In re Applications of

COMCAST CORPORATION
and subsidiaries

and

AT&T COMCAST CORPORATION

For Transfer of Control

AT&T CORP.
and subsidiaries

and

AT&T COMCAST CORPORATION

For Transfer of Control

TO: The Commission

PETITION FOR RECONSIDERATION

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The Commission never seriously considered the extensive and documented claims of twelve citizens of Marietta, Georgia (eleven African-American, one Hispanic-American) who suffered racial discrimination and unfair trade practices at the hands of AT&T Corp.'s broadband division. Herein, those citizens seek reconsideration of the Commission's November 14, 2002 "Memorandum Opinion and Order", FCC 02-310, granting its consent to the merger of AT&T Corp's broadband division with Comcast Corporation.

Once again, the Commission has by its own actions proven that there are two codes of justice—one for large corporations like AT&T and Comcast, and another for ordinary citizens and small businesses. Petitioners herein call upon the Commission to do the right thing and to vacate FCC 02-310, and to hold a hearing on the AT&T-Comcast merger on appropriate issues.
## TABLE OF CONTENTS

I. Preliminary Statement .......................... 2

II. Reconsideration Is Warranted ................... 4
    A. Overview .................................. 4
    B. Argument .................................. 5
    C. Remedy Sought ............................. 11

III. Conclusion .................................... 13
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WASHINGTON, D.C. 20554

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TO: Chief, Media Bureau

PETITION FOR RECONSIDERATION

Lisa Burton, Carmen (Robinson) Gonzalez, Betty Maina, Tracey Massay, Osmisa Peacock, Kizzie Sanders, Anthony Scott, Deborah Maria Shepherd, Maria Smith, Gloria Marie Mitchell Taylor, Zelda Tepper and Patrick Young, all citizens of the State of Georgia (collectively referred to as "Marietta Petitioners"), by their attorneys, and pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. §405, and Section 1.106 of the
Commission's Rules, hereby respectfully submit their “Petition for Reconsideration” with respect to the Memorandum Opinion and Order in the above-entitled matter, FCC 02-310, released November 14, 2002, which by a 3-1 vote granted FCC consent to the merger of the broadband division of AT&T Corp. (AT&T) and Comcast Corporation (Comcast). Inasmuch as the Commission totally ignored Marietta Petitioners’ prima facie case that AT&T committed acts of racial discrimination and unfair trade practices, the Marietta Petitioners renew their petition that the Commission dismiss, deny or designate for hearing all said applications. In support whereof, the following is shown:

I. Preliminary Statement

1. Section 405(a) of the Communications Act and Section 1.106(f) require that a “Petition for Reconsideration” “shall be filed within 30 days of the date of public notice of the final Commission action”. The date of public notice of the “Memorandum Opinion and Order”, FCC 02-310, was its release date, November 14, 2002. As the 30th day subsequent to November 14, 2002 was Saturday, December 14, 2002, the due date then becomes the first business day thereafter, or Monday, December 16, 2002. See 47 CFR §1.4(e). Therefore, this pleading is timely filed.
2. The following is the entire treatment by the FCC of the Marietta Petitioners' substantial filing (and the opposition by AT&T and Corncast):

209. Aside from customer service issues, other parties question whether Applicants are fit to hold a government license. . . . In addition, a citizen's coalition from Marietta, Georgia (Marietta Coalition) asserts that AT&T filed unsubstantiated criminal reports resulting in the arrest of several low-income minority citizens of Marietta, Georgia for cable theft. Because AT&T failed to investigate whether the affected parties were lawfully receiving cable before filing such reports, and because AT&T allegedly targeted these consumers based on their race and income, Marietta Coalition argues that AT&T does not meet the Commission's character qualifications. . . .

* * * * *

211. Applicants assert that many of the commenters' criticisms are groundless and beyond the scope of the Commission's merger analysis. . . . Applicants argue that allegations of malicious prosecution should have no bearing upon the merger proceeding. Since Marietta Coalition cannot substantiate the claim, Applicants argue that it cannot form any legitimate basis for the Commission to deny the merger based on character qualifications.

212. Discussion. 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. As for Marietta Coalition and Blawnox's claims, the record evidence does not persuade us that Applicants have actually violated any Federal, state or local law. Specifically, the parties do not raise material questions of fact regarding whether AT&T, or Comcast for that matter, has engaged in any conduct unbecoming a Commission licensee. Further, it appears that the complaining parties appropriately have resorted to other fora to resolve their disputes with Applicants. The arguments presented, therefore, do not form any legitimate basis for the Commission to deny the merger based on character qualification. . . [footnotes omitted].
11. Reconsideration Is Warranted

A. Overview

3. A reading of FCC 02-310 reveals that the three-member Commission majority was so determined to ram through consent to the AT&T-Comcast merger that they never even considered holding a hearing in the matter. It is noteworthy that the Commission referred to Marietta Petitioners as the “Marietta Coalition” (bringing to mind an impromptu street protest), rather than as twelve individuals against each of whom AT&T committed racial discrimination and unfair trade practices. It is also noteworthy that the Commission referred to their legal commission as “Comments” (FCC 02-310 at 81, n. 637), not as a “Petition to Deny”. Thus, it would appear that the three-member majority and their staffs failed to accord the Marietta Petitioners the administrative due process to which each of them is entitled pursuant to Section 309 of the Communications Act and pursuant to the Administrative Procedure Act (5 U.S.C. §551 et seq.).

4. These matters take on a heightened importance as a result of the imbroglio created by Senator Lott’s recent impolitic remarks. African-American and Hispanic-American citizens whose rights to life, liberty and property were
violated by AT&T and its willing accomplices in local government apparently have nobody to hear their legitimate grievances among the majority of this Commission, whose members are of the same political party as Senator Lott.

5. Therefore, Marietta Petitioners implore the three-member majority to take a fresh look at the matters raised in their formal “Petition to Deny”, and to respond to the precise legal arguments made by Marietta Petitioners—legal arguments which the three-member majority utterly ignored or side-stepped

R. Legal Argument

6. The Commission was created by Congress, inter alia, for the following purposes (47 U.S.C. §151):

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges... [emphasis supplied]

7. Pursuant to 47 U.S.C. §310(d), the Commission is required, as a regular part of its public interest analysis, to determine whether the transferees are qualified to hold Commission licenses and whether grant of the application would result in the violation of any Commission rules. With respect to the transferors, their qualifications are re-evaluated in the event that (1)

8. It is clear that the Commission must make a statutory finding that an applicant before it possesses the requisite "character qualifications" to be a licensee. 47 U.S.C. §308(b). In broadcast and broadcast-related cases (47 U.S.C. §309), the FCC has stated that its character analysis would focus on "misconduct which violates the Communications Act or a Commission rule or policy, and ... certain specified non-FCC misconduct which demonstrate[s] the proclivity of an applicant to deal truthfully with the Commission and to comply with [its] rules and policies." Statement of Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1190-91 (1986). In addition to serious violations of the Communications Act and/or the
rules and regulations of the FCC, the Commission indicated that it would also consider non-broadcast misconduct in cases involving: fraudulent representations to government agencies, criminal false statements or dishonesty, and broadcast-related violations of antitrust laws or other laws concerning competition. *Id.*, 102 FCC 2d at 1195-1203.

9. It is well settled that a Commission licensee who engages in racially discriminatory conduct is inimical to the public interest and *prima facie* lacks the basic character qualifications to be a Commission licensee. *Catoctin Broadcasting Corp. of New York*, 2 FCC Rcd 2126 (Rev. Bd. 1987); *Black Broadcasting Coalition of Richmond v. FCC*, 556 F.2d 59 (D. C. Cir. 1977). Indeed, the United States Court of Appeals for the District of Columbia Circuit has plainly stated:

The FCC's concerns, however, cannot be wholly prospective: in implementing its anti-discrimination policy, the Commission of necessity must investigate broadcasters' past employment practices. A documented pattern of intentional discrimination would put seriously into question a licensee's character qualifications to remain a licensee: intentional discrimination almost invariably would disqualify a broadcaster from a position of public trusteeship. Where responsible and well-pleaded claims of discrimination have been made, therefore, the FCC may be required to hold a hearing to resolve these charges before granting a license renewal.

*Bilingual Bicultural Coalition on Mass Media v. FCC*, 595 F.2d 621, 628-29 (D. C. Cir. 1978). And while the instant case involving AT&T deals with AT&T's unfair activities in
depriving minority citizens of their liberty and civil rights rather than employment discrimination—the analogy is apt and clear—a discriminator is not entitled to hold an authorization from the Commission. Furthermore, the Commission has stated that it retains "expansive powers" to deal with discrimination. Memorandum of Understanding between the Federal Communications Commission and the Equal Employment Opportunity Commission, 70 FCC 2d 2320, ¶9 (1978).

Therefore, the conduct of AT&T management and key employees (such as Mr. Phillips) is required to be imputed to AT&T.

11. Unfair trade practices are inimical to the public interest. The Commission has defined an “unfair trade practice” is one that causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or competition, citing 15 U.S.C. § 45(n). Joint FCC/FTC Policy Statement, FCC 00-72, 2000 WL 232230 (March 1, 2000). Although the FCC is not directly responsible for enforcing unfair trade practices laws and regulations, “the Commission must take into account the policies underlying the laws of antitrust and unfair competition”. RKO General, Inc., 78 FCC 2d 1, ¶58 (1980).

12. The Commission's current policy is “where an applicant has allegedly engaged in nonbroadcast misconduct 'so egregious as to shock the conscience and evoke almost universal disapprobation,' such conduct 'might be a matter of Commission concern even prior to adjudication by another body.'” Contemporary Media, Inc. v. FCC, 214 F.3d 187, 192 (D. C. Cir. 2001), and cases cited therein. Clearly, multichannel media provider conduct that is so egregious as
to shock the conscience and evoke almost universal disapprobation must then also be grounds for the Commission to take action against AT&T and its subsidiaries.

13. The Commission has in the past not waited for other governmental agencies to act when it learned about acts of racial discrimination by one of its licensees. In *Catoctin Broadcasting*, *supra*, the owner of a 250 watt AM radio station in Fredonia, New York lost his FCC license because, *inter alia*, he engaged in acts of racial discrimination against a Black woman. So far as the FCC decision relates, that discrimination was proven not before some other governmental agency, but at a field hearing in Jamestown, New York conducted by now-retired Administrative Law Judge Walter Miller. Furthermore, in at least one decision of the District of Columbia Circuit (which we cited in *our Petition to Deny*), a prima facie case of discrimination was made out by citizens merely pointing to data on FCC annual employment reports, and required the FCC to hold a hearing on the license renewal application of the affected licensee/renewal applicant. *Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501 (D. C. Cir. 1988).

14. What we have in this case bears out the age-old complaint about the fundamental fairness of the FCC—there is one FCC for big business, and another FCC for the rest
of us. The FCC bares its fangs and goes after a small fry like Henry Serafyn with hammer and tong, but apparently rolls over for corporate giants like AT&T and Corncast. In a supposedly free and fair society, this cannot stand.

C. Remedy Sought

15. Petitioners seek that the Commission designate the above-captioned applications for appropriate hearing issues. It is respectfully submitted that there is a substantial and material question of fact as to whether AT&T possesses the requisite character qualifications that 47 U.S.C. §308(b) mandates the Commission to find. The appellate precedents require that a hearing be held. The United States Court of Appeals for the District of Columbia Circuit has reversed the Commission on a number of occasions for failing to hold hearings in cases such as the instant case where substantial and material questions of fact as to the basic qualifications of applicants to be FCC licensees had been raised but not resolved. Weyburn Broadcasting Limited Partnership v. FCC, 984 F.2d 1220 (D. C. Cir. 1993); David Ortiz Broadcasting Corp. v. FCC, 941 F.2d 1253 (D. C. Cir. 1991); Astrolite Communications Co. v. FCC, 857 F.2d 1556 (D. C. Cir. 1989); Beaumont Branch of the NAACP v. FCC, 854 F.2d 501 (D. C. Cir. 1988); and
Citizens for Jazz on WRVR, Inc. v. FCC, 775 F.2d 392, 59 RR 2d 249 (D. C. Cir. 1985).

16. *Citizens for Jazz* states the test: a petitioner need not demonstrate a fire to prove a fire, but need only demonstrate "a good deal of smoke" in order to obligate the Commission to hold a hearing on whether the fire exists. 775 F.2d at 397. *Citizens for Jazz* is good law in this Circuit, having been quoted with approval in the relatively recent case of *Serafyn v. FCC*, 149 F.3d 12, 1216 (D. C. Cir. 1998).

17. Therefore, Petitioners urge that the Commission designate the above-captioned applications on appropriate issues, including but not limited to the following:

(1) To determine whether AT&T and/or its subsidiaries, employees or agents engaged in racial discrimination against the residents of the Natchez Trace and Hidden Glen apartment communities in Cobb County, Georgia;

(2) To determine whether AT&T and/or its subsidiaries, employees or agents engaged in unfair trade practices by securing arrest warrants and maliciously prosecuting residents of the Natcher Trace and Hidden Glen apartment communities for not subscribing to AT&T cable television services; and

(3) In light of the facts and circumstances adduced pursuant to issues (1) and (2) above, whether AT&T Corporation and/or its subsidiaries possess the requisite character qualifications to be permitted to transfer control of their cable television system and related licenses and radio stations; and

(4) In light of the facts and circumstances adduced pursuant to issues (1), (2) and (3) above, whether the
Respectfully submitted,

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DATED: December 16, 2002
CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Petition for Reconsideration" were served by either first-class United States mail, postage prepaid (or by e-mail as shown by a "+" sign) on this 16th day of December, 2002, upon the following:

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