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. TIME INCORPORATED, 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.	C.A. No. 10866

AFFIDAVIT OF MARTIN D. PAYSON

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

MARTIN D. PAYSON, being duly sworn, deposes and says as follows:

1. I am a member of the Office of the President and General Counsel of Warner Communications Inc. ("Warner"). I submit this affidavit in opposition to Plaintiffs' Motion for a Temporary Restraining Order.

2. On March 3, Warner and Time Incorporated ("Time") entered into an agreement (the "Merger Agreement") providing for a merger of Warner into a wholly-owned subsidiary of Time. The merger of Warner and Time is a unique opportunity to create a combined American entity with the resources to be a worldwide media and entertainment company and to do so without incurring the burdens of a highly-leveraged debt structure or of the disruption to business operations that frequently are features of business combinations today.

The Share Exchange Agreement

3. Simultaneously with entry into the Merger Agreement, Time and Warner entered into the Share Exchange Agreement. Originally, it had been contemplated that the parties would effect a prompt exchange of each other's common stock after federal regulatory approval. That original concept was subsequently revised because of a concern that a prompt exchange of shares between Time and Warner could adversely impact the availability of pooling of interest accounting treatment for the merger transaction. Accordingly, the parties amended the Share Exchange Agreement to provide that, if a third-party commences a tender or exchange offer for 25% or more, or acquires 10% or more, of the stock of either Time or Warner (a "triggering event"), a

share exchange will occur five business days after either party notifies in writing the other party of its election to cause the exchange to occur.

4. In the event of a triggering event, either Time or Warner can require the share exchange to occur and, if effectuated, the share exchange results in each party acquiring stock in the other -- i.e., while Warner would acquire 7,080,016 shares of Time, Time would acquire 17,292,747 shares of Warner. At the time the Share Exchange Agreement was entered into, the exchange ratio was established based upon the average closing prices of Time and Warner common stock for the five days prior to the merger announcement. Thus the economic impact of the occurrence of an exchange was, at the time of agreement, not tilted in favor of one party or the other.

5. It was recognized, of course, that depending on future events, the share exchange could turn out to be advantageous either to Warner or to Time. In a situation where the share exchange was triggered by a tender offer being made for one party, one could assume that the market price of that party's stock would increase -- and that the Share Exchange Agreement, under those circumstances, would operate in favor of the disappointed party, which could be either Time or Warner.

6. The Share Exchange Agreement was designed so that it would not be a bar to a hostile tender offer being made by a third-party for either Time or Warner. In particular, so that shares issued under the Share Exchange Agreement could not be used to influence shareholder approval or disapproval of the merger, Section 5 provided that prior to the termination of the Merger Agreement any shares exchanged would be voted for and against all matters in the same proportion as the votes of all other shareholders.* And because the stock to be issued pursuant to the Share Exchange Agreement would be issued after the commencement of any third-party tender offer, the stock so exchanged would, by definition, not count under Section 203 of the Delaware General Corporation Law for purposes of determining whether a third-party offeror had acquired 85% of the shares of Time or Warner, as the case might be. Further, although the issuance of 7,080,016 additional shares of Time may increase the amount of financing required to acquire Time, Time will have received in exchange a substantial and valuable asset in the form of 17,292,747 Warner shares.

7. Finally, in addition to the foregoing, only a modest percentage of Time and Warner shares were in any

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* There is an exception, which is not applicable here, for votes in relation to matters other than the proposed merger in respect to which a third party solicits proxies.

event to be subject to the Share Exchange Agreement. In order to potentially avoid triggering a "significant change" under the terms of the BHC Shareholders Agreement with BHC and Chris-Craft, it had been necessary that Warner keep the number of Warner shares that would be subject to the Share Exchange Agreement below 10% of the outstanding Warner shares (albeit the parties recognized that even if this were done it was probable that Chris-Craft would contend that a "significant change" arose under other provisions of the BHC Shareholders Agreement -- as proved to be the case). The number of Time shares subject to the Share Exchange Agreement (approximately 11%) was then derived as a function of the respective market prices of Warner and Time shares. Thus, at the time the Merger Agreement was entered into, the BHC Shareholder Agreement constraint imposed an effective ceiling on the number of the shares the parties could agree to exchange. And, notably, even after the Court-approved settlement with Chris-Craft and BHC terminated the BHC Shareholders Agreement, Warner and Time made no attempt to increase the number of shares subject to the Share Exchange Agreement. In short, the rather modest percentage of shares subject to the Share Exchange Agreement was never intended as a "lock-up" and does not remotely serve as a "lock-up".

Reasons for the Share Exchange Agreement

8. There were a number of reasons the parties entered into the Share Exchange Agreement including a desire of each corporation to make a substantial investment in the other. A fundamental premise of the merger of equals was that neither Time nor Warner would be "sold" and thus shareholders would retain their ongoing equity interest in Time Warner. But by virtue of the need for regulatory and other approvals, a considerable period of time would elapse between the announcement of the merger and its consummation. During that time, both Warner and Time would be exposed to the risk that one or the other would be the subject of a hostile bid by a third party which, if successful, would leave the other in a position where it had incurred substantial expenses and otherwise acted to its detriment in reliance on the prospective merger but, if no merger occurred, would have nothing to show for this expense and effort. The Share Exchange Agreement was intended to provide a mechanism (a) to partially compensate the disappointed prospective merger partner for its expenses in pursuing the merger and for the loss of the unique opportunity to form a global media and entertainment company without the incurrence of debt, and (b) to allow the disappointed party to share to a modest extent in any premium offer for the

other party which occurred in response to the announcement of the merger.

9. Several additional factors took on particular importance from the perspective of Warner. First, from the outset it was recognized that Warner's entry into the merger agreement with Time inevitably was going to put in motion a chain of events which would irrevocably alter -- for the worse -- Warner's rights vis-a-vis Chris-Craft and BHC. Warner's Shareholders Agreement with BHC and Chris-Craft presented the risk that Warner, as a price for proceeding with the merger transaction with Time, could be forced -- even before the consummation of the merger, and even if the merger were ultimately not to reach consummation -- to dispose of its BHC stock, to forfeit its charter protections as a minority shareholder of BHC and to give up its right of first refusal with respect to the large block of Warner stock owned by Chris-Craft and BHC. Warner was prepared to bear this risk as a necessary price of moving forward with the merger. On the other hand, Warner was not desirous of finding itself in the posture of having irrevocably prejudiced itself vis-a-vis Chris-Craft and BHC, of ending up with _no_ Time merger, and having no measure of compensation to salve its losses.

10. As this Court knows, the risk that pursuit of the merger would adversely impact on Warner's rights vis-a-vis Chris-Craft and BHC was real -- indeed, such adverse consequences have already come to pass. In order to move forward with the Time merger, Warner found itself required to accede to Chris-Craft's position that the Merger Agreement itself constituted a "significant change" under the Shareholders Agreement and then, on May 19, 1989, to enter into the BHC Stipulation and Order (which this Court thereafter approved) which committed Warner to dispose of its BHC stock and to the loss of its BHC charter protections and right of first refusal. (Despite the fact that the Time-Warner merger was announced on March 3, 1989, Paramount did not make its move until after Warner had irrevocably committed itself to the BHC Stipulation and Order.)

11. Warner estimates that it will incur a tax liability upon the disposition of its BHC stock of as much as $125 million -- which may be somewhat ameliorated by certain tax offsets, which will then not be available to Warner in the future -- and that Warner will also incur substantial fees and expenses in connection with the disposition of the BHC stock. In addition, the aforementioned rights Warner has given up have substantial (but not readily calculable) value. Finally, Warner has paid or committed to pay substantial out-of-pocket expenses to pursue the merger

(excluding the cost of the time and effort of Warner's personnel).

12. A further reason for the Share Exchange Agreement was that, while in view of the low percentages of stock involved and the way the Share Exchange Agreement was structured it was recognized that it could not serve as a "showstopper" to block a hostile bid for one party or the other, it was hoped that the share exchange could have some deterrent effect -- albeit largely symbolic -- by evidencing the parties' commitment to effectuating the merger, and thereby conceivably serve to dissuade third-parties from seeking to disrupt the merger.

13. If Warner loses the merger as a consequence of Paramount's intervention, and then is deprived of its bargained-for contractual rights under the Share Exchange Agreement as well, Warner will have suffered monetary losses of as much as $150 million (and perhaps much more) and other significant losses that are not now readily calculable -- yet Warner will be left out in the cold without the bargained-for compensatory share exchange that the parties had agreed to at the outset as a condition to entering into the Merger Agreement.

Irreparable injury to Warner and
absence of irreparable injury to Paramount

14. Warner now faces the prospect of irreparable injury if the temporary restraining order being sought by Paramount were to be granted. Pursuant to Section 3 of the Share Exchange Agreement, if the exchange shares were not issued and exchanged prior to the date of the Time shareholder meeting (now scheduled for June 23, 1989) and if, at that meeting, Time shareholders -- in the current climate with the outstanding Paramount offer -- were to vote down the proposed merger, Warner is threatened with the irretrievable loss of the right to effect the share exchange and the consequent significant injury arising therefrom.

15. Conversely, there is no countervailing risk of irreparable injury to Paramount. If the TRO is not granted and the share exchange occurs, but this Court thereafter ultimately determines that the share exchange transaction should be voided, the share exchange is capable of being unwound. Under the terms of the Share Exchange Agreement (Section 7), the Time shares Warner would acquire pursuant to the share exchange are subject to various restrictions on transfer, including *inter alia* a right of first refusal.

16. Notably, the occurrence of the share exchange will not and cannot "stop" Paramount's tender offer. As

noted before, it was recognized from the outset that the Share Exchange Agreement would not preclude a hostile bid since, among other things, (i) the stock issued in the share exchange would be issued after the commencement of any hostile offer and thus would not be taken into account under Section 203 in determining whether a third-party had acquired 85% of the issuer's shares outstanding at the time such third-party commenced its offer, and (ii) the Share Exchange Agreement expressly provides that the exchanged shares will be voted for and against all matters in the same proportion as the votes of the other stockholders of the issuer (with an exception not applicable to votes in relation to the proposed merger) and thus any shares received by Warner could not influence the vote of Time's shareholders on the proposed Time-Warner merger.

Martin D. Payson

Sworn to before me this
9th day of June, 1989

Notary Public

PETER C. [illegible]
Notary Public, State of New York
No. 31-[illegible]
Qualified in New York County
Commission Expires March 30, 1991