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November 15, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: FCC CS Docket No.: 00-30
Ex Parte Filing

Dear Ms. Salas:

On behalf of The Walt Disney Company, submitted herewith pursuant to Section 1.1206(b)(1) of the Commission's rules, attached please find an original and one copy of a letter addressed to Ms. Deborah Lathen of the Cable Services Bureau, dated November 15, 2000.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Lawrence Sidman

Lawrence R. Sidman

CC: James Bird
Deborah Lathen
Royce Dickens
Darryl Cooper
Linda Senecal

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November 15, 2000

Deborah Lathen, Esquire
Chief, Cable Services Bureau
Federal Communications Commission
445 12th Street, SW
Room 3 C750
Washington, D.C. 20554

RE: FCC CS Docket No.: 00-30

Dear Ms. Lathen:

On behalf of our Firm and The Walt Disney Company ("Disney"), I wanted to thank you for meeting with us yesterday, in the presence of counsel to AOL and Time Warner, and permitting us to present our views regarding the inappropriateness of sanctions for the breach of the Protective Order in this proceeding and the importance of permitting outside counsel to Disney immediate access to confidential AOL and Time Warner documents at this late and critical juncture in the Commission's review.

Please permit me, also, to amplify briefly on our response to your question regarding how, in the absence of sanctions beyond the Commission's October 10, 2000 Order, the Commission ensures that participants in proceedings subject to protective orders will adhere scrupulously to the terms of such orders, thereby creating the requisite level of comfort for parties submitting confidential documents. I alluded during our meeting to a well developed body of law at the International Trade Commission ("ITC"), that may provide useful guidance to the Commission in answering your question.

In performing its anti-dumping and countervailing duty investigations under Title 7 of the Tariff Act of 1930, the ITC routinely receives vast amounts of confidential business proprietary information and utilizes protective orders to ensure confidential treatment of that information by competitors. The ITC investigates numbers of allegations of breaches of its protective orders each year and publishes summaries of its actions, without identifying the breaching parties, in the Federal Register. Although the ITC has authority to levy a panoply of sanctions on a breaching

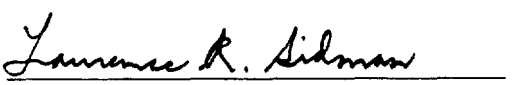
party (19 C.F.R. § 207.7(d)), similar to the Commission's authority, it is the policy of the ITC generally to issue a non-public warning letter, which it does not regard as a sanction, in circumstances where: (1) the breaching party has not previously been involved in a breach of a protective order; (2) the breach was unintentional; and (3) the breaching party took prompt action to remedy the breach and mitigate harm to competitors. Indeed, recently, the ITC used the private letter warning approach in dealing with an e-mail transmission by an associate of a firm of an outline of testimony containing business proprietary information to an individual who had not signed the protective order. *See* 65 Fed. Reg. 30437-30448 (May 11, 2000). In short, the ITC precedents provide the Commission with guidelines which would enable it to draw the distinction made by Mr. McPherson at yesterday's meeting between innocent and inadvertent breaches and deliberate breaches committed with intent to cause competitive harm.

Were the Commission to apply these criteria to the instant case, it would not impose sanctions on Disney or its outside counsel, yet would still send a strong signal to all participants in Commission proceedings involving protective orders that they are to take very seriously the obligations of confidentiality imposed by protective orders. This is particularly true where, as discussed in detail at yesterday's meeting, the Commission's October 10, 2000 Order already has had a profound impact upon both the Firm and Disney.

Once again, I thank you for your thoughtful and expeditious consideration of this matter.

Respectfully submitted,

VERNER, LIIPFERT, BERNHARD,
MCPHERSON & HAND, CHARTERED



By: Lawrence R. Sidman
Counsel to The Walt Disney Company

cc: James Bird
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