

October 24, 2002

By Electronic Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 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 October 16, 2002, representatives of Media Access Project, Center for Digital Democracy, CFA, *et al.* (collectively, "MAP") filed an *ex parte* letter reiterating their request (and that of EarthLink) that the Commission require submission of and allow for public comment on an agreement ("AOL ISP Agreement") that would allow AOL Time Warner to offer high-speed Internet service on AT&T Comcast's cable systems. The letter argues that the AOL ISP Agreement is a material fact relevant to the proposed AT&T Comcast merger because it "is part and parcel with the TWE divestiture agreement, which clearly is part of this merger."¹

This assertion is incorrect and demonstrates a fundamental misunderstanding of the relationship between the August 20, 2002 agreement (the "TWE Restructuring Agreement") among AT&T Corp. ("AT&T"), Comcast Corporation ("Comcast" and, together with AT&T, the "Applicants") and AOL Time Warner Inc., and the other parties thereto, to restructure Time Warner Entertainment, L.P. ("TWE"), on the one hand, and the Applicants' commitment to the FCC to divest the TWE interest as embodied in the Agreement and Declaration of Trust (the "Trust Agreement"), on the other hand.

As the Applicants have explained previously in opposing requests that they submit the AOL ISP Agreement,² their commitment to divest TWE is

¹ See *Ex Parte* Letter from MAP, *et al.* to Marlene H. Dortch, FCC, MB Docket No. 02-70, at 1 (Oct. 16, 2002) ("MAP Ex Parte Letter").

² See Joint Opposition of Comcast Corporation and AT&T Corp., MB Docket No. 02-70 (Sept. 13, 2002) ("Joint Opposition").

embodied in the Trust Agreement, under which the Applicants will place the TWE interest in trust and ensure its divestiture. Although the TWE Restructuring Agreement represents a positive development that should facilitate the divestiture of TWE, the Applicants' commitment to divesting the TWE interest will be implemented according to the terms of the Trust Agreement *whether or not the TWE Restructuring Agreement closes*.³ The Applicants have filed the Trust Agreement in this proceeding and it has been placed on public notice.⁴ Along with other measures the Applicants will take,⁵ the Trust Agreement should address any concerns the Commission may have regarding the TWE interest.

The AOL ISP Agreement has no relevance whatsoever to the Trust Agreement. The AOL ISP Agreement is not even mentioned in the Trust Agreement. It consequently should be clear that the AOL ISP Agreement is not material to the Commission's consideration of the Applicants' commitment to divest the TWE interest.

In addition, MAP and EarthLink are simply wrong in suggesting that the TWE Restructuring Agreement "*is part of this merger*."⁶ While the Trust Agreement can be characterized as "part of the merger," the TWE Restructuring Agreement and the AOL ISP Agreement are most certainly not. The AT&T Comcast merger is not conditioned upon the closing of the transactions contemplated in the TWE Restructuring Agreement, nor is it conditioned upon the effectiveness of the AOL ISP Agreement – in fact, neither agreement is even contemplated in the AT&T Comcast merger agreement.

³ The AT&T Comcast merger is *not* contingent on the closing of the TWE Restructuring Agreement.

⁴ See 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) (rel. Aug. 9, 2002).

⁵ In addition to the proposed Trust Agreement, the Applicants have filed a letter certifying that AT&T Comcast will, at closing, hold a non-attributable, insulated limited partnership interest in TWE. See Letter from Mark C. Rosenblum, AT&T Corp., and Arthur R. Block, Comcast Corp., to Marlene Dortch, Secretary, FCC, filed in MB Dkt. No. 02-70 (Oct. 9, 2002). They have also agreed to the imposition of Paragraphs 3-5 of the Safeguards adopted in the *AT&T-MediaOne Merger Order*. See Letter from Mark C. Rosenblum, AT&T Corp., and Arthur R. Block, Comcast Corp., to Marlene Dortch, Secretary, FCC, filed in MB Dkt. No. 02-70 (Sept. 30, 2002).

⁶ MAP Ex Parte Letter at 1.

MAP and Earthlink also assert that the AOL ISP Agreement might “affect the implementation of the divestiture agreement or even supercede it.”⁷ This unsupported speculation implies that reviewing the AOL ISP Agreement is essential to understanding the basic terms and structure of the TWE Restructuring Agreement. As noted above, this argument is based on the flawed assumption that the Applicant’s commitment to divest the TWE interest is set forth in the TWE Restructuring Agreement rather than the Trust. Even assuming, however, that the TWE Restructuring Agreement is relevant for this purpose, MAP and EarthLink are simply wrong as to their characterization of the relationship between the TWE Restructuring Agreement and the AOL ISP. The AOL ISP Agreement is a commercial understanding between the parties regarding the delivery of high speed internet access. The AOL ISP Agreement in no way supercedes or contradicts the terms of the TWE Restructuring Agreement.

The Commission should consequently deny the motions filed by MAP and EarthLink to compel the production of AOL ISP Agreement and should conclude its review of the merger at the earliest practicable opportunity.

Very truly yours,

COMCAST CORPORATION

By: /s/ Arthur R. Block
Senior Vice President and General Counsel
1500 Market Street
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cc:	Kenneth Ferree	Roger D. Holberg	Royce D. Sherlock
	Neil A. Dellar	James R. Bird	Erin Dozier
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	Jeff Tobias	Simon Wilkie	Qualex International

⁷ See *id.* MAP is presumably referring to the TWE Restructuring Agreement in using the term “TWE divestiture agreement” in its October 16 letter.