



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

#### BACKGROUND

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

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

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

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

#### ATC's Business

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

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

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

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

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

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

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

Regulatory Restrictions on Transfer  
or Change of Control of Franchises

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

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

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

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

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

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

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

#### ATC's Joint Ventures

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

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

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

#### The Tender Offer

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



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

ATC Sues Paramount to Protect ATC's Business

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

Paramount's Application for FCC Approval

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

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

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

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

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

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

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

Litigation by State  
and Local Authorities

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

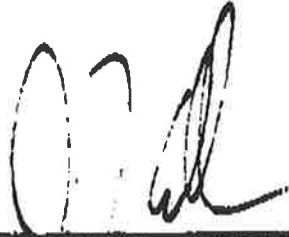
indemnification was necessary fully to protect ATC's interest in Casselberry. The City of Winter Park, Florida, which was not indemnified by ATC, also concluded that consummation of the Tender Offer would violate local law and its franchise agreement, and sought to intervene in the Casselberry action.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

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

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

STATE OF NEW YORK  
COUNTY OF NEW YORK

§§.1



Joseph J. Collins

Sworn to and subscribed before  
me this 7<sup>th</sup> day of July, 1989.

Harold E. Ahlrad  
Notary Public

HAROLD E. AHLRAD  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES 11/30, 1989