

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**DECLARATION OF CAROL A. CLANCY IN SUPPORT OF JAMES J.  
CLANCY'S PETITION FOR RECONSIDERATION**

The undersigned submits this *Declaration of Carol A. Clancy In Support of James J. Clancy's Petition for Reconsideration*, with reference to MB Docket No. 02-70 ["In the Matter of Applications for Consent to the Transfer of Control of Licenses From Comcast Corporation and AT&T Corp., Transferors, To AT&T Comcast Corporation, Transferee"] (hereinafter "the Proceeding")

I, CAROL A. CLANCY, hereby declare:

1. In mid to late October of 2002, I initiated a telephone conversation with the FCC Media Bureau for the purpose of determining whether it was still possible for an individual (who had not yet made any filing in MB Docket No. 02-70) to participate in the Proceeding. I explained that this person wanted to place important evidentiary matters regarding negative conduct (contrary to the public interest) by AT&T in providing Cable TV Services. I explained that this conduct undermined AT&T's basic character as an FCC Licensee, and was so egregious that it reflected negatively upon AT&T's basic qualification to continue to hold an FCC Licensee. I explained that evidence of this conduct should be taken into consideration by the FCC Decision Makers before making any decision in the Proceeding. FCC personnel Roger Holberg told me that it was possible for an individual to participate and address the "basic character issue" in the Proceeding by filing an "*ex parte presentation*," under 47 CFR Section 1.1206 [permit-but-disclose proceedings]. I was told that the *ex parte* presentation should be sent to "Secretary, Federal Communications Communication, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554."

2. On Monday, November 4, 2002, I transmitted to the Federal Communications Commission (FCC) the *Ex Parte Petition of James J. Clancy To Deny Applications and Revoke Licenses*, dated November 3, 2002, together with certain supporting evidentiary exhibits (hereinafter "*The FCC Filing*"), using "same day delivery" via Federal Express (see attached Certificate of Service, which contains a list of the supporting evidence sent to the FCC). The Ex Parte Petition was in electronic format, and could have been filed electronically. However, the supporting evidentiary exhibits were not in electronic format, and could not be transmitted to the FCC Decision Makers in the Proceeding, except by the use of a delivery service (such as U.S. Mail or Federal Express). Therefore, in order that this supporting evidence would reach the FCC Decision Makers before they rendered a decision in the Proceeding, Federal Express "same day delivery" service was used to file the Petition and lodge the supporting evidence. The Federal Express charge for delivery was \$204.97 (as discussed below at paragraph 10, a copy of this Federal Express receipt was subsequently faxed to Roger Holberg and to the FCC Mailroom facility in Maryland, and is currently in the possession of the FCC). *The FCC Filing* was addressed to: "Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 54."

3. On November 4, 2002, in tracking the delivery of the FCC Filing, I was told that Federal Express had attempted delivery of the FCC Filing, but that the Secretary's office had refused to receive the package. I telephoned the FCC, and was told that because of anti-terrorist precautions, only packages sent via United States Mail could be received at the FCC's Washington, D.C. address. Any package sent via Federal Express had to be delivered to "9300 E. Hampton Dr., Capitol Heights, Maryland 20743." I telephoned Federal Express, and directed that the FCC Filing be immediately delivered to the Capitol Heights address.

4. On November 4, 2002, I made a number of phone calls to the FCC to ascertain whether *The FCC Filing* had been received by the FCC. Since I could not ascertain from the FCC whether they had in fact received the *Ex Parte Petition*, plus exhibits, I was advised to "e-mail" a copy of the *Ex Parte Petition* via the FCC electronic filing system – which I did. Although I had been told by Federal Express that the package would be delivered on November 4, 2002, on the following day (November 5, 2002), I called the tracking service for Federal Express, and they had confirmed that the package (containing the *Ex Parte Petition* and the supporting evidentiary exhibits) had been received.

5. Subsequently, I have made multiple inquiries to Federal Express, and have been informed that the *The FCC Filing* was delivered unopened and intact, and was received by the Federal Communications Commission on November 4, 2002, at the address specified by FCC personnel Roger Holberg. [9300 E. Hampton Dr., Capitol Heights, Maryland 20743] on the afternoon of Monday, November 4, 2002, at approximately 2:25 p.m. According to Federal Express, the name of the person who received *The FCC Filing*, on behalf of the FCC, was "B. Pettiford."

6. On November 4, 2002, I had a conversation with Margo Davenport, in which we discussed some of the procedural problems that had been encountered in filing the Petition of James J. Clancy, with supporting evidentiary exhibits, and the difficulty of sending evidentiary exhibits to the Commission. I reiterated my concern that the matters presented by the evidentiary exhibits supporting the Ex Parte Petition of James J. Clancy should be

examined and determined by Commission decision-makers before any decision was taken on the Applications filed in the AT&T/ Comcast matter. Davenport asked me to describe briefly the substance of the Petition. I explained that the Petition asserted: that AT&T lacked the basic character qualifications required of all FCC Licensees, by reason of their past and present conduct in transmitting specifically identified obscene matter as a regular and continuing course of conduct; that the basic character qualifications required of all FCC Licensees had been placed into issue by the AT&T Applications; that under federal law, the transmission of obscenity over cable TV is not in the public interest; and that AT&T's conduct demonstrates it lacks the requisite FCC License holder character qualifications. Davenport asked me to name the specific programming that formed the subject matter of the complaint (e.g. whether it was HBO, Playboy, etc.). I told her the programming involved AT&T's transmission of "The Hot Network." (See Notice of Ex Parte Presentation, filed in this Proceeding by me on November 5, 2002, and on file herein, which memorialized this conversation).

7. On Friday, November 15, 2002 (the first day the text of the FCC opinion, dated November 13<sup>th</sup>, in MB Docket No. 02-70 was available to me via the FCC web site), I reviewed that portion of the decision which addressed the *Ex Parte Petition of James J. Clancy*. The text of the decision states that as of November 13, 2002:

"The parties raising issues of character and legal non-compliance have failed to convince us that we should deny the merger based on the allegations. . . .

We deny Clancy's late-filed<sup>1</sup> petition to deny the Application. Clancy does not offer any evidence that a court has adjudged that any programming distributed by AT&T is or was obscene, *nor any other evidence to support his allegations.*<sup>2</sup>

---

<sup>1</sup> It should be noted that the *Ex Parte Petition of James J. Clancy*, with supporting exhibits, was filed within the time period designated by the FCC for the making of "*ex parte presentations*," and was filed in compliance with the instructions of FCC staff and the procedure described in 47 CFR Section 1.1206. (See *supra*, at paragraph 1).

However, the FCC Order in this Proceeding, adopted November 13, 2002 and released November 14, 2002, at footnote 648, states: "The petition was filed on November 3, 2002, more than six months after the April 29, 2002 deadline for filing of petitions to deny the Application. *AT&T Corp. and Comcast Corp. Seek FCC Consent for a Proposed Transfer of Control*, MB Docket No. 02-70, Public Notice, 17 FCC Rcd 5907 (2002) (establishing a deadline of April 29, 2002 for filing of comments or petitions to deny the Application); *see also* 1.939(a)(2)(providing that petitions to deny may be filed no later than 30 days from the date of public notice listing an application as accepted for filing)."

After the close of the April 29<sup>th</sup> "deadline", the FCC openly invited the participation of interested persons in the Proceeding by permitting presentations under Section 1.1206. It is my understanding that the FCC has considered the *ex parte* objections of other individuals and has disposed of them *on the merits of those claims*, in spite of the fact that these claims were filed after the deadline for filing of petitions to deny the Application.

<sup>2</sup> The FCC Order in this Proceeding, adopted November 13, 2002 and released November 14, 2002, at footnote 649, states: "Clancy's petition references several exhibits and attachments that, at the time of adoption, still had not been received by staff reviewing the transaction." Under 47 C.F.R. Section 1.7, "pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission." Therefore, the evidentiary exhibits had been filed with the FCC on November 4, 2002 (the date

. . . . Clancy's allegations do not justify action on the petition in the context of this proceeding.<sup>3</sup> We will, however, refer Clancy's petition to the Commission's Enforcement Bureau for any further action it deems appropriate. In addition, we note that the petition was extremely untimely, having been filed 189 days after the date for the filing of such petitions and only nine days before the Commission's adoption of its *Order* in this proceeding.

8. After reading the November 13<sup>th</sup> decision, I immediately called Federal Express, and again confirmed that *The FCC Filing* had been in fact delivered and received by the FCC on November 4, 2002. I was told that *The FCC Filing* had been accepted by "B. Pettiman" on behalf of the FCC.

---

the FCC Filing was received).

<sup>3</sup> The FCC Order in this Proceeding, adopted November 13, 2002 and released November 14, 2002, at footnote 651, states:

"See *Litigation Recovery Trust Petition for a Determination Whether Comsat Corp. Has Violated the Public Interest Standard of the Communications Satellite Act*, FCC 02-279 (rel. Oct. 28, 2002)" (holding that an unsupported allegation of obscenity did not warrant requested relief).  
*The Ex Parte Petition of James J. Clancy* asserts that the programming disseminated by AT&T is "obscene." *The Ex Parte Petition of James J. Clancy* does not raise an "indecent" claim. Here, the allegations of "obscenity" were supported by the evidentiary exhibits contained in *The FCC Filing*, filed on November 4, 2002. The "evidence of obscene programming," which was filed with the FCC contemporaneously with the *Ex Parte Petition* consisted of: (1) 2 DVDs (Part I contained the first part of the obscene movie entitled "More Than A Handful 9"; Part II contained the conclusion of said obscene movie, as well as certain obscene "pandering previews") which illustrated and exemplified the content and character of all of the specifically identified obscene films named in the *Ex Parte Petition*, (2) one "Time/Motion Study" providing pictorial evidence of the use of subliminal advertising frames in the obscene pandering previews (a copy of the actual pandering previews were contained on Part II of the DVDs filed, and (3) a list of over 100 obscene films, with detailed information concerning dissemination (date, time, channel), the content and character of which were illustrated and exemplified by the aforementioned obscene movie "More Than A Handful 9" and obscene pandering previews.

9. I then contacted the FCC, in order to find out what had happened to *The FCC Filing*, and to discover why the evidentiary matter, delivered, received, and filed with the FCC on the November 4, 2002, had been withheld from "the staff reviewing the transaction." I discussed matters relating to filing procedures with FCC personnel Roger Holberg. I requested his assistance in locating *The FCC Filing* and its supporting evidentiary exhibits that had been delivered and received by the FCC on November 4, 2002.

10. At first, I was told by Roger Holberg that there was "no record" that the FCC had received such a package. I gave Holberg the Federal Express tracking number for *The FCC Filing*, plus the name of the person who I had been told had received the package on behalf of the FCC on November 4, 2002. When I offered to fax him the Federal Express receipt I possessed, he said that would be unnecessary, and that all he needed was the tracking number. He then called me back, and suggested that the number I had given him was not a valid tracking number, because there was still "no record" that the FCC had received the package (using my "tracking number). Holberg then asked that I fax the FedEx tracking information receipt, both to the FCC off-site mail facility (addressed to the person who had supposedly "received" the package), and to him. I complied with his instructions. Holberg then called me back, and informed me that there was a record that the FCC had received the package on November 4, 2002.

Holberg stated that he believed (but was not completely sure) that the package had been delivered to the Office of the Secretary of the FCC on November 6, 2002. Thereafter, he thought the package was probably sent to "Imaging" (to be scanned for posting on the FCC web site).

In the normal course, the package (and its evidentiary contents) would have been sent to the Media Bureau (who is handling the AT&T Comcast matter). However, Holberg could locate no person in the FCC who currently knew the whereabouts of the package (that is, the original petition plus supporting evidentiary exhibits). He stated that he would try to locate the package, and retrace its progression through the FCC.

I pointed out that I had spent over \$200 to transmit the evidentiary exhibits to the FCC on November 4, 2002, and that I had expressed concern to Margo Davenport that the substantive issues presented in the *Ex Parte Petition of James J. Clancy*, and its supporting exhibits, were serious and had merited careful examination and deliberation by Commission decision-makers before any decision should have been taken on the Applications in MB Docket No. 02-70. I pointed out that in addition to the hand-delivered filing [which included lodged evidentiary exhibits], I was advised by FCC staff to file an electronic copy of said Petition [minus the lodged evidentiary exhibits, which are not in electronic format], using the Commission's electronic filing system.

11. Subsequently, I was informed by Roger Holberg that he had been able to locate only Part I of the DVD (containing the first part of the obscene movie "More Than A Handful 9"). The DVD case had been cracked and damaged. Whether the DVD itself was damaged is unknown. The DVD had been found in the possession of the Engineering Department of the Media Bureau.

Roger Holberg told me that the FCC had received a copy of the following supporting evidentiary exhibits: (1) copy of the state action filed by James J. Clancy, acting as a Private Attorney General, in California court system concerning AT&T's cable TV operation; (2) video taped copies of three movies ("More Than A Handful 9", "101 Cheerleaders & 1 Jock", and "Hell on High Heels"); (3) 3ft. by 5ft. Time and Motion Studies of three cable-casted video features ("More Than A Handful 9", "101 Cheerleaders & 1 Jock"; and "Hell on High Heels"); and (4) a video taped copy of the previews shown before and after "More Than a Handful 9."

12. On December 11, 2002, I visited the web site of the FCC, and accessed the FCC electronic filing system, which indicates that the following documents are in the possession of the FCC:

- (1) *The Ex Parte Petition of James J. Clancy*, dated November 3, 2002, and filed November 4, 2002.
- (2) *Exhibit in Support of the Ex Parte Petition of James J. Clancy* (Time and Motion Study of AT&T's Transmissions of "pandering" previews, shown after the feature "More than a Handful 9", which show the use of "subliminal frames."), filed November 4, 2002.
- (3) *The Notice of Lodging Exhibits in Support of the Ex Parte Petition of James J. Clancy To Deny Applications and Revoke Licenses, and Additional Contentions*, dated November 8, 2002, and filed November 12 and November 13, 2002.

13. The following evidentiary exhibits, filed with the FCC on November 4, 2002, have not yet been located:

- (1) Part II of the DVD disc copy, containing the last part of the obscene film "More Than A Handful 9" together with obscene pandering Previews shown Before and Previews shown After said film, which collectively are representative of AT&T's entire "In Demand, Pay Per View, Adult's Only" programming, and which demonstrate that AT&T's violations of federal law, as complained of herein, are intentional and willful; and
- (2) Exhibit A in Support of the Ex Parte Petition of James J. Clancy, consisting of a partial list of AT&T Cable transmissions of obscene programming.

14. A true and correct duplicate copy of the following evidentiary exhibits: (1) an undamaged duplicate copy of Part I of the DVD disc (containing the first part of the obscene movie "More Than A Handful 9"); (2) a duplicate copy of Part II of the DVD disc (containing the last part of the obscene film "More Than A Handful 9" together with obscene pandering Previews shown Before and Previews shown After said film); and (3) a duplicate copy of Exhibit A in Support of the Ex Parte Petition of James J. Clancy (consisting of a partial list of AT&T Cable transmissions of obscene programming), are being filed contemporaneously with this Declaration (under separate cover), with the request that the duplicate copies of these "misplaced" or "damaged" evidentiary exhibits be received in lieu of the originals, and deemed "filed" as of November 4, 2002, pursuant to the FCC's power to correct Agency errors. See 47 C.F.R. Section 1.7.

The original copies of these evidentiary exhibits were delivered to the FCC on November 4, 2002 (see the Original Certificate of Service attached to the Ex Parte Petition of James J. Clancy to Deny Applications and Revoke Licenses, filed herein on November 4, 2002, a copy of which is on file herein as part of the Original Ex Parte Petition, marked "Original" "Received & Inspected, Nov. 4, 2002, FCC-Mailroom"). The duplicate copies being filed contemporaneously herewith are true and exact copies of the original evidentiary exhibits, which apparently have been either damaged or lost by the FCC.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: December 12, 2002

---

**CERTIFICATE OF SERVICE**

1. This document is being electronically filed.
2. Also, pursuant to the Commission's Rules, an original and four copies of this Declaration are being sent, using the U.S. Mail (**Express Mail**), addressed to Secretary, Federal Communications Commission, 445 12<sup>TH</sup> Street, S.W., Washington, D.C. 20554

**Dated: December 13, 2002**

---

Carol A. Clancy, Declarant  
9055 La Tuna Canyon Road  
Sun Valley, California 91352-2221  
(818) 352-2069