

October 2, 2002

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:

The attached letter was sent today, on behalf of AT&T Corp. and Comcast Corporation, to W. Kenneth Ferree, Chief, Media Bureau. Pursuant to section 1.1206(b) of the Commission's rules, this letter is being filed electronically with the Office of the Secretary. If you have any questions, please contact us.

Very truly yours,

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

/s/ James R. Coltharp
James R. Coltharp
COMCAST CORPORATION
2001 Pennsylvania Avenue, NW
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Attachment

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Chief, Media Bureau
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Dear Mr. Ferree:

On September 30, 2002, Consumers Union, Consumer Federation of America, and Media Access Project (collectively, "Petitioners") filed a document styled as a Supplement to Petition To Deny ("Supplement"). The Supplement is procedurally improper and substantively meritless. We urge you to ignore the Supplement and to complete your work on this merger as soon as possible.

The Petitioners' pleading is untimely and procedurally improper. The time for parties who wished to raise concerns about the proposed merger was in April, not September, and Petitioners did so. There is no provision in the rules for the filing of a "Supplement," especially one that raises issues that the Petitioners chose not to raise or comment on at any point in the nearly seven months that this application has been pending, even though these issues were raised by other parties – and answered fully by Applicants^{1/} – some time ago.

The factual predicate for the Supplement is false. No party has adduced any evidence, and Petitioners supply none, to support the Supplement's claim (at 2) of "predatory" pricing. That issue was put to rest weeks, if not months, ago.

^{1/} See Applicants' Reply to Comments and Petitions To Deny Applicants for Consent to Transfer Control, at 107, 112-115 (May 21, 2002); Response of AT&T Corp. and Comcast Corporation to June 11, 2002 Document and Information Request, at 15-17 (July 2, 2002); Applicants' ex parte submissions of August 1, August 19, and September 10, 2002.

It is most emphatically not the case that discounts are limited to “the lucky few who have a choice of cable providers.” Uncontroverted evidence shows that discounts are available to consumers in areas not served by overbuilders, for the simple reason that cable operators face multiple competitors everywhere they operate.

The consumer groups persist in denying the competitive realities of the MVPD marketplace. In particular, they ignore the two ubiquitous DBS competitors that between them have attracted 18 million customers. They also overlook the incentive of cable operators to compete to “save” customers who may be planning to do without MVPD service altogether.

There is certainly no evidence to support the notion that multichannel video competition is in danger of being “extinguished” as a result of competitive pricing by cable operators. RCN has achieved healthy penetration rates in the neighborhoods it chooses to serve.^{2/} So have other overbuilders, as reflected in comments recently filed in the annual video competition proceeding. As Comcast noted in an earlier ex parte presentation, although RCN has informed the Securities and Exchange Commission of numerous threats to its financial viability, discounts – and the AT&T-Comcast merger – have never appeared among these enumerated threats. Moreover, as the record clearly shows, multichannel video competition is by no means limited to terrestrial competitors.

The issue of competitive pricing is not merger-specific. RCN has claimed that discount pricing is an industry-wide issue. Indeed, RCN’s initial comments in this proceeding complained of discount pricing by an MSO that is not a party to this merger. RCN’s trade association has very recently complained of discounts by “incumbent cable operators,” a group that is clearly not confined to the merging parties. Therefore, to the extent this issue warrants any consideration by the Commission, it should be raised in a proceeding of general applicability, not in the instant merger review.

There is no basis for Petitioners’ proposed regulatory requirements. A requirement of “rate uniformity” would contravene Congress’s decision that the prices for all cable services other than basic cable service should be unregulated. The uniform pricing rule today applies only to basic cable service. The discounts in question here pertain to higher tiers of service that either have never been regulated or have been deregulated by Act of Congress.

A requirement that any and all discounts be publicized by way of the Internet and in all advertising would assuredly diminish the availability of such discounts (an objective that clearly advances RCN’s private commercial interests, but obviously does not serve consumers’ interests). In the wireless context, the Commission has properly recognized that this form of price competition, including the ability of individual consumers to “haggle” and obtain otherwise unpublished discounts, is beneficial to consumers.^{3/} Similar practices are widespread (and similarly benefit consumers) in long distance, hotels, airfares, and numerous other competitive industries. Consumers of multichannel video distribution services do – and should continue to – enjoy the same benefits.

^{2/} See attached excerpts from a recent RCN PowerPoint presentation.

^{3/} *Orloff v. Vodaphone Airtouch*, 17 FCC Rcd. 8987 (2002).

In short, Petitioners have provided no basis for further delaying completion of the Commission's merger review. We urge you to make it clear that the time for regulatory gamesmanship – by Petitioners and certain other parties who continue to pursue their special-interest agendas through ex parte activities – has long since passed. The Commission has conducted a thorough review of all alleged concerns – real, imagined, or contrived – and further delays will only forestall the many benefits of the merger, particularly in speeding the deployment of broadband facilities and the delivery of new and competitive services

Very truly yours,

/s/ Betsy Brady

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