

*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 Corp.,** ) MB Docket No. 02-70  
Transferors, )  
)  
AT&T Comcast Corporation, )  
Transferee )

To: The Commission

**EMERGENCY MOTION FOR SUSPENSION OF PROCEEDING**

Petitioners Consumer Federation of America, Consumers Union and the Center for Digital Democracy (CFA, *et al.*) respectfully ask the Commission to suspend action on the above-cited application pending resolution of an expedited judicial proceeding to review the Commission’s *Order* denying Petitioners’ motion asking that Applicants Comcast Corporation and ATT Corp. be required to submit the complete contents of the so-called “TWE Restructuring Agreement” to the Commission. *Order*, FCC 02-301 (released November 6, 2002).

In their September 5, 2002 *Motion to Provide Information Material to Consideration of Application to Transfer Control of Licenses Petitioners* (“Motion”), Petitioners asked that the Applicants be directed to submit Exhibit D of the TWE Restructuring Agreement. (The Applicants had, without explanation, omitted Exhibit D at the time that they submitted the agreement to the Commission.)<sup>1</sup> Petitioners argued that the Commission cannot make the requisite public interest findings in this proceeding without considering the contents of Exhibit D and such comments as the other parties might thereafter submit with respect to how Exhibit D affects the Commission’s public

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<sup>1</sup>Earthlink, Inc. filed a similar motion on the same date.

interest determination. In the newly-issued *Order*, the Commission denied the motion without mentioning, much less discussing, even one of the cases Petitioners had cited, or explaining how its action could be reconciled with the Commission's recently-issued *LUJ* decision. *LUJ, Inc.*, 17 FCCRcd 16980 (2002).

CFA, *et al.* will today file a *Petition for Review* asking the United States Court of Appeals for the District of Columbia Circuit to reverse the *Order*. They intend to seek expedited consideration of the new appeal.

Petitioners have a strong basis upon which to obtain reversal of the *Order* since the Commission cannot make statutorily-mandated findings necessary to act on the pending application without requiring submission of Exhibit D to the TWE Restructuring Agreement. Moreover, in the event that the Commission were to grant the Comcast/AT&T application without having a complete record before it, and the *Order* were then reversed, the Applicants, the Petitioners and the rest of the public will face the a complicated remand proceeding that would disrupt the entire telecommunications sector.

Although this is not a request to stay operation of a Commission *Order* or rule, Petitioners note that they meet the stringent standard set down in *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) and *Washington Metropolitan Area Transit Comm'n v. Holiday Tours*, 559 F.2d 841, 843 (D.C. Cir. 1977). CFA, *et al.* have made a strong showing that they will prevail on appeal. Furthermore, approval of the merger would dramatically restrict on the free flow of information, especially on the broadband Internet, thereby will inflicting irreparable harm on the interests Petitioners have sought to protect. In contrast, a suspension will not substantially harm other parties in this proceeding, particularly since they have no right to the grant of their application

absent a proper determination of whether it serves the public interest. Finally, grant this motion it will clearly serve the broader public interest; all parties benefit from the free flow of information referred to above. Moreover, at a time when the investment community's lacks confidence in the telecommunications sector in general, and the cable industry in particular, the public interest will clearly be benefitted by action which avoids a needless judicial reversal of an ill-advised agency action.

WHEREFORE, the Commission should suspend action on the proposed transfer until the completion of judicial review of the Order, and grant all such other relief as the Commission may deem proper.

Respectfully submitted,

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November 7, 2002

## CERTIFICATE OF SERVICE

I, Andrew Jay Schwartzman certify that, on this 7<sup>th</sup> day of November, 2002, I caused copies of the foregoing *EMERGENCY MOTION FOR SUSPENSION OF PROCEEDING* to be served by email, and by United States Mail, postage prepaid, upon the parties listed below:

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