

October 11, 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:

In a recent written *ex parte* submission in this proceeding, the Broadband Service Providers Association (“BSPA”) asserted that geographic areas served by AT&T Broadband’s “non-consolidated” cable television systems are “relevant to the Commission’s analysis of the competitive effects of the proposed merger, particularly as it relates to the potential exercise of market power and strategic abuses flowing from the increased regional consolidation and clustering resulting from the proposed merger.”¹

In support of its claim, BSPA apparently exhibited to the Commission staff a map that purported to depict geographic areas served not only by consolidated cable systems that are owned and operated by Comcast and AT&T Broadband, but also by non-consolidated systems in which AT&T Broadband has an interest but which are operated and managed by other parties not affiliated with AT&T Broadband. So far as the Applicants can determine, to date a copy of the map has not been supplied to the Commission’s contract copier. To avoid further delay while waiting for BSPA to supply such a copy, Applicants will simply take this opportunity to restate what the record already makes clear: there is no plausible basis for BSPA’s claim that the merger would have anticompetitive effects.

BSPA’s argument, as best it can be discerned, appears to relate to concerns pertaining to “increased . . . clustering” resulting from the merger. As Applicants explained nearly six months ago, this merger will not lead to any significant increase in

¹ Letter to Marlene H. Dortch, FCC, from Martin L. Stern, Preston Gates Ellis & Rouvelas Meeds LLC, Attorneys for the Broadband Service Providers Association, MB Docket 02-70, at 1 (Oct. 2, 2002) (“*BSPA ex parte*”).

clustering.² Contrary to BSPA's erroneous claim, AT&T Broadband's non-consolidated systems do not contribute to clustering in the new company. Those systems are ones in which AT&T Broadband has an attributable interest, but does not control or manage. As the Media Bureau previously explained in this proceeding, "clustering" consists of "two or more cable systems which are in close geographic proximity *and share personnel, management, marketing, and/or technical facilities.*"³ Thus, to the extent that BSPA intends to suggest that the merger of AT&T Broadband and Comcast will have a significant effect on clustering in markets where the new company may have an attributable interest in a non-consolidated system, that assertion is unfounded. AT&T Broadband does not, and AT&T Comcast will not, manage the non-consolidated systems nor share personnel, management, marketing or technical facilities with those systems.⁴

Moreover, as the Applicants previously have shown, Comcast cable systems, with minor exceptions, do not serve the same geographic areas served by the non-consolidated systems in which AT&T Broadband has an attributable interest.⁵ Consequently, even if BSPA's assertions about the relevance of the non-consolidated systems were correct – which they are not – the merger will have virtually no effect on consumers' choice of multichannel video service providers.

In sum, BSPA's unsubstantiated claim that the merger will have anticompetitive effects because of increased concentration and clustering is without merit. In addition, BSPA's concerns about "increase[s] in the frequency and/or severity of discriminatory pricing practices" or "BSPA members' access to critical programming"⁶ were fully addressed months ago,⁷ and are in any event not affected by the non-consolidated systems

² Reply to Comments and Petitions to Deny Applications for Consent to Transfer Control, MB Docket 02-70, at 112 (May 21, 2002) ("Reply Comments").

³ See Document and Information Request, MB Docket No. 02-70, at 1 (question B1), attached to Letter from Royce D. Sherlock, Media Bureau, FCC, to James R. Coltharp, Comcast Corporation and Betsy J. Brady, AT&T Corp. (June 11, 2002) (emphasis added).

⁴ AT&T Broadband does provide cable telephony on non-consolidated systems operated by Insight Communications. In the offering of that service, AT&T Broadband leases facilities, contracts to have Insight technicians install telephony service, and engages in joint marketing with Insight. That support for the provision of Insight's facilities-based competitive phone service in no way implicates the concerns raised by BSPA.

⁵ See Reply Comments at 54 n.153.

⁶ *BSPA ex parte* at 2.

⁷ See Reply Comments at 97-115.

that were the focus of BSPA's ex parte presentation. As for pricing, AT&T Broadband does not participate in decisions regarding the retail pricing of cable services by non-consolidated systems, and AT&T Comcast will not do so post-merger. As for programming, the vast majority is delivered by satellite and is subject to the program access rules, and Comcast has always made its one terrestrially delivered sports programming service available to the overbuilders that comprise BSPA's membership.

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.

Respectfully submitted,

/s/ Betsy Brady

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