

**DISSENTING STATEMENT  
OF COMMISSIONER MICHAEL J. COPPS**

*Re: 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  
MB Docket No. 02-70*

The sheer economic power created by this mega-combination, and the opportunities for abuse that would accompany it, outweigh the very limited public interest benefits that either the Applicants or the majority find here. The more I review the issues at stake in this proposal, the more I am persuaded it should not go forward. I therefore dissent from this transfer of control.

Let me state at the outset that I see no malevolent objectives or intent to do harm on the part of the Applicants, and my concerns should in no way be read to impugn their character or the many contributions these companies have individually made to our nation's commercial, and its social, development. Nor do I argue that all of the potential harms posited in the Commission's order will necessarily come to pass. Additionally, I commend applicants for an admirable job in presenting their case with both comprehensiveness and candor, convinced in their minds of the soundness of their agreement. But when all is said and done, any public interest benefits that may potentially issue from this huge consolidation of commercial power are vastly outweighed by the potential for significant harm to consumers, the industry, and the country.

The Applicants point to four major public interest benefits of the proposed merger: (1) accelerated deployment of facilities-based high-speed internet service, digital video, and other broadband services; (2) accelerated deployment of facilities-based local telephone competition; (3) an increased supply of local and regional programming; and (4) greater competition in markets for local, regional and national advertising. Yet, of those four benefits, the majority finds the latter three to be less than compelling based on the record before it. And the Applicants themselves admit that consumers should not anticipate lower cable prices as a result of the merger, but only that the expected size of cable price increases would be reduced by the merger. Economic efficiencies that Applicants claim would be derived from this consolidation should allow more than that when it comes to disciplining cable rates. Yet rates continue to climb, undisciplined by either the cable industry or, in fact, by satellite providers, who some thought would provide an external brake on rising cable rates.

The *Order* is telling in its handling of potential harms that could attend this combination. Time and again it cites such potentials only to conclude that there is insufficient evidence in the record to make a specific finding that harm would occur. Here are just two examples:

- While recognizing that access to particular popular programming can be important for MVPDs to compete, and that cable operators have incentive to secure exclusive programming contracts which could be used to deny competing MVPDs and their customers access to such programming, the *Order* declines to impose a condition on the merged entity's ability to do so, noting that, even without merging, the Applicants individually already have sufficient presence in their respective franchise areas to secure such exclusive contracts.
- The *Order* also notes the substantial possibility that the Applicants may have engaged in questionable marketing tactics and targeted discounts designed to eliminate MVPD competition, and acknowledges that such practices may harm consumers. Here again, the *Order* states, based on the record presented, that, even without merging, the Applicants individually already have the incentive and ability to target pricing in an anticompetitive manner.

Because the majority finds insufficient evidence to conclude that these types of harms will be exacerbated by the merger, it declines to impose any conditions that might alleviate the possibility of such harm in the future. Indeed, the absence of such conditions only enlarges the potential for such abuse in the new combined company. A viable public interest finding demands more rigor than this.

I am particularly concerned about the anticompetitive effects of this combination on programming. Although there is general agreement among interested parties that the TWE Divestiture Trust alleviates concerns about the merger's potential for anticompetitive impact on video programming markets, there is nothing in place to preclude the merged entity from investing in other programming interests in the future. Indeed, the whole dynamic of the industry will – in fact, must – pull the combined company in that direction. Its expanded control over the channels of program distribution could afford it the ability not only to influence but perhaps to determine on its own what programming will be produced and offered to the consuming public, and at what cost. That is just too much raw commercial power.

Applicants cite economic efficiencies that will result from their agreement and how these will benefit the combined company's ability to do business. Undoubtedly, there are some such efficiencies. Yet, while Comcast talks about the need to upgrade and modernize AT&T's broadband deployment, one wonders why this corporate resuscitation is better achieved by conglomeration and \$30 billion of additional debt rather than through competition in the marketplace.

As I've said before, mergers and acquisitions are not inherently bad. However, it strikes me as bedrock that our review of proposed consolidations must venture beyond economic efficiencies if we are to ensure that combinations serve the public interest. I believe that each proposed combination needs to be looked at on its own merits within its own individual set of circumstances. I also believe that the public interest test must be rigorously applied to each proposed transaction. This is what I have attempted to do

here. Unfortunately, I do not find that the transaction at issue passes this test. I therefore respectfully dissent.