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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 8, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TWB-204
Washington, D.C. 20554

RE: In the Matter of Applications of Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc. to AT&T Corp., CS Docket No. 99-251; In the Matter of Applications for Transfer of Control to America Online, Inc. ("AOL") of Licenses and Authorizations Held by Time Warner Inc. ("Time Warner"), CS Docket No. 00-30.

Dear Ms. Salas:

A copy of the attached letter was forwarded to Ms. Kathryn Brown today.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

Joan Marsh

Attachment

cc: James Bird
Royce Dickens
Linda Senecal
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November 8, 2000

Ms. Kathryn C. Brown
Chief of Staff
Office of the Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington D.C. 20554

Re: In the Matter of Applications of Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc. to AT&T Corp., CS Docket No. 99-251; In the Matter of Applications for Transfer of Control to America Online, Inc. ("AOL") of Licenses and Authorizations Held by Time Warner Inc. ("Time Warner"), CS Docket No. 00-30.

Dear Ms. Brown:

In an October 13, 2000 *ex parte* letter submitted by Catherine R. Nolan, Vice President, Law and Public Policy of Time Warner, Inc., Time Warner suggests that there is no obstacle to AT&T's divestiture of its minority interest in the Time Warner Entertainment Limited Partnership ("TWE") within the time periods contemplated by the AT&T/MediaOne Order. That suggestion ignores both the terms of the TWE Agreement and Time Warner's steadfast refusal to take even the most basic steps to facilitate AT&T's timely withdrawal from TWE.

Foremost, all three of the exit alternatives that Time Warner suggests are "unilaterally" available to AT&T under the TWE partnership agreement are heavily dependent on the cooperation of Time Warner. Time Warner controls all of the important detailed financial, prospective and operating information regarding TWE. AT&T, in contrast, does not have (and has not had access to) much of the critical and basic information, such as budgets, strategic plans, back-up financial data and other information that is typically provided, and must be reviewed, as part of the due diligence associated with any large transaction. Although TWE files certain historical financial information publicly, only Time Warner has access to the detailed information necessary for any party, including any underwriter, to perform a proper valuation analysis of TWE.

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Any meaningful third party sale process would necessarily require the full cooperation of Time Warner, including provision of the information that a prospective buyer, and AT&T as the seller, would need to arrive at a fair price. Time Warner, however, has no incentive to cooperate. Indeed, AT&T has specifically requested due diligence information customary for determining valuation for an asset of this type, but has not, to date, been given that information. This may well be because Time Warner has a right of first refusal to buy AT&T's interest at the price offered by a third party, and Time Warner thus benefits from artificially suppressing that price.

With respect to the registration rights provided in the TWE partnership agreement, Time Warner claims that there is "nothing in the TWE Agreement" that could prevent AT&T from completing a public sale of its interest in TWE through the registration rights process prior to May 19, 2001. This is simply not true. An initial public offering of the equity of a company as large and complex as TWE would typically take at least four to six months, assuming full cooperation by the issuer and its controlling party (in this case Time Warner) with the selling shareholders and underwriters.[1] In this case, however, as Time Warner noted in its letter, certain steps that are preconditions to the public registration process are required by the TWE partnership agreement to be completed by on or about March 16, 2001. That leaves only two months to complete the SEC registration process, go on "road shows" and price and close the offering, even assuming no delays by Time Warner in drafting and filing the registration statement, selecting the managing underwriter, or preparing the underwriting agreement. Moreover, Time Warner has a "black-out right" to freeze the registration for up to six months under certain circumstances (which are largely under its control).

Even assuming an initial public offering could as a practical matter be effected by May 19, 2001, the partnership agreement requires an investment banker's determination not only of an appraised value for TWE, but also of the "Registrable Amount" – *i.e.*, the banker's determination of how much of AT&T's investment could be sold in the public markets in a single offering. Depending upon market conditions, the banker could determine that only a small portion of AT&T's TWE investment could be sold (a likely conclusion given the fact that a public offering at fair value of AT&T's entire TWE investment would be the largest IPO in U.S. history). In that event, it would likely be significantly after May 19, 2001 before a complete divestiture through the registration process could be completed, even with Time Warner's full cooperation.

Time Warner ultimately recognizes as much, but claims that AT&T could nonetheless comply with the AT&T/MediaOne Order by placing its TWE interest in an irrevocable trust for "orderly" disposition by the trustee over the course of several years. But this completely ignores the central flaw in Time Warner's position, and in the efficacy of the procedures that Time Warner claims are available to AT&T. It is clear that any such trustee would be as dependent on Time Warner's cooperation to facilitate a sale transaction at fair value as AT&T or a potential third party purchaser would be. Because Time Warner

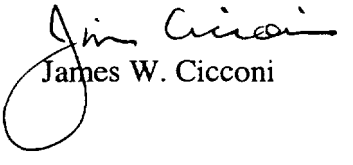
[1] An initial public offering could take much longer, but because TWE already files reports with the SEC it is likely that Time Warner could meet the timetable if it so desired.

not only has the ability to withhold that cooperation, but also controls the information flow to the appraising banker and potentially stands to benefit from a low valuation through certain put and call rights in the TWE partnership agreement, it has every incentive to be uncooperative and to artificially suppress the price.

There should be no confusion on this matter. AT&T prefers to divest the TWE interest, but absent Commission action to give Time Warner the necessary incentives to accommodate a timely disposition of AT&T's TWE interest at fair value, it is likely that AT&T and Time Warner (and, if the Commission approves the pending merger, AOL) will remain partners. Good public policy requires that, to the extent possible, the Commission should be consistent in its treatment of investments such as TWE that come before the Commission as part of more than one transaction. To do otherwise, will inevitably result in one party bearing a greater share of the burden than another similarly-situated party, and will impair the ability of the parties to implement Commission requirements in a fair and feasible manner.

Fortunately, the remedy for this situation is straightforward. Ms. Nolan's letter suggests that Time Warner is interested in purchasing AT&T's minority interest in TWE. The Commission can provide the appropriate incentive to AOL/Time Warner to complete that transaction within the time period contemplated by the AT&T/MediaOne Order by requiring as a condition of its approval of the merger of AOL and Time Warner that in the event AT&T and AOL/Time Warner fail to reach agreement on the price Time Warner will pay for AT&T's interest by December 1, 2000, the matter will be submitted to binding arbitration pursuant to a customary appraisal process, with a requirement that the parties enter a definitive agreement to effect disposition of AT&T's TWE interest, at the arbitrated price, before the compliance date set in the MediaOne merger order. To ensure that any arbitrator has the ability to make an informed and timely valuation decision, the Commission should also require that AOL/Time Warner grant AT&T and the arbitrator full access to the books, records and personnel of TWE in the arbitration proceeding. This simple condition should remove the existing impediment to AT&T's withdrawal from the TWE partnership.

Very truly yours,



James W. Cicconi

cc: Deborah Lathen
Michelle Ellison
Jim Bird