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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

PARAMOUNT COMMUNICATIONS INC., and KDS ACQUISITION CORP.,	)	
Plaintiffs,	)	
v.	)	C.A. No. 10866
TIME INC., TW SUB INC., JAMES F. BERE, HENRY C. GOODRICH, CLIFFORD J. GRUM, MATINA S. HORNER, DAVID T. KEARNS, GERALD M. LEVIN, J. RICHARD MUNRO, N.J. NICHOLAS, JR., DONALD S. PERKINS, CLIFTON R. WHARTON, MICHAEL D. DINGMAN, EDWARD S. FINKELSTEIN, HENRY LUCE III, JASON D. McMANUS, JOHN R. OPEL, and WARNER COMMUNICATIONS INC.,	)	
Defendants.	)	

BRIEF OF DEFENDANT WARNER COMMUNICATIONS INC. IN OPPOSITION TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER

Charles F. Richards, Jr.
William J. Wade
Gregory V. Varallo
Daniel A. Dreisbach
Michael J. Feinstein
Richards, Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
Attorneys for Warner Communications Inc.

OF COUNSEL:

Wachtell, Lipton, Rosen & Katz
299 Park Avenue
New York, New York 10171
Attorneys for Warner Communications Inc.

Dated: June 9, 1989

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NATURE AND STAGE OF THE PROCEEDINGS

After two years of arms-length negotiations between Time Incorporated ("Time") and Warner Communications Inc. ("Warner") concerning various possible business combinations, the boards of directors of Time and Warner approved and executed an agreement and plan of merger (the "Merger Agreement") among Warner, Time and TW Sub Inc. ("Time Sub") on March 3, 1989. Pursuant to the Merger Agreement, Time Sub will be merged into Warner, and Warner will become a wholly-owned subsidiary of Time Warner Inc. ("Time Warner"), resulting in the largest communications corporation in the world (the "Merger"). In addition to approving the Merger Agreement, the boards of Time and Warner also approved, as a "condition to their willingness to enter into the Merger Agreement," an agreement whereby the corporations would exchange shares of each other's common stock (the "Share Exchange Agreement") (Joint Proxy Annex D) (attached as Exhibit A).[1]

Notwithstanding the passage of more than three months since the announcement of the approval of the Merger Agreement and Share Exchange Agreement, plaintiffs Paramount Communications Inc. ("Paramount") and KDS Acquisition Corp.

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[1]Reference to "Joint Proxy at __" refers to the joint proxy statement of Time and Warner dated May 22, 1988, a copy of which is attached as Exhibit C to Plaintiffs Appendix of Exhibits in Support of Their Motions for a Temporary Restraining Order and Expedited Discovery and Scheduling. The Share Exchange Agreement was amended as of April 12, 1989.

("KDS") on June 7, 1989 commenced a tender offer to purchase all of the outstanding common stock of Time and filed their complaint in this Court seeking declaratory and injunctive relief with respect to that offer. Also on that day, plaintiffs filed a motion for a temporary restraining order to enjoin defendants from taking any steps to implement any aspect of the Share Exchange Agreement, and a brief in support thereof (hereinafter "PB__").

Plaintiffs scheduled, on an ex parte basis, a hearing on their motions. After hearing brief arguments by counsel, this Court reserved decision on the motions and invited written submissions from all defendants. This is defendant Warner's brief in opposition to plaintiffs' motion for a temporary restraining order.

PRELIMINARY STATEMENT

Plaintiffs here are challenging Warner's right to exercise its option to acquire certain shares of Time in exchange for issuing shares of Warner to Time. The Share Exchange Agreement at issue was entered into three months before the commencement of plaintiffs' tender offer, at a time when plaintiffs apparently had no involvement whatsoever with Time or Warner. The Share Exchange Agreement was the result of arms-length bargaining between Warner and Time. Plainly, if the Share Exchange Agreement was valid when entered into, plaintiffs could not now deprive Warner of its contractual right to exercise its option thereunder. Of

necessity, therefore, plaintiffs must mount a retroactive attack on the legitimacy of the contract ab initio: plaintiffs must establish that Time's board violated its fiduciary obligations in entering into this Share Exchange Agreement in the first instance and that Warner wrongfully knew of and participated in such breach.

This attack must fail. The Share Exchange Agreement as entered into was entirely neutral as between Time and Warner. It did not, for example, grant to one party an option on a "crown jewel" of the other. Upon exercise of the option by either party, a bilateral and reciprocal exchange of shares takes place. And, the exchange ratio under the Stock Exchange Agreement was itself derived directly from the market price of Time and Warner stock, i.e., each of the companies agreed to sell reciprocally its shares to the other at the then current market price.

Thus, the agreement when entered into was indisputably neutral and fair. The agreement could have turned out - and may still turn out - to be advantageous to either party. Plaintiffs in essence complain that, because of the run up in the price of Time stock - caused in substantial part by plaintiffs own tender offer - the agreement has become advantageous to Warner and therefore must be deemed void ab initio. But the circumstance that, at this moment in time, the share exchange may be deemed advantageous to Warner does not transform the agreement retroactively into a breach of

fiduciary duty by the Time board. No doubt if plaintiffs had decided to make a tender offer for Warner rather than Time, they would now be claiming that the Share Exchange Agreement was unfairly disadvantageous to Warner.

Time and Warner could well have decided to sell reciprocal blocks of stock to each other as promptly as possible after execution of the Merger Agreement - and indeed, had originally intended to do just that.[2] That, too, would arguably have made it more "expensive" for plaintiffs to accomplish a tender offer for Time. Yet, it would be difficult to believe that even plaintiffs would contend that that would give them the right months later - when they decided to inject themselves into Time's affairs - retroactively to undo such exchange of stock. Many corporate transactions may make it more "expensive" for a raider of limited means to accomplish a tender offer. In fact, growth and size do just that. But it would be a novel doctrine indeed that this provides warrant for nunc pro tunc invalidation of historical corporate transactions. A raider has no right to insist upon retroactively tailoring the assets and liabilities of the target so as to facilitate the raider's offer. A bidder takes the target as he finds it.

Moreover, as is set forth in the Affidavit of Martin D. Payson, the parties here had sound and responsible

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[2]The Share Exchange Agreement was thereafter modified to the form of an option to obviate potential "pooling problems."

reasons for entering into the Share Exchange Agreement. The agreement was not intended to be a "lock up" and does not remotely operate as a "lock up." The percentage of Time stock involved in the share exchange is only about 11% - far less than the block determined not to have preclusive effect, for example, in Polaroid. The stock which would be issued after the record dates cannot vote on the Merger. Similarly, the stock would not count to inhibit plaintiffs' offer under Section 203 of the General Corporation Law for, by definition, the stock only issues after commencement of the offer and therefore does not count for Section 203 purposes.

Finally, plaintiffs can show no irreparable injury by denial of a temporary restraining order since the stock when issued will stay in the hands of Warner and Time respectively. The transaction could readily be undone and the relevant "condition" in plaintiffs' tender offer is that there be a permanent injunction against the share exchange, i.e., a temporary restraining order does not remove even the self-created impediment to plaintiffs' offer for Time. Conversely, grant of a temporary restraining order could operate to destroy Warner's rights to exercise the option at all - because the option (if not exercised) could expire in the immediate future before opportunity for further adjudication of the merits.

In sum, as set forth more fully below, there is no

merit and no equity to plaintiffs' application and no precedent for granting it. The application must be denied.

STATEMENT OF FACTS

A. Overview.

After two years of periodic arms-length negotiations concerning possible business combinations between the two corporations, on March 3, 1989 the boards of directors of Time and Warner approved the Merger Agreement and determined to recommend to their respective stockholders a vote in favor of the Merger. The announcement of the Merger was hailed throughout the financial press. For example, The New York Times reported on March 5, 1989:

> The deal would create a media giant, making it a substantial force in both the production and distribution of movie and television programming, as well as in magazines and book publishing. The merger would insure Time Warner a place in the 1990's as one of a handful of global media giants able to produce and distribute information in virtually any medium.

(The New York Times, 3/5/89, at 1, col. 1) (attached hereto as Exhibit B). Not only will the combined entity take advantage of the significant synergies created by the Merger, the combination of Time and Warner will provide the resulting entity with a unique opportunity to compete effectively on a global basis, as well as with foreign multi-nationals in the United States. Significantly, the multifaceted benefits to be realized by the stockholders of Time and Warner will occur

without the disruption frequently encountered in today's typical business combinations (Payson Aff. ¶2).[3]

Conversely, plaintiffs' "offer" is so highly conditional as to be an "offer" only in the most generous sense of the term. As such, any claim of harm to plaintiffs is of their own making as evident from their self-imposed condition that prior to their purchase of any shares, the Share Exchange Agreement be permanently enjoined. Even if this motion for a temporary restraining order is granted, plaintiffs cannot close their offer until after a final hearing in any event.

B. History of the Parties' Relationship.

At various times throughout 1987 and 1988, Time and Warner initially explored the possibility of combining certain of, and subsequently all of, their respective businesses. (Joint Proxy at 32). The initial discussions between the corporations focused on a possible joint venture of their respective cable, television, filmed entertainment and pay television operations. (Id.) As a result of these negotiations, officials of Time and Warner began to see that a complete combination of the two corporations might be even more desirable than the proposed joint venture arrangement, in part in recognition that both of the corporations were undervalued in the market. (Id.) Accordingly, during the

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[3]"Payson Aff. ¶___" refers to specific paragraphs of he Affidavit of Martin D. Payson filed herewith.

summer of 1988, Time and Warner (and their financial and legal advisors) had repeated and lengthy discussions concerning a possible merger of the two corporations. (Id.) Discussions between the parties continued into August 1988, at which time they were terminated due to a failure to reach agreement with respect to a possible combination. (Id.)

In January 1989, Time and Warner re-opened merger discussions. (Id.) During February 1989, representatives of Time and Warner together with their financial and legal advisors commenced innumerable detailed discussions over the definitive structure for the proposed combination and the definitive terms of a merger agreement and related documents. (Id.) Once all terms were finalized, special meetings of the boards of directors of Time and Warner were held in early March 1989, at which each board separately, independently and overwhelmingly approved the Merger Agreement and Share Exchange Agreement. At all times the proposed combination reflected the essence of the deal, i.e., that the merger was one between "equals." (Id.)

C. The Merger's Benefits.

In approving the Merger and recommending it to their stockholders, the boards of directors of Time and Warner recognized: (i) the "unique opportunity to create a combined American entity with the resources to be a worldwide media and entertainment company"; (ii) that the "combination of [Warner] with Time is a major step in pursuit of Time's

key strategic objective ... [that] will better enable Time to compete on a global basis"; (iii) the "unique strengths of Time and [Warner] will position the combined companies to capitalize on emerging technologies, new delivery systems and growing markets to compete effectively on a global basis, both in terms of providing products and services abroad and competing with foreign multi-nationals in the United States"; and (iv) the "significant synergies associated with combining Time's pay television distribution business and direct marketing expertise with Warner Bros.' major film library and Lorimar's television production capabilities in competing in overseas markets." (Joint Proxy at 33).[4] The boards' decisions were taken not in response to any threat to either company; rather, the decisions were made after years of arms-length negotiations aimed at permitting the two entities to take advantage of operating synergies unparalleled in the communications and entertainment industries, or elsewhere.

D. The Terms of the Merger Agreement.

Pursuant to the Merger Agreement, upon consummation of the Merger (i) Time Sub will be merged with and into Warner, which will be the surviving corporation; and (ii)

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[4]The decisions by the respective boards of directors to execute the Merger Agreement and Share Exchange Agreement are unassailable. Not only was the eventual Merger Agreement and combined business structure negotiated innumerable times at arms-length over a several year period, but as even plaintiffs concede by their silence, the boards were thoroughly informed and acted in full conformance with the fiduciary duties owed to their respective stockholders.

each issued and outstanding share of Warner common stock will be converted into the right to receive 0.465 shares of Time Warner common stock, subject to adjustment (the "Exchange Ratio"). The Exchange Ratio was the product of arms-length negotiations by each of the corporations, aided by their respective financial advisors. Included in these negotiations were, inter alia, analyses of the corporations' market values, asset values and earnings history. (Joint Proxy at 11).

The structure of the combined entity was also the subject of intense negotiations. The merger of "equals" concept was purposefully incorporated into that structure.[5] For example, after consummation of the Merger, the board of directors of Time Warner will have 24 members, twelve continuing Time directors and twelve current Warner directors. (Id. at 17-18). Moreover, the committee structure of the Time Warner board of directors further evinces the "merger of equals" concept and continues the control by the current directors of Time or Warner of areas particularly within their respective corporation's areas of expertise.

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[5]Neither board's decision to recommend the Merger was -- as plaintiffs falsely claim of the Time board -- caused by a desire for entrenchment. Indeed, it is obvious that each board's control (and that of each management) over its respective company is being diluted, not enhanced, by the Merger. Managers and directors bent on entrenchment resist mergers, they do not seek them out. Nor can any argument be made that the combined company will somehow be takeover proof. Plaintiffs' allegations of entrenchment motive are baseless.

For example, while the Executive, Audit, Nominating and Governance Committees will have equal numbers of Time and Warner directors, the Editorial Committee-Time Operation will initially consist of four Time directors and only two Warner directors. (Id. at 61-62). Similarly, the Entertainment Committee-Warner Operation will consist initially of four Warner directors and just two Time directors. (Id. at 62). Finally, although directors of each corporation will be numerically superior in the committee charged with oversight of their former corporation's areas of expertise, a majority of Time directors will sit on the committee of the board which will oversee the combined cable television operations of Time and Warner. Hence, where possible, the contemplated structure of Time Warner is set to take advantage of the combined strength of the two corporations while leaving in place control of the particular areas of expertise the merger partners bring to the combination.

E. The Share Exchange Agreement.

Also on March 3, 1989, the boards of directors of Time and Warner approved the Share Exchange Agreement "with a view towards and in furtherance of the parties' commitment to the consummation of the Merger." (Joint Proxy at 32, 69). By its terms, the Share Exchange Agreement was executed as "a condition to [Time's and Warner's] willingness to enter into the Merger Agreement". (Plaintiffs' Appendix Ex. D at 1). Pursuant thereto, Time is contractually obligated to issue

and deliver to Warner 7,080,016 shares of its common stock (including all associated rights) in consideration of and subject to the issuance by Warner and delivery thereof to Time of 17,292,747 shares of Warner's common stock, or a share exchange ratio of approximately 0.409.[6]

The rationale behind the Share Exchange Agreement is fourfold. First, as is evident from the decision of the boards to combine the two corporations, each corporation considered an investment in the other to be a sound business investment. (Payson Aff. ¶8). Second, the Share Exchange Agreement was contemplated in part to compensate both corporations for the time and effort expended throughout the long negotiating process which resulted in the Merger Agreement (id.) and, from Warner's perspective to compensate for the arrangements which would have to be made to eliminate obstacles expected to be raised by its major stockholder, Chris-Craft Industries, Inc. (Payson Aff. ¶9). Third, both corporations realized that prior to the consummation of the Merger an offer by a third party for either or both of the companies could be forthcoming. (Payson Aff. ¶8). Accordingly, the parties recognized that the Share Exchange

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[6]This share exchange ratio was based on the 5 day average pre-merger market prices of Warner and Time. (Payson Aff. ¶4). If the Merger is consummated, immediately prior thereto Time will issue and deliver to Warner additional Time shares so that the shares exchanged will be in the same ratio as the Merger ratio, i.e., 0.465. If the Merger is not consummated, no additional shares will be delivered to Warner. (Plaintiffs' Appendix Ex. D at 6, ¶4).

Agreement would provide a mechanism for the corporation not subject to a third-party offer to take advantage of any premium offered by the potential acquiror. (Id.) At the time it was negotiated neither party knew to whose advantage the agreement might be or whether there would be an offer for either or for how much. (See Payson Aff. ¶5). Finally, because each of the corporations believes that the inherent values of the corporation were not reflected in the market price of its stock, and due to the length of time necessary to clear all regulatory hurdles prior to consummation of the Merger, (Payson Aff. ¶8), both corporations understood that the Share Exchange Agreement had value as a mildly protective device to preserve the values in the Merger for the shareholders of each company against attempts by outsiders to bust up the Merger by commencing a raid on either company (Payson Aff. ¶12).

While it was believed that the Share Exchange Agreement would have some deterrent effect (id.) and would offer some protection to the Merger while regulatory approvals and a shareholder vote were obtained, the Share Exchange Agreement was purposefully not intended to be, nor does it have the effect of being, a "show-stopper." (Payson Aff. ¶¶6, 7, 12). Thus, the share exchange involves only 11% of Time's and 9% of Warner's stock. The shares involved in the exchange are not given a vote on the Merger (Payson Aff. ¶6) as in the Polaroid/Corporate Partners transaction, for

example, nor do they count as outstanding shares for 8 Del.C. §203(a) purposes. (Id.) While the best evidence of the non-preclusive effect of the share exchange may well be the very existence of plaintiffs' offer, it can also be seen in: (i) the small percentage of stock being exchanged; (ii) the fact that the exchanged stock cannot vote on the Merger; and (iii) the fact that the voting provisions of the agreement, prior to the termination of the Merger Agreement, sterilize the exchanged shares in most respects and, thereafter upon expiration of the Share Exchange Agreement, permit each of Time and Warner to vote its own interests in all respects.

F. The Phantom Paramount "Offer".

On June 7, 1989, Paramount, through its wholly-owned subsidiary KDS, announced an offer to purchase all outstanding shares of common stock of Time (including all associated rights) for $175 cash per share. The "offer" is subject to a myriad of conditions, including, inter alia, that: (i) the exchange of shares with Warner contemplated in the Share Exchange Agreement has been permanently enjoined or such agreement has been terminated without liability to Time prior to the exchange of shares; (ii) the Merger Agreement has been terminated in accordance with its terms, or, if such agreement has not been so terminated, it remains subject to the approval of the stockholders of Time and plaintiffs obtain upon consummation of the Offer the right to vote a sufficient number of shares of common stock to preclude such

approval; (iii) all material FCC license transfer approvals and all approvals, consents and franchise transfers relating to the programming and cable television businesses of Time and its subsidiaries and joint ventures have been obtained on terms satisfactory to plaintiffs, except for such approvals, consents and franchise transfers as are not material in the aggregate; (iv) Article V of Time's Restated Certificate of Incorporation, which requires that at least 80% of the common stock, and a majority of the common stock not held by a beneficial owner of 20% or more of the common stock, vote affirmatively to approve a merger or other business combination transaction with a 20% or greater holder, is inapplicable to the Offer; and (v) plaintiffs have obtained sufficient financing to enable it to purchase the shares sought in the Offer, to refinance certain indebtedness of Time, its subsidiaries and Paramount and to pay related fees and expenses. (Offer To Purchase at 3-8).[7]

In addition to fulfillment of all the enumerated conditions, which itself may take months (Warner and Time have yet to secure all required regulatory approvals for the Merger despite having initiated that process over three months ago), plaintiffs have disclosed perhaps optimistically

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[7]The Paramount "offer" is also subject to still further conditions, including a majority tender condition, and conditions regarding the applicability of Section 203 and redemption of the Time's preferred stock purchase rights. Reference to "Offer to Purchase at ___" refers to the offer of plaintiffs' to purchase all outstanding common stock of Time dated June 7, 1989) (attached hereto as Exhibit C).

that "[t]here can be no assurances that the FCC, franchise and joint venture approvals and consents necessary to consummate the Offer will be obtained before a substantial period of time has elapsed or that such consent can be obtained on terms acceptable to [plaintiffs]." (Id.) Accordingly, given its highly conditioned nature, plaintiffs' "offer" is illusory at best.

Moreover, the transaction proposed by plaintiffs would result in a highly leveraged entity, with all the financial constraints and risks that such a state includes. In addition to the resulting highly leveraged corporation, that entity would suffer from immediate negative cash flow in contrast to the Merger from which no additional leverage or negative cash flow will result.

Finally, plaintiffs contend that the Share Exchange Agreement adds to the cost of their proposed transaction. In this regard, plaintiffs point only to the cost of having to purchase pursuant to their offer the additional number of shares of Time issued to Warner pursuant to the Share Exchange Agreement. Although the incremental increase in the cost of purchasing all shares of Time by itself is not insubstantial, plaintiffs have neglected to mention the fact that they would be obtaining 17,292,747 shares of Warner stock as a result of that purchase and that the value of that Warner stock might well exceed the cost to plaintiffs to

acquire it. Moreover, any added costs to plaintiffs from the share exchange plainly are compensible in damages.

As shown below, plaintiffs are not entitled to a temporary restraining order.

ARGUMENT

I. THE RELEVANT STANDARD ON PLAINTIFFS' APPLICATION.

To obtain the relief they seek, plaintiffs must show a "reasonable probability of success on the merits, irreparable injury if injunctive relief is not granted, and that the balancing of hardships leans in the moving party's favor." Durkee Indus. Foods Corp. v. Reckitt & Colman, Inc., Del. Ch., C.A. No. 10727, slip op. at 10, Chandler, V.C. (Apr. 10, 1989); and see Elias v. Wilson Foods Corp., Del. Ch., C.A. No. 10,107, Berger, V.C. (Aug. 4, 1988); Robert M. Bass Group, Inc. v. Evans, Del. Ch., C.A. No. 9953, Jacobs, V.C. (June 10, 1988) (Bench Ruling). Harm which is truly imminent and irreparable is the sine qua non of the remedy, UIS, Inc. v. Walbro Corp., Del. Ch., C.A. No. 9323, slip op. at 14, Allen, C. (Oct. 6, 1987), and injunctive relief is never granted unless earned. Thompson v. ENSTAR Corp., Del. Ch., 509 A.2d 578, 580-81 (1984). As demonstrated below, plaintiffs cannot meet their heavy burden of establishing imminent, irreparable harm, a probability of success on the merits or that the balance of hardships favors issuance of the restraining order sought here.

II. PLAINTIFFS HAVE FAILED TO DEMONSTRATE THAT THEY ARE THREATENED WITH IMMINENT, IRREPARABLE HARM IN THE ABSENCE OF A TEMPORARY RESTRAINING ORDER.

This Court has consistently recognized that "[t]he essential predicate for issuance of [a temporary restraining order] is a threat of imminent, irreparable injury." See, e.g., Cottle v. Carr, Del. Ch., C.A. No. 9612, slip op. at 6, Allen, C. (Feb. 9, 1988). While plaintiffs have conceded (PB 11) their burden of demonstrating imminent, irreparable harm, the prospective harm they have alleged in support of their motion has no basis in law or fact, is neither imminent nor irreparable and certainly cannot support the grant of the extraordinary relief sought here.

The absence of any imminent irreparable harm to plaintiffs if a TRO does not issue must be considered in light of the certain harm that will befall defendants if a TRO does issue. If no shares have been issued and exchanged under the Share Exchange Agreement and the Merger fails to obtain the required vote of the Time or Warner shareholders at the June 23 meetings, the issuance and exchange of shares pursuant to the agreement is precluded. To accomplish an exchange prior to the June 23 meetings, either Time or Warner would have to give the five business days written notice required by Section 3 of the Share Exchange Agreement on or before June 15. Thus, a restraint of even a few days could destroy the contractual rights of defendants which were bargained at arms-length. The only irreparable harm in this

case will result if plaintiffs are given the temporary relief to which they are not entitled. No imminent, irreparable harm can or will result from the denial of the requested restraining order.

A. Plaintiffs' Alleged Harm Is Not Irreparable.

The primary thrust of plaintiffs' irreparable harm argument is that the Share Exchange Agreement will "chill" their ability to conduct the tender offer. (See PB 11). There are several fundamental reasons why this does not constitute irreparable harm.

First, if Warner acquires shares pursuant to the Share Exchange Agreement and this Court later determines that such agreement is invalid, the share exchange could easily be rescinded by order of this Court since all necessary parties will be before it and the shares could easily be returned or cancelled. This Court has previously denied a temporary restraining order application on the grounds of insufficient showing of irreparable harm where it found it could later undo a similar stock swap. In News Int'l, plc v. Warner Communications Inc., Del. Ch., C.A. No. 7420, Brown, C. (Jan. 12, 1984), the Court held:

> I am not persuaded that the threat of harm to the plaintiff is irreparable. Tax and accounting complications arise naturally from any large-scale stock swap. Nonetheless, the transaction sought to be restrained does propose an exchange of stock between two Delaware corporations, both of which are before the Court. Should this exchange be found

> improper hereafter on a more fully developed record, there would seem no impedient at present to a direction that the transaction be undone by means of each corporation returning its shares in the other to the other.

Slip op. at 4 (emphasis supplied). The same result should obtain in this case.

As plaintiffs recognize (Complaint ¶31), under the express provisions of the Share Exchange Agreement, neither Time nor Warner could dispose of the shares received under such agreement prior to the expiration thereof. (Joint Proxy Annex D §7(a)). Moreover, the exchanged shares, being unregistered under the Securities Act of 1933 (the "Securities Act"), could not be sold publicly absent a time consuming registration under the Securities Act, even after the termination of the agreement. As a result, there is no imminent danger that the shares exchanged under the Share Exchange Agreement would end up in the hands of a third party and thus create an impediment to this Court later requiring a return of the shares or their cancellation if the Share Exchange Agreement is found to be invalid. Consequently, there is no irreparable injury faced by plaintiffs which would justify temporary injunctive relief.

Second, plaintiffs commenced their tender offer with full knowledge of the Share Exchange Agreement, which they claim threatens them with irreparable harm, and thereby accepted the risk purportedly posed by the existence of this agreement. See, e.g., Goodman v. Futrovsky, Del. Supr., 213

A.1d 899, 902-03 (1965), cert. denied, 383 U.S. 846 (1966); Elster v. American Airlines, Del. Ch., 100 A.2d 219, 221 (1953). As masters of their own offer, any harm they are threatened with will be the result of their decision to initiate the offer. Such self-created harm cannot be used to justify a temporary restraining order.[8]

In FMC Corp. v. R.P. Scherer Corp., Del. Ch., C.A. No. 6889, Longobardi, V.C. (Aug. 6, 1982), this Court refused to issue injunctive relief at the behest of a tender offeror who challenged a proposed supermajority voting provision where such provision had been proposed over two weeks before the making of the tender offer. The Court stated "[i]n this case, FMC wants to contest what the Directors in Scherer had approved and were submitting to the stockholders for approval. Why should FMC be heard to complain about what they bought? The Proxy Statement had been public for 16 days."

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[8]The cases cited by plaintiffs (PB 12-14) involve lock-up agreements entered into between a target and another corporation which had the effect of stopping an otherwise active auction for the target, a factually distinct scenario. See MacAndrews & Forbes Holdings, Inc. v. Revlon, Inc., Del. Ch., 501 A.2d 1239 (1985), aff'd, Del. Supr., 506 A.2d 173 (1986); In Re Holly Farms Corp. Shareholders Litig., Del. Ch., C.A. No. 10350, Hartnett, V.C. (Dec. 30, 1988); Robert M. Bass Group, Inc. v. Evans, Del. Ch., C.A. No. 9953, Jacobs, V.C. (June 10, 1988). In none of these cases did the plaintiff bidder make his tender offer after the agreement being challenged as a lock-up was entered into. Moreover, the lock-ups in these cases all constituted "show stoppers" in contrast to the Share Exchange Agreement, which as plaintiffs acknowledge, simply increases the number of shares the tender offeror must acquire by a relatively small percentage, 11.1%.

Slip op. at 7. The Court went on to decide that the offeror had failed to demonstrate irreparable harm:

> If an injunction does not issue, FMC could quite easily extricate itself from a situation it intentionally and knowingly created. It could, by the very terms of its offer, decline to takedown the tendered shares and will have suffered no loss. It would be in the same position it would have found itself if it had approached Scherer after the stockholders had adopted the Supermajority Proposals .... On balance, it appears FMC can extricate itself from harm at its option or it can impose upon itself the threatened harm from which it seeks the Court's assistance. Under those circumstances, there is no justifiable basis for injunctive relief. There is no irreparable, imminent, unspeculative harm.

Slip op. at 11-12 (emphasis supplied).

The Delaware District Court similarly rejected the same tender offeror's request for a preliminary injunction in FMC Corp. v. R.P. Scherer Corp., 545 F. Supp. 318, 323 (D. Del. 1982). Judge Schwartz specifically emphasized the inappropriateness of permitting the offeror to use the Court to alleviate a risk of which it was aware in structuring the tender offer. Id. at 323. See also Grand Metropolitan plc v. Pillsbury Co., 704 F. Supp. 538, 541 n.2 (D. Del. 1988) ("Grand Met's motion could be construed as asking the Court to shield it from the risks inherent in any business transaction. The Court, however, is not an insurer against business risks").

Similarly, a tender offeror will not be heard to complain about the consequences of its own chosen method of proceeding with its offer. TW Services, Inc. v. SWT Acquisition Corp., Del. Ch., C.A. No. 10427, slip op. at 34, Allen, C. (Mar. 2, 1989) (holding that where a bidder conditioned his offer on the approval of a merger by the target board, it cannot complain about the board's decision regarding the merger being reviewed under the traditional business judgment rule). Here, plaintiffs conditioned their tender offer on the invalidation of the Share Exchange Agreement. (Offer to Purchase at 6). By so doing, they must accept the risk that this agreement may be upheld as valid.

This Court has previously held that a tender offeror does not suffer irreparable harm merely because it faces an uncertainty regarding whether a challenged action of the target may be upheld. In Newell Co. v. Wm. E. Wright Co., Del. Ch., 500 A.2d 974 (1985), a tender offeror sought a preliminary injunction restraining the target corporation from taking any action pursuant to a proposed rights plan. The Court held that the potentially adverse impact on the tender offer resulting from the rights plan was a risk assumed by Newell, the bidder, and was not irreparable harm. The Court stated:

> The real impact upon the tender offer of the existence of the note rights (and the stock rights) would appear to be upon Newell's decision to accept or reject the tenders, not knowing if those rights will be sustained as valid and

> thus not knowing how much debt Wright will ultimately be determined to have.... Thus, the so-called Fair Price Rights Plan raises practical concerns on Newell's part; it increases the uncertainties it faces. But that uncertainty does not constitute irreparable injury or the threat of irreparable injury. The injury threatened -- a reduction in the utility and value of Newell's enlarged stock interest in Wright -- will or is likely to occur only if the Rights Plan is ultimately sustained as a valid corporate act. If that plan is determined to be invalid for one or more of the reasons urged, then no injury is likely to be sustained. In all events, that Newell now must evaluate the risks it faces and act on its evaluation is itself no legal injury; it is what business persons do every day.

Id. at 985 (emphasis supplied). Likewise, plaintiffs here must evaluate the risks created by the existence of the Share Exchange Agreement about which they have known for over three months. The possibility that its validity would be upheld, thereby (according to plaintiffs) increasing the cost of their acquisition of Time, is a risk of which they were completely aware prior to commencing their tender offer. That plaintiffs must evaluate that risk and act on their evaluation "is no legal injury," much less irreparable harm.

Finally, as in R.P. Scherer, having conditioned their tender offer on the invalidation of the Share Exchange Agreement, plaintiffs can later decide not to take down the tendered shares and thereby will suffer no irreparable harm. See R.P. Scherer, slip op. at 11 ("[FMC] could, by the very terms of its offer, decline to takedown the tendered shares

and will have suffered no loss"). Thus, plaintiffs are not threatened with irreparable harm simply because the Share Exchange Agreement could make their offer more expensive if its validity were upheld. In fact, the affidavits submitted by plaintiffs -- including the affidavit of their investment banker -- do not even claim that the additional expense, if any, is beyond their means or otherwise creates an economic impediment to their offer.[9] Nor do plaintiffs say that if the Share Exchange Agreement is upheld they will abandon their tender offer.

The only other form of irreparable harm upon which plaintiffs rely is the purported harm resulting from the so-called "dilution" of the voting power of Time's stockholders. (PB 11-12, 15). Apparently realizing that the "dilution" created by the issuance of only 11% of Time's stock does not give rise to a serious claim of irreparable harm, plaintiffs simply collapse their "dilution" argument into their "chilling" argument by claiming that the 11% block of Time stock received by Warner in the share exchange will combine with the voting power of Time's management to form an 18% block, which plaintiffs claim, will be sufficient to veto their back-end merger under Article V of Time's Restated Certificate of Incorporation.

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[9]In fact, plaintiffs "additional expense" argument conveniently overlooks the value of the substantial block of Warner shares to be received by Time in the exchange.

Plaintiffs' arguments, however, neglect to address three important aspects concerning Article V. First, the provisions of Article V create two important exceptions to the increased voting requirements for the "back-end" merger. The "Disinterested Directors" of Time can approve the back-end merger prior to plaintiffs' acquisition of 20% of Time's common stock. Second, plaintiffs can avoid the supermajority voting provisions of Article V by simply complying with its terms as to the form and amount of consideration to be offered in such merger. Consequently, plaintiffs' claims that Warner and Time management would have a "veto" over any back-end merger by virtue of the Share Exchange Agreement are simply a product of plaintiffs' desires to avoid complying with the provisions of a duly-adopted provision of Time's charter.

Further, this Court has held that -- even in the context of a white squire arrangement, which this manifestly is not -- one cannot presume that a block of shares placed in purportedly friendly hands would be voted automatically with management. In News Int'l, plaintiff challenged a "stock swap" in which Warner was to convey a 19% interest in it to a wholly-owned subsidiary of Chris-Craft Industries, Inc. Chancellor Brown rejected the claim that this block of stock, in combination with Warner's 80% supermajority voting provision, would impede plaintiff's ability to achieve the necessary vote:

> Plaintiff is arguing that by issuing what in practical effect is a 20% interest to the subsidiary of Chris-Craft, Warner's management is depriving plaintiff for all time of the opportunity, either through the acquisition of stock or through proxies obtained from other Warner shareholders, to exercise the required 80% vote. However, this argument rests necessarily on the assumption that Chris-Craft will always vote its shares with Warner's management hereafter, and I am not convinced from the present record that the plaintiff has demonstrated that this is likely to be so.
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> * * *
>
> Thus, it does not appear that the proposed transaction itself will necessarily deprive plaintiff and the shareholders of Warner other than management from the opportunity of ever taking action against management.

Slip op. at 3-4 (emphasis supplied).[10] See also Shamrock Holdings, Inc. v. Polaroid Corp., Del. Ch., C.A. No. 10582, slip op. at 34, Berger, V.C. (Mar. 17, 1989) (declining to enjoin placement of shares with "white squire" fund or to reconsider earlier opinion refusing to rescind shares sold to ESOP); Shamrock Holdings, Inc. v. Polaroid Corp., Del. Ch., C.A. No. 10075, slip op. at 43-44, Berger, V.C. (Jan. 6, 1989) (decision after trial finding establishment of ESOP inherently fair, and, although ESOP likely to give management

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[10]Indeed, this Court is certainly aware that subsequent events proved Chancellor Brown to be correct. Chris-Craft did not automatically vote its shares together with Warner's management and, in fact, not only demonstrated complete independence from the positions adopted by Warner's management, but often downright hostility. See Warner Communications Inc. v. BHC Inc., Del. Ch., C.A. No. 10817.

a "leg up," no showing made that employee support would be "impossible to obtain"); Cottle v. Standard Brands Paint Co., Del. Ch., C.A. No. 9342, trpt. at 6, Berger, V.C. (Dec. 9, 1987) (Bench Ruling) (Court declines to enjoin restructuring which included placement of preferred stock convertible into 15% of the outstanding common stock with two insurance companies, no showing made "that the holders of the convertible preferred will vote with management").

The presumption that Warner and Time's management would vote together is also contrary to economic reality. A vote on the back-end merger of plaintiffs' acquisition of Time would only occur if the Merger Agreement had been rejected or otherwise terminated. (Offer to Purchase at 6). If the Merger were no longer possible, Warner would have no incentive to blindly follow Time's management in a vote. Instead, Warner, which would be free to vote its shares as it desires, would logically choose to vote its shares in such a way as to maximize the value of its holdings. Assuming that the price offered in the back-end merger were fair, Warner could choose to vote in favor of the back-end merger and accept the offered merger consideration. Plaintiffs offer no evidence to the contrary.

Second, Article V, commonly referred to as a "fair price" provision, is a provision of Time's Restated Certificate of Incorporation which was duly adopted by Time's board of directors and stockholders. Through its provisions,

Article V requires "the vote of a larger portion of the stock" of Time than is required by the General Corporation Law to effect certain business combinations (including plaintiffs' proffered "back-end" merger). Such a provision is specifically authorized by 8 Del.C. §102(b)(4), and a similar charter provision was specifically upheld by the Court in Seibert v. Gulton Indus., Inc., Del. Ch., C.A. No. 5631, Brown, V.C. (June 21, 1979), aff'd mem., Del. Supr., 414 A.2d 822 (1980).

Third, this Court has previously rejected as unripe a tender offeror's claim challenging the operation of a fair price charter provision to a back-end merger. In AC Acquisitions Corp. v. Anderson, Clayton & Co., Del. Ch., 519 A.2d 103 (1986), a tender offeror asserted that the target corporation's directors breached their duty of loyalty by failing to waive the application of a fair price provision to a follow-up merger. The Court held that the legal issue was not ripe. Id. at 115. The Court observed:

> Plaintiffs have no general legal right to have all future legal uncertainties resolved on a motion for preliminary injunction, so that they will be better able to evaluate the economic risks with which they might be faced if the BS/G tender offer is closed.
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> * * *
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> In any event, a future claim arising from a conjectural future merger need not be settled now.

Id. For the same reasons, plaintiffs' attack on the potentially adverse consequences of the share exchange on their future back-end merger fails for lack of ripeness.

Plaintiffs repeatedly emphasize that Time's stockholders are threatened with irreparable harm because the share exchange may deprive the stockholders of their ability to tender into plaintiffs' offer. Plaintiffs have not said unequivocally that they will drop their offer in the light of an adverse ruling. If such action is contemplated, plaintiffs have violated their disclosure obligations by failing to set forth this condition in their offer to purchase. Moreover, such action would clearly demonstrate plaintiffs' desire to get an advisory opinion from this Court concerning the prospective merits of their challenge to the Share Exchange Agreement. Such conduct has never been tolerated by this Court. See R.P. Scherer, slip op. at 7.

B. The Asserted Harm Is Not Imminent.

It is fundamental that plaintiffs are not entitled to a temporary restraining order unless they demonstrate that the harm allegedly threatening them is imminent. Cottle v. Carr, slip op. at 6. Plaintiffs summarily state that "[t]he harm threatened is imminent because there can be no assurance that Defendants will not immediately trigger the exchange of Time and Warner shares." (PB 11). This one-line statement is wholly inadequate to meet plaintiffs' burden.

In the first place, even if defendants were to "immediately trigger" the exchange of shares it would not result in imminent harm to plaintiffs. The only harm that plaintiffs even purport to allege will not and cannot occur until they are in a position to complete their tender offer and back-end merger, which events cannot occur until at least July 5. Thus, if the shares were exchanged by Time and Warner under the terms of the Share Exchange Agreement, the Court would have ample time to rule before any alleged harm occurs to plaintiffs. If plaintiffs ultimately prevail, the share exchange could be undone in a timely fashion. There is simply no imminent harm threatened in this case and thus no basis for a temporary restraining order.

The speculative, non-imminent nature of plaintiffs' purported irreparable harm is highlighted by the myriad of possible future events that could moot the alleged harm. For example, plaintiffs have disclosed that if the Merger Agreement is approved by Time's stockholders, they will withdraw their offer. (Offer to Purchase at 6). Moreover, if other conditions to the offer are neither satisfied nor waived, then plaintiffs' offer could be withdrawn and no harm would have been occasioned by reason of the Share Exchange Agreement. Thus, plaintiffs' asserted "irreparable harm" is contingent on numerous future events many of which are within plaintiffs' own control and which may or may not occur. The

purported harm suffered here cannot support the relief requested because it is not imminent.

Second, even if defendants should proceed with the share exchange, this would not result in imminent, irreparable harm. Plaintiffs' tender offer cannot by its terms close until at least July 5th. Since there is no harm that could possibly jeopardize the offer prior to July 5, there is no imminent harm to plaintiffs. There is more than enough time for this matter to be heard and determined prior to the earliest date upon which plaintiffs' offer could close and thus no need for a temporary restraining order in this case.

> The office of the writ of temporary restraining order is a very narrow one. Such an order will issue only to prevent irreparable injury that is occurring or is threatened to occur before the court may hear an application for a preliminary injunction.... On an application for a temporary restraining order, the imminence of threatened irreparable injury constitutes the predominating concern.

McCann Surveyors, Inc. v. Evans, Del. Ch., C.A. No. 1268-S, slip op. at 1-2, Allen, C. (July 24, 1987). (emphasis supplied). Here, in the absence of any imminent harm, irreparable or otherwise, plaintiffs' application for a temporary restraining order must be denied.

III. NO PROBABILITY OF SUCCESS ON THE MERITS IS MADE OUT ON THE RECORD BEFORE THE COURT.

A. No Duty To Auction Arises From The Share Exchange.

In an argument which betrays the weakness of their position, plaintiffs attempt to distort the facts of this case to implicate the "duty to auction" which they argue arises here under the holding in Revlon and its progeny. No duty to auction is implicated by the decision of either Time or Warner to enter into the Share Exchange Agreement and no case cited by plaintiffs suggests otherwise. Nor would a decision by either party to exercise its rights under the Share Exchange Agreement implicate such a duty.

Plaintiffs build their argument on several unfounded factual assumptions: first, that the decision to approve and recommend the Merger was a recognition that Time was "for sale" and that consummation of the Merger "will constitute a sale of Time" (PB 20); and second, if Time was for sale, a duty to auction the corporation arose. By contrast, the facts of record belie the fantastic suppositions made by plaintiffs.

This Court has squarely held that a decision to enter into a merger, even where such a merger indisputably involves a sale of the corporation, does not trigger a "duty to auction." Thus, in City Capital Assoc. L.P. v. Interco, Inc., Del. Ch., 551 A.2d 787 (1988), this Court stated:

> [Revlon] does not require...that before every corporate merger agreement

> can validly be entered into, the constituent corporations must be "shopped" or, more radically, an auction process undertaken, even though a merger may be regarded as a sale of the Company.

551 A.2d at 802. Likewise, in In Re Fort Howard Corp. Shareholders' Litig., Del. Ch., C.A. No. 9991, Allen, C. (Aug. 8, 1988), this Court refused to enjoin the sale of a corporation in a management led leveraged buy-out where there was no auction undertaken prior to entry into the transaction. The "duty to auction" in this context is a "duty" of plaintiffs' own creation.

This case is, of course, wholly unlike the Revlon line of cases where courts have held that directors may not sell the company to a favored bidder by means that cut off an auction in progress. Here, the Time directors have never done anything to bring an ongoing auction to a halt. To the contrary, Time is not now, and never has been, "for sale". The Time board of directors has determined to maintain the independence of the company and nothing about the Share Exchange Agreement suggests a retreat from that position.

As to the Share Exchange Agreement itself, it provides for an investment by Time and Warner in each other, and, in light of the enormous number of executive hours spent and expenses incurred over the two years the parties negotiated the Merger, (See Payson Aff. ¶11), the share exchange is also a mechanism designed to give either merger partner some of the "upside" in the event that the other is

subject to a third party bid which results in the termination of the Merger Agreement and the loss of the benefits of the Merger to the disappointed party (Payson Aff. ¶8).

As to the Merger Agreement, plaintiffs strenuously assert that Time is somehow "selling itself" in the transaction. Again, plaintiffs are wrong.[11] The public stockholders of Time are simply joining with Warner's public shareholders to control jointly a larger entity. Plaintiffs' argument is misconceived in treating the Warner shareholders as a "block" that will control the merged entity. There is no such block, and -- unlike in the cases such as Black & Decker Corp. v. American Standard, Inc., 682 F. Supp. 772 (D. Del. 1988) cited by plaintiffs -- nothing is occurring which precludes Time shareholders from receiving an acquisition premium on their Time Warner shares in the future.

Similarly, the parties to the Merger have carefully structured the governance of the new entity so that it preserves control over the Time divisions of the merged company in the hands of board committees dominated by Time directors and similarly preserves control over former Warner divisions in the hands of board committees dominated by Warner directors. To that end, Time Warner is to have a 24

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[11]Indeed, plaintiffs themselves recognize the error of this assertion by alleging that "... under the terms of the Merger Agreement, the current senior management and a majority of the boards of both Warner and Time are assured of similar positions in Time Warner." (PB 29).

member board, with each company nominating 12 directors. This is a far cry from a "sale" of Time.

No decision of this or any Court has imposed a duty to auction in a transaction such as this. Plaintiffs citations to authority are not on point. Although the Supreme Court in Revlon held that the duty to auction arose after the target board had authorized its management to pursue the possibility of a merger, Revlon, 506 A.2d at 182 (PB 18, 19), the holding has vitality only in context. The Court held that the duty arose only after "it became apparent to all that the break-up of the company was inevitable", after in fact competing bids had emerged. Revlon, 506 A.2d at 182.

Likewise, plaintiffs rely on Vice Chancellor Hartnett's opinion in In re Holly Farms Corp. Shareholders Litigation for the proposition that a stock-swap merger raises a duty to auction. (PB 18, 19). Plaintiffs conveniently ignore the context of that holding. Vice Chancellor Hartnett wrote:

> Because this sale [the merger] came in response to, and as an alternative to, Tyson Foods' $52 cash tender offer, I agree that the Board's actions must be judged under the standards articulated in Revlon....

In re Holly Farms Corp. Shareholders' Litig., Del. Ch., C.A. No. 10350, slip op. at 12, Hartnett, V.C. (Dec. 30, 1988). Unlike in Holly Farms, here the Merger was not proposed as a response or alternative to any other transaction. Rather,

the Merger evolved through two years of arms-length negotiations. Plaintiffs' reliance on Holly Farms is thus misplaced.

Plaintiffs also appear to place some reliance on inapposite dicta in the Supreme Court's decision in Mills Acquisition Co. v. MacMillan Inc., Del. Supr., Nos. 415 and 416, 1988, Moore, J. (May 3, 1989). (See PB 21). In MacMillan, however, the Supreme Court stressed that the case did "not require a judicial determination of when MacMillan was 'for sale.'" Slip op. at 55. In a footnote, the Court continued:

> This Court has been required to determine on other occasions since our decision in Revlon, whether a company is "for sale." See Ivanhoe, 535 A.2d at 1345; Bershad v. Curtiss-Wright Corp., Del. Supr., 535 A.2d 840, 845 (1987). Clearly not every offer or transaction affecting the corporate structure invokes the Revlon duties. A refusal to entertain offers may comport with a valid exercise of business judgment. (citations omitted).

Id. at 55 n.35.

As this Court has held, a corporation is "for sale" when "the interests of current stockholders will be converted to cash or otherwise terminated." Interco, 551 A.2d at 803. Where, as here, all stockholders of Time and Warner continue to maintain equity in a combined entity, no one's interests are "converted to cash or otherwise terminated." See TW Services, Inc. v. SWT Acquisition Corp., Del. Ch., C.A. No. 10427, slip op. at 19, 20, Allen, C. (Mar. 2, 1989) (sale

transaction is one which may "terminate the interest of all of the existing holders of stock").

This result is a sensible one which preserves the right to engage in a consensual merger, which right is recognized in Section 251 of the General Corporation Law. See, e.g., TW Services. Indeed, any extension of the duty to auction to an arms-length, stock-swap merger would effectively abrogate the statutory right to merge. If every corporation had to survive an auction before it could consummate a merger, the statutory right to merge would become virtually meaningless.

Finally, Warner has an economic and contractual interest separate and distinct from Time in the shares to be exchanged under the Share Exchange Agreement. These shares are valuable economic assets to the recipient thereof. Even assuming, arguendo, a breach of the duty to auction by Time directors, nothing in the complaint and nothing about the transaction itself suggests that Warner was a knowing participant in any such breach of duty. In this respect, the case against Warner is controlled by the decision in LA Partners L.P. v. Allegis Corp., Del. Ch., C.A. No. 9033, Berger, V.C. (Oct. 22, 1987). There, a bidder accused third party Boeing of aiding and abetting an alleged breach of duty by Allegis directors in negotiating a note agreement with Allegis. Boeing was charged with knowledge of a breach of duty because of the course of negotiations, Boeing's

awareness that Allegis had no need for the $700 million provided for in the note, the fact that the agreement was negotiated in great haste and contained no pre-payment clause and Boeing's awareness that Allegis dropped its earlier plan of soliciting competitive proposals from other airplane manufacturers. The Court, however, dismissed the case against Boeing, holding:

> Here, the terms of the Note Agreement and the circumstances under which it was negotiated would not necessarily alert Boeing ... to any wrongful conduct on the part of the Allegis directors. There is nothing in the complaint to suggest that Boeing was privy to the Allegis directors' deliberations.

Slip op. at 18. So here. Nothing about the conduct of the Time defendants was sufficient to alert Warner to any breach of duty. No basis exists, therefore, to enjoin Warner from exercising its bargained-for rights under the Share Exchange Agreement.

B. The Business Judgment Rule, Not Unocal Scrutiny Is Implicated By The Share Exchange Agreement.

Casting about in search of a theory, plaintiffs fall back upon the now-familiar principles of Unocal Corp. v. Mesa Petroleum Co., Del. Supr., 493 A.2d 946 (1985) to argue that the Share Exchange Agreement constitutes an improper overreaction to the non-threat posed by their all-cash offer. This argument is without merit.

At the outset, plaintiffs baldly assert that the Share Exchange Agreement "is an anti-takeover device whose

only purpose is to deter competing bids." (PB 23) (emphasis supplied). The record is otherwise. As the Payson Affidavit demonstrates, the Share Exchange Agreement has several purposes, including the desire of each company to make a substantial investment in the other. (Payson Aff. ¶8). Likewise, another purpose of the agreement is to insure that, in the event the Merger were upset by a bid for either, that the jilted merger partner is compensated for the years of work that are part of this deal and the millions of dollars expended by that party in fees of outside bankers and lawyers, and, of course, lost opportunity costs. (Payson Aff. ¶8).[12] In short, in the event the Merger was put in jeopardy by a raid on either party, the jilted merger partner wanted an opportunity to share in the 'upside' of that third party bid. (Id.) Finally, the parties also understood that the Share Exchange Agreement might have the effect of dissuading a third party raid designed to bust-up the Merger. (Payson Aff. ¶12). In this respect, the Share Exchange Agreement is protective, not reactive or defensive. Both parties understood that there would be risks associated with agreeing to merge in light of the long period of time necessary to receive necessary approvals and the inherent, unrecognized values each saw in the other. (Payson Aff. ¶8).

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[12]In this regard, it must be noted that the Merger Agreement contains no asset options, break-up or termination fees or similar devices to compensate either party for their time and effort in the event the Merger were unsuccessful.

Thus, to some extent, the Share Exchange Agreement was designed to protect the Merger. Action taken to protect valid business judgment is fundamentally distinct, however, from action taken to defend a corporation from a hostile offer, action as to which the "omnipresent specter" of self-interested conduct is implicated. The history of the development of the Share Exchange Agreement strongly corroborates the affidavit evidence as to the purpose of the agreement.

As originally conceived, the share exchange itself was to take place as promptly as possible. (Payson Aff. ¶3). Thus, the parties intended to purchase significant investments in each other. (Payson Aff. ¶8). To avoid disruption in the marketplace likely to be created by a sudden demand for millions of Time and Warner shares, and consistent with the philosophy which led to the notion of a stock swap merger to begin with, the Share Exchange Agreement was developed. Thus, as originally conceived, the share exchange was <u>not</u> dependent upon a third party offer, but was designed to close promptly. (Payson Aff. ¶3).

The SEC views on the effect of the proposed share exchange on the accounting treatment of the Merger altered the parties' plans to effectuate a prompt exchange. The desire of each corporation to make a substantial investment in the other remained, however, and, combined with each company's desire to share in the upside should the Merger be

broken up by a third-party raid on either, the agreement was amended as of April 12, 1989 so as to be triggered by commencement of an offer for more than 25% of either company. (Payson Aff. ¶3). Although the parties understood that the share exchange could have some deterrent effect by raising the sum needed to commence an offer, (Payson Aff. ¶12), it was clearly understood that the share exchange did not preclude any bid for either company and would be ineffective as an anti-takeover device, as it has proved to be (Payson Aff. ¶16).

Plaintiffs bear the burden of demonstrating that Unocal applies. Doskocil Cos., Inc. v. Griggy, Del. Ch., C.A. No. 10095, slip op. at 15, Berger, V.C. (Aug. 18, 1988). Absent a showing that the challenged action was reactive, raising the "specter that a board may be acting primarily in its own interests," there is no basis to apply Unocal. 493 A.2d at 954; and see Grobow v. Perot, Del. Supr., 539 A.2d 180, 188 (1988). Plaintiffs have not met their burden here.

Moreover, even if plaintiffs could demonstrate that the Share Exchange Agreement has an anti-takeover effect, Unocal is not implicated. In Doskocil, this Court rejected plaintiff's contention that Unocal applied in the context of a decision of the defendant board to issue preferred stock, the terms of which allegedly had an anti-takeover effect. Slip op. at 15. The Court noted that the threshold factual question was whether the issuance of the stock "is, in fact,

a defensive measure adopted to protect the [target's] stockholders from a perceived threat of a hostile takeover," slip op. at 13, and ruled that plaintiff had not made a sufficient showing that the preferred stock was a defensive measure. Slip op. at 15. The facts of this case require a similar result. See Solash v. Telex Corp., Del. Ch., C.A. No. 9518, slip op. at 28, Allen, C. (Jan. 19, 1988) (if board qualifies for the protections of the business judgment rule it is essentially protected against liability); Tate v. Lyle Plc v. Staley Continental, Inc., Del. Ch., C.A. No. 9813, slip op. at 18, Hartnett, V.C. (May 9, 1988) (directors' action in adopting the plans is immune from further judicial scrutiny pursuant to the business judgment rule).

But, even if the Court were to apply a Unocal analysis, the proportionality review by necessity must be applied to the facts known to the board when it made its decision -- not based on hindsight. Ivanhoe Partners v. Newmont Min. Corp., Del. Ch., 533 A.2d 585, 609, aff'd, Del. Supr., 535 A.2d 1334 (1987). Thus, plaintiffs' argument under Unocal -- that the "threat" is the specific, pending $175 offer and the response is a "lock-up" -- is nothing more than Monday-morning quarterbacking. On March 3, when the Time and Warner Boards approved the Share Exchange Agreement there was no offer for either Time or Warner. On April 12, when Time and Warner restated the Agreements there was no

offer for either Time or Warner.[13] The Share Exchange Agreement was in that respect completely neutral and reciprocal.

Moreover, the agreement is eminently reasonable. In light of its modest size, its non-effect under Section 203 and the voting restrictions on the shares, the shares can in no way be considered a "lock-up." (Payson Aff. ¶16). Further, even if analyzed as a "break up" arrangement, the premium realizable should Warner exercise its rights under the Share Exchange Agreement is within the range of termination or break-up fees repeatedly upheld by the courts. At close of business yesterday, the fee would equate to roughly 1.17% of the value of the Paramount offer. Cf. In Re Formica Shareholders. Litig., Del. Ch., C.A. No. 10598, Jacobs, V.C. (Mar. 22, 1989) (break up and expense reimbursement fees totalling 4.95% of deal); and see In Re Fort Howard Shareholders. Litig., Del. Ch., C.A. No. 9991, Allen, C. (Aug. 8, 1988) ($67 million break up fee, roughly 1.8% of total deal).

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[13]Plaintiffs attempt to escape the constraints of the facts in this case by arguing that the boards of both companies are now faced with an independent decision to which Unocal applies -- the decision whether to exercise the respective company's rights to require the exchange of shares. That decision, however, is no more reactive than the decision to enter the agreement. Warner might choose to exercise its rights for reasons wholly unconnected with the continued incumbency of Time officers and directors, i.e., a desire to participate in the offer for Time and to be compensated for its loss of a merger partner. Thus, the attempt to bootstrap the decision to exercise into Unocal is a red herring.

Likewise, to state -- as do plaintiffs -- that the exchange somehow constitutes a "lock-up" biases the analysis with respect to the proportionality test under Unocal unfairly. In fact, the Share Exchange Agreement is far from a "lock-up." As demonstrated by the Paramount offer, the Share Exchange Agreement hasn't prevented a tender offer for Time. Thus, the Share Exchange Agreement is far from the type of lock-up condemned to enhanced scrutiny in this Court. See, e.g. MacMillan, slip op. at 57-58 (crown-jewel asset lockup).

This Court should apply the business judgment rule in evaluating this transaction, not a Unocal analysis. In Crouse-Hinds Co. v. InterNorth, Inc., 634 F.2d 690 (2d Cir. 1980) the Second Circuit applied the business judgment rule to a transaction remarkably similar to the Share Exchange Agreement. There, (i) a merger between Crouse-Hinds Company ("Crouse-Hinds") and Belden Corporation ("Belden") was announced on September 9, 1980; (ii) InterNorth, Inc. ("InterNorth") announced its tender offer for a majority of the stock of Crouse-Hinds on September 12, 1980; and (iii) the merger agreement was modified on September 23, 1980 to provide for Crouse-Hinds' offer to acquire a portion of Belden's outstanding stock in exchange for Crouse-Hinds stock (the "Exchange Offer"). Id. at 692. The purpose of the Exchange Offer as described in the prospectus was "(1) to

facilitate the merger with Belden and (2) to discourage the InterNorth Tender Offer." Id. at 704.

In reversing the District Court's grant of a preliminary injunction enjoining Crouse-Hinds from acquiring any shares of Belden stock by the Exchange Offer or otherwise, the Second Circuit held that:

> [t]here can be no genuine question that the Exchange Offer would increase the likelihood of consummation of the merger, since the Exchange Agreement requires Crouse-Hinds to vote all Belden shares acquired pursuant to the exchange Offer in favor of the merger. In these circumstances, Crouse-Hinds's directors' attribution of the Exchange Offer to the facilitation of the merger they had negotiated is patently credible, at least in the absence of substantial evidence that their motives lie elsewhere.

Id. at 703. Significantly, the Court reached its holding notwithstanding that the share exchange in Crouse-Hinds was reactive to a hostile offer.[14] Here, by contrast, the Share Exchange Agreement was made months before the emergence of any third party bid. As in Crouse-Hinds, there is no credible showing made by plaintiffs here that the purpose of the Share Exchange Agreement was not to facilitate the Merger. Accordingly, the decision of the boards of directors to enter into the Share Exchange Agreement is protected by the business judgment rule.

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[14]It is worthy of note that Crouse-Hinds has been cited with approval by the Delaware Supreme Court in several of its decisions including Unocal. See Unocal, 493 A.2d at 954; and see Pogostin v. Rice, Del. Supr., 480 A.2d 619, 627 (1984).

In summary, plaintiffs have failed to demonstrate any basis upon which to invoke a Unocal analysis. The decision to enter the Share Exchange Agreement was taken after extensive arms-length negotiations between independent parties interested in investing in each other, and was not reactive to any existing offer for either party. Even if analyzed under Unocal, however, the desire to protect the Merger justified the mild anti-takeover effect of the agreement.

IV. THE BALANCE OF THE EQUITIES AND CONSIDERATION OF PUBLIC INTEREST WEIGH AGAINST THE RELIEF SOUGHT.

Assuming, arguendo, that plaintiffs have demonstrated some cognizable harm -- which they have not -- this Court must weigh the equities in determining whether to grant plaintiffs' application. First, even assuming that plaintiffs could close their offer on July 5, 1989 (which is unlikely given the myriad of self-imposed conditions) the simple fact is that until July 5th, at the earliest, no harm can occur to them. Hence, there is no imminent need for relief.

Further, plaintiffs contend that the Share Exchange Agreement "will substantially undermine any value that even the Defendants see in the merger and potentially lead to its abandonment." (PB 16). If plaintiffs are correct that the Share Exchange Agreement will lead to the Merger's abandon-

ment, that result will fulfill the condition in their offer that the Merger Agreement be terminated or otherwise abandoned. (Offer to Purchase at 6). The very harm they posit will be gone. Accordingly, rather than support their arguments, their principal contention weighs heavily against them.

Balanced against plaintiffs' total lack of equities is defendants' right to have their contractual rights and obligations honored. Having entered into the Share Exchange Agreement pursuant to arms-length negotiation, defendants are entitled to the benefits of their bargain.

Under the terms of the Share Exchange Agreement, "if the required approval of the Merger by the stockholders of Time or [Warner] shall not have been obtained by reason of the failure to obtain the required vote upon a vote held at a duly held meeting of stockholders or any adjournment thereof, and the Exchange Shares have not theretofore been issued and exchanged, then the closing hereunder shall not occur and neither Subject Company shall issue its Exchange Shares to the other party pursuant to this Agreement". (Share Exchange Agreement, §3). As noted above, the meeting of stockholders of each company is scheduled for June 23. Thus, pursuant to Section 3, if written notice is not given on or before June 15 and no closing occurs prior to the stockholders' meetings and the Merger fails to obtain the required vote at such

meetings, both companies lose irrevocably their bargained-for rights under the Share Exchange Agreement.

Thus, even if the Court were to temporarily restrain the exercise of their rights under the Agreement by either party for a period of 10 days, Warner and Time could be irreparably harmed by the loss of their bargained-for rights. On the other hand, plaintiffs suffer no harm whatsoever if the share exchange were to occur since final relief, which is a self-imposed condition to their offer, could be rendered promptly. In this circumstance, the balance of harms tips decidedly and decisively in favor of defendants.

CONCLUSION

For the foregoing reasons, plaintiffs' motion for a temporary restraining order should be denied.

CHARLES F. RICHARDS, JR.
Charles F. Richards, Jr.
William J. Wade
Gregory V. Varallo
Daniel A. Dreisbach
Michael J. Feinstein
Richards, Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
Attorneys for Warner
Communications Inc.

OF COUNSEL:

Wachtell, Lipton, Rosen & Katz
299 Park Avenue
New York, New York 10171
Attorneys for Warner
Communications Inc.

Dated: June 9, 1989

Exhibit

A

SHARE EXCHANGE AGREEMENT

SHARE EXCHANGE AGREEMENT, dated as of March 3, 1989, as amended as of April 12, 1989, by and between TIME INCORPORATED, a Delaware corporation ("Time"), and WARNER COMMUNICATIONS INC., a Delaware corporation ("WCI").

WHEREAS, concurrently with the execution and delivery of this Agreement, Time, WCI and TW Sub Inc., a Delaware corporation and a wholly-owned subsidiary of Time ("T-Sub"), are entering into an Agreement and Plan of Merger, dated as of the date hereof (the "Merger Agreement"), which provides that, among other things, upon the terms and subject to the conditions thereof, T-Sub will be merged with and into WCI (the "Merger"), with WCI continuing as the surviving corporation; and

WHEREAS, as a condition to their willingness to enter into the Merger Agreement, each of the parties hereto has requested that the other agree, and each has so agreed, to issue to the other its Exchange Shares (as hereinafter defined) on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements set forth herein and in the Merger Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. *Issue and Transfer of Exchange Shares.*

(a) *Issuance of Time Exchange Shares.* In consideration of and subject to the issuance of the shares referred to in Section 1(b), at the Closing (as defined in Section 3), Time will issue and deliver to WCI 7,080,016 shares (the "Time Exchange Shares") of its Common Stock, par value $1.00 per share (the "Time Common Stock"), including the associated rights (the "Rights") to purchase shares of Series A Participating Preferred Stock of Time pursuant to the Rights Agreement, dated as of April 29, 1986, between Time and Morgan Shareholder Services Trust Company of New York, as amended by Amendment No. 1, dated as of January 19, 1989, and as further amended from time to time. All references in this Agreement to shares of Time Common Stock issued to WCI hereunder shall be deemed, prior to the Distribution Date (as defined in the Rights Agreement), to include the Rights.

(b) *Issuance of WCI Exchange Shares.* In consideration of and subject to the issuance of the shares referred to in Section 1(a), at the Closing, WCI will issue and deliver to Time 17,292,747 shares (the "WCI Exchange Shares") of its Common Stock, par value $1 per share (the "WCI Common Stock").

(c) *Defined Terms.* For purposes of this Agreement: (i) the term "Exchange Shares" shall mean the Time Exchange Shares and the WCI Exchange Shares, and reference to "its Exchange Shares" with respect to Time or WCI shall mean the Time Exchange Shares or the WCI Exchange Shares, as the case may be; (ii) the term "Purchaser" shall mean the recipient of Exchange Shares and its successors and assigns; (iii) the term "Subject Company" shall mean the issuer of Exchange Shares and its successors and assigns; (iv) the term "Common Stock" shall mean the Time Common Stock or the WCI Common Stock, as the case may be, and, in each case, shall include any other securities issued or exchanged with respect to such shares as a result of one or more recapitalizations, reclassifications, mergers, consolidations or the like; (v) the term "Securities Act" shall mean the Securities Act of 1933, as amended; (vi) the term "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended; (vii) the terms "affiliate" and "associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 promulgated under the Exchange Act; (viii) the term "business day" shall mean any day other than a Saturday or Sunday or other day on which banks are authorized to close in The City of New York; and (ix) the term "Person" shall mean any corporation, partnership, individual, trust, unincorporated association or other entity or Group (within the meaning of Section 13(d)(3) of the Exchange Act). References in this Agreement to a party shall mean such party and its successors and assigns.

2. *Conditions to Closing.* The obligation of each Subject Company to issue its Exchange Shares to a Purchaser hereunder is subject to the conditions, which (other than the conditions described in clauses (i) and (iii) below) may be waived by such Subject Company in its sole discretion, that (i) all waiting

7. *Restrictions on Transfer; Right of First Refusal.*

(a) *Restrictions on Transfer.* Subject to Section 10, prior to the Expiration Date, neither party shall, directly or indirectly, by operation of law or otherwise, sell, assign, pledge or otherwise dispose of or transfer any Restricted Shares beneficially owned by such party, other than (i) pursuant to Section 4, (ii) pursuant to the Merger Agreement or (iii) in accordance with Section 7(b), 7(c) or 8.

(b) *Right of First Refusal.* If at any time following the termination of the Merger Agreement a party (the "Seller") shall propose to sell any Restricted Shares beneficially owned by it (other than as permitted by Section 7(c)), it shall, by written notice (an "Offer Notice") to the issuer of such shares (the "Issuer"), give the Issuer the opportunity to purchase such shares for cash at a price (the "Purchase Price") equal to the product of (i) the number of such shares proposed to be sold and (ii) the Fair Market Value (as defined below) of such shares. The Issuer (and/or any Person designated by the Issuer) shall have the right, exercisable by written notice (the "Purchase Notice") delivered to the Seller within ten business days (or, if a Relevant Offer (as defined below) is then outstanding, five business days; such ten or five business day period being referred to herein as the "Decision Period") after receipt of the Offer Notice, to agree irrevocably to purchase for cash all or any portion of the shares specified in the Offer Notice (the "Subject Shares"). If the Issuer and/or such designee exercises its right of first refusal pursuant to the preceding sentence (the "First Refusal Right"), the closing of the purchase of the Subject Shares shall occur at the principal executive offices of the Issuer or its counsel at any reasonable date and time designated by the Issuer and/or such designee in its Purchase Notice within 20 business days after delivery of the Purchase Notice and payment for such shares to be purchased shall be made by delivery at the time of such closing of the Purchase Price in immediately available funds, provided that if a tender or exchange offer for more than 50% of the outstanding Common Stock of such Issuer (a "Relevant Offer"), is outstanding at the time of delivery of the Purchase Notice, such closing shall take place following the exercise by the Issuer and/or its designee of its First Refusal Right on the earlier to occur of (A) the third business day following the delivery of the Purchase Notice or (B) 24 hours prior to the then scheduled expiration date of such Relevant Offer. If the Issuer or such designee has not exercised its First Refusal Right prior to the expiration of the Decision Period, the Seller shall have the right during the 45 days immediately following the expiration of the Decision Period to consummate the sale of the Subject Shares at a per share price at least equal to the lowest Closing Sale Price (as defined below) of shares of Common Stock of the Issuer during the period commencing with the delivery of the Offer Notice and ending on the date such sale is consummated; *provided*, that if such sale is not consummated within such 45-day period, the provisions of this Section 7(b) shall again be applicable to any such proposed sale. For purposes of this Section 7(b) and Section 8, the term "Fair Market Value" shall mean the average during the ten trading days immediately prior to the day on which (x) the Seller gives an Offer Notice (for purposes of this Section 7(b)), or (y) a Designated Holder (as defined below) gives a Registration Notice (for purposes of Section 8), of the daily closing sale price (regular way) of the shares of Common Stock of such Issuer as reported on the New York Stock Exchange—Composite Transaction Tape, or any successor thereto on which sales of such shares are reported, or, if such shares are no longer traded on the New York Stock Exchange, as reported on the principal national securities exchange on which such shares are listed or admitted to trading, or, if such shares are not listed or admitted to trading on any national securities exchange, as reported by the National Association of Securities Dealers, Inc. through NASDAQ or a similar organization if NASDAQ is no longer reporting such information (the "Closing Sale Price"). Notwithstanding the foregoing, for purposes of this Section 7(b), if a Relevant Offer is outstanding, the Fair Market Value of the Subject Shares shall equal the higher of (I) the highest price per share being offered pursuant to such Relevant Offer as of the date the Purchase Notice is given or (II) the Fair Market Value of such shares determined in accordance with the preceding sentence. If at the time of the purchase of any Subject Shares by an Issuer pursuant to this Section 7(b) a Relevant Offer is outstanding, then the Issuer shall from time to time promptly pay to the Seller such additional amounts, if any, so that the consideration received by the Seller with respect to each Subject Share shall equal the highest price paid for a share of Common Stock of the Issuer pursuant to such Relevant Offer, or pursuant to any other tender or exchange offer outstanding at any time the Relevant Offer is outstanding, provided such other offer is for more than 50% of the outstanding Common Stock of such Issuer.

(c) *Permitted Sales.* Following the termination of the Merger Agreement, a party shall be permitted to sell any Restricted Shares beneficially owned by it without complying with the restrictions contained in Section 7(b) if such sale is made pursuant to a tender or exchange offer that has been approved or recommended, or otherwise determined to be fair and in the best interests of such Issuer's stockholders, by a majority of the members of the Board of Directors of such Issuer (which majority shall include a majority of directors who were directors prior to the announcement of such tender or exchange offer).

8. *Registration Rights.* Following the termination of the Merger Agreement, each party hereto (a "Designated Holder") may by written notice (the "Registration Notice") to the other party (the "Registrant") request the Registrant to register under the Securities Act all or any part of the Restricted Shares beneficially owned by such Designated Holder (the "Registrable Securities") pursuant to a *bona fide* firm commitment underwritten public offering in which the Designated Holder and the underwriters shall effect as wide a distribution of such Registrable Securities as is reasonably practicable and shall use their best efforts to prevent any Person (including any Group) and its affiliates from purchasing through such offering Restricted Shares representing more than 1% of the outstanding shares of Common Stock of the Registrant on a fully diluted basis (a "Permitted Offering"). The Registration Notice shall include a certificate executed by the Designated Holder and its proposed managing underwriter, which underwriter shall be an investment banking firm of nationally recognized standing (the "Manager"), stating that (i) they have a good faith intention to commence promptly a Permitted Offering and (ii) the Manager in good faith believes that, based on the then prevailing market conditions, it will be able to sell the Registrable Securities at a per share price equal to at least 80% of the Fair Market Value of such shares. The Registrant (and/or any Person designated by the Registrant) shall thereupon have the option, exercisable by written notice delivered to the Designated Holder within 10 business days after receipt of the Registration Notice, irrevocably to agree to purchase all or any part of the Registrable Securities for cash at a price (the "Option Price") equal to the product of (i) the number of Registrable Securities and (ii) the Fair Market Value of such shares. Any such purchase of Registrable Securities by the Registrant hereunder shall take place at a closing to be held at the principal executive offices of the Registrant or its counsel at any reasonable date and time designated by the Registrant and/or such designee in such notice within 20 business days after delivery of such notice. Any payment for the shares to be purchased shall be made by delivery at the time of such closing of the Option Price in immediately available funds.

If the Registrant does not elect to exercise its option pursuant to this Section 8 with respect to all Registrable Securities, it shall use its best efforts to effect, as promptly as practicable, the registration under the Securities Act of the unpurchased Registrable Securities; *provided, however*, that (i) neither party shall be entitled to more than an aggregate of two effective registration statements hereunder and (ii) the Registrant will not be required to file any such registration statement during any period of time (not to exceed 40 days after such request in the case of clause (A) below or 90 days in the case of clauses (B) and (C) below) when (A) the Registrant is in possession of material non-public information which it reasonably believes would be detrimental to be disclosed at such time and, in the written opinion of counsel to such Registrant, such information would have to be disclosed if a registration statement were filed at that time; (B) such Registrant is required under the Securities Act to include audited financial statements for any period in such registration statement and such financial statements are not yet available for inclusion in such registration statement; or (C) such Registrant determines, in its reasonable judgment, that such registration would interfere with any financing, acquisition or other material transaction involving the Registrant or any of its affiliates. If consummation of the sale of any Registerable Securities pursuant to a registration hereunder does not occur within 120 days after the filing with the Securities and Exchange Commission of the initial registration statement, the provisions of this Section 8 shall again be applicable to any proposed registration; *provided, however*, that neither party shall be entitled to request more than two registrations pursuant to this Section 8. The Registrant shall use its reasonable best efforts to cause any Registrable Securities registered pursuant to this Section 8 to be qualified for sale under the securities or Blue-Sky laws of such jurisdictions as the Designated Holder may reasonably request and shall continue such registration or qualification in effect in such jurisdiction; *provided, however*, that the Registrant shall not be required to qualify to do business in, or consent to general service of process in, any jurisdiction by reason of this provision.

The registration rights set forth in this Section 8 are subject to the condition that the Designated Holder shall provide the Registrant with such information with respect to such holder's Registrable Securities, the plans for the distribution thereof, and such other information with respect to such holder as, in the reasonable judgment of counsel for the Registrant, is necessary to enable the Registrant to include in such registration statement all material facts required to be disclosed with respect to a registration hereunder.

A registration effected under this Section 8 shall be effected at the Registrant's expense, except for underwriting discounts and commissions and the fees and the expenses of counsel to the Designated Holder, and the Registrant shall provide to the underwriters such documentation (including certificates, opinions of counsel and "comfort" letters from auditors) as are customary in connection with underwritten public offerings as such underwriters may reasonably require. In connection with any such registration, the parties agree (i) to indemnify each other and the underwriters in the customary manner and (ii) to enter into an underwriting agreement in form and substance customary to transactions of this type with the Manager and the other underwriters participating in such offering.

9. *Restrictive Legends.* Each certificate representing Exchange Shares issued to a Purchaser hereunder shall include a legend in substantially the following form:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY BE REOFFERED OR SOLD ONLY IF SO REGISTERED OR IF AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE. SUCH SECURITIES ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER AS SET FORTH IN THE SHARE EXCHANGE AGREEMENT, DATED AS OF MARCH 3, 1989, A COPY OF WHICH MAY BE OBTAINED FROM [SUBJECT COMPANY].

10. *Relief From Obligations Following Willful Breach.* Notwithstanding anything to the contrary contained in this Agreement, if the Merger Agreement is terminated as the result of a willful breach by a party (or, with respect to Time, by T-Sub) of any of its representations, warranties, covenants or agreements set forth in the Merger Agreement, the other party shall not be subject to the restrictions and obligations otherwise imposed upon it pursuant to Sections 5, 6 and 7 (other than in its capacity as an Issuer under Section 7(b)) of this Agreement.

11. *Binding Effect; No Assignment.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and permitted assigns. Except as expressly provided for in this Agreement, neither this Agreement nor the rights or the obligations of any party hereto are assignable, except by operation of law, or with the written consent of the other party. Nothing contained in this Agreement, express or implied, is intended to confer upon any person other than the parties hereto and their respective permitted assigns any rights or remedies of any nature whatsoever by reason of this Agreement. Any Restricted Shares sold by a party in compliance with the provisions of Section 7 or Section 8 shall, upon consummation of such sale, be free of the restrictions imposed with respect to such shares by this Agreement, unless and until such party shall repurchase or otherwise become the beneficial owner of such shares, and any transferee of such shares shall not be entitled to the rights of such party. Certificates representing shares sold in a registered public offering pursuant to Section 8 shall not be required to bear the legend set forth in Section 9.

12. *Specific Performance.* The parties recognize and agree that if for any reason the other fails to issue any Exchange Shares required to be issued hereunder or if any of the other provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, immediate and irreparable harm or injury would be caused for which money damages would not be an adequate remedy. Accordingly, each party agrees that, in addition to other remedies, the parties shall be entitled to an injunction restraining any violation or threatened violation of the provisions of this Agreement or to specific performance or other equitable relief to enforce the provisions of this Agreement. In the event that any action should be brought in equity to enforce the provisions of this Agreement, no party will allege, and each party hereby waives the defense, that there is adequate remedy at law.

13. *Entire Agreement.* This Agreement and the Merger Agreement (including the exhibits and schedules thereto) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all other prior agreements (including the Agreement between WCI and Time dated as of April 22, 1988) and understandings, both written and oral, among the parties or any of them with respect to the subject matter hereof.

14. *Further Assurances.* Each party will execute and deliver all such further documents and instruments and take all such further action as may be necessary in order to consummate the transactions contemplated hereby.

15. *Validity.* The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the other provisions of this Agreement, which shall remain in full force and effect. In the event any court or other competent authority holds any provision of this Agreement to be null, void or unenforceable, the parties hereto shall negotiate in good faith the execution and delivery of an amendment to this Agreement in order, as nearly as possible, to effectuate, to the extent permitted by law, the intent of the parties hereto with respect to such provision. Each party agrees that, should any court or other competent authority hold any provision of this Agreement or part hereof to be null, void or unenforceable, or order any party to take any action inconsistent herewith, or not to take any action required herein, the other party shall not be entitled to specific performance of such provision or part hereof or to any other remedy, including but not limited to money damages, for breach hereof or of any other provision of this Agreement or part hereof as the result of such holding or order.

16. *Notices.* Any notice or communication required or permitted hereunder shall be in writing and either delivered personally, telegraphed or telecopied or sent by certified or registered mail, postage prepaid, and shall be deemed to be given, dated and received when so delivered personally, telegraphed or telecopied or, if mailed, five business days after the date of mailing to the following address or telecopy number, or to such other address or addresses as such person may subsequently designate by notice given hereunder:

(a) if to Time, to:

Time Incorporated
Time and Life Building
Rockefeller Center
New York, New York 10020
Telecopy No. (212) 522-1252

Attention of Vice President and
General Counsel

with a copy to

Samuel C. Butler, Esq.
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, New York 10005
Telecopy No. (212) 428-3700

and

Exhibit

B

THE NEW YORK TIMES
Sunday, March 5, 1989

Time Inc. and Warner to Merge, Creating Largest Media Company

Print and Movie Giants Are Combining to Fight Foreign Competition

By FLOYD NORRIS

Time Inc. and Warner Communications Inc. announced yesterday that they plan to merge to form the largest media and entertainment conglomerate in the world.

Time is a major force in book publishing and cable television, and Warner is a large producer of movies and records that also has a large cable television operation. The merger would create a company with a total stock market value of $15.2 billion.

The combined company, to be known as Time Warner Inc., would have a total value of $18 billion, including long-term debt, and annual revenue of $10 billion.

The deal would create a media giant, making it a substantial force in both the production and distribution of movie and television programming, as well as in magazines and book publishing. The merger would insure Time [illegible] in the 1990's as one of a [illegible] media giants able to [illegible] information in virtually any medium.

The agreement is subject to approval by the shareholders of both companies and government regulatory agencies.

The chief executives of the two companies said yesterday that the deal would help the United States compete against giant European and Asian companies.

"Only strong American companies will survive after the formation of a unified European market in 1992," said Steven J. Ross, chairman of Warner.

The merger, involving an exchange of stock in which no cash will change hands, was billed as a merger of equals in which the Time Chairman, J. Richard Munro, and the Warner Chairman, Steven J. Ross, would share power on an equal basis as co-chairmen and co-chief executive officers, but in which Time's president, N. J. Nicholas Jr., would eventually take control.

Time Warner would replace Bertelsmann A.G., a privately held German publisher known primarily for its book division, as the world's largest communications company in terms of revenue. Bertelsmann's revenue in 1987 was placed at more than $6 billion.

Board Member Abstains

The merger was unanimously approved by the Time board, but there was one abstention on the Warner board. A Warner official said Herbert Siegel, chairman of Chris-Craft Industries and a frequent opponent of Mr. Ross, was the holdout. Mr. Siegel could not be reached for comment.

The merger unifies two media giants that have felt the pressure of Wall Street's demands for performance and have long been the subjects of takeover rumors. The deal would create a much larger company that would therefore

Continued on Page 38, Column 1

Time Inc. and Warner to Merge, Creating Biggest Media Company

Continued From Page 1

make it a more difficult target in a hostile takeover.

"Neither of these companies was forced into doing anything," Mr. Munro said. "We both could have survived alone. But this gives us a very strong balance sheet. We won't have to fire anybody; we don't have to sell anything; and we don't have to borrow to accomplish this. It gives us a very large treasury — and we have plans to use it."

The two companies have been discussing a possible business combination for more than two years, after Mr. Ross first contacted Time about a possible joint venture in cable television, people affiliated with both companies said. Last year those talks turned to a possible merger, but the discussions were broken off in August for reasons that were not disclosed. Geoffrey Holmes, a senior vice president of Warner, said they were renewed in January after Warner completed its acquisition of Lorimar Telepictures Corporation.

Mr. Holmes discounted the possibility of conflicts between the two organizations. "People perceive the corporate cultures to be very different, but they aren't," he said. "Both we and the Time management have always believed very strongly in decentralized management. Both companies have a limited corporate staff."

'Only strong American companies will survive.'

Takeover Target of Murdoch

In 1983, Warner was a takeover target of the News Corporation, controlled by Rupert Murdoch. To escape that bid, it reached a deal with Chris-Craft giving that company a major stake in Warner, which now amounts to 11 percent of the stock and a 17 percent voting stake. That friendly arrangement has since dissolved in bickering, with Mr. Siegel opposing a large pay package for Mr. Ross and going to court in an unsuccessful effort to stop Warner's takeover of Lorimar Telepictures.

The merger was discussed at a Time board meeting Friday and at a Warner board meeting that began Thursday and continued Friday. The announcement was made yesterday in part because a report of the deal appeared Saturday in the Los Angeles Times.

Under the proposal, each share of Warner Communications would be exchanged for 0.465 shares of Time, with an indicated market value of $50.74, based on Time's closing stock price of $109.125 per share on Friday. Warner shares were very active in New York Stock Exchange trading Thursday and Friday, rising $2.875 in the two sessions to $45.875.

The companies said that Mr. Nicholas would become president of Time Warner and replace Mr. Munro as co-chief executive when he retires in about two years. When Mr. Ross retires five years from now, Mr. Nicholas will become the chief executive.

The board would be made up of 24 members, 12 from each company.

Warner was advised in the merger talks by Lazard Freres & Company and Alpine Capital Group, while Time was advised by Wasserstein Perella & Company and Shearson Lehman Hutton Inc.

Although Time's name went first in the new title, Warner's stockowners would end up owning nearly 60 percent of the common stock in the combined company.

"Warner is the last American-owned record company," said Mr. Ross. "This was an industry that America created, but all of the companies other than Warner that were started by Americans are now owned by British, Japanese, German and Dutch companies."

Mr. Nicholas, the president of the merged company, described a similar situation in the magazine industry.

"The last $4 or $5 billion dollars worth of magazine deals in the United States have been foreign companies buying into the American market," he said.

The New York Times/Fred I

N. J. Nicholas Jr., left, president of Time Inc., J. Richard Munro, man of Time, and Steven J. Ross, chairman of Warner Commu tions, after completing the merger of the two companies.

Merger Unites Companies Born in Roaring Twentie

Warner Communications Inc.

AT A GLANCE

All dollar amounts in thousands, except per share data

Three months ended Dec. 31	1988	1987
Revenues	$1,195,000	$1,025,000
Net income	101,100	92,000
Earnings per share	$.63	$.59
Year ended Dec. 31	**1988**	**1987**
Revenues	$4,206,000	$3,404,000
Net income	423,000	328,100
Earnings per share	$2.65	$2.09

Main Lines of Business
Contribution to 1988 revenues

Filmed entertainment	37%
Recorded music	49%
Cable	11%
Publishing	3%

Total assets, Dec. 31, 1988	$4,598,000
Long-term debt	721,000
Book value per share, Dec. 31, 1988	$8.35
Stock price, March 3, 1989 N.Y.S.E. consolidated close	$45.875
Stock price, 52-week range	$46–29.25
Employees, Dec. 31, 1988	14,460
Headquarters	New York City

(The above figures do not include the acquisition of Lorimar, which was completed in January 1989.)

Time Inc.

AT A GLANCE

All dollar amounts in thousands, except per share data

Three months ended Dec. 31	1988	1987
Revenues	$1,207,000	$1,138,000
Net income	58,000	52,000
Earnings per share	$1.01	$.88
Year ended Dec. 31	**1988**	**1987**
Revenues	$4,507,000	$4,193,000
Net income	289,000	250,000
Earnings per share	$5.01	$4.18

Main Lines of Business
Contribution to 1988 revenues

Magazine publishing	39%
Book publishing	20%
Programming	23%
Cable television	18%

Total assets, Dec. 31, 1988	$4,913,000
Long-term debt	1,485,000
Book value per share, Dec. 31, 1988	$23.97
Stock price, March 3, 1989 N.Y.S.E. consolidated close	$109.125
Stock price, 52-week range	$122.50–84.125
Employees, Dec. 31, 1988	21,000
Headquarters	New York City

Time Inc.

Time Inc. is the nation's leading magazine publisher, the owner of Time, Life, Fortune, Money, Sports Illustrated and People, whose collective circulation exceeds 17 million copies and whose names have become household words.

The company also owns Home Box Office, the country's largest pay cable television programming service. Its book-publishing ventures include the Little, Brown & Company and Scott, Foresman & Company, and its Time-Life Books unit has issued series on subjects from history to cooking.

Founded in 1923 by Henry Robinson Luce and Briton Hadden, two youthful Yale graduates, the company's first publication was Time, a new kind of weekly magazine that chronicled the affairs of the world in a stylized prose of inverted nouns and verbs that came to be known as Timese.

A profile of Luce in The New Yorker at the height of his power chronicled the expansion of the company with Fortune in 1930 and Life in 1936. It was written entirely in Time style and concluded: "Where it will all end, knows God."

Long known for a conservative political posture, and especially for strong support of Nationalist China, the Luce publications began to adopt an increasingly objective approach to the news in the 1960's.

At the same time, the company grew from its original base into a diversified communications conglomerate, with revenues of $4.2 billion in 1987. Last fall, it agreed to acquire 50 percent of Whittle Communications, a publisher of specialty magazines and periodicals.

The company's broadcasting interests include an 82 percent ownership of American Television and Communications, the second largest multiple system cable television operator, with a total of nearly 7 million subscriptions at the end of 1987.

The company's H.B.O. programming service had nearly 16 million subscribers at the end of 1987, and its Cinemax service had another 5.1 million subscribers.

Warner Communications

Warner Communications Inc., born in the Hollywood of the early 1920's as Warner Brothers, today is the largest record and television production company in the United States and one of the biggest film production companies in the world.

The entertainment giant now has two movies up for the Academy Award for best picture, "Dangerous Liaisons" and "The Accidental Tourist." It boasts the rock singers Madonna and Anita Baker among the recording stars on its label. It airs 17 shows on network television, including "Night Court," "Falcon Crest" and "Dallas." And, as the fifth largest cable television operator in the country, it has 1.5 million subscribers.

Last year, revenues reached $4.2 billion, with profits of $423 million, up 30 percent from 1987.

While Warner Communications employs 15,000 people worldwide, with its headquarters in New York and main offices in Los Angeles and London, the company was not always that large. It received a major injection in 1969 when National Kinney, a rental car company founded by Steven J. Ross, acquired Warner Bros., and the name was changed.

The rental car division was sold off, and over the years, Warner Communications Inc., under the guidance of Mr. Ross, has merged with and acquired other companies, most recently taking over Lorimar Telepictures Corporation in January for $1.2 billion. That acquisition made Warner Communications the largest producer of television shows worldwide.

Warner Communications has been riven with internal conflict in recent years largely because of the bid for Lorimar Telepictures. Mr. Ross has had a running feud with Herbert J. Siegel, the chairman of Chris-Craft Industries, the company's largest shareholder. Mr. Siegel had objected to the Lorimar deal, saying it violated a 1984 agreement signed with Warner when the two companies bought stakes in each other.

Exhibit

C

Facsimile copies of the Letter of Transmittal, properly completed and duly executed, will be accepted. The Letter of Transmittal, certificates for Shares and Rights and any other required documents should be sent or delivered by each stockholder of the Company or his broker, dealer, commercial bank, trust company or other nominee to the Depositary at one of its addresses set forth below:

The Depositary is:

CITIBANK, N.A.

By Mail:	*Facsimile Transmission:*	*By Hand:*
Citibank, N.A. c/o Citicorp Data Distribution, Inc. P.O. Box 1429 Paramus, New Jersey 07653	(For Eligible Institutions Only) (201) 262-7521	Citibank, N.A. Mergers and Acquisitions Window 111 Wall Street 5th Floor New York, New York
Overnight Delivery:	*Confirm by Telephone:*	*By Telex:*
Citibank, N.A. c/o Citicorp Data Distribution, Inc. 404 Sette Drive Paramus, New Jersey 07653	(201) 262-4743 (Call Collect)	(710) 990-4964 Answer Back: CDDI PARA

Questions and requests for assistance may be directed to the Information Agent or the Dealer Manager at their respective addresses and telephone numbers listed below. Additional copies of this Offer to Purchase, the Letter of Transmittal and other tender offer materials may be obtained from the Information Agent as set forth below, and will be furnished promptly at the Purchaser's expense. You may also contact your broker, dealer, commercial bank, trust company or other nominee for assistance concerning the Offer.

The Information Agent is:

KISSEL-BLAKE INC.

25 Broadway
New York, New York 10004
Toll Free 1-800-554-7733
Banks and Brokerage Firms please call:
(212) 344-6733

The Dealer Manager is:

MORGAN STANLEY & CO.
Incorporated
1251 Avenue of the Americas
New York, New York 10020
Call Toll Free 1-800-223-2440 ext. 7930

SCHEDULE II

TRANSACTIONS IN SHARES DURING THE PAST SIXTY DAYS BY CERTAIN DIRECTORS AND EXECUTIVE OFFICERS

This Schedule sets forth information with respect to transactions in Shares during the past sixty days by certain directors and executive officers of Parent.

The transactions listed on this Schedule were effected by Great Pacific Capital Ltd., a company in which The Jim Pattison Group owns an indirect 88% interest. James A. Pattison, a director of Parent, is Chairman and Chief Executive Officer of The Jim Pattison Group. All transactions listed below were effected on the NYSE through a broker.

Date of Transaction	No. of Shares Purchased (Sold)	Price Per Share	Aggregate Purchase Price (Including Commissions)
April 20, 1989	5,000	$ 114.75	$ 574,000
April 20, 1989	2,200	115.50	254,188
April 20, 1989	1,000	115.375	115,415
April 20, 1989	500	115.25	57,645
April 20, 1989	500	115.125	57,582.50
April 21, 1989	800	115	92,032
April 24, 1989	5,000	116	580,250
April 25, 1989	(5,000)	117.52	587,855.39
April 25, 1989	500	117.375	58,707.50
April 25, 1989	500	117.50	58,770
April 26, 1989	(1,000)	118.04	118,081.06
	(10,000)	116.40	1,164,461.16

Name and Business Address	Current Principal Occupation or Employment and Five-Year Employment History
Donald Oresman	Director, Executive Vice President, General Counsel and Secretary of Parent, Chief Administrative Officer of Parent since December 1987.
James A. Pattison The Jim Pattison Group 1055 West Hastings Street Suite 1600 Vancouver, British Columbia V6E 2H2 Canada	Director of Parent since March 1988, Chairman and Chief Executive Officer of The Jim Pattison Group.
Lester Pollack Centre Partners One Rockefeller Plaza New York, New York 10020	Director of Parent since December 1985; General Partner, Lazard Freres & Co.; Chief Executive Officer of Centre Partners since March 1986; prior thereto, General Partner of Odyssey Partners.
Irwin Schloss Marcus Schloss & Co., Inc. 1 Whitehall Street New York, New York 10004	Director of Parent, President of Marcus Schloss & Co., Inc., securities brokers.
Samuel J. Silberman Paramount Communications Foundation 133 East 79th Street New York, New York 10021	Director of Parent, Chairman of Paramount Communications Foundation (formerly named Gulf + Western Foundation) since April 1985; prior thereto, President of Paramount Communications Foundation.
Henry A. Walker Amfac, Inc. 700 Bishop Street Honolulu, Hawaii 96801	Director of Parent, Consulting Chairman of Amfac, Inc. since November 1988; prior thereto, Chairman of Amfac, Inc.
George Weissman Philip Morris Companies Inc. 120 Park Avenue New York, New York 10017	Director of Parent; Retired Chairman and Director Emeritus of Philip Morris Companies Inc. since May 1987; Chairman of the Executive Committee of Philip Morris Companies Inc. from August 1984 until May 1987, Chairman and Chief Executive Officer of Philip Morris Companies Inc. until August 1984.
Michael S. Hope	Executive Vice President, Planning and Operations of Parent since November 1987; prior thereto, Executive Vice President and Chief Financial Officer of Parent.
Ronald L. Nelson	Senior Vice President and Chief Financial Officer of Parent since November 1987; Executive Vice President of Gulf + Western Entertainment from July 1986 until November 1987; President of Paramount Network Television Productions and Video Distributions from March 1985 until July 1986; Executive Vice President of Paramount Network Group until March 1985.
Lawrence E. Levinson Paramount Communications Inc. 1875 Eye Street, N.W. Suite 1225 Washington, D.C. 20006	Senior Vice President, Government Relations of Parent since November 1986; prior thereto, Executive Vice President of Parent.
Eugene I. Meyers	Senior Vice President and Senior Tax Counsel of Parent.

SCHEDULE I

DIRECTORS AND EXECUTIVE OFFICERS OF THE PURCHASER

The following table sets forth the name and position with the Purchaser of each director and executive officer of the Purchaser. The business address and present principal occupation or employment of each person is set forth under Directors and Executive Officers of Parent below. Each person listed below is a citizen of the United States.

Name	Position
Donald Oresman	Director, Vice President and Secretary
Michael S. Hope	Director and President
Ronald L. Nelson	Director, Vice President and Treasurer
Lawrence E. Levinson	Vice President

DIRECTORS AND EXECUTIVE OFFICERS OF PARENT

The following table sets forth the name, business address and current principal occupation or employment of the directors and executive officers of Parent. Unless otherwise indicated, all occupations, offices or positions of employment listed opposite an individual's name were held by such individual in the course of the last five years. Each individual listed below is a citizen of the United States except for Franz J. Lutolf who is a citizen of Switzerland and James A. Pattison who is a citizen of Canada. Except as otherwise noted, the business address of such persons is the address of Paramount Communications Inc., 15 Columbus Circle, New York, New York 10023-7780.

Name and Business Address	Current Principal Occupation or Employment and Five-Year Employment History
Martin S. Davis	Director, Chairman of the Board and Chief Executive Officer of Parent.
Grace J. Fippinger NYNEX Corporation 335 Madison Avenue New York, New York 10017	Director of Parent, Vice President, Secretary and Treasurer of NYNEX Corporation.
Irving R. Fischer HRH Construction Corporation 909 Third Avenue New York, New York 10022	Director of Parent; Chairman, and Chief Executive Officer of HRH Construction Corporation.
Judd C. Leighton First Interstate Bank of Northern Indiana, N.A. 112 West Jefferson Blvd. Suite 603 South Bend, Indiana 46601	Director of Parent, Chairman of the Board of First Interstate Bank of Northern Indiana, N.A. of South Bend. Chairman of the Board of Benicia Industries, Inc., an operator of a deep water port, through 1987.
J. Hugh Liedtke Pennzoil Company Pennzoil Place P.O. Box 2967 Houston, Texas 77250	Director of Parent since June 1987, Chairman of the Board of Pennzoil Company, Chief Executive Officer of Pennzoil Company through March 1988.
Franz J. Lutolf Swiss Bank Corporation Aeschenplatz 6 CH 4002, Basle, Switzerland	Director of Parent since March 1985, former General Manager and member of the Executive Board of Swiss Bank Corporation through 1988.
James A. Nicholas, M.D. 130 East 77th Street New York, New York 10021	Director of Parent, orthopedic surgeon.

In any jurisdiction where the securities, blue sky or other laws require the Offer to be made by a licensed broker or dealer, the Offer will be deemed to be made on behalf of the Purchaser by the Dealer Manager or one or more registered brokers or dealers that are licensed under the laws of such jurisdiction.

Parent and the Purchaser have filed with the Commission the Schedule 14D-1, together with exhibits, pursuant to Rule 14d-3 of the General Rules and Regulations under the Exchange Act, furnishing certain additional information with respect to the Offer, and may file amendments thereto. Such Schedule 14D-1 and any amendments thereto, including exhibits, may be examined and copies may be obtained from the office of the Commission in the same manner as described in Section 8 with respect to information concerning the Company, except that they will not be available at the regional offices of the Commission.

No person has been authorized to give any information or to make any representation on behalf of the Purchaser or Parent not contained in this Offer to Purchase, in the Letter of Transmittal or, if required, the Letter of Transmittal Supplement and, if given or made, any such information or representation must not be relied upon as having been authorized. Neither the delivery of the Offer to Purchase nor any purchase pursuant to the Offer, shall, under any circumstances, create any implication that there has been no change in the affairs of Parent, the Purchaser or the Company since the date as of which information is furnished or the date hereof.

KDS ACQUISITION CORP.

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of the target company for purposes of Regulation G because the purchasers of the debt securities could not in good faith lend without reliance on the margin stock as collateral. The Federal Reserve Board stated that this presumption would not apply if, among other things, there is a merger agreement between the acquiring and target companies entered into at the time the commitment is made to purchase the debt securities or in any event before the funds are advanced.

The financing arrangements described in Section 12 are intended to comply with the Margin Credit Regulations. The Commitment Letter from Citibank states that the financing arrangements will not be directly or indirectly secured by the Shares prior to the Proposed Merger. A challenge to such financing arrangements alleging a violation of the Margin Credit Regulations, if adversely determined, could have an adverse effect on the Purchaser's ability to obtain funding sufficient to enable it to consummate the Offer as currently contemplated. See Section 14.

17. Certain Fees and Expenses. Morgan Stanley & Co. Incorporated ("Morgan Stanley") is acting as Dealer Manager in connection with the Offer and is providing financial advisory services to Parent and the Purchaser in connection with the acquisition of the Company. Parent has agreed to pay Morgan Stanley a $2,500,000 advisory fee, $1,000,000 of which has been paid and the balance of which is payable as a result of the commencement of the Offer. Parent has also agreed to pay Morgan Stanley a transaction fee upon the conclusion of a transaction resulting in the ownership of more than 50% of the Company's voting stock by Parent, against which the advisory fee will be credited, in the amount of 0.200% of the aggregate value of the transaction. Aggregate value of the transaction equals the value of the consideration paid per Share times the total number of fully diluted Shares, excluding any Shares issued in connection with a "lock-up" arrangement. The transaction fee would become payable upon the purchase of at least the Minimum Number of Shares pursuant to the Offer.

Parent has also agreed that if at any time during the engagement of Morgan Stanley or within two years following the termination or completion of its engagement, Parent decides to recapitalize, spin off, sell or otherwise dispose of any interest in the assets, business or securities of the Company, Parent will retain Morgan Stanley as financial advisor in executing such transactions, upon terms and conditions, including compensation, mutually acceptable to Parent and Morgan Stanley. In the event that the acquisition of the Company is completed, Parent has agreed that Morgan Stanley will manage certain other financing activities and be paid fees in line with marketplace fees for like underwriting arrangements. The Purchaser has also agreed to reimburse Morgan Stanley for its out-of-pocket expenses, including the fees and expenses of its counsel, in connection with the Offer, and has agreed to indemnify Morgan Stanley against certain liabilities and expenses in connection with its engagement, including liabilities under the federal securities laws.

Kissel-Blake Inc. has been retained by the Purchaser as Information Agent in connection with the Offer. The Information Agent may contact holders of Shares by mail, telephone, telex, telegraph and personal interview and may request brokers, dealers and other nominee stockholders to forward material relating to the Offer to beneficial owners. Customary compensation will be paid for such services in addition to reimbursement of reasonable out-of-pocket expenses. The Purchaser has agreed to indemnify the Information Agent against certain liabilities and expenses, including liabilities under the federal securities laws.

In addition, Citibank, N.A. has been retained as the Depositary. The Depositary will receive reasonable and customary compensation for its services in connection with the Offer, will be reimbursed for its reasonable out-of-pocket expenses and will be indemnified against certain liabilities and expenses in connection therewith.

The Purchaser will not pay any fees or commissions to any broker, dealer or other person (other than the Dealer Manager) for soliciting tenders of Shares pursuant to the Offer. Brokers, dealers, commercial banks and trust companies and other nominees will, upon request, be reimbursed by the Purchaser for customary clerical and mailing expenses incurred by them in forwarding materials to their customers.

18. Miscellaneous. The Offer is being made to all holders of Shares. The Purchaser is not aware of any jurisdiction where the making of the Offer is prohibited by administrative or judicial action pursuant to a valid statute. If the Purchaser becomes aware of any valid statute prohibiting the making of the Offer, the Purchaser will make a reasonable good faith effort to comply with such statute. If, after such reasonable good faith effort, the Purchaser cannot comply with such statute, the Offer will not be made to nor will tenders be accepted from or on behalf of the holders of Shares in such jurisdiction.

the exact nature of the Company's interests in France, but intends to file notice of its acquisition of Shares and seek the approval of the French Minister of Finance, if required.

Australia. According to the Company's 10-K, the Company conducts business in Australia. The Australian Foreign Takeovers Act, 1975 (the "Australian Act") provides that prior notice must be given to the Australian Treasurer where an intended transaction will result in a foreign corporation acquiring a direct or indirect substantial shareholding in an Australian corporation. The Australian Act also provides that where the Australian business has, among other things, gross assets of Australian $3 million or more, the Australian Treasurer is empowered by the Australian Act to prohibit that transaction or order a divestiture if the transaction is considered to be contrary to the Australian national interest. The Australian Government has announced that the limit of Australian $3 million is intended to be increased to Australian $20 million, but, to the knowledge of the Purchaser, the legislative change has not yet been made. The Australian Government has stated that proposals that would be affected by the proposed change which are submitted prior to the change becoming effective will be treated in anticipation of the change. Among others who may be consulted by the Australian Treasurer when he receives such notice and examines a proposal is the Trade Practices Commission which is concerned with matters of competition policy in Australia. The Purchaser is not aware of the exact nature of or the amount of assets involved in the Company's interests in Australia, but intends to give any required notice to the Australian Treasurer.

Foreign Media Control Statutes. The laws of several countries either restrict or regulate foreign investment in or ownership of mass media enterprises. These laws generally prohibit persons foreign to such countries from having any ownership interest in newspapers, television or radio stations. Based on an examination of publicly available information, the Purchaser is not aware of any mass media enterprises being conducted by the Company or any of its subsidiaries in such foreign countries. In the event that one or more foreign laws governing investment in or ownership of mass media enterprises is applicable to the Offer, the Purchaser intends to seek such approvals, consents, licenses or regulatory permits as may be necessary or appropriate, but no assurance can be given that such approvals, consents, filings or regulatory permits will be obtained.

Other Foreign Approvals. According to the Company's 10-K, the Company also owns property and conducts business in a number of other foreign countries and jurisdictions. In connection with the acquisition of the Shares pursuant to the Offer, the laws of certain of those foreign countries and jurisdictions may require the filing of information with, or the obtaining of the approval of, governmental authorities in such countries and jurisdictions. The governments in such countries and jurisdictions might attempt to impose additional conditions on the Company's operations conducted in such countries and jurisdictions as a result of the acquisition of the Shares pursuant to the Offer or the Proposed Merger. There can be no assurance that the Purchaser will be able to cause the Company or its subsidiaries to satisfy or comply with such laws or that compliance or non-compliance will not have adverse consequences for the Company or any subsidiary after purchase of the Shares pursuant to the Offer or the Proposed Merger.

Margin Regulations. Federal Reserve Board Regulations G, T, U and X (the "Margin Credit Regulations") restrict the extension or maintenance of credit for the purpose of buying or carrying margin stock, including the Shares, if the credit is secured directly or indirectly by margin stock. Such secured credit may not be extended or maintained in an amount that exceeds the maximum loan value of the margin stock. Under the Margin Credit Regulations the maximum loan value of the Shares is 50% of their current market value. Such secured credit may not be extended or maintained in an amount that exceeds the maximum loan value of the margin stock. The Shares are presently margin stock under the Margin Credit Regulations.

The definition of "indirectly secured" contained in the Margin Credit Regulations provides that the term does not include an arrangement with a customer if the lender, in good faith, has not relied upon margin stock as collateral in extending or maintaining the particular credit.

In January 1986, the Federal Reserve Board issued an interpretative rule relating to the applicability of the Margin Credit Regulations to debt securities issued by companies without significant assets or operating histories in order to finance the acquisition of margin stock of a target company. The Federal Reserve Board stated its view that such debt securities are generally presumed to be indirectly secured by the margin stock

corporate transactions, such as the acquisition of a large percentage of the stock of a public company which has Canadian operations, or a merger or consolidation involving such an entity. Pre-notification is generally required with respect to transactions in which the parties to the transactions and their affiliates have assets in Canada, or annual gross revenues from sales in, from or into Canada, in excess of Cdn. $400 million and which involve the direct or indirect acquisition of an operating business, the value of the assets of which, or the gross revenues from sales in or from Canada generated from these assets, exceed Cdn. $35 million per year (or in the case of an amalgamation of two or more operating businesses, the assets of the entity resulting from such amalgamation or consolidation or the entities controlled by such entity exceed Cdn. $70 million per year). If a transaction is subject to the notification requirements, notice must be given seven or 21 days prior to the completion of the transaction depending on the information provided to the Canadian Director. The Canadian Director may waive the waiting period. After the applicable waiting period expires or is waived, the transaction may be completed. If the Canadian Director determines that the transaction would have the likely effect of lessening or preventing competition in a definable market, the Canadian Director may apply to the Competition Tribunal, a special purpose Canadian tribunal, to, among other things, require the disposition of the Canadian assets acquired in such transaction. The Purchaser intends to file any required notice with respect to its proposed acquisition with the Canadian Director and, to the extent necessary, observe the applicable waiting period or apply to the Canadian Director for a certificate to the effect that the Offer or Proposed Merger is exempted.

United Kingdom. According to the Company's 10-K, the Company conducts business in the United Kingdom. The Purchaser understands that an acquisition of the Company may come within the provisions of the United Kingdom Fair Trading Act of 1973 and may be studied by the Office of Fair Trading to establish whether the Director General of Fair Trading should recommend to the Secretary of State for Trade and Industry that he refer the proposed acquisition to the Monopolies and Mergers Commission which, in such event, would be required to determine whether the proposed acquisition "operates, or may be expected to operate, against the public interest." The Secretary of State for Trade and Industry has statutory power to order, among other things, a disinvestment if the Monopolies and Mergers Commission reports unfavorably on an acquisition.

Federal Republic of Germany. According to the Company's 10-K, the Company conducts business in the Federal Republic of Germany. The Act Against Restraints of Competition of the Federal Republic of Germany (the "GWB Act") provides for notice of certain intended transactions deemed to be mergers to be filed with the German Cartel Office (the "Cartel Office"). Pursuant to the GWB Act, the Cartel Office may issue a prohibition order with respect to any merger of the Company's business operations in the Federal Republic of Germany with those of the Purchaser or any of its affiliates, if the Cartel Office determines that a market-dominating position in the Federal Republic of Germany would be created or strengthened as a result of such merger, unless the enterprises involved prove that such a merger would also lead to improvements in competitive conditions that would outweigh the disadvantages of market domination. The Cartel Office could order any appropriate remedies designed to eliminate or restrict any anticompetitive effects in the Federal Republic of Germany resulting from such a merger. The Purchaser is not aware of the exact nature of the Company's interests in the Federal Republic of Germany, but intends to give any notice to the Cartel Office which may be required.

France. According to the Company's 10-K, the Company conducts business in France. Pursuant to French Law No. 66-1008 of December 28, 1966, as amended, and Decree No. 67-78 of January 27, 1967, any transfer of foreign ownership of an entity doing business in France is subject to the prior approval of the French Minister of Finance. In addition, pursuant to French Ordinance No. 86-1243 of December 1, 1986, and implementing decrees, business concentrations involving enterprises that (a) had sales, purchases or other transactions concerning replaceable goods, products or services during the calendar year preceding the concentration that in the aggregate exceeded 25% of the total sales, purchases or other transactions on the French market of such goods, products or services or of a substantial portion of such market or (b) had a turnover (excluding value added tax) that aggregated more than FF. 7 billion during the calendar year preceding the concentration, provided that at least two of the enterprises that are parties to the concentration had a turnover of at least FF. 2 billion on the French market, are subject to some control by the French government when they are likely to affect competition, unless the economic and social benefit resulting from such concentration is found to compensate for the restraint on competition. The Purchaser is not aware of

Similarly, in *Tyson Foods, Inc. v. McReynolds*, a Federal district court in Tennessee ruled that four Tennessee takeover statutes are unconstitutional as applied to corporations incorporated outside Tennessee. This decision was affirmed by the United States Court of Appeals for the Sixth Circuit. In December 1988, a Federal district court in Florida held in *Grand Metropolitan PLC v. The Pillsbury Co.* that the provisions of the Florida Affiliated Transactions Act and the Florida Control Share Acquisition Act were unconstitutional as applied to corporations incorporated outside of Florida.

The Purchaser has not attempted to comply with any state takeover statutes in connection with the Offer. The Purchaser reserves the right to challenge the validity or applicability of any state law allegedly applicable to the Offer and nothing in this Offer to Purchase nor any action taken in connection herewith is intended as a waiver of that right. In the event that any state takeover statute is found applicable to the Offer, the Purchaser might be unable to accept for payment or purchase Shares tendered pursuant to the Offer or be delayed in continuing or consummating the Offer. In such case, the Purchaser may not be obligated to accept for purchase or pay for any Shares tendered. See Section 14.

The Offer is conditioned upon, among other things, the Purchaser being satisfied in its sole discretion that, after consummation of the Offer, Section 203 of the Delaware Law would not prohibit for any period of time, or impose any voting requirements in excess of majority stockholder approval with respect to the Proposed Merger or any other business combination involving the Company and the Purchaser (or one of its affiliates). See the discussion of Section 203 in Section 11.

Investment Canada Act. According to the Company's 10-K, the Company conducts certain operations in Canada. The Investment Canada Act (the "ICA") requires that notice of the acquisition of "control" (as defined in the ICA) by "non-Canadians" (as defined in the ICA) of any "Canadian business" (as defined in the ICA) be furnished to Investment Canada, a Canadian governmental agency, and that certain of these investments be reviewed and approved by the Minister of Regional Industrial Expansion (the "Minister") as an investment that is "likely to be of net benefit" to Canada based upon criteria set forth in the ICA. All indirect acquisitions of Canadian businesses with assets of Cdn. $50 million or more, or with assets between Cdn. $5 million and Cdn. $50 million if more than 50% of all assets acquired in the transaction are Canadian, would require review and approval by the Minister. An indirect acquisition is the acquisition of control of a Canadian business through the acquisition of control of its parent outside Canada. The recently ratified U.S.-Canada Free Trade Agreement raises the threshold for review of indirect acquisitions of Canadian businesses by U.S. investors (which would include the Purchaser) to Cdn. $100 million. Under the ICA, the acquisition of more than a majority of the voting shares is deemed to be an acquisition of control.

The acquisition of Shares by the Purchaser pursuant to the Offer may constitute an acquisition of a "Canadian business" within the meaning of the ICA. In such event, if, within a certain specified period of time provided in the ICA, the Minister was not satisfied that the acquisition was likely to be of "net benefit" to Canada, the Purchaser could be required by the ICA to divest itself of control of the Company's Canadian business.

The ICA also contains provisions relating to the acquisition of Canadian businesses which are prescribed to be related to Canada's cultural heritage or national identity. The Purchaser believes that it is likely that certain of the business activities of the Company's Canadian subsidiaries will be considered to be related to Canada's cultural heritage or national identity. In such event, the ICA provides that the Governor in Council (federal Cabinet) may require the acquisition of such business activities to be reviewed under the ICA even if the transaction were not otherwise reviewable under the ICA. Were this to be required, the Purchaser would then be obliged to file an application for such review of such acquisition.

The Canadian federal government has published a policy statement with respect to the indirect acquisition of Canadian businesses which are engaged in book publishing or distribution which states that generally such an acquisition will be allowed provided (i) the acquisition will not significantly lessen effective competition by Canadians in any segment of the Canadian book market and (ii) the acquiror undertakes to divest control of the acquired business to Canadians at a fair market price within two years.

The Purchaser intends to file any required notice under the ICA, including any required applications for review as a result of the acquisition of book publishing operations of the Company, and if necessary, seek the approval of the Minister with respect to the acquisition of Shares pursuant to the Offer.

Canadian Pre-Merger Notification Requirements. Certain provisions of Canada's Competition Act require pre-notification to the Director of Investigation and Research (the "Canadian Director") of significant

FCC Transfer Approvals could entail, the Purchaser intends to proceed with the purchase of Shares on the basis of the Voting Trust Approval unless, at the time at which the Offer would otherwise be consummated, the Purchaser has any reason to believe that the FCC Transfer Approvals will not be obtained within a reasonable time thereafter. As of the date of this Offer, the Purchaser does not know of any reason why the FCC Transfer Approvals should not be granted in a timely fashion.

In an unrelated transaction, Parent has an option to acquire an interest in a company that owns a controlling interest in several television broadcast stations in the Philadelphia, Washington, D.C., Houston, Dallas and Raleigh-Durham areas. If such acquisition is consummated, the Purchaser could be required under the Communications Act and FCC rules relating to cross ownership of CATV systems and broadcast television stations to agree to cause the Company to divest certain of the CATV systems owned by ATC, sell all or a portion of its voting interest in such broadcast television company or cause such company to divest its interests in certain television stations. The Purchaser believes that the pending approval of its acquisition of such interest should not result in any delay in the receipt of either the Voting Trust Approval or the FCC Transfer Approvals and that if required to divest any of the cross ownership interests, the Parent is likely to be allowed a period of time after consummation of the Offer to complete such divestiture.

CATV System Franchises. According to the Company's 10-K, ATC owned or managed cable systems under 767 franchises in 32 states at December 31, 1988. The Company's 10-K further reported that ATC's franchises are generally nontransferable without prior approval of the franchising authorities, and in some instances prohibit a change in ownership or control of ATC without such prior approval and may be terminated prior to their expiration dates if ATC materially breaches the terms thereof. The Company's 10-K further states that a change in control of ATC, and in some cases, the Company, may give ATC's partners in certain joint ventures rights to terminate the joint ventures.

In connection with the CATV systems owned or managed by ATC, or its affiliates and joint ventures, Parent expects to make application to each state and local franchising authority whose consent Parent believes is necessary to consummate the Offer without material adverse consequences. In addition, Parent will seek consents from third parties under cable television joint venture agreements which the Purchaser believes require consent in order to consummate the Offer without adverse consequences.

The Purchaser does not have access to the books and records of the Company, ATC, or their subsidiaries and joint ventures, and its review of the required approvals has been limited to publicly available information. As of the date hereof, the Purchaser has not determined the extent to which franchise authority approvals and joint venture consents will be required as a result of the purchase of Shares pursuant to the Offer.

The obligation of the Purchaser to consummate the Offer is conditioned upon, among other things, the Purchaser being satisfied in its sole discretion, that all approvals, consents and franchise transfers relating to the programming and cable television businesses of the Company and its subsidiaries have been obtained on terms satisfactory to the Purchaser, except for such approvals, consents and franchise transfers as are not material in the aggregate.

There can be no assurances that the cable franchise transfer approvals and other consents necessary to consummate the Offer will be obtained or will be obtained before a substantial period of time has elapsed or that such consents can be obtained on terms acceptable to Parent or the Purchaser.

State Takeover Laws. A number of states have adopted takeover laws which purport, to varying degrees, to be applicable to attempts to acquire securities of corporations which are incorporated in such states or which have substantial assets, security holders, principal executive offices or principal places of business therein. To the extent that certain provisions of these state takeover statutes purport to apply to the Offer, the Purchaser believes that such laws conflict with federal law and constitute an unconstitutional burden on interstate commerce. In 1982, the Supreme Court of the United States, in *Edgar v. Mite Corporation*, held that the Illinois Business Takeover Act is unconstitutional, and the reasoning in such decision is likely to apply to certain other state takeover statutes. In 1987, however, in *CTS Corp. v. Dynamics Corp. of America*, the Supreme Court of the United States upheld an Indiana statute which limited the rights of a potential acquirer of a corporation organized under the laws of Indiana to vote its shares prior to obtaining approval from the remaining stockholders. Subsequently, in *TLX Acquisition Corp. v. Telex Corp.*, a Federal district court in Oklahoma ruled that the Oklahoma statutes are unconstitutional insofar as they apply to corporations incorporated outside Oklahoma in that they would subject such corporations to inconsistent regulations.

"FCC Licenses"). The Communications Act requires the prior approval of the FCC before control over the FCC Licenses may be transferred to the Purchaser pursuant to the consummation of the Offer. The Purchaser intends to apply as promptly as practicable for the required FCC approval for transfer of control of such FCC Licenses. The Communications Act requires that the FCC find, as a prerequisite to granting its approval, that the proposed transfers would serve the public interest, convenience and necessity based on the applicant's demonstration that it possesses the requisite qualifications to operate the licensed facilities. Such approvals are referred to herein as "FCC Transfer Approvals."

The FCC is authorized to approve (with or without conditions), reject or designate for evidentiary hearing the Purchaser's applications. The FCC is currently reviewing the Purchaser's fitness to be a licensee in connection with an unrelated transaction, but has not previously reviewed or approved the Purchaser's qualifications, and no assurance can be given that all the FCC Transfer Approvals in connection with the Offer will be granted, or if granted, that such approvals will be on terms and conditions acceptable to the Purchaser. Conditions to approval could include requirements that the Purchaser make certain commitments regarding the operation of the licensed facilities, divest certain licensed entities and other business activities, refrain from exercising managerial and operational control of certain operations, or await other non-FCC regulatory approvals prior to consummation. Any such conditions might be unacceptable to the Purchaser and could result in the failure of a condition to the Purchaser's obligation to consummate the Offer.

In the case of certain of the radio services, interested parties have 30 days after the public notice of acceptance for filing of FCC Transfer Approval applications to file petitions to deny approval of such applications, and, in connection with all radio services, any person may file an informal objection at any time prior to FCC grant of the FCC Transfer Approvals. As the Offer is being commenced without the concurrence of the Company, the Purchaser expects that its Voting Trust Approval and FCC Transfer Approval applications may be opposed by the Company, by Warner and possibly by other interested parties. In light of the procedural requirements of the Communications Act and FCC rules and policies, there can be no assurance that a final decision on the FCC Transfer Approvals will be reached before a substantial period of time has elapsed.

Simultaneously with its filing of the applications for FCC Transfer Approvals, the Purchaser intends to submit to the FCC a voting trust agreement (the "Voting Trust") which, if approved by the FCC (the "Voting Trust Approval"), would permit, but not require, the Purchaser to consummate the Offer prior to receipt of FCC Transfer Approvals. The Purchaser expects that the Voting Trust will provide, among other things, that all Shares purchased pursuant to the Offer would be deposited in the Voting Trust and voted by an independent trustee (the "Voting Trustee") pending receipt of FCC Transfer Approvals. During such period, the operations of the Company would be under the control, supervision and management of the Voting Trustee, and the Purchaser and its Parent would not be permitted to communicate with the Trustee with respect to such matters. The Voting Trustee will be obligated under the Voting Trust to take all actions, including the exercise of his voting rights, necessary to effect the Offer or any contractual or court-imposed obligation with respect thereto, and to oppose any inconsistent proposal or any proposal which would impair the preservation of the Company's corporate assets. The Trustee could seek to remove and replace any officer, director or employee of the Company who resigns, or who opposes, impedes or impairs the preservation of the value of the Company's corporate assets or the effectuation of the Offer or any contractual or court-imposed obligation with respect thereto, the transfer of control of the Company to the Purchaser, or the Voting Trustee's ability to fulfill his obligations under the Voting Trust, or who otherwise acts in a manner inconsistent with the fiduciary responsibilities of such officer, director or employee. In all other respects, the Voting Trustee would vote the Shares to maintain the current status of the present assets, management and operations of the Company.

Receipt of the Voting Trust Approval does not assure that the FCC Transfer Approvals will be granted. In the event that, following commencement of the Voting Trust, the FCC Transfer Approvals are denied, the Voting Trustee must notify the FCC promptly (within 30 days after a final FCC determination, or within 30 days after the Purchaser and the Voting Trustee determine that the transfer of control of the Company will not be pursued) as to his plans for disposing of the Shares in the shortest period possible. Such disposition by the Trustee is likely to require prior FCC approval.

The obligation of the Purchaser to consummate the Offer is conditioned upon, among other things, the Purchaser being satisfied in its sole discretion that all material FCC Transfer Approvals have been obtained on terms satisfactory to the Purchaser. In order to avoid the delays in consummation of the Offer which the

to such requirements. The Purchaser intends to file on June 7, 1989 with the Antitrust Division and the FTC Notification and Report Forms in connection with the purchase of Shares pursuant to the Offer and the Proposed Merger.

Under the provisions of the HSR Act applicable to the Offer, the purchase of Shares pursuant to the Offer may not be consummated until the expiration of a 15-calendar day waiting period following the filing by the Purchaser, unless such waiting period is earlier terminated by the FTC and the Antitrust Division. Accordingly, if such filing is made by the Purchaser on such date, the waiting period under the HSR Act which is applicable to the Offer will expire at 11:59 p.m., New York City time, on June 22, 1989, unless earlier terminated or the Purchaser receives a request for additional information or documentary material prior thereto. If either the FTC or the Antitrust Division were to request additional information or documentary material from the Purchaser, the waiting period would expire at 11:59 p.m., New York City time, on the tenth calendar day after the date of substantial compliance with such request. Thereafter, the waiting period could be extended only by court order or with the consent of the Purchaser. If the acquisition of Shares is delayed pursuant to a request by the FTC or the Antitrust Division for additional information or documentary material pursuant to the HSR Act, the Offer may at the discretion of the Purchaser be extended and, in any event, the purchase of and payment for Shares will be deferred until ten days after the request is complied with by the Purchaser, unless the ten-day extended period expires on or before the date when the initial 15-day period would otherwise have expired or unless the waiting period is sooner terminated by the FTC and the Antitrust Division. Although the Company is required to file certain information and documentary material with the Antitrust Division and the FTC in connection with the Offer, neither the Company's failure to make such filings nor a request from the Antitrust Division or the FTC for additional information or documentary material made to the Company will extend the waiting period.

The Antitrust Division and the FTC frequently scrutinize the legality under the antitrust laws of transactions such as the acquisition of Shares by the Purchaser pursuant to the Offer and the Proposed Merger. At any time before or after the Purchaser's purchase of Shares, the Antitrust Division or the FTC could take such action under the antitrust laws as either deems necessary or desirable in the public interest, including seeking to enjoin the purchase of Shares pursuant to the Offer, the divestiture of Shares purchased thereunder or the divestiture of substantial assets of the Company, the Purchaser or Parent. Private parties as well as local and state governments may also bring legal actions under the antitrust laws under certain circumstances. If any such action by the FTC, the Antitrust Division or any other person or entity should be threatened or commenced, the Purchaser may extend, terminate or amend the Offer. See Section 14 for certain conditions to the Offer, including conditions with respect to court and governmental actions.

Parent currently plans to voluntarily furnish copies of its HSR Notification and Report forms to the Attorney General of the State of New York as the appropriate officer of the "liaison state" under the Voluntary Pre-Merger Disclosure Compact of the National Association of Attorneys General (the "Compact"). Under the provisions of the Compact, these filings shall be made available on a confidential basis to the other states and territories who are parties to the Compact and who have agreed not to use the information except to file comments on the Offer and the Proposed Merger with federal enforcement agencies or in a judicial action to enjoin consummation of the Offer or the Proposed Merger under federal or state antitrust laws.

Based upon an examination of publicly available information relating to the businesses in which the Company and Parent are engaged, the Purchaser believes that the acquisition of Shares pursuant to the Offer would not violate the antitrust laws. Both Parent and the Company and their respective affiliates have substantial publishing operations and are engaged in aspects of the home video cassette business. Although the Purchaser believes that retention of all such operations should be permitted under the antitrust laws, Parent may be required to sell or agree to sell or cause the Company to sell certain of their respective operations should any antitrust violations be raised or alleged. There can be no assurance that a challenge to the Offer on antitrust grounds will not be made or, if such challenge is made, what the outcome will be. See Section 14 for certain conditions to the Offer, including conditions with respect to litigation and certain governmental actions.

Federal Communications Commission. The Purchaser believes that the Company and its subsidiaries hold numerous radio licenses issued by the FCC, including licenses in the Cable Television Relay Service, the Point-to-Point Microwave Radio Service, the Domestic Fixed-Satellite Service, the Private Operational-Fixed Microwave Service, the Relay Press Radio Service, and the Business Radio Service (collectively, the

If the Purchaser makes a material change in the terms of the Offer or the information concerning the Offer or if it waives a material condition of the Offer (including a waiver of the conditions set forth in the Introduction to this Offer to Purchase), the Purchaser will disseminate additional tender offer materials and extend the Offer if and to the extent required by Rules 14d-4(c) and 14d-6(d) under the Exchange Act. The minimum period during which an offer must remain open following material changes in the terms of the offer or information concerning the offer, other than a change in price or a change in percentage of securities sought, will depend upon the facts and circumstances, including the relative materiality of the changes in terms or information. With respect to a change in price or a change in percentage of securities sought, a minimum ten-business day period is generally required to allow for adequate dissemination to stockholders and investor response.

16. **Certain Legal Matters; Required Regulatory Approvals.** Except as set forth in this Offer to Purchase, based on a review of publicly available filings by the Company with the Commission and other publicly available information regarding the Company, the Purchaser and Parent are not aware of any licenses or regulatory permits that appear to be material to the business of the Company and its subsidiaries, taken as a whole, and that might be adversely affected by the Purchaser's acquisition of Shares (and the indirect acquisition of the stock of the Company's subsidiaries) as contemplated herein, or any filings, approvals or other actions by or with any domestic or foreign governmental authority or administrative agency that would be required prior to the acquisition of Shares (or the indirect acquisition of the stock of the Company's subsidiaries) by the Purchaser pursuant to the Offer as contemplated herein. Should any such approval or other action be required, it is the Purchaser's present intention that such additional approval or action would be sought, except as described below. While, except as otherwise described in this Offer to Purchase, there is no present intent to delay the acceptance for payment of, or the payment for, Shares tendered pursuant to the Offer pending receipt of any such additional approval or the taking of any such action, there can be no assurance that any such additional approval or action, if needed, would be obtained without substantial conditions or that adverse consequences might not result to the Company's business, or that certain parts of the Company's or Parent's business might not have to be disposed of or held separate or other substantial conditions complied with in order to obtain such approval or action or in the event that such approvals were not obtained or such actions were not taken. The Purchaser's obligation to purchase and pay for Shares is subject to certain conditions, including conditions with respect to litigation and governmental actions. See Section 14 for certain conditions to the Offer, including with respect to litigation and governmental actions.

The Delaware Litigation. On June 7, 1989, the Purchaser commenced the Delaware Litigation in the Chancery Court against the Company, members of the Board of Directors of the Company and Warner. The Purchaser believes that the Delaware Litigation is necessary in order to enforce the Purchaser's right to consummate the Offer and Proposed Merger and the stockholders' right to receive the consideration offered pursuant to the Offer. In the Delaware Litigation the Purchaser demands declaratory and injunctive relief to remedy past and anticipated breaches of fiduciary duty on the part of the Board of Directors.

Among other relief, the Purchaser seeks from the Chancery Court: (i) a declaration that the Share Exchange Agreement is null and void and an order enjoining any steps to implement it; (ii) a declaration that Section 203 will not apply to the Proposed Merger or any other business combination involving the Company and the Purchaser or any of its affiliates or, in the alternative, an order requiring the Board of Directors of the Company to take all actions necessary to exempt from the restrictions of Section 203 any business combination involving the Company and the Purchaser or any of its affiliates; (iii) an order requiring the Board of Directors of the Company to take all actions necessary to exempt from the Discriminatory Vote Requirement any business combinations involving the Company and the Purchaser or any of its affiliates; (iv) an order requiring the Company and the Board of Directors to redeem the Rights; and (v) a declaration that the Parent's and the Purchaser's offer to acquire the Company does not constitute tortious interference with contract or prospective economic advantage with respect to the Warner Merger Agreement or the Share Exchange Agreement.

Antitrust. Under the HSR Act, and the rules and regulations that have been promulgated thereunder by the Federal Trade Commission (the "FTC"), certain acquisition transactions may not be consummated until certain information and documentary material has been furnished for review by the Antitrust Division of the Department of Justice (the "Antitrust Division") and the FTC and certain waiting period requirements have been satisfied. The acquisition of Shares pursuant to the Offer is, and the Proposed Merger may be, subject

assets, liabilities, capitalization, stockholders' equity, condition (financial or otherwise), operations, licenses or franchises, results of operations or prospects of the Company or any of its subsidiaries (including, but not limited to, any event of default that may ensue as a result of the consummation of the Offer or the acquisition of control of the Company) or (y) the value of the Shares in the hands of Parent, the Purchaser or any other affiliate of Parent;

which in the sole judgment of the Purchaser and Parent makes it inadvisable to proceed with the Offer or with acceptance for payment or payment for the Shares.

The foregoing conditions are for the sole benefit of the Purchaser, Parent and their respective subsidiaries and affiliates and may be asserted by the Purchaser or Parent regardless of the circumstances (including, without limitation, any action or inaction by the Purchaser or Parent) giving rise to any such condition or may be waived by the Purchaser or Parent in whole or in part from time to time in their sole discretion. The failure by the Purchaser or Parent at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right and may be asserted at any time and from time to time. Any determination by the Purchaser or Parent concerning any of the events described in this Section 14 shall be final and binding.

15. **Extension of Offer Period; Amendment and Termination.** The Purchaser expressly reserves the right (but shall have no obligation), in its sole discretion, at any time and from time to time, to extend the period of time during which the Offer is open by giving oral or written notice of such extension to the Depositary and by making a public announcement of such extension. In addition, the Offer may be extended, amended or terminated upon the occurrence of any event described in Section 14.

If, prior to the Expiration Date, the Purchaser shall, in its sole discretion, increase or decrease the percentage of Shares being sought (in the case of any increase, by more than two percent) or increase or decrease the consideration offered in the Offer to holders of Shares, and if, at the time that notice of such increase or decrease is first published, sent or given to holders of Shares, the Offer is scheduled to expire at any time earlier than the expiration of the tenth business day from, and including, the date that such notice is first so published, sent or given, then the Offer will be extended until the expiration of such period of ten business days. For purposes of the Offer, a "business day" means any day other than a Saturday, Sunday or a federal holiday, and consists of the time period from 12:01 a.m. through 12:00 Midnight, New York City time.

The Purchaser also expressly reserves the right, subject to applicable law, (i) to extend the period of time during which the Offer is open and thereby delay acceptance for payment of and, regardless of whether such Shares have theretofore been accepted for payment, the payment for any Shares, or to terminate the Offer and not accept for payment or pay for any Shares not theretofore accepted for payment or paid for, upon the occurrence of any of the conditions specified in Section 14 by giving oral or written notice thereof to the Depositary, and (ii) subject to applicable law, at any time, or from time to time, to amend the Offer at any time and in any respect by public announcement. The rights reserved by the Purchaser in this paragraph are in addition to the Purchaser's right to terminate the Offer pursuant to Section 14. Any extension of the period during which the Offer is open, delay in acceptance or payment, or termination or amendment of the Offer will be followed as promptly as practicable by public announcement thereof, such announcement in the case of an extension to be issued not later than 9:00 a.m., New York City time, on the next business day after the previously scheduled Expiration Date in accordance with the public announcement requirements of Rule 14d-4(c) under the Exchange Act. Without limiting the obligation of the Purchaser under such Rule or the manner in which the Purchaser may choose to make any public announcement, the Purchaser shall have no obligation to publish, advertise or otherwise communicate any such public announcement, other than by issuing a press release to the Dow Jones News Service and making any appropriate filing with the Commission.

If the Purchaser extends the Offer, or if the Purchaser (whether before or after its acceptance for payment of Shares) is delayed in its payment for Shares or is unable to pay for Shares pursuant to the Offer, the Depositary may retain tendered Shares on behalf of the Purchaser, and such Shares may not be withdrawn except to the extent tendering stockholders are entitled to withdrawal rights as described in Section 4. The ability of the Purchaser to delay payment for Shares which the Purchaser has accepted for payment is limited by Rule 14e-1(c) under the Exchange Act, which requires that a bidder pay the consideration offered or return the securities deposited by or on behalf of holders of securities promptly after the termination or withdrawal of the Offer.

dissolution, business combination, acquisition of assets or securities (other than a redemption of the Rights) or disposition of assets or securities other than in the ordinary course of business, (B) any material change in its capitalization, (C) any release or relinquishment of any material contract rights or (D) any comparable event not in the ordinary course of business, (vi) taken any material action to implement any such transaction previously authorized, recommended, proposed or publicly announced, including the proposed Warner Merger, (vii) authorized, recommended or proposed or announced its intention to authorize, recommend or propose any transaction which could adversely affect the value of the Shares, (viii) proposed, adopted or authorized any amendment to its certificate of incorporation or by-laws or similar organization documents (except as set forth in the Proxy Statement) or (ix) agreed in writing or otherwise to take any of the foregoing actions, or the Purchaser or Parent shall have learned about any such action which shall not have been previously publicly disclosed by the Company; or

(f) a tender or exchange offer for some portion or all of any outstanding securities of the Company or any of its subsidiaries (including the Shares or Rights) shall have been publicly proposed to be made or shall have been made by another person (including the Company or any of its subsidiaries or affiliates), or it shall have been publicly disclosed or the Purchaser or Parent shall have learned that (i) any person, entity or "group" (as defined in Section 13(d)(3) of the Exchange Act) shall have acquired or proposed to acquire more than 5% of any class or series of capital stock of the Company (including the Shares or Rights) or its subsidiaries or shall have been granted any option or right to acquire more than 5% of any class or series of capital stock of the Company (including the Shares) or its subsidiaries, other than acquisitions for bona fide arbitrage positions or pursuant to the Share Exchange Agreement, or (ii) any such person, entity or group who has publicly disclosed any such ownership of more than 5% of any class or series of capital stock of the Company (including the Shares or Rights) or its subsidiaries prior to such date shall have acquired or proposed to acquire any class or series of capital stock of the Company (including the Shares or Rights) or its subsidiaries constituting more than 1% of such class or series or shall have been granted any option or right to acquire more than 1% of such class or series of capital stock of the Company (including the Shares or Rights) or its subsidiaries, (iii) any group shall have been formed which beneficially owns more than 5% of any class or series of capital stock of the Company (including the Shares or Rights) or its subsidiaries, (iv) any person, entity or group shall have entered into a definitive agreement or an agreement in principle or made a proposal with respect to a tender offer or exchange offer for the Shares or Rights or a merger (other than the Warner Merger Agreement), consolidation or other business combination with or involving the Company or its subsidiaries, or (v) any person, entity or group shall have filed a Notification and Report Form under the HSR Act in order to, or made a public announcement reflecting an intent to, acquire the Company or assets or securities of the Company or its subsidiaries; or

(g) the Company, the Purchaser and Parent shall have reached an agreement or understanding that the Offer be terminated or amended or the Purchaser, Parent or any of its affiliates shall have entered into a definitive agreement or announced an agreement in principle with the Company providing for a merger or business combination with the Company; or

(h) the Company or any of its subsidiaries shall have entered into any employment, severance or similar agreement, arrangement or plan (other than the employment agreements described in the Proxy Statement) with or for the benefit of any of its employees other than in the ordinary course of business or entered into or amended any agreements, arrangements or plans (including the employment agreements described in the Proxy Statement) so as to provide for increased or accelerated payment or funding of benefits to the employee as a result of or in connection with the transactions contemplated by the Offer since May 22, 1989; or

(i) the Purchaser or Parent shall become aware (i) that any material contractual right of the Company or any of its subsidiaries or affiliates shall be impaired or otherwise adversely affected or that any material amount of indebtedness of the Company or any of its subsidiaries shall become accelerated or otherwise become due prior to its stated due date, in either case with or without notice or the lapse of time or both as a result of the transactions contemplated by the Offer or (ii) of any covenant, term or condition in any of the Company's or any of its subsidiaries' instruments or agreements that has or may have, in the sole judgement of the Purchaser, a material adverse effect on (x) the business, properties,

its affiliates or designees) to exercise full rights of ownership of the Shares purchased by it, including, but not limited to, the right to vote the Shares purchased by it on all matters properly presented to the stockholders of the Company, or the right to vote any shares of capital stock of any subsidiary directly or indirectly owned by the Company, (v) in the sole judgment of the Purchaser may result in a material diminution in the benefits expected to be derived by the Purchaser and Parent as a result of the transactions contemplated by the Offer, or (vi) seeks to impose any material condition to the Offer unacceptable to the Purchaser or Parent; or

(b) other than as described herein with respect to certain FCC and CATV system approvals to be sought by Parent, there shall have been proposed, sought, promulgated, enacted, entered, enforced or deemed applicable to the Offer or the Proposed Merger, by any state, federal or foreign government or governmental authority or by any court, domestic or foreign, any statute, rule, regulation, judgment, decree, order or injunction that, in the sole judgment of the Purchaser, might, directly or indirectly, result in any of the consequences referred to in clauses (i) through (vi) of paragraph (a) above; or

(c) any change (or any condition, event or development involving a prospective change) shall have occurred or been threatened in the business, properties, assets, liabilities, capitalization, stockholders' equity, condition (financial or otherwise), operations, licenses or franchises, results of operations or prospects of the Company or any of its subsidiaries, or in general economic or financial market conditions in the United States or abroad, which, in the sole judgment of the Purchaser, is or may be materially adverse to the Company or any of its subsidiaries or its stockholders, or the market price of, or trading in, the Shares or the prices or trading of securities generally traded in financial markets in the United States or abroad, or the Purchaser shall have become aware of any facts which, in the sole judgment of the Purchaser, are or may be materially adverse with respect to the value of the Company or any of its subsidiaries or the value of the Shares to the Purchaser and Parent or any of their affiliates; or

(d) there shall have occurred (i) any general suspension of trading in, or limitation on prices for, securities on any national securities exchange or in the over-the-counter market in the United States, (ii) the declaration of a banking moratorium or any suspension of payments in respect of banks in the United States, (iii) a material adverse change in United States or any other currency exchange rates or a suspension of, or a limitation on, the markets therefor, (iv) the commencement of a war, armed hostilities or other international or national calamity directly or indirectly involving the United States, (v) any limitation (whether or not mandatory) by any governmental or regulatory authority on, or any other event which, in the sole judgment of the Purchaser, might affect, the nature or extension of credit or further extension of credit by banks or other lending institutions, (vi) any significant adverse change in the price of the Shares or in United States securities or financial markets generally or (vii) in the case of any of the foregoing existing at the time of the commencement of the Offer, in the sole judgment of the Purchaser, a material acceleration or worsening thereof; or

(e) the Company or any of its subsidiaries shall have, on or after May 22, 1989 (i) issued, distributed, pledged or sold, or authorized, proposed or announced the issuance, distribution, pledge or sale of (A) any shares of capital stock (including, without limitation, any Shares), or securities convertible into any such shares, or any rights (other than the Rights), warrants, or options to acquire any such shares or convertible securities, other than Shares issued or sold upon the exercise of employee stock options outstanding on May 22, 1989 (in accordance with the publicly disclosed terms thereof on such date) or (B) any other securities in respect of, in lieu of or in substitution for Shares outstanding on May 22, 1989, (ii) purchased or otherwise acquired, or proposed or offered to purchase or otherwise acquire, any outstanding Shares or other securities (except for redemption of the Rights), (iii) declared or paid any dividend or distribution on any shares of capital stock (other than regular quarterly dividends not in excess of $.25 per Share, having customary and usual record and payment dates and, in the event the Rights are redeemed, the redemption price payable in connection therewith), or issued, or authorized, recommended or proposed the issuance of, any other distribution in respect of any share of capital stock, whether payable in cash, securities or other property, or altered or proposed to alter any material term of any outstanding security, (iv) issued, or announced its intention to issue, any debt securities or any securities convertible into or exchangeable for debt securities or any rights, warrants or options entitling the holder thereof to purchase or otherwise acquire any debt securities, or incurred, or announced its intention to incur, any debt other than in the ordinary course of business and consistent with past practice, (v) authorized, recommended, proposed or publicly announced its intention to enter into or cause (A) any merger (other than the Proposed Merger or the Warner Merger), consolidation, liquidation,

or any securities convertible into, or rights, warrants or options, conditional or otherwise, to acquire, any of the foregoing, or (d) shall disclose that it has taken such action, then, without prejudice to the Purchaser's rights under Section 14, the Purchaser, in its sole discretion, may make such adjustments in the purchase price and other terms of the Offer and the Proposed Merger as it deems appropriate, including, without limitation, the number or type of securities offered to be purchased.

If, on or after May 22, 1989, the Company should declare or pay any dividend on the Shares (other than regular quarterly fixed cash dividends not in excess of $.25 per Share, having customary and usual record and payment dates) or any distribution (including, without limitation, the issuance of additional Shares pursuant to a stock dividend or stock split, the issuance of other securities or the issuance of rights (other than the separation of the Rights from the Shares) for the purchase of any securities) with respect to the Shares or Rights (other than the redemption price payable in connection with the Rights) that is payable or distributable to stockholders of record on a date prior to the transfer into the name of the Purchaser or its nominees or transferees on the Company's stock transfer records of the Shares purchased pursuant to the Offer, then, without prejudice to the Purchaser's rights under Section 14, (a) the purchase price per Share payable by the Purchaser pursuant to the Offer shall be reduced by the amount of any such cash dividend or cash distribution and (b) any such noncash dividend, distribution, issuance, proceeds or right to be received by the tendering stockholders shall (i) be received and held by the tendering stockholders for the account of the Purchaser and will be required to be promptly remitted and transferred by each tendering stockholder to the Depositary for the account of the Purchaser, accompanied by appropriate documentation of transfer or (ii) at the direction of the Purchaser, be exercised for the benefit of the Purchaser, in which case the proceeds of such exercise will promptly be remitted to the Purchaser. Pending such remittance and subject to applicable law, the Purchaser will be entitled to all rights and privileges as owner of any such noncash dividend, distribution, issuance, proceeds or right and may withhold the entire purchase price or deduct from the purchase price the amount or value thereof, as determined by the Purchaser in its sole discretion.

14. **Certain Conditions of the Offer.** Notwithstanding any other provision of the Offer, the Purchaser shall not be required to accept for payment or, subject to any applicable rules and regulations of the Commission, including Rule 14e-1(c) under the Exchange Act (relating to the Purchaser's obligation to pay for or return tendered Shares promptly after termination or withdrawal of the Offer) to pay for any Shares tendered and may postpone the acceptance for payment or, subject to the restriction referred to above, payments for any Shares tendered, and may amend or terminate the Offer (whether or not any Shares have theretofore been purchased or paid for) if (i) any of the conditions to consummation of the Offer set forth in the Introduction to this Offer to Purchase (relating to the Minimum Number of Shares, the Preferred Stock Purchase Rights, Section 203, the Discriminatory Vote Requirement, FCC and Cable Approvals, the Warner Merger Agreement, the Lock-up Stock Swap and Financing) has not been satisfied; or (ii) all applicable waiting periods under the HSR Act have not expired or been terminated; or (iii) at any time on or after May 22, 1989 and before the time for payment or acceptance for payment of, purchase or payment for such Shares any of the following events shall occur:

(a) there shall have been threatened, instituted or pending any action, proceeding, application or counterclaim by or before any court or governmental regulatory or administrative agency, authority or tribunal, domestic or foreign (other than actions, proceedings or applications filed or initiated by Parent or the Purchaser, including any such actions relating to the Voting Trust Approval), which (i) seeks to challenge the acquisition by the Purchaser of the Shares or Rights, restrain, prohibit or delay the making or consummation of the Offer or the Proposed Merger or any other merger or business combination involving the Purchaser or any of its affiliates and the Company (or any of its subsidiaries), prohibit the performance of any of the contracts or other agreements entered into by Parent or any of its affiliates in connection with the acquisition of the Company, or obtain any damages in connection therewith, (ii) seeks to make the purchase of, or payment for, some or all of the Shares or Rights pursuant to the Offer, the Proposed Merger or otherwise illegal, (iii) seeks to impose limitations on the ability of the Purchaser, Parent (or any of their affiliates) effectively to acquire or hold, or requiring the Purchaser, Parent or the Company or any of their respective affiliates or subsidiaries to dispose or hold separate, any portion of the assets or the business of the Purchaser, Parent and its affiliates or the Company and its subsidiaries, or impose limitations on the ability of Parent, the Purchaser or the Company to continue to conduct, own or operate all or any portion of their businesses and assets as heretofore conducted, owned or operated, (iv) seeks to impose or may result in material limitations on the ability of the Purchaser or Parent (or

The Purchaser expects that all or a portion of such repayments will be made with the proceeds of additional debt or equity financing, the sale of assets or a combination of such financing and asset sales. No determination has yet been made as to any such matters and the Purchaser has no plans in this regard. All net proceeds from the sale of assets of Parent and its subsidiaries, including, after the Proposed Merger, the Company, proceeds from the issuance of additional debt or equity and a percentage of consolidated excess cash flow of Parent, including, after the Proposed Merger, the Company, shall be used to reduce the commitments under the Facilities.

Interest on funds borrowed under the Facilities will be payable at a spread above Citibank's Alternate Base Rate III or the equivalent spread above the LIBO Rate (adjusted for reserves), such spread to be established by Citibank based on market conditions prevailing at the time of syndication for transactions of the size and type of the Senior Bank Financing. Such rates will be adjusted downward upon achievement of financial performance tests to be determined.

The commitment and best efforts undertaking of Citibank are subject to (i) the successful syndication of the Senior Bank Financing, (ii) the negotiation, preparation, execution and delivery of mutually acceptable loan documentation covering all the terms and conditions of the Senior Bank Financing and (iii) the absence of a material adverse change in the business, condition (financial or otherwise), operations, performance, properties or prospects of Parent and its subsidiaries or the Company and its subsidiaries from December 31, 1988. In addition, the definitive Senior Bank Financing documentation will contain representations, warranties, covenants, events of default, and conditions customary in Citibank's loan agreements for transactions of this size and type. The availability of the Senior Bank Financing will be subject to customary conditions, including the following conditions: (i) the absence of any material adverse change in the business, condition (financial or otherwise), assets, operations or prospects of Parent and its subsidiaries or of the Company and its subsidiaries, (ii) the receipt of evidence satisfactory to the Banks of the solvency of Parent and its subsidiaries after giving effect to the Proposed Merger, (iii) that, at the time of borrowing under each Facility, no injunction or other restraining order shall have been issued or filed or a hearing therefor be pending or noticed with respect to the Offer, the Proposed Merger or the making of the Banks' loans and (iv) the Offer shall be consummated strictly in accordance with the terms of this Offer to Purchase. Citibank's commitment further provides that the Tender Facility is based on the assumption that approximately $830 million of Parent's long-term debt will remain outstanding after giving effect to the Offer and the Merger Facility is based on the assumption that approximately $800 million of long-term indebtedness of the Company and its subsidiaries will remain outstanding after giving effect to the Proposed Merger. Citibank's commitment will terminate in 150 days unless definitive loan documents for the Tender Facility are entered into on or before such date.

Parent has agreed to pay certain fees to Citibank with respect to the Senior Bank Financing and agents' and facility fees to the Banks, including Citibank, which Parent estimates will aggregate approximately $350 million. In addition, Parent has agreed to pay commitment fees equal to ½ of 1% per annum on the aggregate unused portion of such Banks' commitments, which commitment fees shall accrue from September 4, 1989 with respect to Citibank and, with respect to the other Banks, from the date their commitments are accepted by Parent. Parent has agreed to reimburse Citibank for its out-of-pocket costs and expenses (including reasonable fees and disbursements of counsel) incurred in connection with the Commitment Letter and the Senior Bank Financing. Parent has agreed to indemnify and hold harmless Citibank and the other Banks from and against certain liabilities and expenses in connection with or by reason of the Offer, the Proposed Merger or the transactions contemplated in the Commitment Letter.

The foregoing summary of the source and amount of funds is qualified in its entirety by reference to the text of the Commitment Letter, a copy of which is filed as an exhibit to the Tender Offer Statement on Schedule 14D-1 of the Purchaser and Parent filed with the Commission in connection with the Offer (the "Schedule 14D-1") and is incorporated herein by reference and may be inspected in the same manner as set forth in Section 8. If and when definitive agreements relating to the Financing are executed, copies will be filed as exhibits to amendments to the Schedule 14D-1.

13. **Dividends and Distributions.** If, on or after May 22, 1989, the Company should (a) split, combine or otherwise change the Shares or its capitalization, (b) acquire currently outstanding Shares or otherwise cause a reduction in the number of outstanding Shares or (c) issue or sell additional Shares (other than the issuance of Shares reserved for issuance as of May 22, 1989, under stock plans in accordance with their terms as publicly disclosed as of May 22, 1989), shares of any other class of capital stock, other voting securities

could be for cash or other consideration. Alternatively, the Purchaser may sell or otherwise dispose of any or all Shares acquired pursuant to the Offer or otherwise. Such transactions may be effected on terms and at prices then determined by Parent or the Purchaser, which may vary from the price paid for Shares in the Offer.

12. Source and Amount of Funds.

The consummation of the Offer is subject to, among other things, the Purchaser being satisfied, in its sole discretion, that the Purchaser has obtained sufficient financing to enable it to purchase the Shares sought in the Offer, to refinance certain indebtedness of the Company, its subsidiaries and Parent, and to pay related fees and expenses.

The Purchaser estimates that approximately $14 billion will be required to purchase all the Shares pursuant to the Offer and the Proposed Merger, to refinance certain indebtedness of Parent, the Company and its subsidiaries and to pay related fees and expenses expected to be incurred in connection therewith and, after the Proposed Merger, to provide working capital. Parent expects that approximately $800 million of outstanding indebtedness of the Company and its subsidiaries, and approximately $830 million of outstanding indebtedness of Parent will remain outstanding after giving effect to the Offer and the Proposed Merger.

Parent has received a commitment letter (the "Commitment Letter") from Citibank, committing it to lend to Parent and/or one or more direct or indirect subsidiaries of Parent, on a senior basis, $1 billion and to use its best efforts, without any obligation to underwrite a syndication, to arrange a syndicate of lenders (the "Banks") to provide the balance of the senior bank facilities of $13 billion which will be required to consummate the Offer and the Proposed Merger (the "Senior Bank Financing"). Citibank has stated in the Commitment Letter that it is highly confident that it will be able to arrange a syndicate of lenders for the balance of the Senior Bank Financing. Citibank's expression of confidence is subject to the satisfaction of the conditions and terms stated in the Commitment Letter and is based on its experience in syndicating loans of the nature contemplated and is subject to the absence of any change in loan syndication or capital markets generally that would materially impair the syndication.

The Senior Bank Financing will consist of two phases. In the first phase, $12 billion will be made available to finance the Offer, pay anticipated transaction costs and refinance certain portions of Parent's long-term debt (the "Tender Facility"). In the second phase, $14 billion will be made available to finance the consideration to be paid to consummate the Proposed Merger, to refinance the Tender Facility, to refinance certain portions of the long-term debt of the Company and its subsidiaries, to pay anticipated transaction costs and, after the Proposed Merger, to provide working capital (the "Merger Facility"). The Senior Bank Financing will be borrowed by Parent and/or one or more of its subsidiaries and guaranteed by Parent. Citibank will have the right to require that the Senior Bank Financing be secured by a pledge of the capital stock of certain subsidiaries of Parent and/or guaranteed by certain subsidiaries of Parent, including, after the Proposed Merger, the Company and its subsidiaries. Depending on the final structure of the Senior Bank Financing, under certain circumstances, Parent may be required to cause certain existing indebtedness of Parent and the Company to be equally and ratably secured with the Senior Bank Financing. In no case will the Senior Bank Financing be directly or indirectly secured by the Shares prior to the Proposed Merger. The Banks' commitments under the Senior Bank Financing will be automatically reduced by the amount of the net proceeds received from the sale by Parent of its subsidiary Associates.

The Tender Facility will mature upon the earlier of 180 days from funding and the consummation of the Proposed Merger.

The Merger Facility will be subdivided into (i) one or more senior term loans with a final maturity not to exceed ten years, (ii) a senior bridge loan with a final maturity of the earlier of the consummation of the sale of Associates and another date to be agreed upon and (iii) a senior working capital revolving credit facility with a final maturity of eight years. Citibank has reserved the right to apportion the amount of the Merger Facility among such loans. The Commitment Letter provides that all borrowings under the working capital portion of the Merger Facility must be repaid for a number of days in each 12-month period, such number to be determined by Citibank after determining working capital needs. The senior term loan portion of the Merger Facility will have an amortization schedule on mutually acceptable terms, provided that not less than 33% of the committed amount must be repaid within twelve to eighteen months after the Proposed Merger and not less than 50% must be repaid within five years after the Proposed Merger.

however, that Rule 13e-3 would not be applicable to the Proposed Merger if the Proposed Merger is consummated within one year after the expiration or termination of the Offer and the price paid in the Proposed Merger is not less than the Offer price. However, in the event that the Purchaser is deemed to have acquired control of the Company pursuant to the Offer and if the Proposed Merger is consummated more than one year after completion of the Offer or an alternative acquisition transaction is effected whereby stockholders of the Company receive consideration less than that paid pursuant to the Offer, in either case at a time when the Shares are still registered under the Exchange Act, the Purchaser may be required to comply with Rule 13e-3 under the Exchange Act. Rule 13e-3 requires, among other things, that certain financial information concerning the Company, and certain information relating to the fairness of the proposed transaction and the consideration offered to minority stockholders in such transaction, be filed with the Commission and disclosed to stockholders prior to the consummation of the transaction. The purchase of a substantial number of Shares pursuant to the Offer may result in the Company being able to terminate its Exchange Act registration. See Section 7. If such registration were terminated, Rule 13e-3 would be inapplicable to any such future transactions.

Although the Purchaser intends to propose and seek to consummate the Proposed Merger as described above, the Purchaser can give no assurance that the Proposed Merger will be consummated or as to the timing of the Proposed Merger if it is consummated. The Purchaser presently intends to propose the Proposed Merger generally on the terms described above, but it is possible that, as a result of substantial delays in the Purchaser's ability to effect such a transaction, information hereafter obtained by the Purchaser, changes in general economic or market conditions or in the business of the Company, or other presently unforeseen factors, such a transaction may not be so proposed, may be delayed or abandoned or may be proposed on different terms. Although it has no current intention to do so, the Purchaser expressly reserves the right not to propose the Proposed Merger or to propose such a transaction on terms other than those described above.

Plans for the Company

The Purchaser currently intends, after consummation of the Offer and receipt of all material FCC Transfer Approvals, to seek maximum representation on the Company's Board of Directors as described above. If the Purchaser acquires control of the Company, it intends to conduct a further review of the Company and its assets, corporate structure, capitalization, operations, properties, policies, management and personnel. After such review, the Purchaser will determine what other actions or changes, if any, would be desirable in light of the circumstances which then exist, and reserves the right to effect such actions or changes. The Purchaser's decisions could be affected by information hereafter obtained, changes in general economic or market conditions or in the business of the Company, actions by the Company or Warner and other factors, including repayment requirements of the Financing. See Section 12.

The Purchaser currently expects that, after consummation of the Proposed Merger, it will seek to acquire the outstanding capital stock of ATC not owned by the Company. There can be no assurances that the Purchaser will be able to acquire any such capital stock on terms which it finds acceptable. Any such acquisition will necessarily be dependent upon conditions prevailing at the time.

If the Purchaser consummates the Offer prior to obtaining all material FCC Transfer Approvals, all Shares purchased will be deposited in a Voting Trust and the Purchaser will generally not be permitted to pursue its plans with respect to the Company until receipt of all such FCC Transfer Approvals.

Except as described in this Offer to Purchase, Parent and the Purchaser have no present plans or proposals that would result in an extraordinary corporate transaction, such as a merger, reorganization, liquidation, relocation of any operations of the Company or sale or transfer of a material amount of assets, involving the Company or any of its subsidiaries, or any material changes in the Company's capitalization, dividend policy, corporate structure or business or the composition of its management or personnel.

After completion or termination of the Offer, the Purchaser reserves the right to purchase additional Shares in the open market, in privately negotiated transactions, in another tender or exchange offer or otherwise. In addition, in the event that the Purchaser decides not to propose a merger or other similar business combination with the Company, or proposes such a transaction but cannot promptly obtain any required approval, Parent and the Purchaser will evaluate their other alternatives. Such alternatives could include purchasing additional Shares in the open market, in privately negotiated transactions, in an exchange offer or another tender offer or otherwise, or taking no further action to acquire additional Shares. Any additional purchase of Shares could be at a price greater or less than the price to be paid for Shares in the Offer and

the Company's Board of Directors to approve the Offer and the Proposed Merger and thereby render the restrictions of Section 203 inapplicable. See Section 16.

The restrictions of Section 203 are also inapplicable to a corporation that engages in a business combination with an interested stockholder if (i) prior to the date such interested stockholder became an interested stockholder, the board of directors of such corporation approves either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder, or (ii) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of Shares outstanding those Shares owned by (x) persons who are directors and also officers and (y) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or (iii) on or subsequent to the date the interested stockholder becomes an interested stockholder, the business combination is approved by the board of directors of such corporation and authorized at an annual or special meeting of stockholders by the affirmative vote of at least 66⅔% of the outstanding voting stock which is not owned by the interested stockholder.

The Purchaser believes that the date of public announcement of the Offer constitutes the date on which outstanding Shares are determined for purposes of calculating whether 85% of the Shares are acquired under Section 203 and that any Shares issued pursuant to the Share Exchange Agreement, even if such Shares were to be deemed validly issued, would not be counted for such purposes. Accordingly, based on publicly available information, the Purchaser believes that if it acquires at least 48,430,578 Shares (representing 85% of all outstanding Shares at May 1, 1989) pursuant to the Offer and no additional Shares were issued since May 1, 1989 and before announcement of the Offer, the restrictions of Section 203 would not be applicable to the Proposed Merger.

The Offer is conditioned upon, among other things, the Purchaser being satisfied, in its sole discretion, that, after consummation of the Offer, the requirements of Section 203 would not prohibit for any period of time, or impose any voting requirements in excess of majority stockholder approval with respect to, a merger (which would include the Proposed Merger) or any other business combination involving the Company and any affiliate of Parent.

(vi) *Appraisal Rights.* Holders of Shares do not have appraisal rights as a result of the Offer. However, if the Proposed Merger is consummated, holders of Shares would have certain rights to dissent and demand appraisal of their Shares under the Delaware Law. Under the Delaware Law, dissenting stockholders who comply with the requisite statutory procedures would be entitled to receive a judicial determination and payment of the "fair value" of their Shares as of the close of business on the day prior to the stockholders' meeting with respect to the Proposed Merger. The value so determined could be more or less than the consideration to be paid in the Proposed Merger. Any judicial determinations of the fair value of Shares could be based upon considerations other than or in addition to the market value of the Shares, including, among other things, asset values and earnings capacity. In *Weinberger v. UOP, Inc.*, the Delaware Supreme Court stated, among other things, that "proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court" should be considered in an appraisal proceeding.

In addition, several decisions by Delaware courts have held that, in certain circumstances, a controlling stockholder of a corporation involved in a merger has a fiduciary duty to other stockholders that requires that the merger be fair to other stockholders. In determining whether a merger is fair to minority stockholders, Delaware courts have considered, among other things, the type and amount of the consideration to be received by the stockholders and whether there was fair dealing among the parties. The Delaware Supreme Court stated in *Weinberger* and *Rabkin v. Philip A. Hunt Chemical Corp.* that the remedy ordinarily available to minority stockholders in a cash-out merger is the right to appraisal described above. However, a damages remedy or injunctive relief may be available if a merger is found to be the product of procedural unfairness, including fraud, misrepresentation or other misconduct.

(vii) *"Going Private" Transactions.* The Commission has adopted Rule 13e-3 under the Exchange Act which is applicable to certain "going private" transactions and which may under certain circumstances be applicable to the Proposed Merger or another business combination following the purchase of Shares pursuant to the Offer in which the Purchaser seeks to acquire the remaining Shares not held by it. The Purchaser believes,

The Offer is conditioned upon, among other things, the Rights having been redeemed or the Purchaser otherwise being satisfied in its sole discretion that the Rights have been invalidated or are otherwise inapplicable to the Offer and a merger or other business combination involving the Company and the Purchaser (or one of its affiliates). The Purchaser believes that, under the circumstances of the Offer and under applicable law, the Board of Directors of the Company is obligated by its fiduciary responsibilities to redeem the Rights in order to allow stockholders the opportunity to receive the consideration offered pursuant to the Offer. Accordingly, the Purchaser is requesting the Company's Board of Directors to redeem the Rights to permit the acceptance for payment of Shares pursuant to the Offer. As described in Section 16, the Purchaser has commenced the Delaware Litigation in the Chancery Court seeking, among other things, an order requiring the defendants to redeem the Rights.

If the condition to the Offer relating to the Rights is not satisfied and the Purchaser elects, in its sole discretion, to waive such condition and consummate the Offer, and if there are outstanding Rights which have not been acquired by the Purchaser, the Purchaser will evaluate its alternatives. Such alternatives could include purchasing additional Rights in the open market, in privately negotiated transactions, in another tender or exchange offer or otherwise. Any such additional purchase of Rights could be for cash or other consideration. Under such circumstances, the Proposed Merger might be delayed or abandoned as impracticable. The form and amount of consideration to be received by the holders of Shares in the Proposed Merger, if consummated, might be subject to adjustment to compensate the Purchaser for, among other things, the costs of acquiring Rights and a portion of the potential dilution cost of Rights not owned by the Purchaser and its affiliates at the time of the Proposed Merger. In such event, the value of the consideration to be exchanged for Shares in the Proposed Merger could be substantially less than the consideration paid in the Offer. In addition, the Purchaser may elect under such circumstances not to consummate the Proposed Merger.

Unless the Rights are redeemed, stockholders will be required to tender one Right for each Share tendered in order to effect a valid tender of such Share in accordance with the procedures set forth in Section 3. If separate certificates for the Rights are not issued, a tender of Shares will also constitute a tender of the associated Rights. See Sections 1 and 3.

(iv) *Delaware Section 203.* The Company is incorporated under the laws of the State of Delaware. Section 203 of the Delaware Law generally provides that, subject to a number of exceptions, a Delaware corporation may not engage in any "business combination" with an "interested stockholder" for three years following the date that such stockholder became an "interested stockholder", subject to certain exceptions. An "interested stockholder" is defined as a person owning 15% or more of a corporation's voting stock, and a "business combination" would include a transaction such as the Proposed Merger.

Section 203(b)(6) provides that the restrictions of Section 203 will not apply to any business combination which is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required under Section 203 of a proposed business combination which is a (i) merger or consolidation of the corporation, subject to certain exceptions, (ii) sale, lease, exchange, mortgage, pledge, transfer or other disposition of at least 50% of the assets of the corporation, or any subsidiary, calculated in accordance with that provision, or (iii) tender or exchange offer for 50% or more of the outstanding voting stock of the corporation; provided, however, that such other proposed business combination is with or by a person who either was not an interested stockholder during the previous three years or who became an interested stockholder with the approval of the corporation's board of directors, and is approved or not opposed by a majority of the members of the board of directors then in office (but not less than one) who were directors prior to any person becoming an interested stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors.

The effect of Section 203(b)(6) is to exempt all business combinations during the pendency of one of the types of proposed business combinations specified in Section 203(b)(6), if the stockholder involved in such proposed business combination meets the requirements of such provision and such proposed business combination is approved by a majority of those board members specified in the provision.

The Purchaser believes that the proposed Warner Merger, although in form a merger with a subsidiary of the Company, should fairly be interpreted as a merger of the Company within the meaning of Section 203(b)(6). Accordingly, the Purchaser believes that the exemption of Section 203(b)(6) is applicable to the Proposed Merger and is seeking in the Delaware Litigation, among other things, a declaratory judgment that the restrictions in Section 203 are inapplicable to the Proposed Merger, or, in the alternative, an order requiring

Merger or Triggering Event, by the holders of [the Company's] voting securities having the voting power of (i) 80% or more of the outstanding [voting securities of the Company] and (ii) at least a majority of the [Company's] voting securities beneficially owned by Persons other than the Acquiring Person (or its affiliates or associates).

In the event that, following the Distribution Date, [the Company] is acquired in a merger or other business combination or 50% or more of its assets or assets representing more than 30% of its earning power are sold, leased, exchanged or otherwise transferred (in one or more transactions) to a publicly-traded corporation, the Rights will entitle each holder of a Right to purchase, for the Purchase Price, that number of common shares of such corporations which at the time of the transaction would have a market value of twice the Purchase Price. In the event that, following the Distribution Date, [the Company] is acquired in a merger or other business combination or 50% or more of the assets or assets representing more than 50% of the earning power of [the Company] are sold, leased, exchanged or otherwise transferred (in one or more transactions) to an entity that is not a publicly-traded corporation, the Rights will entitle each holder of a Right to purchase, for the Purchase Price, at such holder's option, (i) that number of shares of such entity (or, at the holder's option, of the surviving corporation in such acquisition, which could be [the Company]) which at the time of the transaction would have a book value of twice the Purchase Price or (ii) if such entity has an affiliate which has publicly-traded common shares, that number of common shares of such affiliate which at the time of the transaction would have a market value of twice the Purchase Price.

At any time prior to the earliest of (i) the tenth day following the Share Acquisition Date, (ii) the occurrence of a Triggering Event or (iii) the Expiration Date, the Board of Directors of [the Company] may redeem the Rights in whole, but not in part, at a price of $.05 per Right (the date of such redemption and such redemption price being referred to as the "Redemption Date" and the "Redemption Price", respectively); however, immediately upon the date that an Acquiring Person becomes an Acquiring Person and thereafter until the earliest of (1) the tenth day following the Share Acquisition Date, (2) the occurrence of a Triggering Event or (3) the Expiration Date, the Rights may be redeemed only if the Board of Directors, with the concurrence of a majority of the [Company's] directors who (i) are not officers or employees of [the Company] or any of its subsidiaries, (ii) are not Acquiring Persons or affiliates or associates thereof or nominees or representatives of an Acquiring Person or any such affiliate or associate and (iii) were [the Company's] directors prior to the Share Acquisition Date or succeeded to such a director upon recommendation of a majority of directors meeting the aforesaid criteria (such directors [of the Company] being referred to as "Disinterested Directors"), determines that such redemption is in the best interests of [the Company] and its stockholders. . . .

At any time prior to the Distribution Date, [the Company] may, without the approval of any holder of Rights, supplement or amend any provision of the Rights Agreement (including the date on which the Distribution Date shall occur), except that no supplement or amendment shall be made which reduces the Redemption Price or provides for an earlier Expiration Date. From and after the Distribution Date, [the Company] may, without such approval, amend the Rights Agreement to cure any ambiguity, make corrections and to make other provisions which do not adversely affect holders of Rights (other than an Acquiring Person or an affiliate or associate of such person). However, at any time when there shall be an Acquiring Person, the Rights Agreement may be supplemented or amended only if the Board of Directors of [the Company], with the concurrence of a majority of the Disinterested Directors, determines that such supplement or amendment is in the best interests of [the Company] and its stockholders.

The foregoing summary of certain provisions of the Rights Agreement in this Offer to Purchase does not purport to be complete and is qualified in its entirety by reference to the Proxy Statement and the text of the Rights Agreement as set forth as exhibits to the Company's Application for Registration on Form 8-A dated May 8, 1986, as amended by Amendment No. 1 on Form 8 dated January 19, 1989 and Amendment No. 2 on Form 8 dated May 19, 1989, filed with the Commission, copies of which may be obtained in the manner set forth under Section 8.

Based on the foregoing, as a result of the Purchaser's public announcement of the Offer on June 7, 1989, the Rights will become exercisable on June 17, 1989 (or such later date as is determined by the Company's Board of Directors) unless the Rights are redeemed or invalidated.

Company, as Rights Agent, amended the Rights Agreement governing the terms of the Rights. . . . Each Right, when it becomes exercisable, will entitle the registered holder to purchase from [the Company] one one-hundredth of a share of Series A Preferred [Stock of the Company (the "Series A Preferred")] at a price of $300 (the "Purchase Price").

Until the earlier of (i) the tenth day after the first public disclosure that a person or group (including any affiliate or associate of such person or group but excluding [the Company], any [Company] subsidiary, any employee benefit plan of [the Company] or any such subsidiary or any person holding [the Company's] voting securities for or pursuant to any such employee plan) acquires, or obtains the right to acquire, beneficial ownership of [the Company's] voting securities having the voting power of 15% or more of [the Company's] outstanding voting securities unless, subject to the limitation that such a person or group not acquire any additional voting securities [of the Company], such acquisition or obtainment is a result of [the Company] repurchasing or redeeming any [of its] voting securities or a result of an adjustment to the number of [Shares] into which each share of [Company Preferred Stock] is convertible pursuant to the terms of the Certificate of Designation of the [Company Preferred Stock] (such person or group being called an "Acquiring Person" and such date of first public disclosure being called the "Share Acquisition Date") or (ii) the tenth day after the commencement of, or first public disclosure of an intention to commence, a tender or exchange offer for [the Company's] voting securities having the voting power of 20% or more of the outstanding [Company] voting securities (the earlier of such dates in (i) and (ii) being called the "Distribution Date"), the Rights will be evidenced by certificates for the [Company's] voting securities in respect of which Rights have been issued, registered in the names of the holders of such voting securities (certificates for such [Company] voting securities shall also be deemed to be Right Certificates, as defined below) and not by separate certificates representing Rights ("Right Certificates"). . . .

As soon as practicable following the Distribution Date, separate Right Certificates will be mailed to holders of record of the [Company's] voting securities in respect of which Rights have been issued as of the close of business on the Distribution Date, and such separate Right Certificates alone will thereafter evidence the Rights. . . .

The Rights are not exercisable until the earlier of the Distribution Date and the occurrence of a Triggering Event (as defined below) and will expire on April 26, 1996 (the "Expiration Date"), unless earlier redeemed by [the Company] as described below.

The number of shares of Series A Preferred or other securities issuable upon the exercise of Rights is subject to adjustment from time to time upon the occurrence of certain events.

In the event that (i) any person or group (other than [the Company] any [Company] subsidiary, any employee benefit plan of [the Company] or any such subsidiary or any person holding [the Company's] voting securities for or pursuant to any such employee plan), shall acquire beneficial ownership of [the Company's] voting securities having the voting power of 20% or more of the outstanding [voting securities of the Company] or (ii) an Acquiring Person shall acquire from [the Company] shares of capital stock of [the Company] or any securities exercisable for or convertible into shares of capital stock of [the Company] (any such event being called a "Triggering Event"), the Rights will entitle each holder of a Right to purchase, at the Purchase Price, that number of one one-hundredths (1/100ths) of a share of Series A Preferred equivalent to the number of [Shares] which at the time of the transaction would have a market value of twice the Purchase Price.

In the event [the Company] merges with an Acquiring Person and [the Company] is the surviving corporation and all the [Shares] remain outstanding and unchanged (any such event being called an "Affiliate Merger"), the Rights will entitle each holder of a Right to purchase, for the Purchase Price, that number of [Shares] which at the time of the transaction would have a market value of twice the Purchase Price.

Any Rights that are or were, at any time on or after the Distribution Date, beneficially owned by an Acquiring Person (or an affiliate or associate of an Acquiring Person) will become null and void upon the occurrence of an Affiliate Merger or a Triggering Event and any holder of any such Right (including any subsequent holder) will be unable to exercise any such Right after the occurrence of an Affiliate Merger or Triggering Event, unless the exercise of such Right is approved, after the occurrence of such Affiliate

Shares acquired pursuant to the Offer, the actions of the Company and Warner with respect to the Warner Merger Agreement, the status of required applications and approvals and whether the conditions to the Offer are satisfied or waived. Although it is the Purchaser's current intention to propose and seek to enter into the Proposed Merger Agreement and consummate the Proposed Merger, there can be no assurance that the Proposed Merger will be consummated or as to the timing of the Proposed Merger if consummated.

(i) *The Warner Merger Agreement.* In light of the Black-out Provision of the Warner Merger Agreement, which appears to prohibit the Company from negotiating with a potential acquiror prior to commencement of an offer to acquire at least 25% of the Shares (or the acquisition of 10% of the Shares), neither the Purchaser nor any of its representatives have sought to negotiate with the Company regarding the Offer or the Proposed Merger. To the extent the Company is free to do so without violating the terms of the Warner Merger Agreement, the Purchaser will seek to negotiate with the Company and currently intends to offer to enter into the Proposed Merger Agreement which will provide for consummation of the Offer and the Proposed Merger on terms to be agreed upon by the Company, the Purchaser and Parent. The Purchaser would seek to provide in the Proposed Merger Agreement that in the Proposed Merger each of the outstanding Shares (other than shares owned by the Purchaser or any of its affiliates, Shares held in the treasury of the Company and Shares owned by stockholders who perfect any available appraisal rights under the Delaware Law) would be converted into the right to receive $175 (or such other per Share amount paid pursuant to the Offer) per Share in cash, without interest.

If the Warner Merger Agreement has not been previously terminated in accordance with its terms and subsequently is submitted to the Company's stockholders for approval, the Purchaser intends, or if all material FCC Transfer Approvals have not been received, the Voting Trustee will be required, to vote any Shares acquired pursuant to the Offer or otherwise against the Warner Merger, and to seek termination of the Warner Merger Agreement in accordance with its terms. There can be no assurance that the Warner Merger Agreement will be terminated or that the Company or Warner will take any action which might otherwise facilitate the Proposed Merger.

In any event, consummation of the Offer is subject to, among other things, the Purchaser being satisfied, in its sole discretion, that the Warner Merger Agreement has been terminated in accordance with its terms or, if such agreement has not been terminated, remains subject to the approval of the stockholders of the Company and the Purchaser or, if the FCC Transfer Approvals have not been received, the Voting Trustee obtaining upon consummation of the Offer the right to vote a sufficient number of Shares to deny such approval. See Section 16 regarding possible delays in consummation of the Proposed Merger relating to FCC approvals.

(ii) *Required Stockholder Vote.* Generally, under the Delaware Law, the Proposed Merger must be approved by the Company's Board of Directors and, upon such approval, submitted by the Board to the Company's stockholders for their approval at an annual or special meeting of stockholders. At such meeting, the affirmative vote of the holders of a majority of the outstanding Shares would be required to approve the Proposed Merger, unless a greater vote is required under the Company's Charter. If the Board of Directors in office following consummation of the Offer refuses to approve the Proposed Merger, and if the "short form" merger provisions of the Delaware Law discussed below are inapplicable, the Purchaser would not be able to consummate the Proposed Merger, which could be deferred until the Purchaser was able to designate a majority of the Company's Board of Directors. As noted above, certain provisions of the Company's Charter and By-Laws could delay or prevent the Purchaser from electing a majority of the Company's Board of Directors prior to the second annual meeting of stockholders held after the Purchaser acquired a majority of the outstanding Shares. After obtaining control of the Board of Directors, the Purchaser could approve the Proposed Merger without the affirmative vote of any other stockholder, subject to the provisions of the Charter and the Delaware Law discussed below.

The Delaware Law provides that, if a corporation owns 90% or more of the outstanding shares of each class of stock of another corporation, the corporation holding such stock ownership may merge such other corporation into itself, or itself into such other corporation, without any action or vote on the part of the board of directors or stockholders of such other corporation. If such a "short form" merger is available and the conditions to the Offer have been satisfied, the Purchaser currently intends to consummate a "short form" merger in order to effect the Proposed Merger.

11. Purpose of the Offer; Plans for the Company.

Purpose of the Offer.

The purpose of the Offer and the Proposed Merger is to enable Parent to acquire control of, and the entire equity interest in, the Company. The Offer, as the first step in the acquisition of the Company, is intended to facilitate the acquisition of all outstanding Shares. The Purchaser currently intends, as soon as practicable following completion of the Offer and receipt of all material FCC Transfer Approvals, to seek maximum representation on the Company's Board of Directors and seek to consummate the Proposed Merger or other similar business combination between the Company and the Purchaser (or one of its affiliates). The purpose of the Proposed Merger is to acquire all outstanding Shares not tendered and purchased pursuant to the Offer or otherwise.

Control of the Company.

As soon as practicable following consummation of the Offer and receipt of all material FCC Transfer Approvals, the Purchaser intends to request that some of or all the then-current members of the Board of Directors resign and to cause designees of the Purchaser to be elected to fill the resulting vacancies. Should such request be refused, the Purchaser intends to take such action as may be necessary and lawful to obtain majority representation on the Board of Directors of the Company.

The Company's Charter and By-Laws provide for a classified Board of Directors, with each class elected for a term of three years and one class elected each year at the Company's annual meeting of stockholders. The Company's Charter generally provides that directors may be removed from office only for cause and only by the affirmative vote of the holders of a majority of the voting power of the then outstanding voting stock, voting together as a single class. Currently, Shares represent the only voting stock. The Charter of the Company defines the term "cause" for purposes of this provision as the willful and continuous failure of a director to substantially perform such director's duties to the Company (other than any such failure resulting from incapacity due to physical or mental illness) or the willful engaging by a director in gross misconduct materially and demonstrably injurious to the Company.

The Company's By-Laws generally provide that newly created directorships resulting from any increase in the number of directors must be filled by the Board, or, if not so filled, by the stockholders at the next annual meeting or special meeting called for that purpose. The Company's Charter provides that subject to the provisions of the Delaware Law, any vacancy on the Board of Directors resulting from death, resignation, removal or other cause may be filled only by the affirmative vote of a majority of the remaining directors, although less than a quorum, or by a sole remaining director, or as otherwise provided in the Company's By-Laws. The stockholders may not fill such vacancies unless otherwise permitted by the Company's By-Laws or the Delaware Law. In addition, the Company's Charter and By-Laws provide that any new directors elected to fill a vacancy on the Board will serve for the remainder of the full term of the class in which the vacancy occurred, rather than until the next annual meeting of stockholders.

The Company's Charter and By-Laws require that stockholder action be taken only at an annual meeting or by a special meeting of stockholders called by the Chairman of the Board of Directors or the President of the Company or by a majority of the entire Board, and prohibit stockholder action by written consent in lieu of a meeting.

The foregoing provisions of the Company's Charter and By-Laws could delay or prohibit, absent the resignations of a sufficient number of Directors, the Purchaser after acquiring a majority of the outstanding Shares from obtaining control of the Company's Board of Directors because the Purchaser would not be able to replace a majority of the directors prior to the second annual meeting of stockholders held after the Purchaser acquired a majority of the outstanding Shares.

The foregoing summary of certain provisions of the Company's Charter and By-Laws does not purport to be complete and is qualified in its entirety by reference to the text of such documents, which are included as exhibits to the Company's 10-K, copies of which may be obtained in the manner set forth in Section 8.

The Proposed Merger.

The precise time and terms of the Proposed Merger or any other business combination between the Purchaser and the Company following consummation of the Offer will necessarily depend upon a variety of factors and legal requirements, including the actions of the Company's Board of Directors, the number of

Based upon its review of publicly available information concerning the Company and its review of the Warner Merger Agreement and the Share Exchange Agreement, including the Black-out Provision contained in the Warner Merger Agreement, the Purchaser and Parent determined to commence the Offer as a means of pursuing Parent's interest in acquiring the Company.

On June 7, 1989, the Offer was commenced and Mr. Davis had the following letter delivered to J. Richard Munro at the Company:

Mr. J. Richard Munro
Chairman and Chief Executive Officer
Time Inc.
Time-Life Building
1271 Avenue of the Americas
New York, New York 10020

Dear Dick,

We have today commenced a cash tender offer for all of Time's outstanding shares at $175 per share. This price represents a premium of more than 60 percent over the price of Time's shares at the time you announced your proposed transaction with Warner. We believe our offer provides extraordinary value to all of your shareholders as well as to our own.

Together, we will be a communications company rich in resources and with unparalleled range and depth. We will be strongly positioned for global growth through the next decade and into the next century. No other company will be as significant a force in entertainment and publishing with operations in quality magazine and book publishing, as well as in motion picture and television production and distribution, cable systems and cable programming. The fit is superb.

On several occasions in the past, we have advised you of our interest in the merger of our two companies. We would have much preferred to renew those discussions before we launched our offer. We were advised, however, that your existing agreements require us to commence an offer before you are free to explore merging with us. As soon as you may legally do so, we hope that you will meet with us so that we can work together to structure a transaction which will benefit the shareholders and employees of both companies. When we meet, we will be prepared to negotiate all aspects of our proposal.

With respect to your proposed agreement with Warner, we do not wish to interfere with your shareholder process in any way. We will not solicit proxies. If Time's shareholders approve the agreement with Warner, we will respect that decision and promptly withdraw our offer.

If, on the other hand, the Time Board decides that your existing arrangements permit you to consider our proposal, we would welcome the opportunity to work with you. We seek no favored status or inside track, no exclusive dealing rights or "lock-up" arrangements. We do request that any information which is made available to Warner or other third parties for the purpose of evaluation or pursuing alternative transactions be made available to us as well, so that our offer and its terms may be formulated with the full benefit of all information provided to others.

The litigation we are filing today in Delaware simply asks that Time's shareholders be permitted to consider our offer and make up their own minds as to its merits. It also asks that we be given the same opportunity as Warner or any other potential merger partner to make our case. We therefore request that you redeem your existing preferred stock purchase rights and remove any other obstacle, such as your lock-up stock swap arrangements with Warner. We also ask that your Board and management refrain from putting any additional impediments in the way of shareholder choice.

We look forward to meeting with you and your Board shortly. With your cooperation, we are confident that a transaction can be concluded which will be in the best interests of both of our companies. Please call at your earliest convenience so that we can discuss our proposal in full detail.

Sincerely,

/s/ MARTIN

Irving R. Fischer, a director of Parent, owns 500 Shares. Irwin Schloss, a director of Parent, shares voting and dispositive power over 74,000 Shares owned by Marcus Schloss & Co., Inc., of which he is the president and 27,400 Shares held by Marcus Schloss & Co., Inc. in a discretionary advisory account for a customer. Donald Oresman, a director and executive officer of Parent and the Purchaser, shares voting and investment power over 800 Shares owned by a trust of which he is a co-trustee. In addition, an affiliate of The Jim Pattison Group, of which James A. Pattison, a director of Parent, is the chairman and chief executive officer, has effected certain transactions in the Shares during the past 60 days. See Schedule II.

In the course of its ordinary business, Parent has ongoing business relations with the Company and its subsidiaries. In 1987, Paramount entered into an exclusive pay television license agreement with Home Box Office, Inc. ("HBO"), a subsidiary of the Company. The HBO license is for 85 new Paramount motion pictures beginning with films released theatrically in May 1988. The amount payable with respect to each film to be licensed under the HBO agreement will depend, among other things, on the amount of film rentals from theatrical distribution and the number of HBO subscribers. To date only one film has been made available to HBO under such license agreement. In addition, Parent owns the MSG Network and a one-half interest in U.S.A. Network, both of which provide basic cable programming services to some of the CATV systems owned and managed by ATC.

Except as set forth in this Offer to Purchase, none of the Purchaser or Parent nor, to the best knowledge of the Purchaser and Parent, any of the persons listed in Schedule I hereto, has any contract, arrangement, understanding or relationship (whether or not legally enforceable) with any other person with respect to any securities of the Company, including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any of such securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or the giving or withholding of proxies, consents or authorizations. Except as set forth in this Offer to Purchase, there have been no contacts, negotiations or transactions which have occurred since December 31, 1985 between the Purchaser, Parent or any of its subsidiaries, or, to the best knowledge of the Purchaser and Parent, any of the persons listed in Schedule I hereto, on the one hand, and the Company or its affiliates, on the other hand, concerning a merger, consolidation or acquisition, tender offer or other acquisition of securities, an election of directors or a sale or other transfer of a material amount of assets. Except as set forth in this Offer to Purchase, none of the Purchaser and Parent nor, to the best knowledge of the Purchaser and Parent, any of the persons listed in Schedule I hereto, has since December 31, 1985 had any transaction with the Company or any of its executive officers, directors or affiliates which would require disclosure under the rules and regulations of the Commission applicable to the Offer.

Parent is subject to the information filing requirements of the Exchange Act and, in accordance therewith, files reports, proxy statements and other information with the Commission relating to its business, financial condition and other matters. Information, as of particular dates, concerning Parent's directors and officers, their remuneration, options granted to them, the principal holders of Parent's securities and any material interest of such persons in transactions with Parent is disclosed in proxy statements distributed to Parent's stockholders and filed with the Commission. Such reports, proxy statements and other information may be examined and copies may be obtained from the Commission in the same manner as set forth in Section 8 with respect to information concerning the Company. Such information should also be available for inspection at the NYSE at the address set forth in Section 8.

10. Background of the Offer; Contacts with the Company.

On several occasions during the past several years, Martin S. Davis, Chairman and Chief Executive Officer of Parent, raised in a general way the possibility of a merger of Parent and the Company with J. Richard Munro, Chairman and Chief Executive Officer of the Company, and N.J. Nicholas, Jr., the Company's President and Chief Operating Officer. On separate occasions, Mr. Davis also expressed Parent's interest in a possible merger with the Company to a director of the Company and an investment banker representing the Company. All such conversations were preliminary in nature and did not involve any discussions of specific transactions or their terms.

On March 3, 1989, the Company and Warner announced that they had entered into the Warner Merger Agreement and the Share Exchange Agreement. On May 22, 1989, the Company filed the S-4 Registration Statement and Proxy Statement with the Commission and distributed the Proxy Statement to stockholders of the Company.

financial statements presented in Parent's Quarterly Report on Form 10-Q for the fiscal quarter ended April 30, 1989 filed with the Commission. More comprehensive financial information is included in such reports and other documents filed by Parent with the Commission, and the financial information summary set forth below is qualified in its entirety by reference to such reports which are incorporated herein by reference and all the financial information and related notes contained therein, which may be inspected and copies obtained at the offices of the Commission as set forth in Section 8. In addition, such material also should be available for inspection at the NYSE at the address set forth in Section 8.

PARAMOUNT COMMUNICATIONS INC.

SELECTED CONSOLIDATED FINANCIAL INFORMATION

(In millions, except per share)

Income Statement Data

	Six Months Ended April 30		Year Ended October 31		
	1989	1988	1988	1987	1986
Revenues	$1,472.2	$1,325.2	$3,055.9	$2,923.5	$2,103.0
Operating income	66.4	87.3	375.5	398.3	206.7
Other income (expense)	0.5	(1.8)		(1.0)	(2.4)
Interest expense—net	(56.2)	(52.5)	(106.8)	(112.7)	(107.5)
Earnings from continuing operations before income taxes	10.7	33.0	268.7	284.6	96.8
Provision for income taxes	4.3	14.9	120.9	127.9	49.6
Earnings from continuing operations before extraordinary items	6.4	18.1	147.8	156.7	47.2
Extraordinary items					38.7
Earnings from discontinued operations	128.4	102.1	236.9	199.4	181.5
Net earnings	134.8	120.2	384.7	356.1	267.4
Average common and common equivalent shares outstanding (millions)	118.6	120.1	119.5	123.4	124.6
Earnings (Loss) per share from continuing operations before extraordinary items	$ .05	$ .15	$ 1.23	$ 1.29	$ .41
Net earnings per share	1.13	1.00	3.21	2.88	2.14

Balance Sheet Data

	April 30	October 31		
	1989	1988	1987	1986
Total current assets	$1,790.8	$2,147.0	$1,737.3	$1,270.2
Property, plant and equipment	437.6	413.9	378.1	392.6
Other assets	3,123.1	2,817.2	2,813.5	2,580.6
Total assets	5,351.5	5,378.1	4,928.9	4,243.4
Total current liabilities	891.5	1,080.6	961.0	778.2
Deferred liabilities	494.5	641.0	526.4	302.3
Long-term debt, net of current maturities	1,571.7	1,390.3	1,334.9	1,260.8
Stockholders' equity	2,393.8	2,266.2	2,106.6	1,902.1

Except as set forth in this Offer to Purchase, neither of the Purchaser or Parent, nor, to the best knowledge of the Purchaser and Parent, any of the persons listed on Schedule I thereto nor any associate or majority owned subsidiary of any of the foregoing, beneficially owns or has a right to acquire any equity securities of the Company, and neither of the Purchaser or Parent, nor, to the best knowledge of the Purchaser and Parent, any of the persons or entities referred to above, nor any director or executive officer of any subsidiary of any of the foregoing, has effected any transaction in such equity securities during the past 60 days. On May 31, 1989, Parent purchased, in a NYSE transaction, 100 Shares at a price of $129.00 per share. Certain pension and retirement plans of Parent and its subsidiaries may own Shares which were acquired by the trustees of such plans in the ordinary course of their administration of the plans. Parent and the Purchaser disclaim beneficial ownership of any Shares that may be held by such plans.

The information concerning the Company contained in this Offer to Purchase has been taken from or based upon publicly available documents and records on file with the Commission and other public sources. The Purchaser and Parent have no knowledge that would indicate that any statements contained herein based on such documents and records are untrue; however, the Purchaser, Parent and their affiliates assume no responsibility for the accuracy or completeness of the information contained in such documents and records, or for any failure by the Company to disclose events which may have occurred or may affect the significance or accuracy of any such information but which are unknown to the Purchaser and Parent.

The Company is subject to the information and reporting requirements of the Exchange Act and in accordance therewith is obligated to file reports and other information with the Commission relating to its business, financial condition and other matters. Certain information, as of particular dates, concerning the Company's directors and officers, their remuneration, stock options granted to them, the principal holders of the Company's securities, any material interests of such persons in transactions with the Company and other matters is required to be disclosed in proxy statements distributed to the Company's stockholders and filed with the Commission. Such reports, proxy statements and other information may be inspected at the Commission's public reference facilities at Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549, and should also be available for inspection at the following regional offices of the Commission: Jacob J. Javits Federal Building, 26 Federal Plaza, New York, New York 10007; and Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604; and copies may be obtained by mail at prescribed rates, from the principal office of the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549. Reports, proxy statements and other information concerning the Company should also be available for inspection at the offices of the NYSE, 20 Broad Street, New York, New York 10005.

9. Certain Information Concerning the Purchaser and Parent.

The Purchaser. The Purchaser, a Delaware corporation, was recently incorporated for the purpose of acquiring the Company, and has engaged in no activities to date, other than those incidental to its organization and making the Offer. The Purchaser is an indirect wholly owned subsidiary of Parent. The principal office of the Purchaser is located at 15 Columbus Circle, New York, New York 10023-7780.

Parent. Parent, a Delaware corporation, operates in three business areas: Entertainment, Publishing and Consumer/Commercial Finance. Entertainment (Paramount Pictures Corporation ("Paramount"), Famous Players—Parent's Canadian theatre chain, Cinemerica—Parent's 50% owned domestic theatre chain, and Madison Square Garden) produces, finances and distributes motion pictures, television programming and prerecorded videocassettes, and operates motion picture theatres in the United States and Canada and Madison Square Garden Center in New York City. Paramount distributes its motion pictures for theatrical release outside the United States and Canada through United International Pictures, a company jointly owned by Paramount, MCA Inc. and MGM/UA Communications Company. Paramount distributes its home video products outside the United States and Canada and operates foreign motion picture theatres through Cinema International Corporation, B.V., a joint venture with MCA Inc. Publishing (Simon & Schuster, Prentice Hall, Pocket Books and Silver Burdett & Ginn) publishes hardcover and paperback books for the general public, publishes textbooks for elementary schools, high schools and colleges, and provides information services for business and professions. Consumer/Commercial finance (Associates Corporation of North America) provides consumer and specialized commercial finance and related insurance services. For the fiscal year ended October 31, 1988, Entertainment accounted for 31% of operating income, Publishing/Information 23% and Consumer/Commercial Finance 46%. The principal office of Parent is 15 Columbus Circle, New York, New York 10023-7780.

On April 9, 1989, Parent announced that it would sell Associates First Capital Corporation ("Associates"), its wholly owned subsidiary through which Parent conducts its Consumer/Commercial Financial operations, and change its name to "Paramount Communications Inc." Such name change became effective on June 5, 1989.

The name, business address, current principal occupation or employment and citizenship of each of the directors and executive officers of Parent and the Purchaser are set forth in Schedule I hereto.

Set forth below is a summary of certain consolidated financial information with respect to Parent and its subsidiaries for its fiscal years ended and as of October 31, 1988, 1987 and 1986, excerpted from financial statements presented in Parent's Annual Report on Form 10-K for the fiscal year ended October 31, 1988 filed with the Commission and for the six months ended and as at April 30, 1989 and 1988, excerpted from

TIME INCORPORATED

SELECTED FINANCIAL INFORMATION

	Three Months Ended March 31,		Years Ended December 31,				
	1989	1988	1988	1987	1986	1985	1984
	(In millions, except per share amounts)						
Operating statement information:							
Revenues (1)	$1,136	$1,065	$4,507	$4,193	$3,762	$3,404	$3,067
Income before gain on partial sale of a subsidiary	49	66	289	250	149	200	216
Gain on partial sale of a subsidiary, after income taxes (2)	—	—	—	—	227	—	—
Net income (1)(3)	49	66	289	250	376	200	216
Per share (fully diluted):							
Income before gain on partial sale of a subsidiary	.87	1.13	5.01	4.18	2.36	3.15	3.37
Gain on partial sale of a subsidiary, after income taxes (2)	—	—	—	—	3.59	—	—
Net income (1)(3)	.87	1.13	5.01	4.18	5.95	3.15	3.37
Dividends per common share (4)	$ .25	$ .25	$ 1.00	$ 1.00	$ 1.00	$ 1.00	$ 0.82
Ratio of earnings to fixed charges (5)	2.8	3.9	4.0	4.3	7.0	5.6	6.4
Average shares outstanding (fully diluted)	56.6	58.1	57.8	59.8	63.3	63.7	64.5
Balance sheet information:							
Total assets	$4,906	$4,412	$4,913	$4,424	$4,230	$3,072	$2,615
Long-term debt	1,459	1,127	1,485	1,118	928	465	383
Shareholders' equity	$1,410	$1,272	$1,359	$1,248	$1,302	$1,210	$1,032

Notes to The Company Selected Financial Information

(1) The Company purchased Scott, Foresman and Company ("Scott, Foresman") on December 29, 1986 for $540 million. Assuming that the acquisition had occurred at the beginning of 1985, unaudited pro forma combined revenues, net income and earnings per share would have been $3,959 million, $361 million and $3.71, respectively, for 1986 and $3,573 million, $176 million and $2.76, respectively, for 1985.

(2) The initial public offering of 20 million shares of Class A Common Stock by the Company's subsidiary ATC resulted in a pre-tax gain of $318 million.

(3) In 1986, the Company changed the rate of amortization of its pay-TV programming costs to more closely reflect audience viewing patterns. The effect of this change was to reduce programming costs by $55 million, $58 million and $57 million, resulting in increased net income of $36 million, $35 million and $31 million, or $.62 per share, $.58 per share and $.49 per share, during 1988, 1987 and 1986, respectively.

(4) The 1984 dividend reflects an adjustment for the divestiture of Temple-Inland Inc. ("Temple-Inland"). The total 1984 dividend on both the Company's and Temple-Inland's common stock after the distribution was $1.00.

(5) Earnings are calculated by adding pretax income, interest expense, previously capitalized interest amortized to expense and the Company's proportionate share of such items for its partially-owned subsidiaries and 50%-owned joint ventures, and by deducting the Company's share of the undistributed earnings of less-than-50%-owned companies. Fixed charges consist of interest expense, interest capitalized, the portion of rents representative of an interest factor and the Company's proportionate share of such items for its partially-owned subsidiaries and 50%-owned joint ventures. On a pro forma basis, assuming the Scott, Foresman acquisition had occurred at the beginning of 1986, the ratio of earnings to fixed charges for 1986 would have been 6.6.

to its stockholders and the Commission and would make certain provisions of the Exchange Act, such as the short-swing profit recovery provisions of Section 16(b) and the requirements of furnishing a proxy statement in connection with stockholders' meetings pursuant to Section 14(a), no longer applicable to the Company. If the Shares are no longer registered under the Exchange Act, the requirements of Rule 13e-3 under the Exchange Act with respect to "going private" transactions would no longer be applicable to the Company. Furthermore, the ability of "affiliates" of the Company and persons holding "restricted securities" of the Company to dispose of such securities pursuant to Rule 144 promulgated under the Securities Act of 1933, as amended, may be impaired or eliminated. However, so long as any of the Company Debentures remain registered under the Exchange Act, the Company would remain subject to the requirements of the Exchange Act with respect to the filing with the Commission of publicly available annual, periodic and certain other reports and compliance with such reporting requirements would alleviate certain restrictions on sales of Shares under Rule 144. If, as a result of the purchase of Shares pursuant to the Offer, the Company is no longer required to maintain registration of the Shares under the Exchange Act, the Purchaser intends to cause the Company to apply for termination of such registration. See Section 11.

The Rights currently are registered under the Exchange Act and are listed on the NYSE and the PSE, but currently are attached to the outstanding Shares and are not separately transferable. The Purchaser's commencement of the Offer may result in the occurrence of a Distribution Date and as soon as practicable thereafter, separate certificates for the Rights being sent to all holders of Rights and the Rights becoming transferable apart from the Shares. See Section 11. If the Distribution Date occurs and the Rights separate from the Shares, the foregoing discussion with respect to the effect of the Offer on the market for the Shares, stock exchange listings and Exchange Act registration would apply to the Rights in a similar manner. The Purchaser is requesting the Company's Board of Directors to redeem the Rights and is seeking in the Delaware Litigation, among other things, an order requiring the redemption of the Rights.

If registration of the Shares is not terminated prior to the Proposed Merger, then the Shares will be delisted from all stock exchanges and the registration of the Shares under the Exchange Act will be terminated following the consummation of the Proposed Merger.

Margin Regulations. The Shares are presently "margin securities" under the regulations of the Board of Governors of the Federal Reserve System (the "Federal Reserve Board"), which have the effect, among other things, of allowing brokers to extend credit on the collateral of such Shares. Depending on factors such as the number of holders of the Shares and the number and market value of publicly held Shares, following the purchase of Shares pursuant to the Offer the Shares might no longer constitute "margin securities" for purposes of the Federal Reserve Board's margin regulations and, therefore, could no longer be used as collateral for loans made by brokers. In addition, if registration of the Shares under the Exchange Act were terminated, the Shares would no longer constitute "margin securities".

8. **Certain Information Concerning the Company.** The Company is a Delaware corporation with its principal executive offices located at Time & Life Building, Rockefeller Center, New York, New York 10020. According to information filed by the Company with the Commission, the Company's principal lines of business are the publication of magazines, the publication of books, the distribution of pay television programming and the operation of cable television systems.

The selected financial information of the Company and its consolidated subsidiaries set forth below has been taken from the Proxy Statement, which states that such information has been derived from and should be read in conjunction with the audited financial statements and other financial information contained in the Company's 10-K and with the unaudited financial statements contained in the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 1989. Such financial information is qualified in its entirety by reference to the Proxy Statement, such reports and all of the financial statements and related notes contained therein. The S-4 Registration Statement, which contains the Proxy Statement, and such reports may be examined and copies may be obtained at the offices of the Commission in the manner set forth below.

On June 6, 1989, the last full day of trading prior to the announcement of the Purchaser's intention to make the Offer and the commencement of the Offer, the reported closing price on the NYSE Composite Tape for the shares was $126 per Share, according to published sources.

Stockholders are urged to obtain a current market quotation for the Shares.

According to the Company's 10-K, the Rights are listed on the NYSE and the PSE, but are currently attached to all outstanding Shares and may not be traded separately. As a result, the sale prices per Share set forth above are also the high and low sale prices per Share and associated Right during such periods. Upon the occurrence of the Distribution Date, the Rights are to detach, and may trade separately, from the Shares. See Section 11. As a result of the Purchaser's commencement of the Offer on June 7, 1989, the Distribution Date may be as early as June 17, 1989. If the Distribution Date occurs and the Rights begin to trade separately from the Shares, stockholders are urged to obtain a current market quotation for the Rights.

7. **Effect of the Offer on the Market for the Shares; Stock Exchange Listing; Exchange Act Registration and Margin Regulations.** The purchase of Shares pursuant to the Offer will reduce the number of Shares that might otherwise trade publicly and, depending upon the number of Shares so purchased, could adversely affect the liquidity and market value of the remaining Shares held by the public. The purchase of Shares pursuant to the Offer may also be expected to reduce the number of holders of Shares.

Stock Exchange Listing. Depending on the number of Shares acquired pursuant to the Offer, the Shares may no longer meet the requirements for continued listing on the NYSE, the PSE or the ISE. According to the Proxy Statement, there were approximately 14,655 holders of record of Shares as of May 1, 1989. According to the NYSE's published guidelines, the NYSE would consider delisting the Shares if, among other things, the number of holders of 100 Shares or more were reduced to less than 1,200, the number of Shares publicly held (excluding those held by officers and directors of the Company, members of their immediate families and persons owning 10% or more of the Shares outstanding) were reduced to less than 600,000 or the aggregate market value of publicly held Shares were reduced to less than $5,000,000. According to the PSE's published guidelines, the PSE would consider delisting the Shares if, among other things, the number of publicly held Shares (exclusive of holdings of management and other concentrated holdings) should fall below 100,000 or the number of record holders of Shares should fall below 500. The PSE would also consider delisting the Shares if the number of record holders of at least 100 Shares should fall below 200 or the aggregate market value of publicly held Shares (exclusive of management and other concentrated holdings) should fall below $500,000 for a six-month period. The ISE's published guidelines do not provide the criteria on which a delisting of the Shares would be based, but state that the ISE may at any time and in such circumstances as it deems fit cancel a listing of securities. In addition, if registration of the Shares under the Exchange Act were terminated as described below, the Shares would no longer be eligible for listing on the NYSE or the PSE.

If, as a result of the purchase of Shares pursuant to the Offer or otherwise, the Shares no longer meet the requirements of the NYSE for continued listing and/or trading and such trading of the Shares were discontinued, the market for the Shares could be adversely affected. In the event that the Shares were no longer listed or traded on the NYSE, the PSE or the ISE (which the Purchaser intends to cause the Company to seek after the consummation of the Offer), it is possible that the Shares would trade on another securities exchange or in the over-the-counter market and that price quotations would be reported by such exchange, through the National Association of Securities Dealers Automated Quotation System, or other sources. Such trading and the availability of such quotations would, however, depend upon the number of stockholders remaining at such time, the interest in maintaining a market in the Shares on the part of securities firms, the possible termination of registration of the Shares under the Exchange Act, and other factors.

The Purchaser cannot predict whether the reduction in the number of Shares that might otherwise trade publicly would have an adverse or beneficial effect on the market price for, or marketability of, the Shares or whether such reduction would cause future market prices to be greater or less than the Offer price.

Exchange Act Registration. The Shares and certain debentures of the Company (the "Company Debentures") are currently registered under the Exchange Act. Registration of the Shares may be terminated upon application of the Company to the Commission if the Shares are not listed on a national securities exchange and there are fewer than 300 record holders of Shares. Termination of registration of the Shares under the Exchange Act would substantially reduce the information required to be furnished by the Company

The receipt of cash pursuant to the Offer or the Proposed Merger will be a taxable transaction for federal income tax purposes and may also be a taxable transaction under applicable state, local, foreign or other tax laws. Generally, a stockholder will recognize gain or loss in an amount equal to the difference between the cash received and the stockholder's adjusted tax basis in the Shares (together with the Rights). For federal income tax purposes, such gain or loss will be a capital gain or loss if the Shares are a capital asset in the hands of the stockholder, and a long-term capital gain or loss if the stockholder's holding period is more than one year as of the date the Purchaser accepts such Shares for payment pursuant to the Offer or the effective date of the Proposed Merger, as the case may be. However, capital gains are currently taxed at the same rates as ordinary income. There are limitations on the deductibility of capital losses.

If the sale of Shares and Rights pursuant to the Offer occurs after the Distribution Date (and possibly even if the sale occurs before such date) and the condition relating to the Rights has not been satisfied, the cash received must be allocated between the Shares and Rights in proportion to their respective fair market values and the tax treatment described in the preceding paragraph will apply separately with respect to the Shares and the Rights. It is unclear, for this purpose, whether the holding period of the Rights includes the holding period of the Shares with respect to which the Rights were distributed, and whether, if not, such holding period includes any period prior to the Distribution Date.

For federal income tax purposes, it is unclear whether amounts received with respect to the redemption of the Rights by the Company should be treated as additional consideration for the Shares or as a dividend or other ordinary income.

Under certain circumstances, New York State and New York City may impose taxes (the "Transfer Taxes") on the gain or proceeds from the sale of Shares pursuant to the Offer or the Proposed Merger attributable to real property of the Company or its subsidiaries in those jurisdictions. If any taxes are owing, the Purchaser expects that pursuant to the terms of the Proposed Merger Agreement the Company would agree to pay any Transfer Taxes that might be owing as a result of the Offer and the Proposed Merger. By tendering Shares, a stockholder is authorizing the Purchaser or, if the Proposed Merger Agreement is entered into, the Company to complete and file any necessary tax forms or otherwise take action with respect to these two taxes in connection with the Offer. The payment of any Transfer Taxes by the Company should have no effect on the amount of gain or loss realized by any stockholder for federal income tax purposes.

6. **Price Range of the Shares; Dividends.** According to the Proxy Statement, the Shares are listed on the NYSE, the Pacific Stock Exchange (the "PSE") and the International Stock Exchange of the United Kingdom and Republic of Ireland Limited (the "ISE"). The Shares are traded on the NYSE under the symbol "TL". The following table sets forth, for the periods indicated, the reported high and low sale prices for the Shares on the NYSE Composite Tape and the amount of cash dividends paid per Share, all as reported in published financial sources.

	High	Low	Cash Dividends
1987			
First Quarter	91½	69½	.25
Second Quarter	101⅜	83½	.25
Third Quarter	116⅞	95¼	.25
Fourth Quarter	109¼	65¾	.25
1988			
First Quarter	94½	78¾	.25
Second Quarter	100¼	84⅛	.25
Third Quarter	117½	93	.25
Fourth Quarter	122½	96	.25
1989			
First Quarter	122¼	103⅝	.25
Second Quarter (through June 6)	135½	112⅛	.25

On March 3, 1989, the last full day of trading prior to the execution and delivery of the Warner Merger Agreement and the public announcement thereof, the closing price on the NYSE Composite Tape for the Shares was $109¼ per Share, according to published sources.

Shares or Rights of any particular stockholder whether or not similar defects or irregularities are waived in the case of other stockholders.

The Purchaser's interpretation of the terms and conditions of the Offer (including the Letter of Transmittal, the Letter of Transmittal Supplement and the instructions thereto) will be final and binding. No tender of Shares will be deemed to have been validly made until all defects and irregularities have been cured or waived. None of the Purchaser, Parent, any of their affiliates or assigns, if any, the Dealer Manager, the Depositary, the Information Agent or any other person will be under any duty to give notification of any defects or irregularities in tenders or incur any liability for failure to give any such notification.

Other Requirements. A tender of Shares pursuant to any one of the procedures described above will constitute the tendering stockholder's acceptance of the terms and conditions of the Offer, as well as the tendering stockholder's representation and warranty that (a) such stockholder owns the Shares (and associated Rights) being tendered within the meaning of Rule 10b-4 promulgated under the Exchange Act and (b) the tender of such Shares and Rights complies with Rule 10b-4. The Purchaser's acceptance for payment of Shares tendered pursuant to the Offer will constitute a binding agreement between the tendering stockholder and the Purchaser upon the terms and subject to the conditions of the Offer.

4. **Withdrawal Rights.** Except as otherwise provided in this Section 4, tenders of Shares and Rights made pursuant to the Offer are irrevocable. Shares tendered pursuant to the Offer may be withdrawn at any time on or prior to the Expiration Date and, unless theretofore accepted for payment as provided herein, may also be withdrawn at any time after August 5, 1989. A withdrawal of Shares will also constitute a withdrawal of the associated Rights. Rights may not be withdrawn unless the associated Shares are also withdrawn.

For a withdrawal to be effective, a written, telegraphic, telex or facsimile transmission notice of withdrawal must be timely received by the Depositary at one of its addresses set forth on the back cover of this Offer to Purchase. Any such notice of withdrawal must specify the name of the person who tendered the Shares to be withdrawn, the number of Shares to be withdrawn, and (if certificates for Shares have been tendered) the name of the registered holder of the Shares as set forth in the certificate, if different from that of the person who tendered such Shares. If certificates for Shares have been delivered or otherwise identified to the Depositary, then prior to the physical release of such certificates, the tendering stockholder must also submit the serial numbers shown on the particular certificates evidencing the Shares to be withdrawn and the signature on the notice of withdrawal must be guaranteed by an Eligible Institution, except in the case of Shares tendered for the account of the Eligible Institution. If Shares have been tendered pursuant to the procedures for book-entry transfer set forth in Section 3, the notice of withdrawal must specify the name and number of the account at the appropriate Book-Entry Transfer Facility to be credited with the withdrawn Shares and otherwise comply with such Book-Entry Transfer Facility's procedure. Withdrawals of Shares may not be rescinded. Any Shares properly withdrawn will be deemed not validly tendered for purposes of the Offer, but may be retendered at any subsequent time prior to the Expiration Date by following any of the procedures described in Section 3.

All questions as to the form and validity (including time of receipt) of notices of withdrawal will be determined by the Purchaser, in its sole discretion, whose determination shall be final and binding. None of the Purchaser, Parent, any of their affiliates or assigns, if any, the Dealer Manager, the Depositary, the Information Agent or any other person will be under any duty to give any notification of any defects or irregularities in any notice of withdrawal or incur any liability for failure to give any such notification.

5. **Certain Federal Income Tax Consequences.** The summary of tax consequences set forth below is for general information only. The tax treatment of each stockholder will depend in part upon his particular situation. Special tax consequences not described herein may be applicable to particular classes of taxpayers, such as financial institutions, broker-dealers, persons who are not citizens or residents of the United States, stockholders who acquired their Shares through the exercise of an employee stock option or otherwise as compensation, and persons who received payments in respect of options to acquire Shares. ALL STOCKHOLDERS SHOULD CONSULT WITH THEIR OWN TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES OF THE OFFER AND THE PROPOSED MERGER TO THEM, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL AND FOREIGN TAX LAWS.

Notwithstanding any other provision hereof, payment for Shares accepted for payment pursuant to the Offer will in all cases be made only after timely receipt by the Depositary of certificates for, or of Book-Entry Confirmation with respect to, such Shares, certificates for, or a Book-Entry Confirmation, if available, with respect to the associated Rights (unless the Purchaser elects to make payment for such Shares pending receipt of the certificates for, or a Book-Entry Confirmation with respect to, such Rights as described above), a properly completed and duly executed Letter of Transmittal (or facsimile thereof) and any other documents (which may include a Letter of Transmittal Supplement or facsimile thereof) required by the Letter of Transmittal (or such Letter of Transmittal Supplement). Accordingly, payment may not be made to all tendering stockholders at the same time depending upon when certificates for Shares (or Rights) or confirmations of book-entry transfer of such Shares (or Rights, if available) into the Depositary's account at a Book-Entry Transfer Facility are actually received by the Depositary.

The method of delivery of Shares, Rights, the Letter of Transmittal, the Letter of Transmittal Supplement, if required, and any other required documents is at the option and sole risk of the tendering stockholder. If delivery is by mail, registered mail with return receipt requested, properly insured, is recommended. In all cases, sufficient time should be allowed to ensure timely delivery.

Back-up Federal Tax Withholding. **Under the federal income tax laws, the Depositary will be required to withhold 20% of the amount of any payments made to certain stockholders pursuant to the Offer. To prevent back-up federal income tax withholding on payments made to certain stockholders with respect to the purchase price of Shares purchased pursuant to the Offer, each such stockholder must provide the Depositary with his correct taxpayer identification number and certify that he is not subject to back-up federal income tax withholding by completing the Substitute Form W-9 included in the Letter of Transmittal. See Instruction 10 set forth in the Letter of Transmittal.**

Appointment as Proxy. By executing the Letter of Transmittal, a tendering stockholder irrevocably appoints designees of the Purchaser, and each of them, as such stockholder's attorney-in-fact and proxies, with full power of substitution, in the manner set forth in the Letter of Transmittal, to the full extent of such stockholder's rights with respect to the Shares and Rights tendered by such stockholder and accepted for payment by the Purchaser and with respect to any and all other Shares or Rights and other securities or rights issued or issuable in respect of such Shares and Rights on or after May 22, 1989. All such proxies shall be considered coupled with an interest in the tendered Shares and Rights. Such appointment will be effective when, and only to the extent that, the Purchaser accepts such Shares for payment. Upon such acceptance for payment, all prior powers of attorney and proxies given by such stockholder with respect to such Shares, Rights and such other securities or rights will be revoked, without further action, and no subsequent powers of attorneys and proxies may be given (and, if given, will not be deemed effective) by such stockholder. The designees of the Purchaser will be empowered to exercise all voting and other rights of such stockholder as they in their sole discretion may deem proper with respect to such Shares, Rights and other securities or rights at any annual, special meeting of the Company's stockholders, or any adjournment or postponement thereof, or in connection with any action that may be taken by consent in lieu of any such meeting or otherwise. The Purchaser reserves the right to require that, in order for Shares and Rights to be validly tendered, immediately upon the acceptance for payment of such Shares and Rights, the Purchaser or its designee will be able to exercise full voting rights with respect to such Shares, Rights and other securities, including voting at any meeting of stockholders then scheduled.

If at the time the Purchaser accepts Shares for payment pursuant to the Offer all material FCC Transfer Approvals have not been obtained, and until such approvals are obtained, the Purchaser shall designate the Voting Trustee (as defined in Section 16) as its designee for purposes of appointment as attorney-in-fact and proxy by tendering stockholders.

Determination of Validity. All questions as to the form of documents and validity, eligibility (including time of receipt) and acceptance for payment of any tender of Shares or Rights will be determined by the Purchaser, in its sole discretion, whose determination shall be final and binding. The Purchaser reserves the absolute right to reject any or all tenders, determined by it not to be in proper form or the acceptance of or payment for which may, in the opinion of the Purchaser's counsel, be unlawful. The Purchaser also reserves the absolute right to waive any of the conditions of the Offer or any defect or irregularity in any tender of

The Depositary will also make a request to establish an account with respect to the Rights at each of the Book-Entry Transfer Facilities, but no assurance can be given that book-entry delivery of Rights will be available. If book-entry delivery of Rights is available, the foregoing book-entry transfer procedures will also apply to Rights. Otherwise, if separate certificates for the Rights have been issued, a tendering stockholder will be required to tender Rights by means of physical delivery to the Depositary of certificates for Rights (in which event references in this Offer to Purchase to Book-Entry Confirmations with respect to Rights will be inapplicable).

Delivery of documents to a Book-Entry Transfer Facility in accordance with such Book-Entry Transfer Facility's procedures does not constitute delivery to the Depositary.

Signature Guarantees. Signatures on all Letter of Transmittal and, if required, Letter of Transmittal Supplements, must be guaranteed by a member firm of a registered national securities exchange, a member of the National Association of Securities Dealers, Inc. (the "NASD") or a commercial bank or trust company having an office, branch, agency or correspondent in the United States (collectively, "Eligible Institutions"), unless the Shares and Rights tendered thereby are tendered (i) by the registered holder of Shares and Rights who has not completed either the box labeled "Special Payment Instructions" or "Special Delivery Instructions" on the Letter of Transmittal or (ii) for the account of an Eligible Institution. See Instruction 1 of the Letter of Transmittal.

If the certificates evidencing Shares and Rights are registered in the name of a person other than the signer of the Letter of Transmittal, or if payment is to be made to, or certificates for unpurchased Shares and Rights are to be issued or returned to, a person other than the registered holder, then the tendered certificates must be endorsed or accompanied by appropriate stock powers, in either case signed exactly as the name or names of the registered holder or holders appear on the certificates, with the signatures on the certificates or stock powers guaranteed by an Eligible Institution as provided in the Letter of Transmittal. See Instructions 1 and 5 to the Letter of Transmittal.

Guaranteed Delivery. If a stockholder desires to tender Shares and Rights pursuant to the Offer and such stockholder's certificates for Shares and/or Rights are not immediately available (including because certificates for Rights have not yet been distributed by the Company) or time will not permit all required documents to reach the Depositary on or prior to the Expiration Date, or the procedure for book-entry transfer cannot be completed on a timely basis, such Shares and/or Rights may nevertheless be tendered if all of the following guaranteed delivery procedures are duly complied with:

(i) such tender is made by or through an Eligible Institution;

(ii) a properly completed and duly executed Notice of Guaranteed Delivery, substantially in the form provided by the Purchaser, is received by the Depositary, as provided below, on or prior to the Expiration Date; and

(iii) the certificates for all tendered Shares and/or Rights, in proper form for transfer, or a Book-Entry Confirmation, together with a properly completed and duly executed Letter of Transmittal (or facsimile thereof), with any required signature guarantees and, in the case of the delivery of certificates for tendered Rights with respect to which a Letter of Transmittal has already been delivered, a Letter of Transmittal Supplement (or facsimile thereof), and any other documents required by the Letter of Transmittal or Letter of Transmittal Supplement, are received by the Depositary within (a) in the case of Shares, five New York Stock Exchange, Inc. ("NYSE") trading days after the date of execution of such Notice of Guaranteed Delivery or (b) in the case of Rights, a period ending on the later of (i) five NYSE trading days after the date of execution of such Notice of Guaranteed Delivery or (ii) five business days after the date certificates for Rights are distributed to stockholders by the Rights Agent.

The Notice of Guaranteed Delivery may be delivered by hand or transmitted by telegram, telex, facsimile transmission or mail to the Depositary and must include a signature guarantee by an Eligible Institution in the form set forth in such Notice of Guaranteed Delivery.

Following any redemption of the Rights, the guaranteed delivery procedure with respect to Rights certificates and the requirement for the tender of Rights will no longer apply.

required signature guarantees and any other required documents, must be received by the Depositary at one of its addresses set forth on the back cover of this Offer to Purchase on or prior to the Expiration Date. In addition, either (i) certificates representing such Shares and Rights must be received by the Depositary along with the executed Letter of Transmittal (or facsimile thereof) or such Shares and Rights must be tendered pursuant to the procedure for book-entry transfer set forth below, and a Book-Entry Confirmation and the executed Letter of Transmittal (or facsimile thereof) must be received by the Depositary, in each case on or prior to the Expiration Date, or (ii) the guaranteed delivery procedure set forth below must be complied with. Delivery of documents to a Book-Entry Transfer Facility does not constitute delivery to the Depositary.

Unless the Rights are redeemed, holders of Shares will also be required to tender one Right for each Share tendered in order to effect a valid tender of such Share. If separate certificates for the Rights are not issued, a tender of Shares will also constitute a tender of the associated Rights. Accordingly, stockholders who sell their Rights separately from their Shares and do not otherwise acquire Rights may not be able to satisfy the requirements of the Offer for the tender of Shares.

If Rights certificates have been distributed to holders of Shares prior to the time Shares are tendered pursuant to the Offer, Rights certificates representing a number of Rights equal to the number of Shares tendered must be delivered to the Depositary or, if available, a Book-Entry Confirmation received, in order for such Shares to be validly tendered. If the Rights certificates have not been distributed prior to the time Shares are tendered pursuant to the Offer, Rights may be tendered prior to a stockholder receiving the Rights certificates by using the guaranteed delivery procedure described below. A tender of Shares constitutes an agreement by the tendering stockholder to deliver Rights certificates representing a number of Rights equal to the number of Shares tendered pursuant to the Offer to the Depositary within five business days after the date Rights certificates are distributed. If Rights certificates are distributed, the Purchaser will deliver to stockholders Letter of Transmittal Supplements for use in connection with the tendering of Rights certificates. The tendering stockholder should deliver Rights certificates received subsequent to the date of tender of Shares with a properly completed Letter of Transmittal Supplement (or facsimile thereof) with any required signature guarantees and any other documents required by the Letter of Transmittal Supplement.

The Purchaser reserves the right to require that it receive such Rights certificates, or a Book-Entry Confirmation, if available, with respect to such Rights, prior to accepting the related Shares for payment pursuant to the Offer. Nevertheless, the Purchaser will be entitled to accept for payment Shares tendered by a stockholder prior to receipt of the Rights certificates required to be tendered with such Shares or, if available, Book-Entry Confirmation with respect to such Rights and either (a) subject to complying with applicable rules and regulations of the Commission, withhold payment for such Shares pending receipt of the certificates for, or a Book-Entry Confirmation with respect to, such Rights or (b) make payment for Shares accepted for payment pending receipt of the certificates for, or, if available, Book-Entry Confirmation with respect to, such Rights in reliance upon the guaranteed delivery procedures described below. However, after expiration of the period permitted by such guaranteed delivery procedures for delivery of certificates for, or, if available, Book-Entry Confirmation with respect to, Rights (the "Rights Delivery Period"), the Purchaser may elect to reject as invalid a tender of Shares with respect to which certificates for, or, if available, Book-Entry Confirmation with respect to, an equal number of Rights have not been received by the Depositary. Any determination by the Purchaser to make payment for Shares in reliance upon such guaranteed delivery procedures or, after expiration of the Rights Delivery Period, to reject a tender as invalid, shall be made in the sole and absolute discretion of the Purchaser.

Book-Entry Transfer. The Depositary will establish accounts with respect to the Shares at each Book-Entry Transfer Facility for purposes of the Offer within two business days after the date of this Offer to Purchase. Any financial institution that is a participant in any of the Book-Entry Transfer Facility systems may make book-entry delivery of Shares by causing a Book-Entry Transfer Facility to transfer such Shares into the Depositary's account, in accordance with such Book-Entry Transfer Facility's procedures for such transfer. However, although delivery of Shares may be effected through book-entry transfer into the Depositary's account at a Book-Entry Transfer Facility, the Letter of Transmittal (or facsimile thereof), properly completed and duly executed, with any required signature guarantees and any other required documents must, in any case, be transmitted to and received by, the Depositary at one of its addresses set forth on the back cover of this Offer to Purchase on or prior to the Expiration Date, or the guaranteed delivery procedure set forth below must be complied with.

the Purchaser will purchase, by accepting for payment and will pay for all outstanding Shares validly tendered and not properly withdrawn on or prior to the Expiration Date as soon as practicable after the later to occur of (i) the Expiration Date and (ii) the satisfaction or waiver of the conditions of the Offer set forth in Section 14, including without limitation, the expiration or termination of the waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") applicable to the Purchaser's acquisition of Shares pursuant to the Offer. See Section 16. In all cases, payment for Shares purchased pursuant to the Offer will be made only after timely receipt by the Depositary of (a) certificates for such Shares and, if applicable, certificates for the associated Rights, or timely confirmation (a "Book-Entry Confirmation") of the book-entry transfer of such Shares and, if available, Rights into the Depositary's account at The Depository Trust Company, the Midwest Securities Trust Company or the Philadelphia Depository Trust Company (collectively, the "Book-Entry Transfer Facilities"), pursuant to the procedures set forth in Section 3, (b) the Letter of Transmittal and, if required, Letter of Transmittal Supplement (or facsimiles thereof), properly completed and duly executed, and (c) any other documents required by the Letter of Transmittal (or the Letter of Transmittal Supplement). For a description of the procedures for tendering Shares pursuant to the Offer, see Section 3.

In addition, the Purchaser expressly reserves the right, in its sole discretion, to delay the acceptance for payment of, or payment for, Shares in order to comply in whole or in part with any applicable law. See Section 16. Any such delays will be effected in compliance with Rule 14e-1(c) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which requires that a person who makes a tender offer pay the consideration offered or return tendered securities promptly after the termination or withdrawal of a tender offer.

For purposes of the Offer, the Purchaser will be deemed to have accepted for payment, and thereby purchased, Shares validly tendered and not withdrawn as, if and when the Purchaser gives oral or written notice to the Depositary of the Purchaser's acceptance of such Shares for payment pursuant to the Offer. In all cases, upon the terms and subject to the conditions of the Offer, payment for Shares purchased pursuant to the Offer will be made by deposit of the purchase price therefor with the Depositary, which will act as agent for tendering stockholders for the purpose of receiving payment from the Purchaser and transmitting payment to validly tendering stockholders. Under no circumstances will interest on the purchase price for Shares be paid by the Purchaser by reason of any delay in making such payment. If, for any reason whatsoever, acceptance for payment of or payment for any Shares tendered pursuant to the Offer is delayed, or the Purchaser is unable to accept for payment or pay for Shares tendered pursuant to the Offer, then, without prejudice to the Purchaser's rights set forth herein, the Depositary may, nevertheless, on behalf of the Purchaser and subject to Rule 14e-1(c) under the Exchange Act, retain tendered Shares and such Shares may not be withdrawn except to the extent that the tendering stockholder is entitled to and duly exercises withdrawal rights as described in Section 4.

If any tendered Shares are not purchased pursuant to the Offer for any reason, or if certificates are submitted evidencing more Shares than are tendered, certificates for such unpurchased or untendered Shares and the associated Rights will be returned, without expense to the tendering stockholder (or, in the case of Shares or Rights delivered by book-entry transfer into the Depositary's account at a Book-Entry Transfer Facility, such Shares or Rights will be credited to an account maintained within such Book-Entry Transfer Facility) as promptly as practicable following the expiration, termination or withdrawal of the Offer.

If, on or prior to the Expiration Date, the Purchaser shall increase the consideration offered to stockholders pursuant to the Offer, such increased consideration shall be paid to all holders of Shares that are purchased pursuant to the Offer, whether or not such Shares were tendered prior to such increase in consideration.

The Purchaser reserves the right to transfer or assign, in whole or from time to time in part, to one or more of Parent's subsidiaries or affiliates the right to purchase Shares and the associated Rights tendered pursuant to the Offer, but any such transfer or assignment will not relieve the Purchaser of its obligations under the Offer or prejudice the rights of tendering stockholders to receive payment for Shares validly tendered and accepted for payment pursuant to the Offer.

3. Procedure for Tendering Shares and Rights.

Valid Tender. Except as set forth below, for Shares and Rights to be validly tendered pursuant to the Offer, the Letter of Transmittal (or a facsimile thereof), properly completed and duly executed, with any

Parent has received a commitment letter from Citibank, N.A. ("Citibank") committing it to lend to Parent and/or one or more direct or indirect subsidiaries of Parent, on a senior basis, $1 billion of the Financing and to use its best efforts, but without any obligation to underwrite a syndication, to arrange a syndicate of lenders to provide the balance of the senior bank facilities of $13 billion which will be required to consummate the Offer and the Proposed Merger. Citibank has stated in its commitment letter that it is highly confident that it will be able to arrange the balance of the Financing. See Section 12 for a description of the Financing, including the terms and conditions set forth in Citibank's commitment letter.

The Purchaser expressly reserves the right to waive any one or more of the conditions to the Offer. See Sections 11, 14 and 15.

In the event that the Offer is not consummated, the Purchaser currently intends to explore all options which may be available to it, which may include, without limitation, seeking to acquire additional Shares through open market purchases or privately negotiated transactions, which may be at a price more or less than the price to be paid pursuant to the Offer.

This Offer to Purchase and the Letter of Transmittal contain important information which should be read carefully before any decision is made with respect to the Offer.

THE TENDER OFFER

1. Terms of the Offer. Upon the terms and subject to the conditions set forth in the Offer (including, if the Offer is extended or amended, the terms and conditions of any such extension or amendment), the Purchaser will accept for payment and thereby purchase all outstanding Shares validly tendered on or prior to the Expiration Date (as hereinafter defined) and not withdrawn in accordance with the procedures set forth in Section 4 of this Offer to Purchase. The term "Expiration Date" means 12:00 Midnight, New York City time, on Wednesday, July 5, 1989, unless and until the Purchaser, in its sole discretion, shall have extended the period of time for which the Offer is open, in which event the term "Expiration Date" shall mean the latest time and date at which the Offer, as so extended by the Purchaser, shall expire.

This Offer is conditioned upon, among other things, satisfaction of each of the conditions set forth above in the Introduction to this Offer to Purchase, as well as the conditions described in Section 14.

The Purchaser reserves the right (but shall not be obligated), in accordance with applicable rules and regulations of the Commission, to waive any or all of the conditions to the Offer. If, by the Expiration Date, any of such conditions have not been satisfied, the Purchaser reserves the right to (a) decline to accept for payment or pay for any Shares tendered, terminate the Offer and return all tendered Shares to tendering stockholders, (b) extend the Offer and, subject to the withdrawal rights set forth in Section 4, retain all tendered Shares until the expiration of the Offer as extended or (c) waive such unsatisfied condition or conditions and, in accordance with applicable law and subject to giving sufficient notice to stockholders pursuant to the Offer and in compliance with applicable rules and regulations of the Commission, accept for payment and pay for all Shares validly tendered. See Section 15.

In a published release, the Commission has stated that in its view a tender offer must remain open for a minimum period of time following a material change in the terms of the offer and that the waiver of a material condition is a material change in the terms of the offer. The release states that an offer should remain open for a minimum of five business days from the date a material change is first published, sent or given to security holders, and that, if material changes are made with respect to information that approaches the significance of price and share levels, a minimum of ten business days may be required to allow for adequate dissemination and investor response.

A request is being made to the Company for the use of the Company's stockholder list, list of non-objecting beneficial owners and security position listings for the purpose of disseminating the Offer to holders of Shares. This Offer to Purchase and the related Letter of Transmittal and, if required, the Letter of Transmittal Supplement and other relevant materials will be mailed to record holders of Shares and will be furnished to brokers, dealers, commercial banks, trust companies and similar persons whose names, or the names of whose nominees, appear on the stockholder lists or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of Shares by the Purchaser.

2. Acceptance for Payment and Payment. Upon the terms and subject to the conditions of the Offer (including, if the Offer is extended or amended, the terms and conditions of any such extension or amendment),

If an Acquiring Person (as defined in the Rights Agreement) acquires from the Company certain securities or any person becomes the beneficial owner of 20% or more of the Shares, each Right entitles the holder to purchase for $300 an amount of preferred stock of the Company having a market value of $600. If the Company merges with an Acquiring Person and the Company is the surviving corporation and all the Shares remain outstanding and unchanged, each Right entitles the holder to purchase for $300 a number of Shares having a market value of $600.

The terms of the Rights and the Rights Agreement are described in more detail in Section 11.

Based on publicly available information, the Purchaser believes that the Rights are not exercisable at this time, that separate certificates evidencing the Rights have not been issued and that the Rights are evidenced by the certificates for the Shares. The commencement of the Offer on June 7, 1989 would result in the Distribution Date being June 17, 1989, unless prior to such date the Company's Board of Directors redeems the Rights or amends the Rights Agreement to delay the Distribution Date.

The Purchaser believes that, under the circumstances of the Offer and under applicable law, the Board of Directors of the Company is obligated by its fiduciary responsibilities to redeem the Rights in order to allow the Company's stockholders the opportunity to tender their Shares and receive the consideration offered pursuant to the Offer. Accordingly, the Purchaser is requesting the Company's Board of Directors to redeem the Rights to permit the acceptance for payment of Shares pursuant to the Offer. As described in Sections 11 and 16, the Purchaser is seeking in the Delaware Litigation, among other things, an order requiring the Board of Directors of the Company to redeem the Rights.

Unless the Rights are redeemed, holders of Shares will also be required to tender one Right for each Share tendered in order to effect a valid tender of such Share. If separate certificates for the Rights are not issued, a tender of Shares will also constitute a tender of the associated Rights. If separate Rights certificates are distributed, the Purchaser will deliver to stockholders Letter of Transmittal Supplements (the "Letter of Transmittal Supplements") for use in connection with the tendering of Rights certificates. See Sections 1 and 3.

Section 203. Consummation of the Offer is subject to, among other things, the Purchaser being satisfied, in its sole discretion, that after consummation of the Offer, Section 203 of the Delaware Law would not prohibit for any period of time, or impose any voting requirements in excess of majority stockholder approval with respect to, a merger or other business combination involving the Company or any of its subsidiaries and any affiliate of Parent.

Section 203 of the Delaware Law ("Section 203") provides that, subject to a number of exceptions, a Delaware corporation may not engage in any "business combination" with an "interested stockholder" for three years following the date that such stockholder became an "interested stockholder" unless (1) prior to the date that the stockholder becomes an interested stockholder, the board of directors of the corporation approves the business combination or the transaction which resulted in the stockholder becoming an interested stockholder, or (2) upon consummation of that transaction, the interested stockholder owns at least 85% of the voting stock outstanding at the time the transaction commenced (excluding for this purpose those shares owned by directors who are officers of the corporation and by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in the offer), or (3) on or subsequent to the date the interested stockholder becomes an interested stockholder, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders by the affirmative vote of at least 66⅔% of the outstanding voting stock which is not owned by the interested stockholder. An "interested stockholder" is defined as a person owning 15% or more of a corporation's voting stock, and a "business combination" would include a transaction such as the Proposed Merger.

The Purchaser believes that the exception to the restrictions on business combinations contained in Section 203(b)(6) is applicable to the Offer and the Proposed Merger. By its terms, Section 203 will not apply to a business combination proposed after the corporation's board of directors has approved a merger of the corporation with another party. The Purchaser believes that the approval by the Company's Board of Directors of the proposed Warner Merger is the sort of action contemplated by Section 203(b)(6), and that the restrictions on business combinations contained in Section 203 are accordingly inapplicable. In the Delaware Litigation, the Purchaser is seeking, among other things, declaratory relief to this effect, or, in the alternative, an order

to or endorse any takeover proposal." Notwithstanding the Black-out Provision, the Warner Merger Agreement goes on to provide that if "(x) any person acquires securities representing 10% or more . . . or commences a tender or exchange offer following the successful consummation of which the offeror and its affiliates would beneficially own securities representing 25% or more . . . of the voting power of [the Company] . . . and (y) at any time prior to the approval of [the Warner Merger] Agreement by the stockholders of the [Company] . . . the Board of Directors of [the Company], acting with the advice of the [Company's] counsel and investment bankers, determines that it is in the best interest of the [Company's] stockholders to take, or seek to take, one or more actions in response to such [acquisition of shares or tender or exchange offer]" then, the Company may take certain actions otherwise prohibited in the Warner Merger Agreement, provided that the Board of Directors of the Company may not "take any such action until after reasonable notice to and consultation with [Warner] with respect to such action and that such Board of Directors shall continue to consult with [Warner] after taking such action and, in addition . . . (A) if the [Company] receives any takeover proposal . . . from any person other than [Warner], then [the Company] shall promptly inform [Warner] of the terms and conditions of such proposal and the identity of the person making it and (B) the [Company] shall not take any action to solicit, encourage or otherwise facilitate any takeover proposal from any person other than [Warner], except after reasonable consultation with [Warner]."

To the extent the Company is free to do so without violating the terms of the Warner Merger Agreement, the Purchaser will seek to negotiate with the Company and currently intends to offer to enter into a definitive merger agreement with the Company (the "Proposed Merger Agreement") which would provide for consummation of the Offer and the Proposed Merger. See Sections 10 and 11.

Conditions to the Offer

The Offer is subject to the fulfillment of a number of conditions, including the following:

Minimum Number of Shares. Consummation of the Offer is subject to, among other things, there being validly tendered and not withdrawn prior to the expiration of the Offer at least a majority of the total number of outstanding Shares on a fully diluted basis (the "Minimum Number of Shares").

The Proxy Statement recites that as of May 1, 1989, there were 56,977,150 Shares outstanding, and an additional 7,652,484 Shares reserved for outstanding stock plans. Assuming that no Shares (other than those reserved on May 1, 1989) were issued after such date and all reserved Shares were reserved for outstanding options or rights, the Minimum Number of Shares would be 32,314,818.

If the Purchaser beneficially owns 90% or more of the outstanding Shares after consummation of the Offer, the "short form" merger provisions of the Delaware Law would permit the Proposed Merger to occur without the vote of any of the Company's other stockholders and without action by the Company's Board of Directors. If a "short form" merger is available under the Delaware Law and the conditions of the Offer have been satisfied, Parent expects to cause the Purchaser or a subsidiary of the Purchaser to consummate a "short form" merger of the Purchaser or one of its affiliates with the Company. See Section 11.

Preferred Stock Purchase Rights. Consummation of the Offer is subject to, among other things, the Purchaser being satisfied, in its sole discretion, that the Rights have been redeemed by the Board of Directors of the Company or have been invalidated or are otherwise inapplicable to the Offer and a merger or other business combination involving the Company and any affiliate of Parent.

According to the Proxy Statement and the Company's other public filings, the Company distributed a dividend of one Right for each outstanding Share to stockholders of record at the close of business on April 29, 1986 and provided for the issuance of one Right with each Share issued between April 29, 1986 and the earliest of the Distribution Date (as defined in the Rights Agreement) and expiration or redemption of the Rights.

In certain circumstances described in Section 11, the Rights will become exercisable on the Distribution Date and separate certificates evidencing the Rights will be distributed as soon as practicable thereafter by the Rights Agent. However, prior to the Distribution Date, the Rights Agreement may be amended to delay the Distribution Date and, until such later date, no separate certificates will be distributed.

Upon the occurrence of certain acquisition transactions, including the acquisition of the Company pursuant to a merger or other business combination, each Right entitles the holder to purchase for $300 an amount of common equity of the acquiring person (or one of its affiliates) having a market value of $600.

consummation of the Warner Merger will own securities representing approximately 62% of the outstanding voting power of the Company following consummation of the Warner Merger.

The obligations of the parties to effect the Warner Merger are subject to a number of conditions, including approval of the Warner Merger Agreement by the stockholders of Warner at a special meeting to be held for that purpose and by the Company's stockholders at its 1989 Annual Meeting of Stockholders. According to the Proxy Statement, the Company has scheduled its Annual Meeting for June 23, 1989 and set the record date for voting at such meeting at May 1, 1989. Consummation of the Warner Merger is also subject to obtaining certain regulatory approvals.

This is not a solicitation of proxies, and stockholders are requested not to send to the Purchaser, Parent or their affiliates any proxies in connection with the Warner Merger Agreement.

The Company and Warner also entered into a Share Exchange Agreement dated as of March 3, 1989 (the "Share Exchange Agreement"), pursuant to which (i) Warner agreed to issue and deliver to the Company at the closing of the Share Exchange Agreement 17,292,747 shares (the "Warner Exchange Shares") of Warner Common Stock and (ii) the Company agreed to issue and deliver to Warner (x) at such closing 7,080,016 Shares (the "Company Exchange Shares") and (y) immediately prior to the consummation of the Warner Merger, 961,111 additional Shares, subject to possible adjustment, including the associated Rights. According to the Proxy Statement, the Warner Exchange Shares represent approximately 9.4% of the outstanding shares of Warner Common Stock and the Company Exchange Shares represent approximately 11.1% of the outstanding Shares, in each case after giving effect to the proposed exchange. As originally executed, the closing under the Share Exchange Agreement was to take place on the first business day following the satisfaction or waiver of the conditions to the obligations of the parties (which primarily related to required waiting periods, regulatory approvals and stock exchange listing.)

On April 12, 1989, the Company disclosed that the Commission had advised it and Warner in connection with the Commission's preliminary review of the proxy materials filed with respect to the Warner Merger that, in the Commission's view, the exchange of shares contemplated by the Share Exchange Agreement would preclude pooling of interests accounting treatment for the Warner Merger. The Company and Warner then entered into Amendment No. 1 dated May 5, 1989 to the Share Exchange Agreement, which provides that the closing thereunder will occur, subject to the satisfaction or waiver of the closing conditions, on the earlier of February 28, 1990 and the fifth business day following the giving of written notice subsequent to the occurrence of a Trigger Event (as defined in the Warner Merger Agreement) by either party to the other party of its election to cause the closing thereunder to occur. A "Trigger Event" is defined in the Warner Merger Agreement to occur in the event that any person acquires securities representing 10% or more, or commences a tender or exchange offer following the successful consummation of which the offeror and its affiliates would beneficially own securities representing 25% or more, of the voting power of the Company or Warner. The amended Share Exchange Agreement also provides that, notwithstanding the foregoing, if the required approval of the Warner Merger by the stockholders of the Company or Warner shall not have been obtained by reason of the failure to obtain the required vote at a duly held meeting of stockholders and the exchange has not previously occurred, then such closing shall not occur pursuant to the Share Exchange Agreement.

According to the Proxy Statement, the Company and Warner entered into the Share Exchange Agreement "with a view towards and in furtherance of the parties' commitment to the consummation of the [Warner] Merger." The Purchaser believes that the Share Exchange Agreement, as amended, serves no proper corporate purpose and is designed unlawfully to "lock up" the proposed Warner Merger in violation of the rights of the Company's stockholders. On June 7, 1989, the Purchaser commenced litigation (the "Delaware Litigation") in the Court of Chancery of the State of Delaware (the "Chancery Court") against the Company, members of the Board of Directors of the Company and Warner seeking, among other things, a declaration that the Share Exchange Agreement is null and void and an order enjoining any steps to implement it.

As part of the Warner Merger Agreement, the Company has agreed to a black-out provision (the "Black-out Provision"), pursuant to which it will not, nor will it permit any of its subsidiaries to, nor will it "authorize or permit any of its officers, directors or employees or any investment banker, financial advisor . . . attorney, accountant or other representative retained by it or any of its Subsidiaries to, solicit or encourage (including by way of furnishing information), or take any other action to facilitate, any inquiries or the making of any proposal which constitutes, or may reasonably be expected to lead to, any takeover proposal, or agree

To All Holders of Shares of Common Stock (including the Associated Preferred Stock Purchase Rights) of TIME INCORPORATED:

INTRODUCTION

KDS Acquisition Corp., a Delaware corporation (the "Purchaser") and an indirect wholly owned subsidiary of Paramount Communications Inc., a Delaware corporation, formerly named Gulf+Western Inc. ("Parent"), hereby offers to purchase all outstanding shares of Common Stock, par value $1.00 per share (the "Shares"), of Time Incorporated, a Delaware corporation (the "Company"), including the associated Preferred Stock Purchase Rights (the "Rights") at a price of $175 per Share, net to the seller in cash without interest thereon, upon the terms and subject to the conditions set forth in this Offer to Purchase and in the related Letter of Transmittal (together with any supplement thereto, the "Letter of Transmittal", and which, together with the Offer to Purchase, constitutes the "Offer"). Unless the context otherwise requires, all references to Shares shall include the associated Rights issued pursuant to the Rights Agreement dated April 29, 1986, as amended in January 1989 and May 1989 (as so amended, the "Rights Agreement") between the Company and Morgan Guaranty Trust Company of New York, as Rights Agent (together with its successor, Morgan Shareholder Services Trust Company, the "Rights Agent"). All references to the Rights shall include all benefits that may inure to holders of Rights pursuant to the Rights Agreement.

Tendering stockholders will not be obligated to pay brokerage fees or commissions or, except as set forth in Instruction 6 of the Letter of Transmittal, stock transfer taxes on the purchase of Shares pursuant to the Offer. The Purchaser will pay all charges and expenses of Morgan Stanley & Co. Incorporated, as Dealer Manager (the "Dealer Manager"), Citibank, N.A. (the "Depositary") and Kissel-Blake Inc. (the "Information Agent") incurred in connection with the Offer. See Section 9 for additional information concerning the Purchaser and Parent.

The Offer is subject to the terms and conditions set forth herein, including the conditions set forth in this Introduction and Section 14.

The purpose of the Offer is to enable Parent and the Purchaser to acquire control of, and the entire equity interest in, the Company. The Purchaser intends to propose and seek to have the Company, as soon as practicable following consummation of the Offer, consummate a merger or similar business combination (the "Proposed Merger") with the Purchaser or another direct or indirect subsidiary of Parent, pursuant to which each then outstanding Share (other than Shares owned by the Purchaser or any of its affiliates, Shares held in the treasury of the Company, and Shares owned by stockholders who perfect any available appraisal rights under the General Corporation Law of Delaware (the "Delaware Law")) would be converted into the right to receive an amount in cash equal to the price per Share paid in the Offer. Certain provisions of the Company's Restated Certificate of Incorporation (the "Charter") and the Delaware Law, and certain terms of the Rights, as well as other matters described herein will affect the ability of the Purchaser to obtain control of the Company and to consummate the Proposed Merger. Accordingly, the timing and other terms of the Proposed Merger will necessarily depend upon a variety of factors and legal requirements, including those described herein.

The Warner Transaction

According to the Registration Statement on Form S-4 (the "S-4 Registration Statement") of the Company, filed with the Securities and Exchange Commission (the "Commission") on May 22, 1989, and the Joint Proxy Statement (the "Proxy Statement") of the Company and Warner Communications Inc. ("Warner") included therein, the Company, TW Sub Inc., a wholly owned subsidiary of the Company ("Merger Sub") and Warner executed an Agreement and Plan of Merger dated as of March 3, 1989 (as amended and restated as of May 19, 1989 (the "Warner Merger Agreement"), providing for the merger (the "Warner Merger") of Merger Sub with and into Warner. Upon consummation of the Warner Merger, the Company is to be renamed Time Warner Inc. and Warner would become a wholly owned subsidiary of Time Warner Inc. Pursuant to the Warner Merger, each share of Warner common stock, par value $1.00 per share (the "Warner Common Stock"), is proposed to be converted into the right to receive 0.465 of a share of common stock of Time Warner Inc. (and a corresponding percentage of a Right), subject under certain circumstances to downward adjustment. Each share of Series B Preferred Stock of Warner ("Warner Preferred Stock") is proposed to be converted into the right to receive one share of a substantially similar series of Time Warner Inc. preferred stock pursuant to the Warner Merger. According to the Proxy Statement, the stockholders of Warner immediately prior to

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IMPORTANT

Any stockholder desiring to tender all or any portion of his Shares (and the associated Preferred Stock Purchase Rights (the "Rights")) should either (a) complete and sign the Letter of Transmittal (or a facsimile thereof) in accordance with the instructions in the Letter of Transmittal, mail or deliver it and any other required documents to the Depositary and either deliver the certificates for such Shares and, if applicable, Rights to the Depositary along with the Letter of Transmittal or deliver such Shares and, if applicable, Rights pursuant to the procedure for book-entry transfer set forth in Section 3 (in the case of Rights, only if such procedures are available) or (b) request his broker, dealer, commercial bank, trust company or other nominee to effect the transaction for him. A stockholder whose Shares and, if applicable, Rights are registered in the name of a broker, dealer, commercial bank, trust company or other nominee must contact such person if he desires to tender his Shares and, if applicable, Rights.

Unless the Rights have been redeemed, stockholders will also be required to tender one Right for each Share tendered in order to effect a valid tender of such Share. If separate certificates for the Rights are not issued, a tender of Shares will also constitute a tender of the associated Rights.

A stockholder who desires to tender his Shares and whose certificates for such Shares and, if applicable, Rights are not immediately available, or who cannot comply with the procedure for book-entry transfer on a timely basis, may tender such Shares and, if applicable, Rights by following the procedures for guaranteed delivery set forth in Section 3.

Questions and requests for assistance may be directed to the Information Agent or the Dealer Manager at their respective addresses and telephone numbers as set forth on the back cover of this Offer to Purchase. Additional copies of this Offer to Purchase, the Letter of Transmittal and other tender offer materials may be obtained from the Information Agent as set forth on the back cover of this Offer to Purchase, and will be furnished promptly at the Purchaser's expense.

Offer to Purchase for Cash
All Outstanding Shares of Common Stock
(Including the Associated Preferred Stock Purchase Rights)
of

Time Incorporated

at

$175 Net Per Share

by

KDS Acquisition Corp.

an indirect wholly owned subsidiary of

Paramount Communications Inc.

THE OFFER AND WITHDRAWAL RIGHTS WILL EXPIRE AT 12:00 MIDNIGHT, NEW YORK CITY TIME, ON WEDNESDAY, JULY 5, 1989, UNLESS EXTENDED.

THE OFFER IS CONDITIONED UPON, AMONG OTHER THINGS, (A) THERE BEING VALIDLY TENDERED AND NOT WITHDRAWN PRIOR TO THE EXPIRATION OF THE OFFER AT LEAST A MAJORITY OF THE TOTAL NUMBER OF OUTSTANDING SHARES OF COMMON STOCK ON A FULLY DILUTED BASIS, AND (B) THE PURCHASER BEING SATISFIED, IN ITS SOLE DISCRETION, THAT (1) THE PREFERRED STOCK PURCHASE RIGHTS HAVE BEEN REDEEMED BY THE BOARD OF DIRECTORS OF THE COMPANY OR HAVE BEEN INVALIDATED OR ARE OTHERWISE INAPPLICABLE TO THE OFFER AND A MERGER OR OTHER BUSINESS COMBINATION INVOLVING THE COMPANY AND ANY AFFILIATE OF PARAMOUNT COMMUNICATIONS INC., (2) AFTER CONSUMMATION OF THE OFFER, SECTION 203 OF THE DELAWARE GENERAL CORPORATION LAW WOULD NOT PROHIBIT FOR ANY PERIOD OF TIME, OR IMPOSE ANY VOTING REQUIREMENTS IN EXCESS OF MAJORITY STOCKHOLDER APPROVAL WITH RESPECT TO, A MERGER OR OTHER BUSINESS COMBINATION INVOLVING THE COMPANY OR ANY OF ITS SUBSIDIARIES AND ANY AFFILIATE OF PARAMOUNT COMMUNICATIONS INC., (3) THE DISCRIMINATORY VOTE REQUIREMENT OF ARTICLE V OF THE COMPANY'S RESTATED CERTIFICATE OF INCORPORATION IS INAPPLICABLE TO THE OFFER AND A MERGER OR OTHER BUSINESS COMBINATION INVOLVING THE COMPANY AND ANY AFFILIATE OF PARAMOUNT COMMUNICATIONS INC., (4) ALL MATERIAL FCC LICENSE TRANSFER APPROVALS AND ALL APPROVALS, CONSENTS AND FRANCHISE TRANSFERS RELATING TO THE PROGRAMMING AND CABLE TELEVISION BUSINESSES OF THE COMPANY AND ITS SUBSIDIARIES AND JOINT VENTURES HAVE BEEN OBTAINED ON TERMS SATISFACTORY TO THE PURCHASER, EXCEPT FOR SUCH APPROVALS, CONSENTS AND FRANCHISE TRANSFERS AS ARE NOT MATERIAL IN THE AGGREGATE, (5) THE AGREEMENT AND PLAN OF MERGER AMONG THE COMPANY, TW SUB INC. AND WARNER COMMUNICATIONS INC. HAS BEEN TERMINATED IN ACCORDANCE WITH ITS TERMS OR, IF SUCH AGREEMENT HAS NOT BEEN SO TERMINATED, REMAINS SUBJECT TO THE APPROVAL OF THE STOCKHOLDERS OF THE COMPANY AND THE PURCHASER WILL OBTAIN UPON CONSUMMATION OF THE OFFER THE RIGHT TO VOTE A SUFFICIENT NUMBER OF SHARES TO DENY SUCH APPROVAL, (6) THE EXCHANGE OF SHARES WITH WARNER COMMUNICATIONS INC. CONTEMPLATED IN THE SHARE EXCHANGE AGREEMENT HAS BEEN PERMANENTLY ENJOINED OR SUCH AGREEMENT HAS BEEN TERMINATED WITHOUT LIABILITY TO THE COMPANY PRIOR TO THE EXCHANGE OF SHARES, AND (7) THE PURCHASER HAS OBTAINED SUFFICIENT FINANCING TO ENABLE IT TO PURCHASE THE SHARES SOUGHT IN THE OFFER, TO REFINANCE CERTAIN INDEBTEDNESS OF THE COMPANY, ITS SUBSIDIARIES AND PARAMOUNT COMMUNICATIONS INC., AND TO PAY RELATED FEES AND EXPENSES. THE OFFER IS ALSO SUBJECT TO OTHER TERMS AND CONDITIONS. SEE THE INTRODUCTION AND SECTIONS 1 AND 14.

(Continued on next page)

The Dealer Manager for the Offer is:

MORGAN STANLEY & CO.

Incorporated

June 7, 1989