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December 14, 2002

Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: *Petition of James J. Clancy for Reconsideration* in MB Docket No. 02-70 of *Order, Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, dated November 13, 2002 and released November 14, 2002, with reference to "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 "this Proceeding").

Dear Secretary:

As explained in my letter dated December 13, 2002, and in the documents referenced below, the following evidentiary exhibit, filed with the Federal Communications Commission (hereinafter "FCC") on November 4, 2002 in the above-referenced Proceeding, has been "misplaced" by the FCC:

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, showing the date and channel of specifically named obscene movies as transmitted by AT&T's cable TV operation.

See the *Ex Parte Petition of James J. Clancy* at 4, the *Declaration of Carol A. Clancy in Support of James J. Clancy's Petition for Reconsideration* at 6, and *Petition of James J. Clancy for Reconsideration* at 7 and 20, all on file herein.

A true and correct duplicate copy of this "lost" evidentiary exhibit has been transmitted to you via U.S. Mail. For the reasons stated in the above-referenced documents, and in the interests of justice and in the public interest, Petitioner has requested: (1) that the FCC correct the record in this Proceeding by receiving and substituting into the record this duplicate copy of Exhibit A in lieu of the lost original; and (2) that the substituted Exhibit A be deemed *nunc pro tunc* "filed" as of November 4, 2002, pursuant to the power of the FCC to correct Agency error. See 47 C.F.R. Section 1.7; and (3) that Petitioner's *Ex Parte Petition* be reconsidered in light of the evidence submitted to the FCC.

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A copy of this duplicate Exhibit A is being electronically sent to you with this letter, together with an additional copy of the Petition for Reconsideration in this matter (which was electronically filed yesterday, as well as sent by overnight mail), in an effort to be sure that these documents successfully reach Agency Decision Makers.

The FCC has both the power and duty to adjudicate Petitioner's cable TV obscenity claim in this Proceeding, and in the interest of justice, must do so in order to fairly evaluate and rule upon the AT&T License Transfer Application. AT&T has transmitted obscene programming unprotected by the Constitution, in direct violation of FCC Policy and federal law, including the Communications Act of 1934, as amended (see 47 U.S.C. § 559, proscribing the transmission over any cable system of any matter which is obscene or otherwise unprotected by the Constitution). As an FCC Licensee, AT&T has violated the long-standing policy of the FCC that the transmission of obscene matter over federal channels of communication is contrary to the public interest (see *Illinois Citizens Committee for Broadcasting v. FCC*, 515 F.2d 397 (1974) and *Monroe Communications Corporation v. FCC*, 900 F.2d 351 (1990)).

The *Order* of the FCC in MB 02-70, released November 14, 2002, erroneously states that Petitioner's obscenity claim as expressed in his *Ex Parte Petition* was unsupported by evidence. This is false. In reality, after Petitioner's supporting evidence was filed on November 4, 2002, the FCC either damaged, misplaced, or lost that evidence (see *The Petition of James J. Clancy for Reconsideration, The Declaration of Carol A. Clancy in Support of James J. Clancy's Petition for Reconsideration, the Declaration of James J. Clancy in Support of Petition for Reconsideration*, and the *Letter of James J. Clancy, dated December 13, 2002, to Secretary, FCC, regarding evidentiary exhibits damaged or lost by FCC*, filed electronically yesterday, and sent to you via U.S. Mail).

Under the circumstances, reconsideration should be granted, and the record in this Proceeding must be corrected. In the context of AT&T's Application for Transfer of FCC Licenses, a hearing on the obscenity issue should be set. *The surveillance tapes listed in Exhibit A should be examined by the FCC. Copies of these tapes will be transmitted to the FCC, at their direction.* Exhibit A lists 94 surveillance tapes of analogue cable transmissions on Channel 96, from January 28, 2001 through May 1, 2001, and lists 95 surveillance tapes of the AT&T "transmissions of digital Channel 457 ("The Hot Network"), from May 2, 2001 through August 5, 2001. As explained on November 4, 2002, the content and character of the programming specifically named and identified in Exhibit A is obscene, and is identical to the samples of obscene programming filed with the FCC on November 4, 2002, and November 12-13, 2002.

Any final decision on AT&T's Application in MB 02-70 should be based on all the facts and circumstances that surround AT&T's cable TV operation. AT&T made the deliberate choice to transmit hard-core obscene material over federal channels of communication, using FCC Licensed facilities, over the objections of a group of AT&T shareholders. See *Ex Parte Letter to Secretary, FCC*

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Petition of James J. Clancy to Deny Applications and Revoke Licenses, on file herein, at p. 9, fn. 27, citing *SEC No Action Letter pursuant to Rule 14a-8*, dated February 21, 2001, Re AT&T Corp. 2001 SEC No-Act LEXIS 240.

As Petitioner's Exhibit A surveillance tapes indicate, AT&T was transmitting obscene and unprotected programming over its cable TV operation, in violation of 47 U.S.C. § 559, 18 U.S.C. § 1468, and 18 U.S.C. § 1466, during the time-period in which AT&T was involved in SEC proceedings concerning the nature of its cable programming. You will note in response to these AT&T shareholder inquiries, AT&T claimed to the U.S. Securities and Exchange Commission that: "The Company's actual policy regarding cable programming is a responsible and ethical one." *Id.* The evidence submitted to the FCC in this proceeding amply demonstrates that, contrary to the assertions of AT&T made before SEC regarding this specific time-period, the behavior of AT&T in transmitting cable programming was neither "responsible" nor "ethical," but was fraudulent.

It is evident that in connection with the aforementioned SEC proceeding, AT&T deliberately made reprehensible, false and misleading representations to a governmental agency, which is fraud. This is an important factor bearing upon basic character qualifications and the public interest that was raised by Petitioner's *Ex Parte Petition*, and which is relevant herein and must be considered by the FCC in deciding whether to grant or deny AT&T's Application for Transfer of FCC Licenses.

The surveillance tapes listed in Petitioner's Exhibit A, as well as his other filings herein, amply demonstrate that a full hearing should immediately be set to investigate the obscenity claims raised by the *Ex Parte Petition*. Any final decision in MB 02-70 should be based upon full and fair disclosure, and upon a record that accurately reflects AT&T's actions in connection with its cable TV operation, and FCC-related business activity.

Sincerely,

James J. Clancy, Petitioner

JJC/cac

encl. [Filed electronically: 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; Petition of James J. Clancy for Reconsideration]