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July 3, 2002

ELECTRONICALLY FILED

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20024

**Re: Notice of *Ex Parte* Presentation by RCN Telecom Services, Inc., for
Filing in MB Docket 02-70.**

Dear Secretary Dortch:

Pursuant to section 1.1206(b)(2) of the Commission's Rules, RCN Telecom Services, Inc., by its attorneys, submits for filing in the above-captioned docket this notice of an *ex parte* meeting on July 2, 2002, to discuss the pending license transfer applications of AT&T Broadband and Comcast Corporation. Scott Burnside, Senior Vice President for Regulatory and Government Affairs, and John Murawski, Director of Programming, both with RCN, and Andrew Lipman and L. Elise Dieterich, both with Swidler, Berlin, Shereff, Friedman, LLP, met with the following FCC personnel: Royce Sherlock, Roger Holberg, Thomas Horan, Erin Dozier and John Scott of the Media Bureau; James Bird, Nandan Joshi and Kimberly Reindl of the Office of the General Counsel; David Sappington and Donald Stockdale of the Office of Plans and Policy; and Ben Childers of the Wireline Competition Bureau.

RCN presented its views and marketplace experience in three areas relevant to competition in the cable market: (1) access to programming; (2) access to third party vendors of goods and services; and (3) predatory or targeted discount pricing. RCN also responded to questions posed by the FCC staff regarding each of these topics. Specifically, RCN discussed the bargaining process involved in contracting for programming, the bulk discounts available to large cable operators, and programming it has been unable to obtain due to exclusive agreements between programming providers and large cable operators. RCN also discussed, and answered questions regarding, the intransigence of Comcast-owned SportsNet (Philadelphia) in negotiating two non-standard terms in its proposed contract that have prevented RCN from entering into a long-term contract to carry SportsNet, namely, the requirement that RCN obtain SportsNet's consent before providing the programming to subscribers in newly-served communities, and the proviso that SportsNet can immediately terminate the agreement if a discrepancy of 5%+ is found upon an audit of RCN's books. RCN discussed the large cable operators' use of exclusive agreements with construction, installation, and sales contractors, as well as vendors of video-on-demand technology, the interactive program guide TV Gateway, and other goods and services, to impede competition. Finally, RCN discussed the problem of predatory, deep discount pricing targeted by Comcast and AT&T Broadband against customers and potential customers of RCN (and its Washington-area joint venture, Starpower), but not offered to customers uniformly throughout a franchise area. RCN reiterated its request, as set forth in its comments on file in the above-captioned proceeding, that the FCC address these three competitive concerns through conditions mandating non-discriminatory access to programming, prohibiting exclusive arrangements with third party vendors, and requiring uniform pricing.

In addition, RCN addressed, in response to questions from FCC staff, how the proposed merger of AT&T Broadband and Comcast is likely to exacerbate the competitive concerns described, due to: the clustering of systems and increased opportunity for the migration of programming to terrestrial delivery; the opportunity for concerted application of anti-competitive tactics in multiple markets simultaneously; the increased market share and associated bargaining power with third-party vendors that the merged entity will have; the fact that the merged entity will have exceptionally deep pockets and can amortize the cost of pursuing anti-competitive tactics against overbuilder competitors over a far larger subscriber base than currently exists; and, the loss of competing and/or independent cable operators in RCN's markets against whom AT&T Comcast's competitive conduct can be benchmarked. RCN presented its view that the public interest standard applicable to the FCC's review of the proposed license transfers affords the agency authority to impose pro-competitive and pro-consumer conditions that go beyond the minimum protections mandated by the antitrust laws, the Communications Act of 1934, as amended, and the FCC's rules, and that such safeguards are warranted in view of AT&T Broadband's and Comcast's history of anti-competitive behavior and the magnitude of their proposed merger.

Secretary, Federal Communications Commission

July 3, 2002

Page 3 of 3

Pursuant to sections 1.1206(b)(2) and 1.49(f) of the Commissions rules, this *ex parte* notice is being electronically filed for inclusion in the public record for the above-referenced docket. Please direct any questions concerning this filing to the undersigned.

Respectfully submitted,

s/ L. Elise Dieterich
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Inc.*

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