of LTB (WPGH-TV) Corp.*, Decision, 3 FCC Rcd. 6250 ¶ 13 n.9 (1988). *See also In re Reexamination of the Commission's Rules & Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television & Newspaper Entities*, Report & Order, 97 F.C.C.2d 997 ¶ 54 (1984) ("We will continue to accept trusts as legitimate insulation devices, judging their acceptability for our purposes on a case-by-case basis.").

3 *See In re Applications for Consent to the Transfer and Control of License and Section 214 Authorizations from Tele-Communications Inc., Transferor, to AT&T Corp., Transferee*, 14 FCC Rcd. 3160, 3211-3212 (1999) ("*AT&T-TCI Merger Order*").

Applicants here and, as shown below, the divestiture of the TWE Interest presents "unusual circumstances" by any standard when compared to other divestitures in Commission merger proceedings. A longer divestiture period is also warranted by the fact that AT&T's interest in TWE is a passive, non-controlling interest, as was the case with the Sprint PCS trust. This is in contrast to the shorter divestiture periods the Commission has adopted for trusts involving a controlling interest in a media property.

Divestiture of the TWE Interest is unprecedented in both size and complexity. It has been estimated that the TWE Interest has a value of over $10 billion,[4] exceeding the largest previous Commission-required divestiture *by a factor of three*. The divestiture of wireless properties in the 1999 SBC/Ameritech merger represented an aggregate sales price of $3.27 billion.[5] The 2000 Vodafone/Bell Atlantic merger divestiture was valued at approximately $3

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(continued)

Moreover, both the Commission and the Department of Justice have recognized the importance of considering the effect of a trust's duration on the ability of an entity to gain access to capital. *See AT&T-TCI Merger Order* ¶¶ 105-106; *United States v. AT&T Corp. & Tele-Communications, Inc.*, No. CIV.A. 1: 98CV03170, Competitive Impact Statement at 11 (Dec. 30, 1998), *available at* http://www.usdoj.gov/atr/cases/f2100/2155.htm.

4 *See* Richard A. Bilotti et al., Morgan Stanley Equity Research, *Analyzing the AT&T Broadband / Comcast Merger* 15 (May 3, 2002) (valuing the TWE Interest at $10.6 billion). *See also* Lisa Singhania, Associated Press, *AT&T, AOL Deal Praised*, twincities.com (Aug. 22, 2002) (noting that analysts value the TWE Interest between $8 billion and $10 billion), *available at* http://www.twincities.com/mld/twincities/news/local/3911732.htm.

5 *See* Ameritech, Press Release, *Ameritech Sells Cellular Properties to GTE and Georgetown Partners for $3.27 Billion: Sales Advances SBC-Ameritech Merger, Brings New Competitor and Ownership Diversity to Chicago, St. Louis Markets* (Apr. 5, 1999), *available at* http://www.nuzoo.com/AMR/news/releases/archive/2556.htm.

billion.[6] The divestitures required in connection with the Bell Atlantic/GTE and WorldCom/MCI mergers, large in their own right, pale when compared to the divestiture of the TWE Interest: the June 2000 initial public offering of Genuity stock (Bell Atlantic/GTE merger) raised $1.91 billion,[7] and the sale of MCI's Internet business to Cable & Wireless brought $1.75 billion (WorldCom/MCI merger).[8] Divestiture of the TWE Interest is undoubtedly the largest divestiture, from a financial point of view, ever undertaken as part of a merger proceeding before the Commission. Clearly, disposing of an interest of this magnitude will be more complicated and difficult than other, smaller divestitures, and it is therefore entirely reasonable for the Commission to allow the sale to occur in the time frame set out in the proposed trust.

The divestiture period also takes into account the complexity of the TWE Interest. AT&T's unsuccessful efforts to date in divesting the interest underscore the difficulties inherent in attempting to sell such an interest. TWE currently consists of a diverse collection of assets, including not only cable systems but also cable programming networks, a broadcast network, and the Warner Bros. movie and programming studios. In addition, the partnership structure itself is

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6 The properties were valued at about $3 billion according to The Wall Street Journal; the deal was configured as an exchange, with the buyer paying about $600 million in cash as well. *See* Richard McCaffery, Motley Fool, *Breakfast with The Fool, Bell Atlantic and Alltel Wheel and Deal* (Feb. 1, 2000), *available at* http://www.fool.com/news/2000/breakfast000201.htm.

7 *See* Bloomberg News, *Genuity Raises $1.91 Billion in Biggest Initial Public Offer By a Web Firm*, June 28, 2000.

8 *See In re Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd. 18025 ¶ 151 (1998).

extraordinarily complicated. It has been described as "abstruse"[9] and "byzantine and opaque."[10] Moreover, the TWE Interest carries with it no right to participate in the management or operation of the assets held by TWE.[11] All of these factors make it a particularly difficult asset to sell. In its current form, the TWE Interest is essentially illiquid.[12] The agreement entered into by AT&T Broadband, Comcast, and AOL Time Warner to restructure TWE will, upon closing, make AT&T Broadband's TWE Interest more marketable.[13] Upon closing of the agreement, which is expected to take place in 4-6 months, AT&T Comcast will receive interests in AOL Time

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9 Frank Ahrens, *AOL Time Warner, AT&T Reach Deal to End Venture*, washingtonpost.com, Aug. 21, 2002.

10 *Id. See also* Seth Schiesel & David D. Kirkpatrick, *All Sides Praise Deal Dissolving Time Warner Entertainment*, N.Y. Times, Aug. 22, 2002 (a "complicated venture"); Seth Schiesel, *AOL in Deal to Regain All of Media Unit*, N.Y. Times, Aug. 21, 2002 (a "complicated structure"); Christopher Grimes, *AOL Near to Deal on TWE*, Financial Times (London), Aug. 21, 2002, at 19 ("complicated in an age when investors were seeking transparency"); Seth Schiesel, *AOL Time Warner Near Deal on a Unit, Again*, N.Y. Times, Aug. 9, 2002 (a "complicated joint venture"); Miriam Hill, *Comcast May Bid on Various Assets to Gain AT&T's Cable Systems*, Philadelphia Inquirer, Aug. 28, 2001 (a "complicated capital structure").

11 *See Applications for Consent to the Transfer of Control of Licenses, Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Dkt. No. 02-70, Applications and Public Interest Statement at 57 (filed Feb. 28, 2002) ("*AT&T/Comcast Public Interest Statement*"); Reply to Comments and Petitions to Deny Applications for Consent to Transfer Control at 28 & n.85 (filed May 21, 2002) ("*AT&T/Comcast Reply*").

12 Seth Schiesel & David D. Kirkpatrick, *All Sides Praise Deal Dissolving Time Warner Entertainment*, N.Y. Times, Aug. 22, 2002 (explaining that the agreement to restructure Time Warner Entertainment "helps the financial profile for Comcast by creating near- and long-term liquidity for this otherwise illiquid investment").

13 AT&T Corp. & Comcast Corp., Press Release, *AOL Time Warner, AT&T and Comcast Agree to Restructure Time Warner Entertainment Partnership* (Aug. 21, 2002) (noting that the restructuring of TWE "allows for the orderly and timely sale of AT&T's stake"), *available at* http://www.att.com/news/item/0,1847,10750,00.html.

Warner, Time Warner Cable, Inc., and a restructured TWE, with these interests held in trust.[14] Although the restructuring makes the TWE Interest more marketable, it will still take considerable time and effort to divest the interest on an economically rational and efficient basis.[15]

Divestiture of the TWE Interest has become an even more difficult undertaking, due to the general slump in the market for equity securities, which has had a disproportionately negative impact on cable and other communications industry stocks. *The Wall Street Journal* identified "the rocky equity markets, especially for cable stocks" as a "major hindrance" to an immediate IPO of the TWE Interest,[16] and analysts have noted that "[t]he timing and circumstances surrounding the restructuring of TWE couldn't be more difficult."[17] More generally, as Chairman Powell has testified to Congress, "the telecommunications industry is riding on very

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14 Pursuant to the restructuring agreement, upon closing of the restructuring, AT&T Comcast will hold AOL Time Warner common stock with a value of $1.5 billion, 17.9% of the outstanding Time Warner Cable common stock and 4.7% of the common interests in the restructured TWE. After the restructuring, Time Warner Cable will hold 94.3% of the common interests in the restructured TWE (with AOL Time Warner holding the remaining 1% common interest in the restructured TWE) and will also directly hold cable systems formerly wholly owned by AOL Time Warner. AT&T Comcast will also receive $2.1 billion in cash upon the closing of the restructuring. As the President of Comcast Corporation has explained, this aspect of the restructuring "generates significant near-term liquidity that immediately strengthens AT&T Comcast's balance sheet." *Id*.

15 Beyond the market factors discussed in this letter, which will make it difficult for AT&T Comcast to sell its large Time Warner Cable stake in a short period of time without significant adverse effects, the registration rights granted to AT&T Comcast in connection with the restructuring will place limitations on AT&T Comcast's ability to sell its entire stake in a short period of time.

16 Martin Peers, *Leading the News: AOL, Comcast, AT&T Near Deal To End Venture*, The Wall Street Journal, July 22, 2002.

17 Reuters, *AOL, AT&T Delay Cable Decision*, Toronto Star, July 31, 2002, at E04 (quoting Fred Moran, Analyst, Jefferies & Co.).

stormy seas. This is an industry where … approximately $2 trillion of market value has been lost in the last two years."[18]

Allowing divestiture of the TWE Interest over a five and one-half year period will make it possible for this asset to be sold in an orderly, efficient manner, pursuant to the framework established in the TWE restructuring agreement and the proposed trust terms described in the Applicants' recent filings with the Commission. In doing so, it will help to ensure that the disposition of this asset serves to enhance, rather than impair, the financial health of AT&T Comcast, as well as its ability to accelerate and broaden the availability of new advanced digital broadband services to American consumers.

The rational liquidation of AT&T Comcast's equity interests in the restructured TWE over the proposed term of the trust will improve AT&T Comcast's access to capital,[19] and this will benefit the public as well. In their Application, the parties noted that while AT&T Broadband has expended significant resources upgrading its systems to provide advanced digital broadband services, "it has experienced a number of delays in its deployment plans as a result of rising capital costs and significant budget constraints related to its heavy debt load."[20] The

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18 Statement of Chairman Powell Before the U.S. Senate Committee on Commerce, Science, and Transportation, June 30, 2002, at 6 ("Statement of Chairman Powell to Commerce Committee").

19 Indeed, the bond-rating agency, Fitch Ratings, gave AT&T Comcast a "BBB" rating on the assumption "that noncore investments (*e.g.*, TWE, Sprint PCS) will be sold and/or monetized with the proceeds used towards debt reduction." *Fitch Comments on AT&T Comcast & Assigns Expected Rtg "BBB"*, Business Wire, Mar. 4, 2002. Moreover, Morgan Stanley recently noted that "[o]ver half of the value of [AT&T Broadband's] unconsolidated assets is Time Warner Entertainment" and that "[a]ssuming this interest is sold, we would expect free cash flow to increase." Bilotti et al., *supra* note 4, at 5.

20 *AT&T/Comcast Public Interest Statement* at 30.

improved access to capital resulting from the merger, particularly coupled with the ability to monetize the TWE Interest under the arrangements made possible by the trust, will facilitate the upgrading of the AT&T Broadband systems and the introduction of advanced service offerings to reach additional consumers in markets served by AT&T Broadband systems.[21] Combining the five and one-half year period with the flexibility to arrange alternative transactions will further improve the AT&T Comcast balance sheet, with significant and rapid reductions of debt, but without all of the negative consequences of currently depressed valuations. As a stronger company, with a reduced debt load, AT&T Comcast will be in a much better position to promote the availability of local telephony, digital video, high-speed Internet service, and other digital broadband services to millions of residential consumers in areas of 41 states.[22] All of these benefits can be obtained under the five and one-half year trust arrangement, while avoiding any danger of influence by AT&T Comcast over the management and operation of TWE.

The Commission has recognized the need to ensure that the cable and broadcast industries have sufficient access to capital to finance operations and upgrade facilities. Indeed, one of the goals of the Commission's attribution rules is to "avoid disruption in the flow of capital."[23] Moreover, Chairman Powell has recently described how reducing debt loads, gaining access to capital, prudent industry restructuring, and deploying broadband infrastructure in the

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21 *See id.* at 30-32; *AT&T/Comcast Reply* at 11-13.

22 *See AT&T/Comcast Public Interest Statement* at 30-36.

23 *In re Review of the Commission's Regulations Governing Attribution of Broadband and Cable/MDS Interests*, Report and Order, 14 FCC Rcd. 12559 ¶ 1 (1999). *See also In re Review of the Commission's Cable Attribution Rules*, Report and Order, 14 FCC Rcd. 19014 ¶ 45 (1999); *In the Matter of Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry*, Notice of Proposed Rule Making and Notice of Inquiry, 7 FCC Rcd. 2654 (1992).

"last mile" to the consumer's home are among the critical elements of "bringing new and vital communications capabilities to people's lives."[24] The proposed divestiture period will significantly enhance AT&T Comcast's ability to further this vital goal.

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24 *See* Statement of Chairman Powell to Commerce Committee at 7, 11-14.

For the foregoing reasons, Comcast and AT&T urge the Commission to approve the proposed trust and, in particular, those provisions establishing a reasonable time frame for divestiture of the TWE Interest, as described herein and in the Applicants' prior submissions in this proceeding.

Respectfully submitted,

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