

this affidavit on personal knowledge, except as to paragraphs 6, 12 and 19 through 24, which are made on information and belief. I submit this affidavit to explain to the Court that the actions taken by ATC in response to the tender offer (the "Tender Offer") by Paramount Communications Inc. ("Paramount") were undertaken for the purpose of protecting ATC's business as an owner and operator of cable television systems. The Tender Offer, as presently formulated, threatens the very foundation of ATC. ATC, therefore, took and is taking actions that are designed to prevent ATC from being damaged.

BACKGROUND

2. I joined ATC in 1972 as Marketing Director of ATC's Orlando Division, after receiving my MBA from Harvard University. I became Manager of ATC's Central Florida System in 1973 and a division manager in Denver in 1974. I was made a Vice President of ATC in 1976 and was appointed President of ATC in 1982. ⁰ I remained President of ATC until 1984, when I was appointed President of Home Box Office Inc. ("HBO"), a wholly-owned subsidiary of Time. In 1988 I returned to ATC and was appointed to my present position as Chairman and Chief Executive Officer.

3. Time first acquired an ownership interest in ATC in 1974, when it acquired 10% of ATC's stock. In 1978 Time acquired the remaining ATC stock, and ATC became a wholly owned

subsidiary of Time. ATC's board of directors (the "ATC Board") is comprised of eight persons, three of whom are independent, "outside" directors; they are not employed by or otherwise affiliated with Time, ATC or their affiliates.

4. In 1986, ATC sold approximately 20 million shares of ATC stock in a public offering, as a result of which ATC became 18% publicly owned. These 20 million publicly owned shares of ATC stock are traded on the NASDAQ National Market and have a current market value of approximately \$1 billion.

ATC's Business

5. ATC owns and operates cable television systems across the United States. ATC has approximately 767 cable television franchises granted by the local cable television regulatory authorities in 32 states. A franchise is necessary to enable ATC lawfully to provide cable television services in a particular community. ATC's franchises constitute its principal asset. Indeed, ATC derives virtually all of its revenue from the periodic payments it receives from its subscribers. Collectively, ATC's cable systems serve more than 4 million subscribers, making ATC the second largest cable television operator in the United States.

6. Warner also owns and operates cable television systems across the United States. It has cable television franchises in 22 states. Warner's cable systems serve approxi-

mately 1.5 million subscribers, making it the fifth largest cable television operator in this country.

7. ATC's cable television systems are regulated by federal, state and local authorities. At the federal level, ATC is regulated by the Federal Communications Commission ("FCC") in connection with its operation of cable television relay service licenses (known by the FCC as "CARS"), which are microwave broadcast facilities used to transmit television signals to cable systems. ATC holds a number of CARS licenses. Neither the licenses nor the ownership of the licensee can be transferred without the approval of the FCC.

8. At the state level, ATC's cable systems are directly regulated by at least five states: New York, New Jersey, Connecticut, Minnesota and Hawaii. Those states regulate, among other things, the transfer of cable television franchises in their respective states. In some of these states, local governmental authorities also regulate cable television franchises.

9. At the local level, ATC's cable systems are regulated by local cable television franchising authorities and various city and municipal ordinances. The terms of the 767 franchises vary, but, in general, they regulate such matters as the number of television channels carried by the cable system, public and leased access channels for use by members of the local communities, repair and installation service and renewal

and transfer of the cable television franchise. A cable television franchise is awarded after a local franchising authority considers applications by companies setting forth, among other things, the cable television service they propose to provide, the price at which services will be provided, and their ability to provide that service and their suitability to be a cable television operator.

Regulatory Restrictions on Transfer
or Change of Control of Franchises

10. State and local franchising authorities issue franchises to promote the public interest. To assure that the public interest is properly served, the franchising authorities often subject any change of control or transfer of a franchise to prior regulatory approval. In addition, many states have enacted statutes that prohibit any entity from acquiring control of a cable television company without first obtaining approval from the pertinent state governmental authority. ATC has franchises that are governed by such statutes in at least five states: New York, New Jersey, Connecticut, Minnesota and Hawaii.

11. ATC has reviewed its 767 franchise agreements and has determined that approximately 180 of those agreements require that the local franchising authority approve a change of control of ATC from Time to Paramount. The cable television systems operating pursuant to those 180 franchise agreements

are among ATC's largest systems and collectively serve approximately 2.7 million (67%) of ATC's more than 4 million cable subscribers.

12. Before Paramount lawfully may acquire Time in the Tender Offer, it first must obtain the approval of the FCC to transfer the CARS licenses. Paramount also must obtain consent from the five states that regulate ATC cable systems and the local authorities that issued the 180 franchises described above. Paramount has applied to the FCC for approval to purchase Time stock pursuant to an interim arrangement known as a voting trust. If the FCC were to approve Paramount's application for a Voting Trust, Paramount would be able to transfer the Time stock it purchases to the trust, which would hold the stock pending the FCC's approval or rejection of Paramount's "long-form" transfer application. Although FCC rules allow the formation of a voting trust to allow the expeditious sale of a company that holds FCC licenses, the state and local jurisdictions regulating cable television do not have comparable rules. Any transfer of ownership, including a transfer to a voting trust, must be approved by those jurisdictions.

13. If Paramount were to fail to obtain the necessary approvals to transfer Time stock to the voting trust or to Paramount, the state agencies or local cable franchising authorities could terminate ATC's franchises. If a franchise

were to be terminated, ATC would lose its right to be a cable operator in that jurisdiction.

14. Even if the state agencies or local authorities were not to terminate ATC's franchise, Paramount's failure to obtain their approval would affect ATC's right to have its franchise renewed. Because ATC's franchises are of a fixed duration, it must apply for renewals before the franchises expire. Under the Federal Cable Communications Policy Act of 1984, a cable television operator has a legal expectation that its franchises will be renewed unless, among other things, the franchise has been breached. Therefore, if Paramount were to acquire Time and the majority ownership of ATC without obtaining the approval of the appropriate state and local authorities, ATC would lose its expectancy of renewal.

ATC's Joint Ventures

15. ATC has five joint venture agreements with third parties that operate certain cable television systems. Those systems serve approximately 1 million subscribers. Some of those agreements give a party the right to terminate the joint venture if there is a change in control of one party without the other party's consent.

16. If ATC's franchises were to be terminated or not renewed, or if its joint venture agreements were to be terminated, ATC's business would be injured seriously. ATC's share-

holders, including the public shareholders who own 20 million shares of ATC stock, likewise would be harmed.

The Tender Offer

17. The Tender Offer, which was commenced on June 5, 1989, does not require Paramount to obtain approvals from state and local franchising authorities for the transfer of ATC's cable franchises from Time to Paramount before Paramount consummates the offer. The Paramount Offer to Purchase sets forth a condition that permits Paramount to consummate the offer when it decides, in "its sole discretion," that it has obtained all "consents and franchise transfers" except those that are "not material in the aggregate." (Paramount Offer to Purchase at 5.) (Emphasis added.) The "sole discretion" language allows Paramount to define materiality in any manner that suits its, not ATC's, interest. Moreover, this condition is for "the sole benefit of [Paramount]" and may be waived by Paramount at any time "in [Paramount's] sole discretion." (Paramount Offer to Purchase at 34.) In essence, therefore, Paramount can buy the shares of Time stock that are tendered whenever Paramount chooses to do so, even if it has obtained no approvals from cable franchising authorities or ATC's joint venture partners for transferring control of ATC's cable franchises. Thus, the Tender Offer, as presently formulated, requires ATC and its minority shareholders to bear the risk that Paramount will

acquire control without the necessary approvals, thereby causing ATC to be in default of its franchises and in violation of a number of state and local laws.

ATC Sues Paramount to Protect ATC's Business

18. Following the commencement of the Tender Offer, the ATC Board met to consider certain consequences that the Tender Offer might have for ATC. The ATC Board, including its independent outside directors, unanimously determined that because Paramount did not obligate itself first to obtain state and local regulatory approval for the transfer of ATC's cable franchises before consummating the Tender Offer, the offer threatened to cause irreparable harm to ATC's business. Therefore, the ATC Board unanimously approved the filing of a lawsuit in Connecticut -- the location of ATC's principal place of business -- seeking an injunction that would require Paramount not to purchase any stock in the Tender Offer until it first obtained the required approvals. The complaint in the Connecticut action alleges, among other things, that Paramount, by failing to commit to obtaining state and local regulatory approvals before closing the Tender Offer, tortiously is interfering with ATC's performance of its contractual obligations by needlessly threatening ATC's franchises and joint venture and financing agreements in violation of state and local laws.

Paramount's Application for FCC Approval

19. ATC determined that additional efforts were needed to protect ATC's interests. In proceedings before the FCC, Paramount refused to answer directly the question whether it intended to obtain state and local regulatory approvals (for a transfer of control of ATC's franchises to Paramount) before it consummated the offer. ATC asked state and local officials to consider writing to the FCC to inform the FCC of their views concerning whether the transfer of ownership to the voting trust without their consent would violate state and local law or their franchises with ATC. ATC prepared a draft memorandum to aid state officials in preparing submissions to the FCC and sent that draft to the Attorney General of Hawaii. The Attorney General prepared a draft memorandum to the FCC and sent it to the attorneys general of other states asking them to join the memorandum. Thirteen states agreed that Paramount's tender offer was in violation of state law and joined Hawaii's submission to the FCC. Thereafter, two additional states joined Hawaii's submission. Similar views to those expressed by the states attorneys general have been expressed by officials of at least fourteen U.S. cities and by the U.S. Conference of Mayors. (A copy of that memorandum is attached as Exhibit A.)

20. The Attorney General of Hawaii subsequently wrote a letter to the Chairman of the FCC further expressing his concerns -- based on "independent, objective evaluations of

facts and law by responsible officials" -- regarding the serious legal questions raised by Paramount's petition. He determined, based on Paramount's statements and filings, that Paramount would seek the transfer of ownership of cable television franchises without first seeking state and local approvals. (A copy of that letter is attached as Exhibit B.)

21. The concerns of ATC and the Attorneys General were well-founded. On June 29, 1989, the FCC notified Paramount in a strongly worded letter that, in the FCC's view, Paramount had not stated clearly whether it intended first to obtain state and local regulatory approval before consummating the Tender Offer. (A copy of the FCC letter is attached as Exhibit C.) The FCC demanded that Paramount clarify its position as to whether and when it would obtain such approvals. Paramount responded by stating that "it intends to consummate its offer to purchase Time shares ... only when Paramount has obtained material state and local franchise transfer consents that are legally required," (letter of Norman P. Leventhal to Alex D. Felker dated June 30, 1989 (attached as Exhibit D to this affidavit) (emphasis added)), which simply begged the question of what "material" meant. Paramount did not tell the FCC that "materiality," as defined in Paramount's Offer to Purchase, was to be determined in "its sole discretion," and that the discovery to date showed, as Paramount's principal litigation counsel conceded, that Paramount had given no

thought to the meaning of "materiality": "the record is absolutely clear. I don't know who it helps, but the record is absolutely clear that we [Paramount] have made no judgment on what's material. I mean, you have established that as a fact." (Davis Dep. at 287-88.) Thus, Paramount's answer to the FCC only reinforced ATC's concerns.

ATC's Contacts with State and Local
Officials Concerning Paramount's Tender Offer

22. Paramount did not seek approvals from the state and local franchising authorities after the Tender Offer was announced. Under many of its franchises, ATC was obligated to and did notify the authorities of the Tender Offer. ATC also sent draft complaints and legal memoranda to certain officials to assist them in preparing filings if they determined that Paramount was acting in contravention of state and local law and the franchises.

Litigation by State
and Local Authorities

23. The City of Casselberry, Florida, after reviewing material submitted by ATC, concluded that consummation of the Tender Offer would violate local law as well as its franchise agreement with ATC. It, therefore, filed an action against Paramount in the United States District Court for the Middle District of Florida. ATC agreed to indemnify the City of Casselberry in connection with the lawsuit because such an

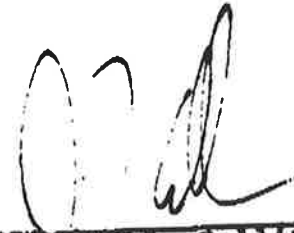
indemnification was necessary fully to protect ATC's interest in Casselberry. The City of Winter Park, Florida, which was not indemnified by ATC, also concluded that consummation of the Tender Offer would violate local law and its franchise agreement, and sought to intervene in the Casselberry action. We are informed that several other cities may file similar actions to protect their interests.

24. In addition, the City of Denver has asked Connecticut Superior Court for permission to file an amicus curiae brief in support of ATC's position in that lawsuit. In addition, the Consumer Council of the Connecticut Department of Public Utility Control also moved to intervene in ATC's Connecticut lawsuit stating that: "The OCC [Office of Consumer Council] has an interest on behalf of customers in ensuring that the State of Connecticut retains its full authority to review the suitability and financial responsibility of any Company prior to that Company acquiring a controlling interest in a community antenna television company."

25. All of ATC's activities in connection with the Tender Offer were designed to protect ATC's rights and the value of its assets. In fact, such actions were necessary fully to fulfill ATC's fiduciary duties.

STATE OF NEW YORK }
COUNTY OF NEW YORK }

ss.:



Joseph J. Collins

Sworn to and subscribed before
me this 7th day of July, 1989.

Harold E. Axelrad
Notary Public

HAROLD E. AXELRAD
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-400079
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES 11/29, 1989

Exhibit

A

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In re Applications of:

KDS Acquisition Corp.

For Commission Consent to
Transfer of Control of
Time Inc.

File Nos.

OPPOSITION OF THE STATES OF HAWAII, ALABAMA, DELAWARE,
KANSAS, LOUISIANA, MINNESOTA, NEVADA, NORTH CAROLINA,
NORTH DAKOTA, RHODE ISLAND, SOUTH DAKOTA, AND THE
COMMONWEALTHS OF PENNSYLVANIA AND VIRGINIA, TO THE
APPLICATION OF KDS ACQUISITION CORP. FOR
COMMISSION CONSENT TO TRANSFER OF CONTROL OF TIME INC.

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COMMONWEALTHS OF PENNSYLVANIA AND VIRGINIA, TO THE
APPLICATION OF KDS ACQUISITION CORP. FOR
COMMISSION CONSENT TO TRANSFER OF CONTROL OF TIME INC.

SUMMARY

Paramount Communications Inc. ("Paramount") is attempting a hostile \$14 billion takeover of Time Inc. ("Time"). Paramount, through its acquisition vehicle, KDS Acquisition Corp., has proposed to transfer Time stock into a temporary "voting trust" via the Federal Communications Commission's ("FCC") Special Temporary Authority ("STA") procedures. This voting trust mechanism would effectuate a transfer of Time stock and, therefore, the cable television franchises held by its subsidiary, American Television and Communications Corporation ("ATC"), and by ATC's local cable subsidiaries, to a trustee acting on behalf of Paramount.

Paramount proposes a two-step transaction. The first step involves the transfer by Time stockholders of Time stock to a voting trustee and the payment to the stockholders for such stock. The second step involves the transfer of that stock from the voting trustee to Paramount. The critical issue to be decided is the legality under state and local law of the voting trustee taking possession and control of Time stock on the basis of FCC approval of the transfer of the Cable Television Relay Service ("CARS") and other licenses before state and local franchising authorities have approved the transfer of control of their cable franchises either to the voting trustee or to Paramount.¹

If the step one transfer of Time stock to the voting trustee is accomplished on the basis of FCC approval of the transfer of the CARS licenses, but without prior approval of the transfer of control of the Time cable franchises by state and local franchising authorities, federal, state and local law will be violated and the rights of state and local franchising authorities to review effectively and pre-approve the transfer of cable franchises will be lost. Consequently, the States of Hawaii, Alabama, Delaware, Kansas, Louisiana, Minnesota, Nevada, North Carolina, North Dakota, Rhode Island, South Dakota, and the Commonwealths of Pennsylvania and Virginia ("States") submit this

¹ Paramount has obfuscated (i) when the Time stock would be received by the trustee and payment made to the stockholders; and (ii) when required approvals from state and local franchising authorities would be obtained. The FCC should require Paramount to clearly state whether it intends the trustee to take and pay for the Time stock before or after obtaining the required approvals from franchising authorities.

opposition to the application of KDS Acquisition Corp. for FCC consent to transfer control of Time unless such consent is conditioned upon a requirement that the voting trustee not take possession of any Time stock nor pay for such stock unless and until any and all required franchising authority approvals are obtained by Paramount.

INTRODUCTION

As set forth more fully below, the Cable Communications Policy Act of 1984² (the "Cable Act") created a hybrid system of oversight authority, whereby the FCC assumed certain regulatory responsibilities, but Congress reserved for state and local governments the authority to award franchises to cable operators. That authority also includes the power to regulate transfers of ownership of franchises.

Various states have incorporated this regulatory authority into their statutes and franchise agreements, by expressly prohibiting the transfer of control of cable franchises without the express written consent of the franchising authority. In other states, this authority is exercised at the local level. Paramount's use of the FCC's STA procedures and the proposed voting trust is an attempt to circumvent the requirement that transfers of cable franchises receive the prior approval of state and local franchising authorities and to avoid its legal obligations at the state and municipal levels.

²

Pub. L. 98-549, 98 Stat. 2779 (1984).

The FCC Policy Statement³ issued in 1986 establishes STA procedures for utilization of a voting trust in connection with a tender offer. Pursuant to the requirements of the Policy Statement, a trustee is only permitted restricted powers and is required to maintain the status quo. The voting trust agreement proposed by Paramount, however, enables the trustee to gain control of the local cable operations, thereby violating many state laws, municipal ordinances, franchise agreements and the Cable Act itself.

In addition, FCC approval of the voting trust would limit the practical options available to franchising authorities should such authorities ultimately determine to disapprove or attach conditions to the transfer of control of a cable franchise. Careful scrutiny by a state or local authority of the transfer of control of a cable system before the transfer takes place is absolutely essential, for example, to protect consumers from the potential adverse consequences -- skyrocketing rates and deteriorating system plant and services -- of highly leveraged financial structures which are prominent in hostile takeovers such as this. Moreover, approval of the voting trust would also prevent the franchising authorities from conducting a meaningful investigation of the financial stability, and the character and

³ Tender Offers and Proxy Contests, MM Docket No. 85-218, FCC 86-87, 59 R.R.2d 1536 (released March 17, 1986), appeal dismissed sub nom. Office of Communication of the United Church of Christ v. FCC, 826 F.2d 101 (D.C. Cir. 1985) ("Policy Statement").

fitness of the ultimate transferee (Paramount) prior to the transfer of control from Time.

Once control is transferred from Time, if a franchising authority determines not to approve or to condition the transfer, its practical remedial options would be severely limited. The lengthy negotiation and certain litigation would inevitably lead to a protracted period of neglect, and service and plant deterioration. The ultimate sanction -- outright disapproval of the transfer -- would lead only to a further period of system declination while a new operator is sought. This can only harm cable subscribers throughout the franchised systems. For these reasons, Time should continue to control and operate its cable franchises until such transfers are approved by the relevant franchising authorities. Accordingly, the States respectfully request that KDS Acquisition Corp.'s application be denied or explicitly conditioned upon a requirement that the voting trustee not take possession of any Time stock nor pay for such stock unless and until any and all required franchising authority approvals are obtained by Paramount.

ARGUMENT

I. State and Local Governments Have the Right to Require Approval of Franchise Transfers by the Appropriate Franchising Authority

Congress, pursuant to the Cable Act, which amended the Communications Act of 1934, has created a hybrid system with respect to the regulation of cable franchises. As FCC Chairman Patrick has stated:

Federalism is itself a social contract; a contract among those entities vested with the awesome power, and sobering responsibility, of state and federal government. The broad terms of this contract are defined by the Constitution and the Communications Act. But there are many gray areas. The viability of the federalist contract thus requires mutual respect, and reciprocal restraint.⁴

As part of that hybrid federalist system, the FCC assumed certain regulatory responsibilities, but Congress conferred exclusive jurisdiction upon state and local governments to award cable franchises⁵ and to approve the transfer of control of such franchises:

The Cable Act itself creates a dichotomy between the local franchise authorities and the FCC. While the FCC can set technical requirements, the local franchising authorities are given authority over the franchising of cable systems * * *. The

⁴ D. Springer, Who's Gonna Getcha?, Media Business Review 8, 9 (Second Quarter 1989).

⁵ Some franchising authorities also require public notice and a hearing prior to the approval or disapproval of a franchise application.

legislative history of the Cable Act further suggests that Congress did not intend general [FCC] oversight of local franchise decisions.⁶

The authors of the Cable Act made explicit their intent to vest full authority for the award, administration and enforcement of cable franchises in state and local authorities:

This grant of authority to a franchising authority to award a franchise establishes the basis for state and local regulation of cable systems * * *. [M]atters subject to state and local authority include, to the extent not addressed in the legislation, certain terms and conditions related to the grant of a franchise (e.g., duration of the franchise term, delineation of the service area), the construction and operation of the system (e.g., extension of service, safety standards, timetable for construction) and the enforcement and administration of a franchise (e.g., reporting requirements, bonds, letters of credit, insurance and indemnification, condemnation, and transfers of ownership).

H.R. Rep. No. 934, 98th Cong., 2d Sess. 59 (1984), reprinted in 1984 U.S. Code Cong. & Admin. News 4696 (emphasis supplied). The House Report thus highlights that the authority to approve franchise transfers also resides at the state and local level.⁷

⁶ General Telephone Co. of California, 3 FCC Rcd. 2317, 2322 (CCB 1988) (footnote omitted). The FCC text affirming the Bureau's Order has not yet been released. See also In re Amendment of Parts 1.63 and 76 of the Commission's Rules to Implement the Provisions of the Cable Communications Policy Act of 1984, 104 F.C.C.2d 386, 391 (1986) (The FCC's mandate under the Cable Act must be read "with due regard for the divisions of responsibility for enforcement and interpretation that Congress specified in both the specific words of those amendments to the Act adopted in the Cable Act and in the legislative history of those amendments.").

⁷ For example, in considering Act 301, Session Laws of Hawaii 1987, which amended Chapter 440G, Haw. Rev. Stat. to require any person who constructs, operates or acquires a cable
(Footnote Continued)

Numerous franchising authorities have incorporated that regulatory authority and expressly prohibited the outright transfer of control of a franchise, or even the transfer of less than a controlling interest, without their prior approval.⁸ Many of Time's cable facilities are subject to franchises, the transfer of which requires such approval. Similar authority is frequently reserved with respect to the renewal of franchises.⁹ As a result of the renewal and approval provisions, cable operators have an additional incentive to provide optimal service so as not to be subject to the penalty of non-renewal or denial of a transfer for failure to meet their franchise obligations.

(Footnote Continued)

system, or extends an existing system to outside of its service area, to obtain a franchise (Haw. Rev. Stat. § 440G-5) and to obtain approval of any transfer (Haw. Rev. Stat. § 440G-10.1), the members of the Committees on Consumer Protection, Commerce and Industry said in their report: "[T]he bill is proposed in order to conform State law with federal requirements. The passage of the federal Cable Policy Act of 1984 has established a new framework for the State's regulations of cable communication services." House Stand. Comm. Rep. No. 545, 1987 House Journal at 1357.

⁸ E.g., Haw. Rev. Stat. § 440G-10.1 (Supp. 1988) ("No cable franchise * * * may be * * * transferred * * * including by transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and by written approval of the director."); Minn. Stat. Ann. § 238.083 (Supp. 1989) ("A sale or transfer of a franchise, including a sale or transfer by means of a fundamental corporate change, requires the written approval of the franchising authority."); N.Y. Exec. Law § 822 (McKinney 1982) (prior Cable Commission authority required for a transfer of any franchise, or any transfer of control of a franchise). See infra pp. 14-19.

⁹ This authority is recognized in Section 626 of the Cable Act, 47 U.S.C. § 546 (1987). See, e.g., Haw. Rev. Stat. § 440G-10 (Supp. 1988).

Thus, state and local authorities have used their approval and renewal powers to ensure that service of an appropriate level and quality is provided to the franchisees' subscribers. Moreover, state and local authorities' concerns regarding undue market concentration within the cable industry can be addressed through these powers. Should the FCC approve a transfer of control prior to the franchising authorities' review of the transaction and the transferee, it would severely limit such authorities' ability to protect subscribers through the array of options available under their respective regulatory schemes. Once the transfer is effectuated, Time would no longer exist and the imposition by a franchising authority of the maximum sanction -- denial of the transfer -- would result in system neglect with a consequent loss or deterioration of service to subscribers. This result is contrary to the express intent of the Cable Act.

In addition to the provisions of the House Report quoted above, the intent of Congress to reserve explicitly authority over cable franchises to state and local, rather than federal, authorities is evident from other portions of the legislative history of the Cable Act. For example, representatives of state and local governments urged that franchising authority be left in their hands.¹⁰ The National Association of Regulatory Utility

¹⁰

E.g., Cable Telecommunications Act of 1983: Hearings on S. 66 Before the Subcommittee on Communications of the Committee on Commerce, Science, and Transportation ("Hearings on S. 66"), 98th Cong., 1st Sess. 185 (1983) (statement of Morris Tarshis, Director of the Bureau of Franchises of City of New York); Options for Cable Television: Hearings on H.R. 4103, 4229 and 4299 before the Subcommittee on Telecommunications, Consumer

(Footnote Continued)

Commissioners testified:

The uniquely local character of cable service provision via the franchise mechanism, as well as the previously cited need for flexible regulation as the medium continues to evolve, present compelling reasons why Congress should preserve primary authority over cable telecommunications regulation at the State and local level. It is our strong belief that the public interest is best served when decisions materially affecting the quality of citizens' lives are made by officials who are easily accessible to those citizens. State and local regulators are in a far better position to be knowledgeable about local conditions and to balance competing interests involved in cable regulatory decisions than is the FCC.¹¹

During the floor debates in the House, Congressman John Dingell reaffirmed this fundamental principle of the Cable Act:

The legislation the House considers today establishes a national policy on cable television which will provide the cable industry and our Nation's cities with the stability and certainty that are essential to cable's growth and development in the public interest. This national policy recognizes the crucial role that the local communities must continue to play in assuring that the cable system in their community does, indeed, serve the interests and the needs of the citizens in the community.¹²

(Footnote Continued)

Protection and Finance of the Committee on Energy and Commerce, 98th Cong., 2d Sess. 820 (1984) (statement of Gregory Sparrow, Mayor of De Kalb on behalf of the United States Conference of Mayors).

¹¹ Statement of the National Association of Regulatory Utility Commissioners, Hearings on S. 66, supra note 10, at 179.

¹² 130 Cong. Rec. H10427, H10442 (Oct. 1, 1984) (Statement of Rep. Dingell); id. at 10444 (statement of Rep. Bryant) ("H.R. 4103 establishes the authority of local governments to regulate cable franchises."). See also H.R. Rep. No. 934, 98th Cong., 2d Sess. 19, 24 (1984); S. Rep. No. 67, 98th Cong., 1st Sess. 19, 30 (1983); 129 Cong. Rec. S8291, S8322 (June 14, 1983) (statement of

(Footnote Continued)

The Supreme Court has also explicitly referenced the Cable Act's jurisdictional structure that "left franchising to state or local authorities."¹³ Numerous other federal and state decisions, construing various provisions of the Cable Act, have similarly confirmed that, under the Cable Act, authority with respect to cable franchises resides with state and local governments.¹⁴

II. FCC Precedent Requires that Neither Paramount Nor Paramount's Voting Trustee Take Control of or Pay for Time Stock Until State and Local Franchising Authority Approvals Are Obtained

The Mass Media Bureau ("Bureau") has recognized the limitations on the FCC's jurisdiction with respect to the authorization and operation of cable systems. The Bureau has specifically held that the Cable Act limits the FCC's jurisdiction to grant CARS licenses. In C&S Trenching Co., 2 FCC Rcd. 116 (MMB 1987), the Bureau ruled that "to be eligible for a CARS license an entity must establish * * * that it holds a franchise * * *." Id. at 116. The Bureau rejected arguments that the FCC need not concern itself with the franchise process in determining

(Footnote Continued)

Sen. Kasten) ("The bill recognizes local authorities' exclusive power to grant franchises and negotiate contracts and contract renewals with cable operators.").

¹³ City of New York v. FCC, ____ U.S. ____, 108 S. Ct. 1637, 1641 (1988).

¹⁴ See, e.g., Cable Investments, Inc. v. Woolley, 867 F.2d 151, 154 (3d Cir. 1989); Channel One Systems, Inc. v. Conn. Dep't of Public Utility Control, 639 F. Supp. 188, 195 (D. Conn. 1986); Rollings Cablevue, Inc. v. Saienni Enterprises, 633 F. Supp. 1315, 1318 (D. Del. 1986); NYT Cable TV v. Homestead at Mansfield, Inc., 111 N.J. 21, 543 A.2d 10 (1987) (per curiam) (dissenting opinion).

to grant a CARS license by noting that "Congress mandated in the Cable Act that a cable operator may not provide cable services without a local franchise." Id; see LaSalle Tele-Communications, Inc., 2 FCC Rcd. 2935 (MMB 1987) (grant of CARS license appropriate where applicant holds requisite franchise authority). Simply put, the FCC lacks subject matter jurisdiction to grant the proposed transfer of control of ATC's franchises to the voting trust prior to the consent of the local authority to grant a franchise either to the voting trust or to Paramount.

Paramount apparently seeks to rely upon an unpublished staff letter¹⁵ to show that the FCC may transfer CARS licenses to a voting trust, contending that such a transfer "in no way interferes with the rights of local governments to approve or disapprove the transfer of a franchise."¹⁶ The States did not have the benefit initially of reviewing this unpublished staff letter and find it regrettable that Paramount did not append it to its Opposition. A copy of what the States believe to be the referenced letter has now been obtained; and the States now understand why the letter was not appended to Paramount's Opposition.

Paramount misleadingly suggests that the FCC permitted the transfer of control of Rogers U.S. Holdings Limited to KBL Cable, Inc., and hence the transfer of the City of Laredo cable

¹⁵ See Opposition of Paramount to Motion of Time to Dismiss or Deny, June 19, 1989, at 9 n.12.

¹⁶ Id. at 10.

franchise, before the City of Laredo approved the transfer of the franchise. In fact, the staff letter made clear that approval of the CARS license transfer could neither directly nor indirectly be used to effectuate a transfer of control until after the City of Laredo approved the transfer of the cable franchise.

Notwithstanding the totality of page 10 of Paramount's Opposition being a quote from the staff letter, Paramount omitted this last sentence of page 3 of the staff letter: "To assure no misunderstanding on this point, we shall impose an appropriate condition to the transfer in this proceeding." That condition, also missing from Paramount's brief, may be found in the last sentence of the staff letter: "[T]he transaction shall not be consummated until the City of Laredo approves the transfer of the franchise to KBL Cable, Inc."

Plainly, therefore, the FCC may not permit the transaction to be consummated, i.e., it may not permit the transfer of Time stock to the trustee and the payment therefor to the stockholders, until the franchising authorities approve the transfer of the franchises to Paramount or to the trustee. That right and obligation, as the City of Laredo letter made clear, is reserved to state and local franchising authorities. Thus, if the FCC elects to approve the transfer of the CARS licenses to the voting trust, it must explicitly condition that transfer on a clear requirement that the voting trust may not take possession of any Time stock nor pay for such stock unless and until the requisite approvals of the various franchising authorities are obtained.

III. States and Municipalities Actively Regulate Cable Franchises

Under the dual system of regulation contemplated by the Cable Act, most franchising authorities regulate not only the award of cable franchises, but also their transfer. Hawaii, for example, explicitly requires prior approval of transfer of control of a franchise:

(a) No cable franchise, including the rights, privileges, and obligations thereof, may be assigned, sold, leased, encumbered, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including by transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval by the director. The form of the application shall be prescribed by the director.

Haw. Rev. Stat. § 440G-10.1 (Supp. 1988). The Hawaii statute also contemplates notice and a public hearing. Id.; see also id. at § 440G-7 (public hearing required on application for franchise).

New York has an independent state cable television regulatory body. Section 822(1) of Article 28 of the statute relating to the New York Commission on Cable Television ("New York Commission") states that prior New York Commission approval is required for a "transfer * * * of any franchise, or any transfer of control of a franchise."¹⁷ The New York Commission

¹⁷ N.Y. Exec. Law § 822(1) (McKinney 1982). New York courts have reiterated the importance of the approval requirement, stating that "[n]o transfer * * * of any franchise' may be accomplished without commission approval." City of New York v.

(Footnote Continued)

may, but is not required to, hold a public hearing.¹⁸ Local authorities in New York must also give their approval to transfers.

Similarly, Connecticut has a significant role in the regulation of its cable franchises. No sale or transfer of a franchise is valid unless approved by the Department of Public Utility Control ("PUC").¹⁹ Any transfer of a controlling interest is deemed to be a sale.²⁰ In considering a proposed transfer, the PUC must consider certain factors including "the ability of the operator's management to properly operate the franchise."²¹

Municipalities across the country have also expressly asserted authority to regulate the transfer of franchises in municipal ordinances and in franchise agreements themselves.²²

(Footnote Continued)

State of New York Commission on Cable Television, 47 N.Y.2d 89, 92, 390 N.E.2d 293, 294 (1979).

¹⁸ If the Commission holds a public hearing, it must conform to Section 815, which requires reasonable notice to the public and a reasonable opportunity for the public "to express their views." N.Y. Exec. Law § 815(2)(a)(iii) (McKinney 1982).

¹⁹ Conn. Gen. Stat. § 16-331(a) (1985).

²⁰ See Conn. Gen. Stat. § 16-47(c) (1988).

²¹ Conn. Gen. Stat. § 16-331(d)(1) (1985).

²² See, e.g., (Alabama) Birmingham Ordinance No. 73-154 (transfer of control of more than 30% of franchise requires prior approval of city council); (Kansas) Independence Ordinance No. 3394 (assignment of franchise prohibited without express written consent of city); (Kentucky) Murray Franchise Agreement (transfer of franchise prohibited without written permission of city council); (Louisiana) Shreveport Franchise Agreement (sale or

(Footnote Continued)

The transfer of Time stock to the voting trust would violate these provisions as well.

Not only do state and local governments have the requisite authority, they engage in active, direct supervision over the transfer of cable franchises. For example, in connection with a January 1989 show cause order in effect disapproving a cable system transfer, the chairman of the New York Commission expressed concern over the effect of highly leveraged financing on cable system maintenance and rates.²³ The New York Commission received information that a transfer of First Carolina Communications, Inc. would require a yearly 14% subscriber rate increase, a 50% decrease in maintenance expenditures, and a 33% decrease in money for service personnel. The New York Commission also was concerned that the systems in question had been sold four times in the previous four years, with a 150% increase in the per subscriber selling price -- the latest proposal representing a 50% increase in one year.

In September 1988, the State of Connecticut denied a joint application to acquire control over three cable systems and

(Footnote Continued)
assignment of rights and privileges of franchise prohibited without approval of city); (Mississippi) Jackson Franchise Agreement (transfer or sale of franchise prohibited without prior approval of city); (North Carolina) Raleigh Ordinance No. 121 (transfer of control prohibited without prior notice to and approval by city council); (Pennsylvania) Reading Cable Television Ordinance Bill No. 101-85 (transfer of franchise prohibited without prior consent of city); (Virginia) Lynchburg City Code Chapter 12-1 (transfer of franchise prohibited without prior written consent of city).

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January 4, 1989 Commission News Release.

their parent holding company, SCI Holdings, Inc. ("SCI").²⁴ The PUC denied the transfer application because of adverse effects on subscribers of the resulting concentration of cable system ownership and because the proposal failed to provide adequate financial responsibility.²⁵

Significantly, the PUC found that the addition of \$500 million of bank debt to SCI's junk bond rated debt would adversely affect SCI's long-term financial viability.²⁶ The PUC believed that SCI's post-acquisition debt to cash flow and debt to capitalization ratios "would be precariously high."²⁷ It observed that "[t]he expectation of higher rates and declining service to fund debt service is hardly reassuring to [the PUC]," concluding that "SCI's high pro forma financial leverage would have an adverse effect on its financial health and on its capability to provide funds for capital reinvestment purposes."²⁸

In 1986, the City Manager and Cable Television Administrator of Torrance, California recommended disapproval of a proposed franchise transfer by Group W (a subsidiary of

²⁴ State of Connecticut Department of Public Utility Control, Application of Comcast Corporation and Tele-Communication, Inc. for Approval of Acquisition of Control Over SCI Holding, Inc., et al., Dkt. No. 88-06-25 (Sept. 28, 1988).

²⁵ Id. at 17.

²⁶ Id. at 11.

²⁷ Id. at 12.

²⁸ Id.

Westinghouse Electric Company) to Century Southwest Cable Television, Inc. ("Century"). They noted that no transfer could proceed without city approval, and Century had not sought such approval.²⁹ Despite the absence of city approval, Century acquired Group W stock and, although Century pledged that Group W would retain control over the Torrance cable system, Century exercised de facto control. System managers reported to Century personnel and Century officers participated in day-to-day operations of the system.³⁰

More ominously, during the course of its review of the proposed transfer, the city discovered that Century was in a precarious financial position. Like Paramount in the instant case, Century assumed a large debt burden to purchase Group W. Furthermore, the parent company had an estimated debt to equity ratio of almost 10:1. Such a highly leveraged ratio "pose[d] a substantial risk to the City and its cable subscribers."³¹ The city was also concerned about the level of local, cable-originated programming carried by Century's existing systems.³²

Finally, inconsistent information provided by Century, as well as the willingness of Century to breach the franchise agreement by acquiring Group W without city approval, cast doubt on

²⁹ Torrance Staff Report of November 16, 1986, reprinted in Cable Television Law 1989, Vol. Two, 57, 57-58 (Practicing Law Institute 1989).

³⁰ Id. at 61.

³¹ Id. at 66-67.

³² Id. at 63-65.

Century's character qualifications.³³ All of the foregoing resulted in the negative recommendation of the City Manager and Cable Television Administrator, which was accepted by the city council, and the transfer of control was denied.

The circumstances of the Torrance transfer were similar to the proposed voting trust arrangement in the instant case and, even though Paramount may argue that ATC will retain control over its cable operations, in fact, as discussed more fully infra, the trustee has the authority to exercise day-to-day control over the system.

IV. The Ability of a Franchising Authority to Enforce Its Franchise Agreement and State and Local Law Would Be Significantly Diminished in Practical Terms if the Voting Trust Is Approved

The importance of the right of a franchising authority to review and approve or disapprove a transfer of control before it takes place is not merely theoretical. If the franchising authority were to permit transfer of Time stock to Paramount's trustee, it would, under one view of the Cable Act, waive its right to consider, in connection with any renewal sought by Paramount, the performance record of the Time franchisee compiled prior to those changes in control.³⁴ Section 626(d) of the Cable Act provides

³³ Id. at 68-69.

³⁴ N. Sinel, P. Grant & W. Cook, "Local Cable Regulation and the Cable Franchise in 1989" (Jan. 9, 1989), reprinted in Cable Television Law 1989, supra note 29, Vol. One, 449, 497 ("[I]f a franchising authority has consented to a transfer of the cable system, it may not consider the performance of the previous operator in making a renewal decision."); N. Miller & A.

(Footnote Continued)

that, in considering a renewal proposal:

A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise * * * in any case in which it is documented that the franchising authority has waived its right to object, or has effectively acquiesced.

47 U.S.C. § 546(d) (1987). The House Committee Report emphasized:

The assessment made on this criterion should consider the operator's performance over the life of the franchise, unless the franchise has been transferred with the franchising authority's consent. In that case, the applicable period of consideration would be the period in which the franchise was held by the operator seeking renewal.

H.R. Rep. No. 934, 98th Cong., 2d Sess. 74, reprinted in 1984 U.S. Code Cong. & Admin. News 4711.

Moreover, it is essential to assure that cable consumers do not pay for ill-advised takeovers. The state and local authorities must have the opportunity to consider information about Paramount crucial to its ability to deliver reasonably priced, community oriented service. Significantly, the very acquisition of Time would impair Paramount's ability to do this. The particular nature of Paramount's hostile tender offer places Paramount in a tenuous financial position. Yet if the voting trust arrangement

(Footnote Continued)
Ciamporzero, "Cable Television Franchise Transfers" (Jan. 17, 1989), reprinted in Cable Television Law 1989, supra note 29, Vol. Two, 21, 23 ("Franchise noncompliance by a seller may not be held against the buyer at renewal.").

were approved, the state and local authorities would be unable to consider the impact of Paramount's \$14 billion debt burden on cable rates and the quality of service to subscribers because the debt would already be in place. By permitting through inaction the transfer of control to Paramount's trustee, franchising authorities would have in effect acquiesced in the franchisee (through its ultimate parent) becoming greatly encumbered with debt. Clearly, the "after-the-fact" remedies available in such circumstances are unsatisfactory, which is why prior approval is required by virtually every franchising authority.

Also, state and local governments would be similarly precluded from critically examining Paramount's character and fitness to maintain cable operations in their communities' best interest.

Once the voting trust receives the Time stock, each franchising authority must risk system neglect if it does not speedily reach an agreement with the new franchise holder. The more protracted the review and litigation process, the greater the pressure by cable subscribers upon the "city fathers" to maintain system service. In the absence of an appropriate agreement with Paramount, imposition of the ultimate sanction -- disapproval of the transfer of control -- would lead to litigation and further system deterioration. Thus, the fundamental purpose of the franchise approval process would be turned on its head.

These considerations go to the heart of the fundamental judgments that franchising authorities will be called upon to

make, i.e., whether the public interest will be best served by permitting control of the franchises to be transferred from Time to the trustee and ultimately to Paramount. As recognized by the Cable Act, state and local governments have the authority to analyze such information in reaching these judgments. Paramount's plan would allow it to present a fait accompli to state and local franchising authorities.

V. Approval of the Voting Trust Will Allow the Trustee to Control Time's Cable Franchises

Although Paramount may contend that the voting trust will maintain the status quo with respect to the ATC cable systems, the trustee will wield significant and wide-ranging control over the cable operations transferred to the trust. The trustee will be vested with all voting rights in Time stock and, consequently, Time's controlling interest in ATC's stock.³⁵ The trustee will be empowered to elect members of the Board of Directors, who also will have authority to direct the operations of the cable franchises. The trustee may even install himself as a director of Time and, presumably, ATC.³⁶

Although the trustee is reputedly independent of Paramount, he is directed to vote all "shares in favor of any proposal which, in his sole judgment, is necessary to effect, or is consistent with the effectuation of, the Tender Offer." The

³⁵ Paramount Communications Inc. Application to Federal Communications Commission Requesting Transfer of Control of Time Inc., Appendix B at ¶ 5(a) (June 9, 1989) ("Application").

³⁶ Application at ¶ 5(b).

trustee can hire and fire Time and ATC officers and employees virtually without restriction.³⁷ In other words, despite the admonition that the trustee "shall vote Acquired Stock so as to maintain the 'status quo,'"³⁸ the trustee has enormous power to control the operations of Time and its subsidiaries. There is neither a requirement nor a guarantee that the trustee will maintain the existing ATC cable systems in their present state.

The transfer of control of the cable operations might result in drastic changes in the management and operation of the local cable systems. This transfer would occur without state and local approval, in direct contravention of the Cable Act, state law, local ordinances and franchise agreements. That the transfer is to a trustee does not change the fact that determinations of the qualifications of the transferee (i.e., the trustee and ultimately Paramount) is a matter expressly left by law to the state and local franchising authorities. State and local authorities may or may not approve the transfer on the merits. That decision, however, has been reserved to them by Federal law -- not conferred upon the FCC.

³⁷ See Application at ¶ 5(c).

³⁸ Id.

CONCLUSION

For the reasons set forth above, the application of KDS Acquisition Corp. for FCC consent to the transfer of control of Time Inc. should be denied or conditioned as specified herein.

Dated: June 23, 1989

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert Steinert, do hereby certify that I have caused a copy of the foregoing to be hand-delivered this 23 day of June, 1989 to the following persons:

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Robert Steinert

cc: Chairman Dennis R. Patrick
Commissioner James H. Quello
Commissioner Patricia Diaz Dennis
Diane S. Killory, General Counsel
Alex D. Felker, Chief, Mass Media Bureau
Gerald T. Brock, Chief, Common Carrier Bureau
Ralph A. Haller, Chief, Private Radio Bureau
Roy J. Stewart, Chief, Video Services Division,
Mass Media Bureau
Stephen F. Sewell, Assistant Chief, Video
Services Division, Mass Media Bureau
Ronald Parver, Chief, Cable Television Branch
James R. Keegan, Chief, Domestic Facilities
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Cecily C. Holiday, Chief, Satellite Radio Branch,
Common Carrier Bureau
Richard J. Shiben, Chief, Land Mobile and
Microwave Division, Private Radio Bureau
Alfred G. Franz, Compliance Branch, Private Radio
Bureau
Arthur H. Harding, Esq., Attorney for Warner
Communications Inc.

Exhibit

B

JOHN WAMME
COUNSELOR



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WARREN W. WONG, JR.
ATTORNEY GENERAL
CORNING R. A. WATANABE
FIRST DEPUTY ATTORNEY GENERAL

July 5, 1989

The Honorable Dennis R. Patrick
Chairman, Federal Communications Commission
Federal Communications Building
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Dear Chairman Patrick:

As you know, thirteen State Attorneys General, including myself, recently made a filing in opposition to the petition by Paramount Communications Inc. seeking approval of a voting trust in connection with Paramount's tender offer for Time Inc. I understand that similar views have been expressed by officials of at least fourteen U.S. cities and by the U.S. Conference of Mayors. State and local governments are legitimately concerned that the rights reserved for and exercised by State and local government pursuant to the Cable Act of 1904 may be compromised by the FCC.

From my perspective as Attorney General for the State of Hawaii, Paramount's petition raises serious legal questions that go to the heart of the States' power to regulate cable franchises. The congressional recognition of State authority was the product of extensive deliberations and difficult negotiation. I, for one, feel it is my duty to protect this State authority and to insure that the law is upheld.

I regret that the issue arises in the context of a hotly contested battle for control involving three of the nation's largest media companies. It is clear that the intense passion which has characterized this battle has generated rhetoric and accusation from many sides. Specifically, there are those who would seek to create the impression that State and local government officials have petitioned the FCC because they have been manipulated by one or more parties to the takeover battle.


The Honorable Dennis R. Patrick
July 5, 1989
Page 2

Speaking for myself and, I am confident, for the other State and local government officers who have expressed a point of view, such allegations are patently absurd. Frankly, as the Attorney General for the State of Hawaii, I express no opinion concerning who should own any of the companies involved. Neither will I stand by, however, and watch as my State's legal rights are jeopardized as a by-product of a corporate takeover battle.

Paramount's statements and filings give me every reason to be concerned that Time Inc. stock will be purchased and ownership of cable television franchises thereby transferred to the requested voting trust without State and local approvals being first obtained. Such an action puts State and local franchising authorities in the position of approving the new franchise holder or ex post facto denying the transfer and risking degradation or loss of service while a new franchise holder is located and approved. From a legal perspective, this is not the result intended by the Cable Act. From a policy perspective, this is not a workable or fair result.

Our concerns are based on independent, objective evaluations of facts and law by responsible officials acting solely on behalf of millions of cable television subscribers. I would respectfully urge the Commission to consider our views based on the strength of our arguments rather than be distracted by unsubstantiated and untrue allegations of bias. Such allegations do no credit to those who make them.

Very truly yours,



Warren Price, III
Attorney General

WP:csa

cc: The Honorable Don Siegelman
The Honorable Charles M. Oberly, III
The Honorable Robert T. Stephan
The Honorable William J. Guste, Jr.
The Honorable Hubert M. Humphrey, III
The Honorable Brian McKay
The Honorable Lacy H. Thornburgh
The Honorable Ernest D. Preate, Jr.
The Honorable James E. O'Neill
The Honorable Roger A. Tellinghuisen
The Honorable Mary Sue Terry
Norman P. Leventhal, Esq.
Local Attorneys for Paramount Communications, Inc.
and Time Inc.

Exhibit

C

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

June 29, 1989

IN REPLY REFER TO:

Paramount Communications, Inc.
c/o Norman P. Leventhal, Esq. and
Barbara K. Gardner, Esq.
Leventhal, Senter & Lerman
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2000 K Street, N.W.
Washington, D.C. 20006-1809

The Honorable Donald E. Rumsfeld
c/o Gary Senner, Esq.
Sonnenschein, Carlin, Nath & Rosenthal
8000 Sears Tower
Chicago, Illinois 60606

Dear Applicants:

This is in reference to your pending request for a special temporary authorization (STA) to be issued to Mr. Rumsfeld so that he may acquire the stock of Time, Inc. (Time), and operate the company temporarily, pending review of Paramount Communications, Inc.'s (Paramount) qualifications to hold Commission authorizations.

I request your comments on a matter raised in your pleading of June 26, 1989, captioned "Opposition of Paramount Communications, Inc. and KDS Acquisition Corp. to Motion of Warner Communications, Inc. to Dismiss or Deny Applications for Transfer of Control." Based on earlier statements made in this proceeding, it had been my understanding that you intended to await approval of Paramount by local cable franchising authorities before Time stock would be transferred from Mr. Rumsfeld to Paramount, but that you did not intend to await approval of Mr. Rumsfeld by local cable franchising authorities before he acquired Time stock and took temporary control of its cable systems. On page two of your June 26 pleading, however, you characterize as "patently false" Warner's claim that "Paramount will, on July 5, 1989, effect an immediate transfer of control of Time to Donald E. Rumsfeld, as trustee, without 'any' required local franchise approvals." This statement appears to suggest, in contradiction to your earlier statements, that stock will not be paid for and Mr. Rumsfeld will not take control of Time, until local franchising authorities have approved Mr. Rumsfeld's qualifications. My confusion as to exactly what you mean is heightened by your seemingly inconsistent objection (page 14, footnote 14 of your June 26 pleading) to the grant of an STA to Mr. Rumsfeld subject to the condition that local authorizations of Mr. Rumsfeld's temporary operation of the cable systems are obtained.

Paramount Communications, Inc.
The Honorable Donald H. Rumsfeld

2.

In light of these apparent inconsistencies, we request clarification of with regard to the timing of Mr. Rumsfeld's proposed assumption of control under the requested STA. Specifically, assume for the purposes of answering this question that the tender offer is successful and the Commission finds appropriate the issuance of the requested STA. (By asking you to make these assumptions, however, we emphasize that we have not made any determination as to your pending request.) Would it then be your intention to accept and pay for the Time shares promptly, to transmit them to Mr. Rumsfeld, and to place him in temporary control of Time before local franchising authorities have approved his qualifications to own and operate the Time cable television systems? Alternatively, if it is your intention to await such local authorizations, how long do you estimate the process will take?

Please be as specific and clear in your response as possible. Copies of your response should be served on the parties to this proceeding. Action on your STA request will be withheld until a response has been received.

Sincerely,



Alex D. Folger
Mass Media Bureau

cc: Honorable Warren Price, III
Honorable Don Siegelman
Honorable Charles M. Oberly, III
Honorable Robert T. Stephan
Honorable William J. Guste, Jr.
Honorable Hubert H. Humphrey, III
Honorable Brian McKay
Honorable Lacy H. Thornburg
Honorable Nicholas Spaeth
Honorable Ernest D. Preate, Jr.
Honorable James E. O'Neil
Honorable Roger A. Tellinghuisen
Honorable Mary Sue Terry
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Exhibit

D

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June 30, 1989
(VIA HAND DELIVERY)

OF COUNSEL
MICHAEL L. KLIPPER
TOSBY S. MARZOUK

Alex D. Felker, Chief
Mass Media Bureau
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Felker:

This is in response to your letter of June 29, 1989 concerning the pending request for Special Temporary Authorization to be issued to The Honorable Donald H. Rumsfeld, as Trustee, to hold the stock of Time Incorporated pending the Commission's review of Paramount's qualifications to hold licenses currently used in connection with Time's cable television systems.

Our filings have been consistent. Paramount has repeatedly stated, and here reiterates, that it intends to consummate its offer to purchase Time shares and implement the voting trust only when Paramount has obtained material state and local franchise transfer consents that are legally required.

As the FCC is aware, local franchise authorities do not have expedited two-step procedures akin to the Commission's. Accordingly, Paramount is not asking local jurisdictions to approve the transfer of Time stock to Mr. Rumsfeld, as trustee. Instead, Paramount is requesting these jurisdictions to approve the transfer of Time cable systems from its current stockholders to Paramount. At the same time, Paramount will be explaining to all such local franchise authorities that any service by Mr. Rumsfeld, as voting trustee, will be only as a caretaker for an interim period in order to accommodate FCC procedures. In such case, Mr. Rumsfeld would be obligated by the terms of the trust to maintain the status quo regarding the assets, management and operation of Time's cable systems. We are confident, therefore, that local franchise authorities would not object to Mr. Rumsfeld's brief stewardship of the Time stock should that occur.

LEVENTHAL, SENTER & LERMAN

Alex D. Felker
June 30, 1988
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Paramount is currently in the process of applying for consents in all jurisdictions where they are required, and is proceeding diligently to obtain consents as expeditiously as possible. Many of such applications are already on file and may be granted very quickly, particularly if Time withdraws its opposition to Paramount's offer. At this point, we are unable to estimate precisely how long this process will take, primarily because of the efforts of Time and its subsidiaries to disrupt it. In addition, Paramount believes that it is not proper for the Commission to assume any oversight role with respect to local franchise transfer approvals, to second-guess the timing of such approvals, or in any way to base its own approval on the actions of other authorities with concurrent jurisdiction over the same transaction. CNCA Acquisition Corp., 3 FCC Rcd 6088, 6089-90 (1988) (Commission grants special temporary authorization to trustee without waiting for New Jersey public utilities commission to approve transfer to hostile tenderor, or even inquiring as to the timing of State commission's pending proceeding). In our view, local and federal approvals should proceed along independent tracks, and Paramount is entitled to utilize the FCC's expedited procedures without regard to the status of its other necessary approvals (whether they be local franchise transfers, Hart-Scott-Rodino, financing conditions, or anything else.)

Paramount firmly believes that the necessary and material franchise consents can be obtained quickly enough to necessitate expedited FCC procedures. As a result, Paramount believes that the Commission's grant of its special temporary authority should proceed completely independently of the progress of local transfer proceedings, so that when appropriate material local consents have been received, Paramount can proceed to consummate the offer without incurring further delay at the FCC. As the Commission has held in its Tender Offers Policy Statement and the cases decided thereunder, such delay would be manifestly unfair to the offeror and does not serve the public interest.

Respectfully submitted,


Norman P. Leventhal

Attorney for
Paramount Communications Inc.
and
KDS Acquisition Corp.

cc: All Parties of Record

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two copies of the foregoing Affidavit of Joseph J. Collins were served by hand on July 8, 1989 as follows:

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