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REDACTED – FOR PUBLIC INSPECTION

June 28, 2002

RECEIVED

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

JUN 28 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Applications for Consent to the Transfer of Control of Licenses From Comcast Corporation and AT&T Corp. to AT&T Comcast Corporation
MB Docket No. 02-70

Dear Ms. Dortch:

This letter provides notice for the public record that undersigned counsel to Comcast Corporation ("Comcast") filed today certain confidential material under seal and subject to the Protective Order, DA 02-734, in the above-referenced docket.

The confidential material filed under seal responds to Request No. L.1. in the Document and Information Request attached to the letter dated June 11, 2002, from Royce D. Sherlock to James R. Coltharp, Comcast, and Betsy J. Brady, AT&T. The unredacted, confidential version of this filing is being hand delivered to you, as well as to Roger Holberg and Linda Senecal of the Media Bureau, as required by the Protective Order. The confidential version will be made available for inspection pursuant to the terms of the Protective Order at the office of Davis Polk and Wardwell, 1300 Eye Street NW, Washington, DC 20005. Arrangements may be made by contacting the undersigned at 202-777-7723.

Two copies of the filing, as redacted, are submitted herewith pursuant to the Protective Order. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,



A. Renée Callahan

cc: Roger Holberg
Linda Senecal

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RESPONSE OF AT&T CORP. AND COMCAST CORPORATION
TO JUNE 11, 2002 DOCUMENT
AND INFORMATION REQUEST NO. L.1
MB Docket No. 02-70

L. Section 652 Compliance

1. The Applicants have stated that the proposed merger complies with Sections 652(a) and (b) of the Communications Act of 1934, as amended, and the Commission's rules implementing these provisions of the Act. Please provide a map or other data which will allow us to verify compliance with these provisions of the Act and the Commission's rules.

Comcast Corporation ("Comcast") and AT&T Corp. stated in the Application that neither Comcast nor AT&T Broadband "owns a financial interest greater than 10% or has any management interest in a LEC providing telephone exchange service within any of the other company's franchise areas. Thus, the merged entity will fully comply with the Commission's [LEC-cable] buyout restrictions."¹

Section 652(a) of the Communications Act of 1934, as amended, generally prohibits a local exchange carrier ("LEC") from acquiring "any cable operator providing cable service within the local exchange carrier's telephone service area." 47 U.S.C. § 572(a). Section 652(b) generally prohibits a cable operator from acquiring "any local exchange carrier providing telephone exchange service within such cable operator's franchise area." 47 U.S.C. § 572(b). The Commission has emphasized that section 652 only applies to buyouts and does not prohibit a LEC from itself providing cable service or a cable operator from providing local exchange service. See *SBC-Ameritech Merger Order*, 14 FCC Rcd 14712, ¶ 564 (1999), *vacated on other grounds sub nom. Ass'n of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001); *Southeast Telephone, Ltd.*, 12 FCC Rcd 2561 (1996). Moreover, the buyout prohibition is only triggered "where the LEC's telephone service area overlaps with the area in which the cable operator is providing cable

¹ See *Applications for Consent to the Transfer of Control of Licenses, Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Applications and Public Interest Statement at 51-52 (filed Feb. 28, 2002) ("Application"). AT&T Consumer Services and AT&T Business Services, two other divisions of AT&T Corp., offer various telecommunications services. The assets of and services provided by these two divisions will be retained by AT&T Corp. after AT&T Broadband's merger with Comcast.

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service,” and also only applies to the provision of “telephone exchange service.” *AT&T-TCI Merger Order*, 14 FCC Rcd 3160, ¶¶ 133-134 (1999).

Neither AT&T Broadband nor Comcast provides telephone exchange service outside of its respective cable franchise areas.² In analyzing whether section 652 would be implicated by their merger, the parties consequently investigated whether any of their franchise areas overlap, and, if so, whether either company provides telephone exchange service in such overlapping areas. Based on this investigation, the parties determined that neither AT&T Broadband nor Comcast is affiliated with, or has a management interest in, a LEC providing telephone exchange service within the few areas where the two companies have overlapping cable franchises. In particular, there are only 12 instances where Comcast and AT&T Broadband will each own attributable interests in cable systems holding franchises to serve the same geographic areas.³ These 12 areas are:

- (1) [Redacted];
- (2) [Redacted];
- (3) [Redacted];
- (4) [Redacted];
- (5) [Redacted];
- (6) [Redacted];
- (7) [Redacted];
- (8) [Redacted];
- (9) [Redacted];
- (10) [Redacted];
- (11) [Redacted]; and
- (12) [Redacted].

² Comcast provides private line, exchange access, and inter- and intra-LATA toll services in some areas outside of its cable franchise areas, but none of these services falls within the statutory definition of “telephone exchange service.” *AT&T-TCI Merger Order*, 14 FCC Rcd 3160, ¶ 135 (1999).

³ These overlaps involve “non-consolidated” AT&T Broadband cable systems, *i.e.*, systems in which AT&T Broadband has a 50% or less ownership interest. There are no franchise overlaps between Comcast cable systems and AT&T Broadband’s owned, operated or consolidated cable systems, *i.e.*, systems in which AT&T Broadband has a greater than 50% ownership interest. See *Applications for Consent to the Transfer of Control of Licenses, Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, AT&T and Comcast Reply to Comments and Petitions to Deny Applications for Consent to Transfer Control at 54 n.153 (filed May 21, 2002) (“Reply Comments”).

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Neither AT&T Broadband nor Comcast owns a financial interest greater than 10%, or has a management interest in, a LEC providing telephone exchange service within any of these 12 areas.⁴

AT&T currently owns a limited partnership interest in Time Warner Entertainment, L.P. (“TWE”), and AT&T Broadband and Comcast have identified 22 instances where Comcast and a TWE-affiliated cable system hold franchises to serve the same geographic areas.⁵ These 22 areas are:

- (1) [Redacted];
- (2) [Redacted];
- (3) [Redacted];
- (4) [Redacted];
- (5) [Redacted];
- (6) [Redacted];
- (7) [Redacted];
- (8) [Redacted];
- (9) [Redacted];
- (10) [Redacted];
- (11) [Redacted];
- (12) [Redacted];
- (13) [Redacted];
- (14) [Redacted];
- (15) [Redacted];
- (16) [Redacted];
- (17) [Redacted];
- (18) [Redacted];
- (19) [Redacted];
- (20) [Redacted];
- (21) [Redacted]; and
- (22) [Redacted].

As set forth in their Application, AT&T Broadband and Comcast are committed to divesting AT&T Broadband’s interest in TWE and, in the event the TWE interest is not

⁴ Because AT&T Broadband will no longer be affiliated with AT&T Corp. after the merger, the analysis in this letter does not include the telephone exchange services of AT&T Corp. or its affiliates other than AT&T Broadband. See Application at 16-17.

⁵ See Reply Comments at 54 n.153 (filed May 21, 2002).

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divested prior to the closing of their merger, the Applicants are prepared to take the appropriate steps to ensure that the TWE interest is insulated under the Commission's rules. In any event, neither AT&T Broadband nor Comcast owns a financial interest greater than 10%, or has a management interest in, a LEC providing telephone exchange service within any of these 22 areas.

It should also be noted that section 652's buyout prohibition only applies to those overlapping cable/LEC systems where the LEC or its affiliate was providing telephone exchange service as of January 1, 1993.⁶ The telephone exchange services affiliated with Comcast and AT&T Broadband began operation after this date. The prohibition therefore would not apply to the AT&T Comcast merger even assuming the two companies had overlapping cable/LEC systems.

⁶ See 47 U.S.C. § 572(a) & (e) (prohibiting a LEC from acquiring a cable operator that provides cable service within the LEC's "telephone service areas," defined in relevant part to mean "the area within which such carrier provided telephone exchange service as of January 1, 1993"). See also *AT&T-TCI Merger Order*, 14 FCC Rcd 3160, ¶ 136 (1999) (finding that section 652's buyout prohibition did not apply to a competitive LEC that was not providing "telephone exchange service" as of January 1, 1993, because, "by definition, [the LEC] did not have a 'telephone service area' within the meaning of the statute"). Moreover, section 652's buyout prohibition should be construed to apply only to mergers between *incumbent* LECs and the existing in-region cable operator.