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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY



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September 29, 2000

BY HAND

Christopher Wright, Esq.
General Counsel
Federal Communications Commission
The Portals
445 Twelfth Street, SW
12th Street Lobby, 8-C755
Washington, DC 20554

Re: In the Matter of Applications of America Online, Inc. and Time Warner, Inc. for
Transfers of Control, CS Docket No. 00-30

Dear Mr. Wright:

A copy of a Notice of Violation of the Protective Order adopted in the above captioned proceeding, involving The Walt Disney Company ("Disney"), was delivered to our outside counsel on September 27, 2000. We are deeply concerned about the violations reflected in the letter, and thought it important that the Commission was fully aware of the facts and circumstances regarding this matter to the extent that we know them.

At the request of Commission staff, America Online, Inc. ("AOL") has submitted various documents -- including contracts, business plans, and other business-sensitive information -- to facilitate the agency's review of our pending merger with Time Warner. Unlike the confidentiality protections afforded in the Federal Trade Commission merger review under the Hart-Scott-Rodino Act and the Antitrust Civil Process Act, all confidential documents requested by the FCC are subject to review by our competitors. The Protective Order adopted in this proceeding was intended to ensure that business-sensitive information is not disclosed to individuals in other companies that have input into competitive decision-making. As discussed below, it appears the Protective Order did not prove effective in safeguarding such information.

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On September 14, 2000, counsel for Disney reviewed confidential materials (and took notes, which constitute derivative materials) submitted by AOL to the FCC pursuant to the Protective Order. According to Disney's Notice of Violation, a summary of such confidential material was emailed to two Disney in-house counsel in violation of the Protective Order on September 22, 2000. Disney in-house counsel then proceeded to forward this email to other Disney personnel. One hour after the original email was sent out, Disney was informed by its outside counsel that the email related to confidential materials and should not have been sent to them (as such an action violated the Protective Order). Disney in-house counsel then emailed the other recipients and advised them that the email contained confidential information and to "disregard" it.

Even though Disney discovered the violation of the Protective Order within an hour, neither the Commission nor AOL were notified of this violation until late on September 27, 2000, five full days after the violation occurred. Under the Protective Order, Disney is required to "*immediately notify* the Commission and the Submitting Party of such violation[s]." (emphasis added.) Exacerbating the situation, and not referenced in Disney's Notice of Violation, is the fact that on the day of the violation and again on September 25, 2000 (the Monday following the violation), outside counsel from another of Disney's law firms requested immediate access to AOL's confidential documents. Unaware of the violation, AOL's outside counsel arranged to provide access to the confidential materials to Disney counsel -- and this review took place the morning of September 27, 2000. That review was completed by 5 p.m. that afternoon, just after AOL counsel received telephone notification and shortly before receipt of written notification. While timely receipt of the Notice of Violation would have, as Disney surely could anticipate, led AOL to challenge (and, for the interim, deny) Disney's qualifications to continue reviewing these materials, such notification was not given to AOL until Disney's outside counsel were finishing their further review on the 27th.

We have contacted Disney to request additional information regarding the violation. Specifically, we have requested:

- A copy of the email sent by outside counsel to Disney in-house counsel (the "Initial Email Disclosure").
- A list of all recipients-direct or indirect-of the Initial Email Disclosure (and/or the information contained in it).
- Copies of all communications containing or relating to the Initial Email Disclosure (and/or the information contained in it).

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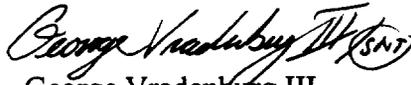
- An accounting of all discussions/communications relating to the five-day delay in notifying the Commission or AOL of this violation.
- An accounting of all discussions/communications relating to Disney's undertaking of a review of all AOL confidential materials, in the period between Disney's becoming aware of the violation and Disney's notifying the FCC and AOL.

We have asked that Disney identify and convey any confidential information to us in a confidential manner that does not aggravate the disclosures to date.

The Commission has repeatedly expressed concerns about the potential for third parties to use its merger review process for business advantage rather than for resolution of merger-specific issues of public interest. As Chairman Kennard advised Disney during the Commission's en banc hearing on the merger of America Online, Inc. and Time Warner, Inc., "we don't like to have our [proceedings] used as leverage in a contractual dispute." In light of the facts presented here, we urge the Commission to investigate this violation and to take any remedial actions it determines are appropriate to protect the integrity of its merger review here and Commission proceedings generally.

Thank you for your prompt attention to this matter.

Respectfully submitted,


George Vradenburg III

cc: Jim Bird
Deborah Lathen