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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

November 3, 2000

The Honorable William Kennard
 Chairman
 Federal Communications Commission
 445 12th Street, S.W.
 Washington, D.C. 20554

Dear Chairman Kennard:

We were very disappointed to learn that the Federal Communications Commission (FCC) has "stopped the clock" on its review of the license transfer applications related to the proposed merger between AOL and Time Warner, pending action by the Federal Trade Commission (FTC). You have taken this action despite the expiration of your self-imposed 180 day time limit for reviewing license transfers. (Indeed, the parties to the merger first filed their license transfer applications on February 11, 2000, more than eight months ago.) This decision is troubling and reinforces our belief that the FCC should be placed under statutory time limits when reviewing applications for license transfers.

While we appreciate the work your agency has done in recent months to implement a more transparent, time-limited review process, the decision in this case underscores our concern that self-imposed time limits are inadequate and do not fully address the problem of harmful delays. This is because, ultimately, the FCC has the discretion to toll the merger review clock, therefore causing uncertainty for all parties with applications pending before the Commission. As a result, many of the benefits that might flow from self-imposed time limits are lost. Another disturbing aspect of this decision is that it appears to demonstrate an inability by the FCC to separate its "public interest" review from strict antitrust reviews conducted by the FTC and the Department of Justice (DOJ). It is our strong belief that the FCC should be able to determine whether proposed license transfers are in the public interest without waiting for a final antitrust determination by the FTC or DOJ.

In addition, with applications relating to mergers involving the European market, delays in the FCC's review process will often mean that the European Union, with its strict five month time limit, will often issue its decision on mergers prior to the FCC. It is plainly undesirable to have the EU routinely coming to decisions regarding mergers involving American companies prior to the U.S. government completing its review.

Our concern is heightened by the fact that there are many other instances of lengthy delays in the FCC review process. For example, the Commission still has not acted on applications concerning the sale of several small radio stations in the Marietta, Ohio/Parkersburg, West Virginia market despite the fact that the applications have been pending for over 14 months and notwithstanding your personal assurance that the applications would be acted upon by the end of this past summer. Again, as in this case, such delays harm the parties awaiting agency action and create uncertainty for all parties, including their employees, with applications pending before the Commission.

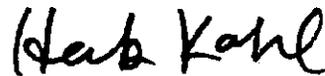
As noted, we are pleased with efforts the FCC has made in recent months to reform its application review process. The FCC has considered our concerns with its review process and in March it implemented a 180 day time limit. At that time, it appeared that the 180 day time limit was meant to accommodate even the most complex transactions, and would be tolled only "due to the applicant's action or inaction." Indeed, the FCC recently sent our staff a draft "Progress Report on FCC review of Applications relating to Proposed Mergers," and this document expressly stated that the 180 day time limit "can be tolled only for delays in receiving requested information or to account for major revisions in the application." (Emphasis added). Delays in both these and other cases appear to ignore the FCC's own policies and undercut the objectives of streamlining review of applications relating to mergers and providing transparency to applicants.

In closing, we want to stress that our concern is solely with excessive delays by the FCC in determining whether or not license transfers relating to mergers are in the public interest. This letter is not intended to express any opinion regarding the merits of the AOL/Time Warner application, about which we have written to you previously, nor whether it satisfies the FCC's public interest test. That decision is one for your agency, but it is one that should be made in a timely fashion. Therefore, we urge you to complete your review of all pending applications related to mergers as soon as possible and hope that such a delay will not occur again.

Sincerely,



MIKE DeWINE
Chairman, Subcommittee on
Antitrust, Business Rights, and
Competition



HERB KOHL
Ranking Member, Subcommittee on
Antitrust, Business Rights, and
Competition