

DANIEL L. BRENNER
Special Vice President, NCTA
Regulatory Policy

May 26, 2000

EX PARTE

Ms. Magalie R. Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, D.C. 20554

Re: CS Docket No. 00-30

Dear Ms. Salas:

Enclosed for filing in this docket is a letter sent to Chairman William E. Kennard responding to certain comments filed in this proceeding.

Respectfully submitted,

Daniel L. Brenner

Daniel L. Brenner

Enclosure

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NATIONAL CABLE TELEVISION ASSOCIATION

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Senior Vice President - Legal &
Regulatory Policy

May 26, 2000

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

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OFFICE OF THE SECRETARY

Re: CS DOCKET NO. 00-30

Dear Mr. Chairman:

This letter is in response to pleadings in this docket filed by the National Association of Broadcasters and Association for Maximum Service Television, Inc. At the risk of adding a few pages to what is already a voluminous docket, we express strong disagreement with these trade association pleadings in the context of a specific merger.

As these parties well know, the Commission has proceedings that address the principal issues raised in these filings – digital must carry and program guides. In particular, the Commission is examining the question of the applicability of the must carry law in the context of digital television in a comprehensive docket.¹ The issues related to whether electronic program guides are “program related,” for purposes of analog must carry, are being considered in a separate proceeding.² These two policy questions are by no means specific to Time Warner, but apply to all cable operators. They are, and should be, addressed through proceedings of general applicability. Their resolution does not turn on the merits of this merger. As was the case with forced access advocates, the claims of broadcasters here are “equally meritorious (or nonmeritorious),” as the FCC’s AT&T-TCI merger decision put it, whether the merger occurs or not.³

Thus, we believe it is unwarranted and unhelpful for parties which represent a wide variety of interests to inject themselves into specific merger proposals with “drive-by” comments on issues on which they have already fully had an opportunity to comment elsewhere.

¹ See, e.g., CS Docket No. 98-120.

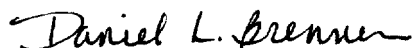
² See Petition for Special Relief of Gemstar International Group, Limited and Gemstar Development Corporation for Enforcement of the Communications Act of 1934, as Amended, and the Commission’s Must-Carry Rules, CSR-5528-Z.

³ AT&T-TCI Merger, CS Docket No. 98-178, 15 C.R. 29, ¶96 (1999).

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Otherwise, every merger review involving a party that may be affected by a rulemaking would be transformed into something else -- namely, a second forum to argue about what is being fully considered elsewhere. The Commission should reject, as it did in the AT&T-TCI merger, this sort of "piling on" in the context of a merger.

Respectfully submitted,



Daniel L. Brenner

DLB:smp

cc: The Honorable Susan Ness
The Honorable Harold Furchtgott-Roth
The Honorable Michael Powell
The Honorable Gloria Tristani
James Bird, FCC, Office of the General Counsel
To-Quyen Truong, FCC, Cable Services Bureau
Royce Dickens, FCC, Cable Services Bureau
Matthew Vitale, FCC, International Bureau
Marilyn Simon, FCC, International Bureau
Monica Desai, FCC, Wireless Telecommunications Bureau
Laura Gallo, FCC, Mass Media Bureau
Linda Senecal, FCC, Cable Services Bureau