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Walter R. McGrath
General Manager

April 26, 2002

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW B204
Washington D.C. 20554

**Re: In the Matter of Applications for Consent to the Transfer of Control;
AT&T Comcast Corporation; MB Docket No. 02-70**

Comments of Braintree Electric Light Department/BELD Broadband

Dear Ms. Dortch:

I submit this letter on behalf of BELD Broadband, the operator of a single cable system serving about 4,300 customers in the Town of Braintree, Massachusetts. For BELD Broadband and consumers in Braintree, the proposed merger of AT&T and Comcast raises important issues of program diversity and competition. At issue is AT&T's continuing denial of access to New England Cable News ("NECN"). NECN will not let us carry their programming because, we are told, they have an exclusive arrangement with AT&T, and AT&T will not let them sell NECN to us. We also compete with AT&T in Braintree.

To conduct a full and fair public interest analysis of the proposed merger, the Commission should get answers to two questions concerning NECN:

Will AT&T Comcast deny BELD and its customers access to important regional news and public affairs programming carried on NECN?

If AT&T Comcast plans to deny BELD and its customers access to NECN, how does this serve the public interest in programming diversity and competition?

Before concluding that the merger is in the public interest, the Commission should require the Applicants to address their plans for distribution of NECN in Braintree, and if necessary, place appropriate conditions on the merger.

Your community owned electric and communications utility

System background.

A municipally-owned utility, BELD has provided electric services in Braintree, Massachusetts, since 1892. In 1998, BELD completed construction of a hybrid-fiber coax network and began to offer cable modem services. In 2000, BELD began offering video services as BELD Broadband. Currently, BELD serves about 4,300 cable television customers in Braintree. BELD Broadband offers an expanded basic service of 63 analog channels. We also offer digital cable services and cable modem services.

BELD's attempts to gain access to NECN.

We have sought access to AT&T-owned NECN for nearly two years. Each time we contacted NECN representatives they expressed an interest in selling us the service, but said they could not because of an exclusive contract with AT&T. After further investigation, we learned that NECN petitioned the Commission for exclusivity rights in 1993 to survive as a "fledgling" regional news service.¹ We also learned that the exclusivity rights expired on June 1, 2001.

So last fall, we again asked NECN for access to their programming in the hopes they would follow the Commission's order concerning expiration of exclusivity.² NECN's response? It claimed that it went terrestrial in 1995, so it was not subject to the program access laws or the Commission's 1994 Order.³ More recently, AT&T has again stated that it will not provide NECN to BELD, essentially because it does not have to.⁴

The public interest in program diversity and competition warrants AT&T Comcast distributing NECN to all consumers in Braintree.

In the context of the biggest cable merger in history, access to NECN raises broader public interest concerns than those addressed in the pending program access proceeding. In essence, the question is this:

Does it serve the public interest after the merger for a company with at least 22 million subscribers and wide-ranging programming assets to deny regional news and public affairs programming to a single cable system serving only 4,300 subscribers?

Surely the public interest in program diversity, particularly when it involves news and public affairs programming, weighs in favor of the largest MVPD allowing a small competitor to access NECN. Our customers desire NECN, and we are willing to pay reasonable fees to carry it.

¹ In the Matter of New England Cable News, 9 FCC Rcd. 3231 (June 1994).

² Exhibit 1, letter dated November 7, 2001 to Art Goody, Director of Affiliate Relations, NECN, from Walter McGrath, General Manager, BELD.

³ Exhibit 2, letter dated November 12, 2001, to Walter McGrath from Phillip Balbom, President, NECN.

⁴ AT&T Reply Comments, CS Docket No. 01-290, (filed January 7, 2002), p. 8, n. 23.

If the merger is approved, will the merged entity agree to transact? If not, why not? It seems that only a desire to thwart a small competitor could stand in the way. If that is how AT&T Comcast proposes to do business, and if that is how AT&T Comcast sees its public interest obligations, they should put that on the record now for the Commission to consider.

Conclusion.

BELD asks that the Commission require Comcast and AT&T to address the public interest in distributing NECN to all consumers in Braintree, whether they subscribe to AT&T Comcast or BELD. Only with complete and satisfactory answers to these questions can the Commission fully evaluate the public interest harms and benefits of the merger.

Sincerely,

A handwritten signature in black ink, reading "Walter R. McGrath". The signature is written in a cursive style with a large, stylized initial 'W'.

Walter R. McGrath
General Manager

Exhibit 1



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November 7, 2001

Mr. Art Goody
Director of Affiliate Relations
New England Cable News
160 Wells Avenue
Newton, MA 02459

via Federal Express

Re: Braintree Electric Light Department/BELD Broadband; request for program access.

Dear Mr. Goody:

We write in our continuing efforts to obtain access on our small cable system to New England Cable News ("NECN"). Upon further investigation, we have determined that NECN's authorization to maintain exclusive carriage contracts has expired, and it is obligated to provide its programming to our cable system under FCC program access regulations. Consequently, we request access to NECN programming in accordance with those regulations.

We explain below.

Background

Our attempts to obtain access to NECN are well documented. JoAnn Stak Bregnard first spoke with you on August 2, 2000 as BELD was putting together its channel line-up in anticipation of launching its service in Braintree. During that telephone conversation, you indicated that NECN had an exclusive contract with Cablevision (AT&T Broadband's predecessor) and that BELD would be unable to obtain access to NECN. Your follow-up email is attached.

During the last week of August 2001, Ms. Stak Bregnard again contacted you regarding carriage of NECN. We had read of Liberty Media's spin off from AT&T and inquired as to the effect of that situation on NECN's exclusive contract. You explained to Ms. Stak Bregnard that the transaction would not impact AT&T's exclusive contract with NECN, but you would check with company personnel further.

On October 16, 2001, Ms. Stak Bregnard received a voice mail from you again indicating that because of the exclusive contract with AT&T, NECN must deny BELD access to its programming.

At this point, we initiated a more in-depth investigation into NECN. The results of that investigation suggest that the continuing denial of access to NECN violates FCC program access regulations and a 1994 FCC order specifically addressing NECN.

Your community owned electric and communications utility

The FCC has ordered that NECN may not maintain exclusive contracts after June 1, 2001.

As NECN is well aware, FCC regulations prohibit exclusive programming contracts for satellite delivered programming in which a cable operator has an attributable interest. 47 CFR § 76.1002(c)(2). In 1993, NECN and its previous owner Continental Cablevision petitioned the FCC for an exemption from the prohibition on exclusive contracts. On June 1, 1994, the FCC granted that request, with the following limitations:

NECN is hereby authorized to provide exclusive distribution rights to cable affiliates within their franchise areas in the six New England states for the next eighteen months, so long as all such exclusive distribution rights terminate seven years from the release of this Order.

In the matter of New England Cable News, Memorandum Opinion and Order, FCC RCD 3231 (1994), ¶ 53.

As a result of this Order, any exclusive distribution rights AT&T may have obtained from its predecessor expired as of June 1, 2001. Moreover, any NECN contract entered into after December 1, 1995 cannot contain exclusive carriage rights. Consequently, under the program access regulations, NECN is obligated to provide its programming to BELD on nondiscriminatory prices, terms and conditions. 47 CFR § 76.1002(b). If NECN has information that results in a different legal conclusion, we would welcome it.

Request for program access.

In light of the above, and NECN's repeated denial of program access after the expiration of its limited exclusivity period, we request access NECN programming on nondiscriminatory prices, terms and conditions. Please provide us with proposed terms of carriage within 15 days of the date of this letter.

Sincerely,

BRAINTREE ELECTRIC LIGHT DEPARTMENT



Walter R. McGrath
General Manager

Enclosure

Exhibit 2

NEW ENGLAND CABLE NEWS

November 12, 2001

Walter R. McGrath
General Manager
Braintree Electric Light Department
150 Potter Road
Braintree, MA 02184

Dear Mr. McGrath:

I am in receipt of your letter of November 7 to Arthur Goody, NECN's Vice President of Affiliate Relations.

First of all, I want to say that we greatly appreciate your interest in NECN and, legal and contractual issues aside, we would be delighted to have our network available to the television customers of the Braintree Electric Light Department. NECN is proud of the growth that has brought us to where we are today and we certainly do not wish to deny any citizen of Massachusetts or New England the opportunity to view our network.

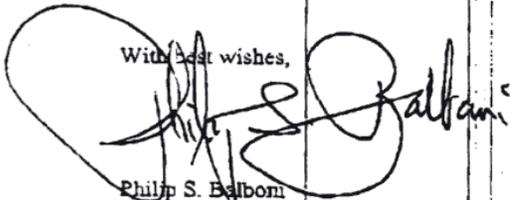
Nevertheless, as Mr. Goody explained in prior communications, NECN has a binding contract with AT&T Broadband that provides it with the exclusive right to distribute our network in the territory served by AT&T Broadband. As long as this contract is in effect, we are not able to provide our service to you or to any other company competing with AT&T Broadband in its service area. Should this situation change, we would be happy to be in touch with you again.

As to the 1994 Federal Communications Commission order that you cited in your letter, you are quite correct that NECN had obtained this waiver of the program access rules of the 1992 Cable Act so that we could grant exclusive contracts to cable providers. At that time New England Cable News was a satellite-delivered program service and was, therefore, covered under the provisions of the program access rules. In April 1995, NECN became a terrestrially delivered network. Such networks are not covered by the program access rules.

Therefore, I am informed by our legal counsel that the exclusivity provisions of the AT&T Broadband contract remain in effect. I hope that this clarifies the situation, even though I realize it is not the outcome for which you had hoped.

Please feel free to be in touch with Mr. Goody or me if we can answer any additional questions.

With best wishes,



Philip S. Balboni
President and Founder

cc. Arthur Goody, NECN
Mark Prak, Brooks Pierce McLendon