



# STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL  
TEN FRANKLIN SQUARE  
NEW BRITAIN, CT 06051

DOCKET NO. 02-03-10 JOINT APPLICATION OF AT&T CORP., COMCAST CORPORATION AND AT&T COMCAST CORPORATION FOR APPROVAL OF A CHANGE OF CONTROL

September 4, 2002

By the following Commissioners:

Jack R. Goldberg  
John W. Betkoski, III  
Donald W. Downes

**DECISION**

## DECISION

### **I. INTRODUCTION**

#### **A. SUMMARY**

In this Decision, the Department of Public Utility Control approves the joint application of AT&T Corp. (AT&T), Comcast Corporation (Comcast; jointly, the Applicants) and AT&T Comcast Corporation (AT&T Comcast) whereby AT&T Comcast will exercise control and become the holding company of the Connecticut community antenna television companies currently serving the franchise areas held by AT&T Broadband Corp. and Comcast. This application is part of a \$73 billion transaction whereby AT&T Comcast will become the new public parent company of AT&T Broadband and Comcast nationwide. No cable television franchises will be transferred as a result of this transaction and the ten AT&T Broadband and Comcast franchise areas in Connecticut will continue to be held by the current franchisees.

#### **B. APPLICANTS' PROPOSAL**

##### **1. Summary of Application**

By application filed with the Department of Public Utility Control (Department) on March 11, 2002 (Application), pursuant to § 16-47 of the General Statutes of Connecticut (Conn. Gen. Stat.), the Applicants requested authority for AT&T Comcast, a subsidiary jointly formed by AT&T and Comcast, to exercise control and become the holding company over nine community antenna television (CATV or cable) companies (the Connecticut CATV companies) currently serving five Connecticut franchise areas held by AT&T Broadband Corp. (AT&T Broadband) and five Connecticut franchise areas held by Comcast, respectively. This request is part of a larger transaction valued at \$73 billion whereby, upon receipt of all applicable approvals, AT&T Comcast would become the new public parent company of AT&T Broadband and Comcast nationwide.

Pursuant to an Agreement and Plan of Merger dated December 19, 2001 (December 19, 2001 Agreement) between the Applicants, AT&T Comcast's pro forma corporate structure would evolve as follows: AT&T would assign and transfer to AT&T Broadband all of the assets and liabilities of AT&T's broadband (cable and cable telephony) business. AT&T would then spin-off AT&T Broadband to the shareholders of AT&T. Immediately following the spin-off, AT&T Broadband would merge with AT&T Broadband Acquisition Corp., with AT&T Broadband surviving. At the same time, Comcast would merge with Comcast Acquisition Corp., with Comcast surviving.<sup>1</sup> Following these steps, AT&T Broadband and Comcast would be wholly-owned subsidiaries of AT&T Comcast.<sup>2</sup>

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<sup>1</sup> AT&T Broadband Acquisition Corp. and Comcast Acquisition Corp are newly formed, wholly-owned subsidiaries of AT&T Comcast.

<sup>2</sup> At the option of AT&T Comcast, AT&T Broadband Holdings, LLC, could become an intermediate holding company between AT&T Comcast and AT&T Broadband for the purpose of future financing needs and issues related to tax restructuring. Application and Public Interest Statement filed with the Federal Communications Commission, p. 6.; Tr. 4/29/02, p. 38.

Upon completion of the proposed merger, current AT&T shareholders would own approximately 53% of the outstanding equity in AT&T Comcast. Current Comcast shareholders (including Sural LLC)<sup>3</sup> would own approximately 42% of AT&T Comcast's economic interest.<sup>4</sup> The remaining 5% equity ownership would belong to Microsoft Corporation (Microsoft).<sup>5</sup> Brian L. Roberts, through control of Sural LLC, would hold a nondilutable 33.3% of the combined voting power of AT&T Comcast stock.<sup>6</sup> AT&T shareholders would own shares representing either 58% or 54% of AT&T Comcast's voting power, while Comcast shareholders (other than Sural LLC) would own either 3.37% or 7.35% of the vote.<sup>7</sup> The balance of the voting power in AT&T Comcast (less than 5%) would be held by Microsoft regardless of the capital structure selected by Comcast's shareholders.<sup>8</sup>

The Applicants believe that the combination of AT&T Broadband with Comcast will accelerate broadband deployment in areas such as telephony, high-speed Internet service, video-on-demand, and other interactive television services, as well as achieve substantial operating synergies that will serve the public interest. No modifications of the existing franchise agreements of the Connecticut CATV companies are sought as a result of this Application.

## 2. Description of Applicants

AT&T is a New York corporation. AT&T Broadband, a wholly-owned subsidiary and one of AT&T's major operating units, is a leading provider of cable television service, cable Internet service, and cable telephony service, and consists primarily of the combined assets and business of TCI and MediaOne.<sup>9</sup> As of December 31, 2001, AT&T Broadband's wholly-owned and consolidated systems served approximately 13.6 million customers and passed approximately 24 million homes. In Connecticut, AT&T Broadband serves 260,000 subscribers, while passing 388,000 homes, and holds five certificates of public convenience and necessity, indicated as follows:

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<sup>3</sup> Sural LLC is controlled by, and represents the interest of Brian L. Roberts, President of Comcast, which owns all outstanding shares of Comcast Class B common stock.

<sup>4</sup> Comcast shareholders would receive one share of the corresponding class of AT&T Comcast common stock in exchange for each of their Comcast common shares (i.e., Comcast Class A, Comcast Class B, and Comcast Class A Special). Application, Exhibit 1, Chapter 1, p. 12 and Chapter 3, p. 1.

<sup>5</sup> Microsoft's economic interest would result from its ownership of quarterly income preferred securities (QUIPS) that would be converted into 115 million shares of AT&T Comcast common stock. Application, Exhibit 1, Chapter 1, p. 17.

<sup>6</sup> The pre-merger Class B shares held by Sural LLC represent a Comcast voting power of 86.7%.

<sup>7</sup> The actual voting shares in AT&T Comcast to be owned (post-merger) by former Comcast and AT&T shareholders depends on the final capital structure approved by holders of Comcast Class A and Class B common stock, which may be either the "preferred" or "alternative" structure. Under the preferred capital structure, the fully-diluted voting percentage to be held by (former) Comcast shareholders and option holders would correspond to 3.37%. Under the alternative structure, the degree of voting power (post-merger) to Comcast shareholders would be 7.35%. Response to Interrogatory CATV-3, parts (a) and (b).

<sup>8</sup> Tr. 4/29/02, p. 36.

<sup>9</sup> See Decision dated January 6, 1999, in Docket No. 98-09-15, Application of AT&T Corp. and Tele-Communications, Inc. for Approval of a Change of Control.

- United Cable Television Services Corporation d/b/a AT&T Broadband/Plainville, which serves the towns of Avon, Berlin, Bristol, Burlington, Canton, Farmington, New Britain and Plainville (the Plainville franchise area);
- United Cable Television Services Corporation d/b/a AT&T Broadband/Hartford, which serves the towns of Bloomfield, East Hartford, Hartford, Simsbury, West Hartford and Windsor (the Hartford franchise area);
- United Cable Television Corporation of Eastern Connecticut d/b/a AT&T Broadband/Vernon, which serves the towns of Andover, Bolton, Ellington, Hebron, Marlborough, Tolland and Vernon (the Vernon franchise area);
- AT&T Broadband CTSI, LLC (f/k/a Community Television Systems, Inc.) d/b/a AT&T Broadband/Branford, which serves the towns of Branford, East Haven, Guilford, Madison, North Branford, North Haven and Wallingford (the Branford franchise area); and
- Westmarc Development Joint Venture d/b/a AT&T Broadband/Sharon, which serves the towns of Canaan, Norfolk, North Canaan, Salisbury and Sharon (the Sharon franchise area).

Comcast, a Pennsylvania corporation, is currently the third largest cable operator in the United States, with approximately 8.5 million subscribers and 13.9 million homes passed as of December 31, 2001. In Connecticut, Comcast serves 194,000 subscribers with 267,000 homes passed, and holds five certificates of public convenience and necessity,<sup>10</sup> indicated as follows:

- Comcast Cablevision of Clinton, Inc., which serves the towns of Chester, Clinton, Deep River, Durham, Essex, Haddam, Killingworth, Old Saybrook and Westbrook (the Clinton franchise area);
- Comcast Cablevision of Danbury, Inc., which serves the towns of Bethel, Danbury and Ridgefield (the Danbury franchise area);
- Comcast Cablevision of Groton, Inc., which serves the towns of Groton, Ledyard, North Stonington, Stonington and Voluntown (the Groton franchise area);

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<sup>10</sup> See the Department's May 13, 1986 Decision in Docket No. 86-02-09, Joint Application for the Approval to Sell the Stock of Group W to Comcast Corporation, et al., and its December 2, 1992 Decision in Docket No. 88-06-25, Application of Comcast Corporation and Tele-Communications, Inc. for Approval of Acquisition of Control over SCI Holdings, Inc., et al - Request to Reopen and Modify a Portion of the Supplemental Decision, dated July 26, 1989. The Department's May 14, 1997 Decision in Docket No. 97-03-12, Application of Comcast Corporation, et al. for Approval of a Holding Company, approved Brian Roberts' voting control (individually and through Sural Corporation) in Comcast.

- Comcast Cablevision of Middletown, Inc., which serves the towns of Cromwell, East Hampton, Middlefield, Middletown and Portland (the Middletown franchise area); and
- Comcast Cablevision of New Haven, Inc., which serves the towns of Hamden, New Haven and West Haven (the New Haven franchise area).

The Applicants assert that the combination of Comcast with AT&T Broadband would create a leading entertainment, communications and information company, with 22 million subscribers and 38 million homes passed. The combined company would have a presence in 41 states, and a leading presence in eight of the ten largest U.S. cable marketing areas. The physical plant would be 80% upgraded to 550 MHz and 67% upgraded to 750 MHz which would, according to the Applicants, ensure that AT&T Comcast would be well positioned for developing and bringing to market new and innovative products and services for consumers.<sup>11</sup> In Connecticut, the number of subscribers served by the combined company would be approximately 1% of the total number of subscribers served nationwide.

### **C. PARTIES AND INTERVENORS**

The Department recognized the following as parties to the proceeding: AT&T Corp., 32 Avenue of the Americas, New York, New York 10013; Comcast Corporation, 1500 Market Street, Philadelphia, Pennsylvania 19102; AT&T Comcast Corporation, 1500 Market Street, Philadelphia, Pennsylvania 19102; and the Office of Consumer Counsel, Ten Franklin Square, New Britain, Connecticut 06051. The Department designated the advisory councils for each Connecticut Comcast and AT&T Broadband franchise area as intervenors. Also, the Statewide Cable Advisory Council requested and was granted intervenor status.

### **D. CONDUCT OF THE PROCEEDING**

Pursuant to a Notice of Hearing dated April 10, 2002, a hearing on the Application was convened at the offices of the Department, Ten Franklin Square, New Britain, Connecticut, on April 29, 2002. The Department issued a draft Decision in this matter on August 21, 2002. Parties and Intervenors were given the opportunity to file written exceptions to and present oral arguments on the draft Decision.

### **E. PUBLIC COMMENT**

At the April 29, 2002 hearing, the Chairman of the Statewide Cable Advisory Council (SCAC) suggested that the Applicants should commit to or demonstrate some public interest, such as a local rate freeze, as a result of the proposed transaction.<sup>12</sup> Additionally, the SCAC Chairman suggested that the Applicants should commit to not consolidating the subject Connecticut franchise areas, and to provide local customer service instead of operating out-of-state call centers.<sup>13</sup>

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<sup>11</sup> Application, Exhibit 1, Chapter 2, p. 8.

<sup>12</sup> Tr. 4/29/02, pp. 8 and 17.

<sup>13</sup> *Id.*, pp. 13 and 15.

The Chairman of the AT&T Plainville Advisory Council stated that she hoped that the positive relationship between the Plainville Advisory Council and AT&T would continue if the proposed transaction were approved by the Department. She also expressed concern regarding escalation of cable rates.<sup>14</sup>

An AT&T subscriber wrote to the Department in opposition to the planned transaction because of anticipated rate hikes that would follow, while another AT&T subscriber described recent cable reception problems and difficulty getting AT&T to adequately address his concerns.

The Town of Berlin wrote to express concern regarding recent staff reductions at a local AT&T facility. The Town of Berlin requested that if the proposed transaction is approved, the Department impose conditions specifically requiring, or in the alternative encouraging, AT&T Comcast to retain jobs at its Berlin facility to help assure local service quality. The Town of Berlin also requested that AT&T and Comcast elaborate on their plans to introduce high-speed data services to the local business community.

The Communications Workers of America submitted a letter asking a series of pre-merger and post-merger operational questions regarding customer service, financing, programming, and other issues.

The Connecticut Television Network (CTN), which videotapes local government in action, urged the Department to request that AT&T Comcast be required to set aside a channel devoted to state-level government access on each of its Connecticut franchise area channel line-ups as a condition for application approval. State House Majority Leader David B. Pudlin wrote in support of CTN's proposal.

## **II. DEPARTMENT ANALYSIS**

### **A. LEGAL REQUIREMENTS**

The Applicants seek approval of their proposal pursuant to Conn. Gen. Stat. § 16-47. Conn. Gen. Stat. § 16-47 addresses generally the ability of a corporation, association, partnership, trust or similar organization, or person, which attempts to directly or indirectly control a public service company, whether through ownership of voting securities, the ability to effect change in the composition of its board of directors, or otherwise. The criteria for approving an application filed under Conn. Gen. Stat. § 16-47 is detailed in Conn. Gen. Stat. § 16-47(d), which states in pertinent part that the Department, in its review of such an application:

. . . shall, in a manner which treats all parties to the proceeding on an equal basis, take into consideration (1) the financial, technological and managerial suitability and responsibility of the applicant, [and] (2) the ability of the . . . community antenna television company or holding company to provide safe, adequate, and reliable service to the public

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<sup>14</sup> *Id.*, pp. 21 and 22.

through the company's plant, equipment and manner of operation if the application were to be approved. . . .

State regulations applicable to applications filed under Conn. Gen. Stat § 16-47 require that certain information accompany the application,<sup>15</sup> including financial data, a transaction description and associated agreements. Other required data includes a statement of the benefits, including rates, standards of service and efficiency and adequacy that would result to customers and stockholders, other organizational data, board of director data, description of the applicants' operational and management experience, description of the proposed operations of the applicants for the first calendar year following consummation of the proposed transaction (including but not limited to employment levels and office and service center locations), and details of all changes from the existing operations of the affected companies.

The Department will assess the Application under Conn. Gen. Stat. § 16-47 and review AT&T Comcast Corporation's qualifications to own and control Comcast and AT&T Broadband and, therefore, the ten Connecticut CATV franchises currently owned by AT&T Broadband and Comcast Corporation, as discussed below.

## **B. FINANCIAL SUITABILITY**

Pursuant to the December 19, 2001 Agreement, the Applicants have agreed to combine their business through a sequence of transactions, whereby AT&T Comcast would become the parent company of Comcast and AT&T Broadband, and the ultimate parent company of the Connecticut CATV companies. Comcast believes that the proposed structure of the transaction, whereby AT&T Broadband would be spun-off and merged with a subsidiary of AT&T Comcast (i.e., AT&T Broadband Acquisition Corp.), as opposed to the spin-off and subsequent merger with AT&T's communications business, reduces the potential exposure of AT&T Comcast to AT&T liabilities not attributable to AT&T's broadband business.<sup>16</sup> The Department concurs that the AT&T Broadband spin-off is prudent and would appear to lessen AT&T Comcast's exposure to the contractual liabilities of AT&T's communications business.

The proposed merger is valued at approximately \$73 billion and includes the assumption by AT&T Comcast of indebtedness totaling \$24 billion. To accomplish the transaction, AT&T Comcast would issue approximately \$49 billion in common stock equity. If the preferred capital structure is approved, AT&T Comcast would issue up to 1.372 billion shares of its Class A common stock as follows: 1.235 billion shares to AT&T shareholders for their shares of AT&T Broadband common, 22 million shares to Comcast shareholders for their Comcast Class A common stock, and 115 million shares to an affiliate of Microsoft in the QUIPS exchange transaction. If the alternative capital structure is approved, AT&T Comcast would still issue up to 1.372 billion shares of common stock, but of those shares only 22 million would be issued as AT&T Comcast Class A (on a one-for-one basis) to existing Comcast Class A common shareholders. The balance of the equity consideration, up to 1.35 billion shares, would be issued as

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<sup>15</sup> See §§ 16-47-1 through 16-47-5 of the Regulations of Connecticut State Agencies (Conn. Agencies Regs.).

<sup>16</sup> Application, Exhibit 1, Chapter 2, p. 9.

AT&T Comcast Class C common stock (i.e., 1.235 billion to AT&T shareholders and 115 million for the QUIPS exchange). In either scenario, 0.34 shares of AT&T Comcast common stock would be issued for each outstanding share of AT&T Broadband common held by AT&T shareholders.<sup>17</sup>

The difference between the preferred and alternative capital structure manifests as an issue of liquidity and voting power to existing Comcast Class A common stockholders. Under the preferred capital structure, current shareholders of Comcast Class A common stock would have decreased per share voting power relative to that under the alternative structure, but far greater liquidity would attach to their ownership shares in AT&T Comcast. The Comcast Board of Directors believes that the preferred structure is in the best interests of Comcast Class A common stockholders.<sup>18</sup> The Applicants believe that the preferred capitalization has a strong likelihood of being approved.<sup>19</sup> The Department agrees that the benefit to Comcast Class A common stockholders from owning shares in an extremely liquid class of stock under the preferred structure outweighs the increased per share voting power of AT&T Comcast Class A common stock under the alternative structure. However, either capital structure would be suitable for AT&T Comcast.

The valuation approach used to establish the worth of AT&T's stock was based on developing a fair acquisition multiple of earnings before interest, taxes, depreciation and amortization (EBITDA) of estimated 2002 AT&T Broadband revenues. The analysis also included valuation on a per subscriber basis in terms of the number of AT&T Broadband subscribers to be acquired and a valuation based on a five-year discounted cash flow of AT&T Broadband. The implied market value of AT&T Broadband as a result of the various analyses conducted by Morgan Stanley, JPMorgan and Merrill Lynch ranged from \$46 billion (2002 estimated cable EBITDA multiples basis) to \$92 billion (discounted cash flow analysis including synergies). At \$73 billion, the proposed bid by Comcast for AT&T Broadband falls well within these market valuations and results in an EBITDA multiple (i.e., 14 times) and a per subscriber value (i.e., \$4,139) that are both within a reference range established by similar precedent transactions involving other companies in the broadband industry.<sup>20</sup>

None of the advisory councils or the OCC questioned the financial suitability of AT&T Comcast.<sup>21</sup> Upon reviewing the financial qualifications of the Applicants and all

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<sup>17</sup> The exchange ratio assumes roughly 3.6 million shares AT&T Broadband common stock outstanding, and would be subject to minor adjustment based on the price of AT&T and Comcast Class A common stock immediately prior to the AT&T Broadband spin-off and on the actual number of AT&T shares outstanding prior to closing. The final exchange ratio would also recognize the extent to which AT&T shares currently held by Comcast are retained by Comcast and converted into exchangeable preferred stock. Responses to Interrogatories CATV-1(d) and CATV-2; Application, Exhibit 1, Chapter 1, p. 27, and Chapter 2, p. 10.

<sup>18</sup> If the preferred structure is implemented, there would be approximately 1.372 billion shares of AT&T Comcast Class A common stock outstanding. By contrast, under the alternative structure there would only be 22 million outstanding shares of AT&T Comcast Class A common stock, all of those held by (former) shareholders of Comcast's Class A common stock. Application, Exhibit 1, Chapter 2, pp. 10 and 11.

<sup>19</sup> Response to Interrogatory CATV-3(d).

<sup>20</sup> Application, Exhibit 1, Chapter 4, pp. 7-9.

<sup>21</sup> OCC Brief, p. 7.

the supporting financial statements, the Department similarly concludes that AT&T Comcast would be financially suitable to become a holding company over the Connecticut CATV companies pursuant to Conn. Gen. Stat. § 16-47.

### **C. MANAGERIAL SUITABILITY**

The Applicants state that AT&T Comcast has the managerial suitability and responsibility to become the holding company over the AT&T Broadband and Comcast CATV companies in Connecticut, noting that AT&T and Comcast have already been approved as holding companies in Connecticut and have been deemed managerially suitable by the Department in prior<sup>22</sup> Conn. Gen. Stat. § 16-47(d) proceedings.<sup>23</sup> The Applicants also state that AT&T Broadband and Comcast are each among the largest CATV and broadband service providers in the United States and that their local, regional and national management possesses significant experience managing advanced broadband networks.<sup>24</sup>

According to the Applicants, when federal restrictions on joint planning efforts are lifted,<sup>25</sup> AT&T Comcast plans to provide notice to the Department, Advisory Councils and the public of changes in practices and policies in accordance with applicable laws and customary procedures.<sup>26</sup> Notwithstanding antitrust prohibitions, AT&T Comcast has no plans to change any of the rates, services, programming packages, customer service policies or community access practices currently in place as a result of the merger within the first six months after the planned transaction is consummated. Moreover, the Applicants state that changes to rates, programming, customer services policies or community access practices are neither required nor anticipated as a direct result of the merger, but AT&T Comcast would reserve all post merger rights to make service changes in accordance with franchise area and market needs and applicable law.<sup>27</sup>

Following the proposed change of control, the franchises of the Connecticut CATV companies would continue to be held by the current franchisees.<sup>28</sup> The Applicants have not made any plans, at this time, concerning the business names for the Connecticut CATV companies.<sup>29</sup> The Applicants seek no changes to extant franchise agreements with the Department, and would continue to operate the franchises in compliance with these agreements and applicable state and federal law.<sup>30</sup> Neither Comcast or AT&T has been fined or cited for any violation of consumer protection laws in any state or federal jurisdiction.<sup>31</sup>

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<sup>22</sup> Application, pp. 2-5; footnotes 9 and 10.

<sup>23</sup> Application, pp. 2 and 4; Comcast Letter and Brief dated May 22, 2002.

<sup>24</sup> Application, pp. 2 and 5.

<sup>25</sup> AT&T and Comcast state that federal law (primarily the Hart-Scott-Rodino Antitrust Improvement Act of 1976, 15 U.S.C. § 18a, and related antitrust statutes) prohibited them from discussing post-merger operational details. Tr. 4/29/02, pp. 45-52, 100-102.

<sup>26</sup> Tr. 4/29/02, pp. 88-90, 93 and 94, 115 and 116.

<sup>27</sup> Application, p. 11; Response to Interrogatory CATV-16; Tr. 4/29/02, pp. 44, 45, and 53.

<sup>28</sup> Application, p. 11; Response to Interrogatory CATV-5.

<sup>29</sup> *Id.*

<sup>30</sup> Response to Interrogatory CATV-6; Tr. 4/29/02, pp. 34, 44 and 45.

<sup>31</sup> Application, Exhibit Nos. 15 and 16; Tr. 4/29/02, p. 96.

The Applicants state that nothing in the record calls into question the ability of the AT&T Comcast to own the operating CATV companies in a manner that will fully comport with applicable laws, regulations and policies.<sup>32</sup> The Applicants have also committed to submitting quarterly reports concerning operational changes for the Connecticut CATV companies, if any, for a one year period following closing of the merger.<sup>33</sup>

Several of the AT&T and Comcast advisory councils commented on the Applicants' proposal. The Plainville Area Cable Television Advisory Council took no position on the Application.<sup>34</sup> The Danbury Bethel Ridgefield Cable Advisory Council (DBRCAC) made no resolution regarding the Application, but suggested that the Department verify each company's compliance with all terms of their extant Connecticut franchise agreements. In recognition of the financial efficiencies and benefits that would flow to the Applicants if the merger were approved, DBRCAC recommended a rate freeze for a period of two years.<sup>35</sup> The Cable Advisory Council of South Central Connecticut expressed no concerns regarding the proposed transfer but expects that AT&T Comcast would honor all commitments among local community access groups and the franchisee, and that AT&T's advisory council liaison would remain post-merger.<sup>36</sup>

The advisory council serving the communities of New Haven, West Haven and Hamden expressed concern that approval of the transaction might lead to increased rates.<sup>37</sup> Finally, the Hartford Area Cable Television Advisory Council (HACTAC) notes that the Applicants have proposed no changes in existing franchise agreement terms and that the proposal involves merely a transfer of control.<sup>38</sup> HACTAC indicated that some of its membership was disappointed that AT&T moved its Berlin call center operations out of state with little notice, and questioned whether the trend toward out-of-state customer service would continue.<sup>39</sup>

In determining AT&T Comcast's suitability to manage the Connecticut CATV Companies, the Department reviewed the specific local performance of Comcast and AT&T personnel in operating their respective Connecticut CATV franchises. Comcast acquired its Middletown and Danbury franchise areas in 1986, and acquired the New Haven, Clinton, and Middletown franchises in 1989 from Storer Communications.<sup>40</sup> Each of the five Comcast cable franchises has recently concluded or is near completion of a franchise renewal proceeding.<sup>41</sup> Similarly, AT&T Broadband's management and

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<sup>32</sup> Neither AT&T or Comcast had a transfer request denied or subject to material conditions as of the April 29, 2002 hearing. Tr. 4/29/02, pp. 52 and 53, 125-129.

<sup>33</sup> Applicant's Brief dated May 22, 2002, p. 10.

<sup>34</sup> Responses to Interrogatories CATV-62 through CATV-64.

<sup>35</sup> Responses to Interrogatories CATV-45 and CATV-46.

<sup>36</sup> Response to Interrogatory CATV-58.

<sup>37</sup> Response to Interrogatory CATV-55.

<sup>38</sup> Responses to Interrogatories CATV-59 and CATV-60.

<sup>39</sup> Response to Interrogatory CATV-61.

<sup>40</sup> Application, Exhibit No. 13; footnotes 9 and 10.

<sup>41</sup> See May 19, 1999 Decision in Docket No. 97-12-02, Application of Comcast Cablevision of Danbury for Franchise Renewal; Decision dated May 30, 2001, in Docket No. 99-01-06, Application of Comcast Cablevision of Groton for Franchise Renewal; Decision dated June 12, 2002, in Docket No. 99-11-30,

operation of its local franchises have been subject to Department review on numerous occasions, including Department reviews of each of the five Connecticut AT&T Broadband CATV companies during the past three years.<sup>42</sup>

While the Department required remedial action by the Companies in several of these reviews,<sup>43</sup> the Department concluded that each company's overall management of its local CATV franchises was satisfactory. In the current proposal, the Applicants essentially plan to continue "business as usual" with the current franchisees in place and no change in franchise agreements, rates, services, programming packages, customer service policies or community access practices.<sup>44</sup> Based upon each Company's aggregate local performance, and AT&T Comcast's post-transaction proposals, the Department concludes that AT&T Comcast would be suitable to manage the Connecticut CATV Companies.

#### **D. TECHNICAL SUITABILITY**

In the course of its recent reviews, the Department also considered the Connecticut CATV Companies' technical performance. These technical reviews included an assessment of each company's compliance with state and federal regulations and laws addressing issues such as plant construction and condition, safety issues, carrier-to-noise ratios, distortion, signal levels, and signal leakage. In those proceedings, the Department determined that AT&T and Comcast were in almost all instances compliant with technical requirements related to the provision of CATV services.

The Applicants state that the planned merger would create efficiencies and synergies to allow AT&T Comcast to go beyond traditional cable service and accelerate availability of local telephony, digital video, high-speed Internet service, and other broadband services such as home security with video monitoring, to residential

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Application of Comcast Cablevision of New Haven for Franchise Renewal; (draft) Decision dated July 26, 2002 in Docket No. 00-01-15, Application of Comcast Cablevision of Middletown for Franchise Renewal. Docket No. 00-03-17, Application of Comcast Cablevision of Clinton for Franchise Renewal, is pending. A final Decision is scheduled to be issued in November 2002.

<sup>42</sup> Recent AT&T Broadband cases have included several decisions that resulted from Docket No. 95-04-26, Application of AT&T Broadband/Vernon for Franchise Renewal (and related reopened proceedings). See also the Department's October 25, 2000 Decision in Docket No. 98-01-05, Application of TCI Cablevision of Central Connecticut/Hartford for Franchise Renewal; the Department's December 12, 2001 Decision in Docket No. 99-04-12, Application of United Cable Television Services Corporation, Providing Service as AT&T Broadband/Plainville, for Franchise Renewal; the Department's July 31, 2002 Decision in Docket No. 99-10-05, Application of Community Television Systems, Inc., d/b/a AT&T Broadband/Branford, for Franchise Renewal; and the Department's December 5, 2001 Decision in Docket No. 01-04-03, Application of AT&T Broadband/Lakeville for Modification of its Franchise Agreement.

<sup>43</sup> For example, proceedings resulting from Docket No. 95-04-26 addressed AT&T Vernon's system upgrade completion commitments, and Docket No. 01-04-03 resulted from AT&T's failure to meet a line extension deadline. The telephone responsiveness of each Company's customer service operations was also criticized in each recent franchise renewal proceeding, although recent statistics indicate improvement on each company's part. See responses to Interrogatories CATV-29 through CATV-31; Tr. 4/29/02, pp. 71-83; Late Filed Exhibit No. 1.

<sup>44</sup> While reserving the right to make service changes in accordance with franchise area and market needs and applicable law.

consumers in Connecticut and other states.<sup>45</sup> Scale economies are anticipated to further enhance AT&T Comcast's ability to upgrade systems and deploy new services, as it expects to obtain lower prices as a result of the increased scale of its purchases for programming, for example. According to the Applicants, this increased scale is particularly important to accelerate the development and testing (and defray research, development, and testing costs) of new interactive TV services, voice-enhanced data service, home networking and security, and other new, and as yet untested, broadband services.<sup>46</sup>

Presently, all of the homes passed by AT&T plant in its Hartford and Plainville franchise areas have access to high-speed Internet service, while approximately 41% of homes in the Branford franchise have such access. AT&T has previously committed to make high-speed Internet service available in its Vernon franchise area by September 30, 2002, but has no plans to offer such services in its Lakeville franchise area.<sup>47</sup>

With regard to Comcast, 100% of the homes passed in the Danbury and New Haven franchise areas have access to high-speed Internet access. Customers in the Clinton, Groton and Middletown franchise areas are scheduled to begin receiving high-speed Internet service this summer, with service available to all customers within a year thereafter.<sup>48</sup>

The Applicants could not confirm how each company's Internet access operations would co-exist, or whether customers would need to change out equipment post-merger, or what routing policies would apply.<sup>49</sup>

With regard to telephony, the Applicants have not developed specific plans to deploy facilities-based local telephone service to Connecticut customers, other than where service is currently offered, or to expand current telephone offerings to include business customers.<sup>50</sup> To date, AT&T Broadband has deployed facilities-based local telephone service to residential customers only in its Hartford franchise area, but plans to offer local telephone service to residential customers in Vernon following completion of the ongoing system upgrade.<sup>51</sup> Comcast's affiliate, Comcast Telephony Communications of Connecticut, Inc., was certified to provide facilities-based and resold telephone services statewide in Connecticut in 1997, but never commenced service.<sup>52</sup>

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<sup>45</sup> Response to Interrogatory CATV-7.

<sup>46</sup> *Id.*

<sup>47</sup> Responses to Interrogatories CATV-8 and CATV-9.

<sup>48</sup> In its response to Interrogatory CATV-8, Comcast provided a Connecticut press release it issued on April 3, 2002, stating that high speed Internet access would be available to all of its Connecticut customers during the summer of 2002. In its response to Interrogatory CATV-9, Comcast stated that customers in its Clinton, Groton and Middletown franchise areas "are scheduled to begin receiving high-speed Internet service this summer, with service available to all customers within a year thereafter."

<sup>49</sup> Response to Interrogatory CATV-13; Tr. 4/29/02, pp. 50 and 51, 59 and 60, 63 and 64.

<sup>50</sup> Response to Interrogatory CATV-11; Tr. 4/29/02, pp. 50 and 51.

<sup>51</sup> Tr. 4/29/02, pp. 65 and 66.

<sup>52</sup> Response to Interrogatory CATV-11; Tr. 4/29/02, pp. 65-67. By Decision dated May 15, 2002, in Docket No. 97-08-11, Application of Comcast Telephony Communications of Connecticut, Inc. for a Certificate of Public Convenience and Necessity - Reopening, the Department accepted Comcast

Despite the Applicants' expectations regarding the benefits to flow to Connecticut consumers as a result of the planned merger, they did not develop or present any specific plans or timeframe to deliver those benefits, and would commit to no more than they have already done in pre-existing franchise agreements with the Department.<sup>53</sup>

The OCC states that the record is prohibitively incomplete due to the Applicants' refusal to discuss their future plans regarding any facet of operations in the ten affected Connecticut franchises. According to the OCC, nothing in federal law precludes the Applicants from disclosing or discussing purported Connecticut-specific benefits stemming from the proposal. The OCC believes that the Applicants have misinterpreted federal law in an attempt to thwart discovery in this proceeding, and therefore the OCC opposes the Application.<sup>54</sup>

Based solely on the technical performance of AT&T and Comcast in operating their respective cable franchises, the Department finds that each company has the requisite technical expertise to provide safe, reliable quality service to Connecticut subscribers, and no evidence was presented to indicate that would change if the merger were approved. Each company has a proven track record of building and operating technologically advanced broadband service networks in Connecticut and other states.

#### **E. OTHER ISSUES**

As noted above in Section II.B., regulations applicable to Conn. Gen. Stat. § 16-47 applications require that certain information accompany the application. While the Applicants submitted voluminous information in compliance with most sections of Conn. Agencies Regs. § 16-47-2, the Applicants were not forthcoming with information applicable to public benefit requirements. Conn. Agencies Regs. § 16-47-2(i) requires "A statement of the benefits, including rates, standards of service and efficiency and adequacy of management, that would result to the customers and stockholders of the public service company or holding company the interference with, or acquisition or control of which, is the subject of the application . . ." The Applicants did not include a statement in their Application that was responsive to the Conn. Agencies Regs. § 16-47-2(i) requirements regarding the benefits (rates, standards of service and efficiency and adequacy of management) to result to customers.

Conn. Agencies Regs. § 16-47-2(o) requires that an Application submitted pursuant to Conn. Gen. Stat. § 16-47 also include "a narrative description of the proposed operations of the applicant and the affected company for the first calendar year following the effectiveness of the proposed transaction(s), including, but not limited to, employment levels and office and service center locations, and details of all changes from the existing operations of the affected company." The Application<sup>55</sup> purported to meet this requirement with the following statement:

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Telephony's request to revoke its Certificate of Public Convenience and Necessity to provide a variety of telecommunications services.

<sup>53</sup> As noted above in Section II.B. See also the response to Interrogatory CATV-10.

<sup>54</sup> OCC Brief, pp. 3 and 4.

<sup>55</sup> Application, Exhibit B, p. 2.

No modifications of the existing franchise agreements of the Connecticut CATV Companies are sought as a result of this Application. The Connecticut CATV Companies will be operated pursuant to the current franchises and applicable laws after consummation of the proposed transactions. As described above, the transactions contemplated under the Agreement are not expected to directly impact the customers of the Connecticut CATV Companies.<sup>56</sup>

On March 28, 2002, the Department notified all parties that the Application lacked certain exhibits required by state regulations. On April 4, 2002, the Applicants responded by providing a revised schedule that included "additional references to portions of the Application containing information required by Conn. Agencies Regs. § 16-47-2" and also making minor corrections to portions of the Application. The April 4, 2002 filing failed to include the information required by Conn. Agencies Regs. §§ 16-47(i) and (o).

On April 4, 2002, the Department issued interrogatories to the Applicants again attempting to elicit information responsive to the requirements of Conn. Agencies Regs. §§ 16-47-2(i) and 16-47-2(o). The Applicants' April 17, 2002 responses to numerous Department interrogatories were prefaced with the statement that "AT&T Broadband and Comcast are currently prohibited by federal law from discussing operational issues."<sup>57</sup>

At the April 29, 2002 public hearing, the Applicants were questioned regarding the public benefits and operational data required by state regulations. According to the Applicants, "waiting period" provisions of the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (HSR Act), 15 U.S.C. § 18a, precluded discussion of operational issues.<sup>58</sup>

The Department subsequently received motions<sup>59</sup> from the Statewide Advisory Council (SAC) and the OCC requesting that the Application be dismissed without prejudice, or that another hearing be held at which the Applicants would elaborate on operational issues and proposed benefits to subscribers from the merger. The OCC disputed the Applicants' testimony regarding applicability of the HSR Act to the instant proceeding and stated that the HSR Act in no way prohibits merging companies from discussing concrete substantive state-specific benefits to be derived from a proposed merger.<sup>60</sup>

On May 15, 2002,<sup>61</sup> the Department ruled that the Applicants had not complied fully with the Conn. Agencies Regs. filing requirements. The Department required the Applicants to supply information including a legal analysis of the applicability of the HSR

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<sup>56</sup> Application, p. 10.

<sup>57</sup> For example, responses to Interrogatories CATV-7, CATV-10 through CATV-17, CATV-19, CATV-22 and CATV-23, CATV-25 and CATV-26, and CATV-32 through CATV-34.

<sup>58</sup> Tr. 4/29/02, pp. 45-48.

<sup>59</sup> Motion Nos. 5 and 6.

<sup>60</sup> OCC Motion dated May 9, 2002 (Motion No. 5).

<sup>61</sup> In response to Motion Nos. 5 and 6.

Act to the instant proceeding, specifically with respect to operational issues; the date upon which the Applicants made certain filings with and received certain notifications from the Federal Trade Commission pursuant to the HSR Act; the information required by Conn. Agencies Regs. §§ 16-47-2(i) and 16-47-2(o); and amended responses to numerous interrogatories.

The Applicants replied that the HSR Act "waiting period" prohibitions were still in force and precluded discussion of post-transaction operational issues. The Applicants repeated their assertions that information supplied, along with each operator's local track record and franchise agreement commitments, were sufficient for the Department to approve the Application, noting that the Department "approved numerous change of control applications involving cable operators, including the prior proceeding involving AT&T, where such information was not provided." Finally, the Applicants stated that local franchising authorities' review of CATV transfers and change of control proceedings are circumscribed by 47 U.S.C. § 537 and implementing federal regulations.<sup>62</sup>

In a subsequent filing, the OCC disputed the Applicants' claims that the HSR Act prevents them from meeting to discuss operational details, and constrains them from disclosing concrete, substantive and Connecticut-specific subscriber benefits to be derived from the proposed merger. The OCC stated that the Application remained incomplete, renewed its motion to dismiss without prejudice, and requested that the Department direct the Applicants to respond to questions concerning Connecticut-specific merger benefits at an additional hearing.<sup>63</sup>

The Applicants responded that the OCC had ignored well-established constraints placed on merging parties by applicable antitrust laws and doctrines, that the Department in cable-related and other regulated industry holding company proceedings approved applications without requiring post-closing details, and that the OCC filings would impose conditions on the Application that would place the Department in violation of binding federal law doctrines that protect established substantive and procedural rights of cable television providers.<sup>64</sup>

On June 20, 2002, the Department notified the Applicants that the data required to accompany a Conn. Gen. Stat. § 16-47 application had not been filed until submission of their interrogatory replies on April 17, 2002, supplemented by subsequent testimony at the April 29, 2002 hearing, and filings dated May 22, 2002. The Department accepted the Company's submittals as applicable to Connecticut-specific filing requirements. The Department also encouraged the Applicants to meet with the OCC in an attempt to achieve mutual support of the Application in exchange for to-be-identified Connecticut-specific benefits for the Companies' subscribers. By filings dated August 6 and 7, 2002, the OCC and the Applicants, respectively, reported that the parties had not reached an agreement, and thus requested that the Department reconvene proceedings.

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<sup>62</sup> Letter to the Department dated May 22, 2002.

<sup>63</sup> OCC letter dated June 7, 2002, in response to the Applicants' May 22, 2002 filing.

<sup>64</sup> Applicants' letter dated June 14, 2002 in response to the OCC's June 7, 2002 letter.

As noted in Section II.D, the OCC opposes the Application because it believes that the Applicants' refusal to discuss public benefit details is not supported by the HSR Act, and that as a result, the record lacks information required to approve the proposed transaction.<sup>65</sup> The OCC's research of the HSR Act reveals that it in no way prohibits merging companies from discussing concrete substantive state-specific benefits to be derived from a proposed merger. The OCC also notes that recent mergers before the Department<sup>66</sup> have included substantial amounts of information concerning operational issues and proposed benefits to be derived by subscribers and ratepayers from such mergers.<sup>67</sup>

Lastly, the OCC stated that its attempts to develop with the Applicants some form of settlement proposal failed because the Applicants offered no substantive commitments in any respect. Until the Applicants provide testimony concerning the concrete, substantive and Connecticut-specific benefits that Connecticut subscribers will receive as a result of the merger, it cannot be supported by the OCC. Accordingly, the OCC restated<sup>68</sup> its request that the Department dismiss the Application without prejudice and require the Applicants to submit a new petition and restart the "statutory clock." Alternatively, the OCC suggested that the Department either schedule another hearing so that the Applicants may be further questioned regarding operational issues and Connecticut-specific benefits that would result from the merger and/or require in a Decision, specific and reasonable benefits to the Applicants' subscribers. Among the benefits suggested by the OCC are a) a rate freeze for a minimum of two years; b) a specific date by which the Applicants would deploy local telephony as currently marketed to millions of homes outside of Connecticut; c) an immediate, one-time goodwill contribution to each of the ten franchises for the purposes of enhancing community access;<sup>69</sup> d) a commitment to interconnect the Comcast Middletown and Clinton systems with the Adelphia Lyme franchise area to the distance learning network; and e) specific commitments to customer service standards above and beyond the minimums currently set forth by statute and regulations.<sup>70</sup>

The OCC's proposals were made after the close of the evidentiary record and absent any opportunity by the Applicants to comment. While the OCC has requested that a hearing be held to further examine these proposals, both federal and state law have established a maximum time period by which the Application must be reviewed and a Decision rendered. Granting the OCC's request for another hearing at this time would delay the issuance of a final Decision beyond the time permitted by state and federal law. Additionally, the Department believes the OCC's suggestion to restart the statutory clock to be without value because the Applicants have already satisfied their filing requirements. Moreover, based on a cursory review of the OCC's proposals, the Department finds that in some cases they are prohibited by state and federal law (i.e., a

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<sup>65</sup> OCC Brief, pp. 11 and 12.

<sup>66</sup> Citing Docket No. 00-01-11, Joint Application of Consolidated Edison, Inc. and Northeast Utilities for Approval of a Change in Control, Decision dated October 19, 2000 and Docket No. 99-08-02, Joint Application of Northeast Utilities and Yankee Energy System, Inc. for Approval of a Change of Control, Decision dated December 29, 1999.

<sup>67</sup> OCC Brief, pp. 9 and 10.

<sup>68</sup> See OCC Motion to Dismiss dated May 9, 2002.

<sup>69</sup> But not passed through to customers via rates.

<sup>70</sup> OCC Brief, pp. 13-15.

two year rate freeze and goodwill contribution not to be passed on to consumer through rates) or inconsistent with established Department practices (specific date by which local telephony must be deployed). In the opinion of the Department, the OCC has made untimely suggestions that are without merit. Accordingly, the OCC's proposals are hereby denied.

In the Public Interest Statement filed with the Federal Communications Commission (FCC), the Applicants assert that the merger would have no anti-competitive effect in any market and would comply fully with Federal laws and regulations. Moreover, the merger would generate substantial public interest benefits including:

- acceleration of the deployment of facilities-based high-speed Internet service, digital video, and other broadband services, particularly to residential subscribers;
- promotion of facilities-based local telephone competition, particularly to residential subscribers;
- an increase in the supply of local and regional programming; and
- achieve public interest benefits that cannot be reached independent of the merger.

According to the Applicants' FCC Public Interest Statement, merger synergies will allow the merged company to deploy telephone service in the certain markets after the transaction is consummated, bringing facilities-based local telephone choice to approximately one million homes.<sup>71</sup> The Applicants stated to the FCC that the proposed transaction would yield savings of \$250 million - \$450 million annually in programming expenses alone.<sup>72</sup> Also, "As a result of Comcast discussions with AT&T Broadband, however, and based on AT&T Broadband's telephony expertise, and the resources that will be available due to the merger, Comcast is currently planning to roll out cable telephony in certain markets after closing."

In contrast, after the Department notified the Applicants that their Connecticut Application lacked key filing requirements, AT&T and Comcast submitted a reference to a section of the Application that states that the proposed merger "is fair and in the best interests of each company's respective shareholders."<sup>73</sup> That filing, solicited by the Department, was intended to comply with the Conn. Agencies Regs. § 16-47-2(i) requirement that the Application include "A statement of the benefits, including rates, standards of service and efficiency and adequacy of management, that would result to *the customers and* stockholders of the public service company or holding company . . . ." (emphasis added).

When the Department queried the Applicants, they stated that federal law prohibited them from discussing operational issues and have not yet developed specific

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<sup>71</sup> Public Interest Statement, p. 38.

<sup>72</sup> See February 27, 2002 Declaration of Comcast Senior Vice President Robert Pick, pp. 8 and 9.

<sup>73</sup> April 4, 2002 filing, pp. 1 and 2, referencing Application, Proxy Statement, Chapter 11, pp. 8 and 11.

plans to deploy facilities-based local telephone service to residential or business customers.<sup>74</sup> The OCC also questioned why the Applicants resist commitment to local benefits to be derived from the merger while published accounts indicated that the Applicants made post-merger commitments in other areas, such as Portland, Oregon and Chicago, Illinois.<sup>75</sup>

The Applicants were also reluctant to make any commitments with respect to subscriber rate benefits, programming, customer service, new service trials, equipment compatibility, or Internet service provider choice.<sup>76</sup> With respect to the proposed Connecticut operations of the Applicants for the first calendar year following the effectiveness of the proposed transaction(s), the Applicants could not make such a commitment.<sup>77</sup> Nevertheless, the Applicants maintain that they have no current plan to change existing operations, including employment levels, or office and service locations, upon consummation of the merger.<sup>78</sup>

Having established a "status quo" baseline for post-merger operations, the Applicants state that the "demonstrable benefits" anticipated to flow to AT&T Comcast customers would benefit subscribers in Connecticut and other states as well with no offsetting detriments.<sup>79</sup> They further state that their complementary strengths would enable AT&T Comcast franchise areas to benefit from both Comcast's deep tradition and experience in the cable industry and AT&T's infrastructure and experience as a broadband local telephony services provider. The Applicants also note that they remain committed to investing resources in Connecticut, a development that benefits rural consumers and the general public.<sup>80</sup>

To their collective credit, each applicant has made recent upgrade and or service expansion commitments to Connecticut subscribers. Comcast will within the next year upgrade its Middletown, Groton and Clinton franchise areas to offer high-speed Internet services and other broadband services as it has done in its Danbury and New Haven franchise areas. Comcast has also made recent improvement to its New Haven call center operations.<sup>81</sup> AT&T has previously committed to upgrading or extending plant in Connecticut franchise areas and to maintain a substantial workforce at its Berlin facility, including a recent decision to site its northeast region "Broadband University" training facility on the Berlin premises.<sup>82</sup>

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<sup>74</sup> Response to Interrogatory CATV-11; Tr. 4/29/02, pp. 49 and 50.

<sup>75</sup> See OCC letter to the Department dated June 17, 2002.

<sup>76</sup> Tr. 4/29/02, pp. 53; 60 and 61; 67 and 68, 70 and 71; Responses to Interrogatories CATV-16, CATV-6; CATV-12.

<sup>77</sup> Tr. 4/29/02, pp. 45 and 46; 67 and 68.

<sup>78</sup> Citing the Application, p. 10; Responses to Interrogatories CATV-16, CATV-17, CATV-21, CATV-22, CATV-25, CATV-26, CATV-27, CATV-32, and CATV-33.

<sup>79</sup> May 22, 2002 filing, p. 9.

<sup>80</sup> *Id.*, pp. 16 and 17.

<sup>81</sup> Responses to Interrogatories CATV-8, CATV-10; Tr. 4/29/02, pp. 56-58, and 68.

<sup>82</sup> See December 19, 2001 Decision in Docket No. 95-04-26 (Vernon system upgrade), December 12, 2001 Decision in Docket No. 99-04-12 (Plainville system upgrade), the July 31, 2002 Decision in Docket No. 99-10-05 (Branford system upgrade), and the December 5, 2001 Decision in Docket No. 01-04-03, (Lakeville system line extension). See also, Tr. 4/29/02, pp. 65-66, 69-71, 83-85; Late Filed Exhibit No. 2.

Connecticut subscribers have benefited from each company's provision of service in Connecticut over a period of years, and the Applicants have vowed to ensure that the current franchise-related or service commitments of the Connecticut CATV companies will be met or exceeded.<sup>83</sup> These facts distinguish the instant proceeding from other Conn. Gen. Stat. § 16-47 cases in which the Applicants were out-of-state companies without Connecticut experience, or the applications did not invoke HSR Act provisions.

The Department finds the Applicants to be qualified from Conn. Gen. Stat. § 16-47 financial, managerial and technical perspectives. Nevertheless, the Applicants' lack of specific local commitments of any kind gives the Department pause, especially when the Applicants appear to have made such commitments in other jurisdictions. The Department also finds that the merger of AT&T Comcast should create scale economies, operational efficiencies, and synergies and savings that should help AT&T Comcast accelerate the availability of advanced broadband services and moderate the need for future programming rate increases. Given the significant benefits that the Applicants anticipate to flow from this transaction, the Department will enforce the merged company's compliance with all extant franchise agreement commitments with vigilance.

### **III. FINDINGS OF FACT**

1. AT&T Corp. and Comcast Corporation requested authority for AT&T Comcast Corporation to exercise control and become the holding company over ten CATV franchise areas held by AT&T Broadband Corp. and Comcast.
2. Upon completion of the proposed merger, current AT&T shareholders would own approximately 53% of the outstanding equity in AT&T Comcast, current Comcast shareholders would own approximately 42% of AT&T Comcast's economic interest, and the remaining 5% equity ownership would belong to Microsoft Corporation.
3. AT&T Broadband, a wholly-owned subsidiary and one of AT&T's major operating units, is a leading provider of cable television service, cable Internet service, and cable telephony service, and consists primarily of the combined assets and business of TCI and MediaOne.
4. In Connecticut, AT&T Broadband serves 260,000 subscribers, while passing 388,000 homes, and holds five certificates of public convenience and necessity.
5. Comcast is currently the third largest cable operator in the United States, with approximately 8.5 million subscribers and 13.9 million homes passed as of December 31, 2001.

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<sup>83</sup> Responses to Interrogatories CATV-17, CATV-19, CATV-26, CATV-35, CATV-36, CATV-38, CATV-39, CATV-40; Tr, 4/29/02, pp. 66 and 67, 71-83.

6. In Connecticut, Comcast serves 194,000 subscribers with 267,000 homes passed, and holds five certificates of public convenience and necessity.
7. In Connecticut, the number of subscribers served by the combined company would be approximately 1% of the total number of subscribers served nationwide.
8. The Applicants seek approval of their proposal pursuant to Conn. Gen. Stat. § 16-47.
9. The proposed merger is valued at approximately \$73 billion and includes the assumption by AT&T Comcast of indebtedness totaling \$24 billion.
10. The valuation approach used to establish the worth of AT&T's stock was based on developing a fair acquisition multiple of earnings before interest, taxes, depreciation and amortization of estimated 2002 AT&T Broadband revenues.
11. AT&T and Comcast have already been approved as holding companies in Connecticut and have been deemed managerially suitable by the Department in prior Conn. Gen. Stat. § 16-47(d) proceedings.
12. AT&T Comcast has no plans to change any of the rates, services, programming packages, customer service policies or community access practices currently in place as a result of the merger within the first six months after the planned transaction is consummated.
13. Following the proposed change of control, the franchises of the Connecticut CATV companies would continue to be held by the current franchisees.
14. The Applicants seek no changes to extant franchise agreements with the Department, and would continue to operate the franchises in compliance with these agreements and applicable state and federal law.
15. Neither Comcast or AT&T has been fined or cited for any violation of consumer protection laws in any state or federal jurisdiction.
16. Comcast acquired its Middletown and Danbury franchise areas in 1986, and acquired the New Haven, Clinton, and Middletown franchises in 1989.
17. Each of the five Comcast cable franchises has recently concluded or is near completion of a franchise renewal proceeding.
18. AT&T Broadband's management and operation of its local franchises have been subject to Department review on numerous occasions, including Department reviews of each of the five Connecticut AT&T Broadband CATV companies during the past three years.
19. In recent proceedings, the Department determined that AT&T and Comcast were in almost all instances compliant with technical requirements related to the provision of CATV services.

20. The Applicants could not confirm how each company's Internet access operations would co-exist, or whether customers would need to change out equipment post-merger, or what routing policies would apply.
21. The Applicants have not developed specific plans to deploy facilities-based local telephone service to Connecticut customers, other than where service is currently offered, or to expand current telephone offerings to include business customers.
22. The Applicants' FCC Public Interest Statement states that merger synergies will allow the merged company to deploy telephone service in the certain markets after the transaction is consummated, bringing facilities-based local telephone choice to approximately one million homes.
23. The Applicants' FCC Public Interest Statement states that "as a result of Comcast discussions with AT&T Broadband . . . and based on AT&T Broadband's telephony expertise, and the resources that will be available due to the merger, Comcast is currently planning to roll out cable telephony in certain markets after closing."
24. Each applicant has made recent upgrade and or service expansion commitments to Connecticut subscribers.

#### **IV. CONCLUSION AND ORDERS**

##### **A. CONCLUSION**

AT&T Corp., Comcast Corporation and AT&T Comcast Corporation have sufficiently demonstrated that AT&T Comcast Corporation, a subsidiary jointly formed by AT&T and Comcast to exercise control and become the holding company over ten Connecticut community antenna television franchise areas is financially, managerially and technologically capable of exercising such control. The Department hereby approves the transactions whereby AT&T Comcast Corporation will become the parent company of AT&T Broadband and Comcast nationwide.

##### **B. ORDERS**

For the following Orders, please submit an original and 10 copies of the requested materials, identified by Docket Number, Title and Order Number to the Acting Executive Secretary.

1. No later than November 15, 2002, AT&T Comcast shall notify the Department in writing that the transaction has been consummated without material modifications or alterations to the proposal as filed in this Application, unless the Department has issued prior approval of such changes.
2. Beginning January 3, 2003, and continuing quarterly thereafter concluding with a final report due no later than October 3, 2003, AT&T Comcast will file with the

Department a comprehensive report identifying Connecticut cable system operational changes, if any, planned for the subsequent quarter, unless such notice is otherwise required on a sooner basis by law, regulation, or franchise agreement.

Each report shall include a subsection addressing:

- a) Customer service operations, including any proposed changes in: customer service policies and procedures (e.g., deposit policies, credit and collection policies); charges related to cable service (e.g., returned check charges, late payment fees); office hours and customer service telephone hours of operation; bill form; and call center operations (e.g., consolidation and/or expansion). Each report shall also include a statistical analysis of each Connecticut franchise area's telephone responsiveness (e.g., longest time on hold, average speed of answer, number of call answered in less than/more than two minutes, and calls abandoned) separate from any calls handled by an automatic response unit.
- b) Employment levels, including total current number of Company employees who work in Connecticut (i.e., excluding out-of-state call center operations) segregated by: customer service; technical (e.g., service, repair, installation); community access; administrative and managerial; and separately stating if and how employment levels in Connecticut are expected to change in the next reporting period.
- c) Outside plant, including miles of plant upgraded or rebuilt in the prior reporting period or planned to be rebuilt or upgraded in the subsequent reporting period.
- d) New services, including status of the provision of high-speed Internet access to the Middletown, Clinton, Groton, and Branford (non-rebuilt) franchise areas; the provision of competitive local exchange telephony service in each franchise area, and any service trials.
- e) Commitments to the educational community, including any changes to policies, procedures, funding, grants, donations, and/or outreach to the educational community, including the status of the Middletown and Clinton franchise area interconnection with Adelp hia Cable Communications.
- f) Any changes to policies, procedures, funding, grants, and/or donations to public, educational and or governmental access.
- g) Any changes to high-speed Internet access policies (e.g., equipment change-out, home routing policies, subscriber choice of Internet service provider).
- h) Service quality, including for each franchise area, the average number of days required to fulfill requests for service/repair, installation, and disconnection.

**DOCKET NO. 02-03-10 JOINT APPLICATION OF AT&T CORP., COMCAST CORPORATION AND AT&T COMCAST CORPORATION FOR APPROVAL OF A CHANGE OF CONTROL**

This Decision is adopted by the following Commissioners:

Jack R. Goldberg

John W. Betkoski, III

Donald W. Downes

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

\_\_\_\_\_  
Louise E. Rickard  
Acting Executive Secretary  
Department of Public Utility Control

9/6/02

\_\_\_\_\_  
Date