

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**SUPPLEMENT TO PETITION TO DENY
OF
CONSUMERS UNION
CONSUMER FEDERATION OF AMERICA
MEDIA ACCESS PROJECT**

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INTRODUCTION

Consumers Union,¹ together with the Consumer Federation of America,² the Media Access Project,³ and a host of other consumer and public interest groups (collectively referred to as the Joint Consumer Petitioners), filed in the above-captioned docket a Petition to Deny the pending transfer applications of Comcast Corporation and AT&T Corporation, on the ground that Applicants have not met their burden under Sections 214 and 310 of the Communications Act of 1934, as amended, to show that the proposed transfer will serve the public interest.⁴ As the Joint Consumer Petitioners discussed at length in their Petition, the proposed AT&T/Comcast merger poses significant monopoly and monopsony market power problems. The effective competition necessary to discipline market power in the cable industry has failed to materialize, in part because of the pervasive behaviors of both AT&T and Comcast that frustrate market entry. While AT&T's and Comcast's overbuilder competitors have long complained of these behaviors, the Commission has done little to curb them. Consumers Union submits these Further

¹ Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* (with approximately 4.5 million paid circulation) regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

² The Consumer Federation of America is the nation's largest consumer advocacy group, composed of over 280 state and local affiliates representing consumer, senior, citizen, low-income, labor, farm, public power and cooperative organizations, with more than 50 million individual members.

³ Media Access Project is a nonprofit, public interest law firm that represents the interests of the public to speak and to receive information via the electronic media of today and tomorrow.

⁴ "Petition to Deny of Arizona Consumers Council, et al.," *In the Matter of Applications for Consent to the Transfer of Control of Licenses of Comcast Corporation and AT&T Corporation, Transferors, to AT&T Comcast Corporation, Transferee*, April 29, 2002, (hereinafter Joint Consumer Petition).

Comments to urge the Commission to take the specific actions discussed below, in response to the practices of applicant Comcast that recently have been illuminated in this proceeding.

ALL CONSUMERS SHOULD HAVE THE BENEFIT OF COMPETITIVE CABLE RATES

The Joint Consumer Petitioners have presented to the Commission extensive information establishing that the intent of Congress to open cable markets to competition largely has been thwarted, and that cable pricing patterns increasingly reflect the abuse of market power by the largest incumbent cable operators.⁵ RCN Telecom Services, Inc., a competitive cable overbuilder that competes with AT&T and Comcast in five of the nation's major metropolitan cable markets, has brought to light in this proceeding specific, detailed evidence of Comcast's anti-consumer, anti-competitive marketing and promotional practices,⁶ which reserve the benefits of price competition for the lucky few who have a choice of cable providers, while requiring the majority of subscribers to continue paying monopoly rates. Worse, it appears the monopoly rates charged by the Applicants to the majority of their subscribers are so high as to permit them to offer sustained, predatory discounts to the customers of their overbuilder competitors, such that the overbuilders can no longer compete. Ultimately, if the practices described in the comments of the overbuilder competitors in this docket and documented in RCN's recent filings are allowed to continue, what little cable competition currently exists will be extinguished, and the cable monopoly will become permanently entrenched. For this reason,

⁵ "The Failure of 'Intermodal' Competition In Cable and Communications Markets," by Dr. Mark Cooper, April 2002, at 17-20, appended to the Joint Consumer Petition.

⁶ "RCN Telecom Services, Inc., Written Ex Parte and Accompanying Declaration," *In the Matter of Applications for Consent to the Transfer of Control of Licenses of Comcast Corporation and AT&T Corporation, Transferors, to AT&T Comcast Corporation, Transferee*, August 14, 2002.

Consumers Union urges the Commission to require rate uniformity, and endorses the proposal made by RCN to require AT&T/Comcast to post on their website all promotions, discounts, or other special offers made available to any customer in a given area, so that all consumers may see the range of rates being charged.⁷ In addition, the company should include notice of such subscriber discounts in all advertising within franchise territories where discounts are being offered. Notification should be in a font and for a duration that makes it legible and understandable to consumers.

Consumers, consistent with the intent of Congress, are entitled to the benefits of cable competition – mandating improved disclosure of cable rates is one, minimally intrusive step the Commission can take to help give consumers their due.

⁷ “RCN Telecom Services, Inc., Written Ex Parte Presentation Proposing Condition,” *In the Matter of Applications for Consent to the Transfer of Control of Licenses of Comcast Corporation and AT&T Corporation, Transferors, to AT&T Comcast Corporation, Transferee*, August 21, 2002.

**THE COMMISSION SHOULD REQUIRE ADDITIONAL DOCUMENTATION
RE THE APPLICANTS' EXISTING PRACTICES AND FUTURE PLANS**

The affidavit filed by RCN on August 14, 2002, also calls into question Comcast's candor with the Commission in responding to the Commission's effort to better understand the Applicants' marketing and promotional practices. In response to the concerns raised by the Joint Consumer Petitioners, the overbuilder competitors, and the host of other commenters in this proceeding, AT&T and Comcast have provided repeated assurances that the anticipated competitive and public interest harms associated with the merger are nothing to worry about.⁸ It now appears, however, that the Applicants may have been less than fully forthcoming with the Commission. Consumers Union strongly urges the Commission to reopen the record in this proceeding and to insist that AT&T and Comcast disclose the underlying corporate documents that will support – or belie – their assertions regarding the competitive issues raised by the Joint Consumer Petitioners and other market participants. Consumers Union submits that complete and accurate development of the record will establish, as the Joint Consumer Petitioners contend, that the Applicants cannot meet their burden of proving that their proposed merger and, thus, the transfer of licenses to the merged entity, will serve the public interest.

⁸ See, e.g., "Reply to Comments and Petitions to Deny Applications for Consent to Transfer Control," *In the Matter of Applications for Consent to the Transfer of Control of Licenses of Comcast Corporation and AT&T Corporation, Transferors, to AT&T Comcast Corporation, Transferee*, May 21, 2002, at 30-95 ("The merger will have no anticompetitive effects in any relevant market.").

CERTIFICATE OF SERVICE

I hereby certify that copies of the Further Comments of Consumers Union were served on September 30, 2002, on the following parties, via e-mail, as indicated below:

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Respectfully,

A handwritten signature in black ink, appearing to read "Chris Murray". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Chris Murray, Internet & Telecom Counsel, Consumers Union