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Re: Applications for Consent to Transfer Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee, CS Docket No. 99-251

Dear Mr. Garavito:

This letter responds to your two letters to me dated July 11, 2000 and July 18, 2000.¹ In those letters, AT&T Corp. (“AT&T”) requests, pursuant to paragraph 14 of the Safeguards Relating to Video Programming (“Safeguards”),² that it be permitted to participate in matters which AT&T alleges would have a significant impact on certain MediaOne Video Programming Interests, but which AT&T alleges are not directly related to the video programming activities of the MediaOne Video Programming Interests.³ This letter will address AT&T’s request with respect to New England Cable News (“NECN”). AT&T’s request is granted subject to the guidelines set forth below.

Safeguards Relating to Video Programming

Until AT&T complies with the divestiture requirements of the *Merger Memorandum Opinion and Order*, the Safeguards restrict AT&T’s contact with the MediaOne Video

¹ Letter dated July 11, 2000, from Stephen C. Garavito, General Attorney, to Magalie Roman Salas, Secretary, FCC, Transmittal of Letter dated July 11, 2000, from Stephen C. Garavito to Deborah A. Lathen, Chief, Cable Services Bureau (“July 11 Garavito Letter”); Letter dated July 18, 2000, from Stephen C. Garavito, General Attorney, to Magalie Roman Salas, Secretary, FCC, Transmittal of Letter dated July 18, 2000, from Stephen C. Garavito to Deborah A. Lathen, Chief, Cable Services Bureau (“July 18 Garavito Letter”).

² *In re Applications for Consent to Transfer Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 99-251, Memorandum Opinion and Order (“*Merger Memorandum Opinion and Order*”), FCC 00-202, Appendix B ¶ 14 (rel. Jun. 6, 2000).

³ See July 11 Garavito Letter at 1.

Programming Interests, which include NECN.⁴ Paragraph 12 of the Safeguards prohibits, *inter alia*, AT&T from sending representatives to NECN Management Committee meetings. Paragraph 12 provides:

AT&T shall have no role in the management or operation of iN Demand⁵ or the MediaOne Video Programming Interests during the Compliance Period. AT&T shall instruct its representatives serving on the Boards of Directors or management committees of iN Demand and the MediaOne Video Programming Interest not to attend any Board or other management committee meetings, receive any materials or other information, or otherwise have any contact with iN Demand or the MediaOne Video Programming Interests during the Compliance Period.⁶

Paragraph 13 further restricts AT&T's interaction with NECN:

No officer, director, or employee of AT&T shall, directly or indirectly, influence or attempt to influence, or otherwise participate in, the management or operation of iN Demand or the MediaOne Video Programming Interests.⁷

AT&T's Request

Paragraph 14 permits AT&T to file a written request with the Cable Services Bureau in order to seek permission to

participate in matters that would have a significant impact on iN DEMAND or the MediaOne Video Programming Interests but which are not directly related to the Video Programming activities of iN Demand or the MediaOne Video Programming Interests.⁸

If a request is granted, "AT&T's ability to participate in . . . the MediaOne Video Programming Interests shall be limited to the specific matters that are the subject of the request."⁹ If a request is not denied within 14 days of receipt of the request, it shall be deemed granted.¹⁰

With regard to NECN, AT&T makes two requests.¹¹ First, AT&T requests permission to

⁴ See *Merger Memorandum Opinion and Order*, FCC 00-202 Appendix B at ¶ 2(i), ¶¶12-13.

⁵ iN Demand is a programming service held by AT&T.

⁶ *Merger Memorandum Opinion and Order*, FCC 00-202 Appendix B at ¶ 12.

⁷ *Id.* at ¶ 13.

⁸ *Id.* at ¶ 14.

⁹ *Id.*

¹⁰ *Id.*

¹¹ July 18 Garavito Letter at 1. In its July 11 Letter, AT&T had originally made four requests with respect to

discuss with Hearst the future of NECN after the NECN Joint Venture Agreement (“Agreement”) expires on October 31, 2000.¹² Second, AT&T requests permission to send a representative to the July 20, 2000 NECN Management Committee meeting in order to avoid a possible default of the Agreement.¹³ According to your July 11 letter, AT&T and Hearst Cable News Inc. (“Hearst”) own 50% each of a joint venture that owns NECN, a 24-hour regional news channel. You state that, under paragraph 3.7 of the Agreement, “a breach or default occurs when either partner fails to send a representative to two consecutive Management Committee meetings.”¹⁴ As a remedy for a default, the Agreement permits the party not in default to purchase the defaulting party’s partnership interest at 20% less than fair market value.¹⁵

You state that AT&T representatives did not attend the June 15, 2000 meeting of the NECN Management Committee because the AT&T and MediaOne merger closed on that day.¹⁶ As noted above, paragraph 12 of the Safeguards prohibits AT&T from sending representatives to NECN Management Committee meetings. You state that if, pursuant to paragraphs 12 and 13 of the Safeguards, AT&T is not permitted to attend an NECN Management Committee meeting on July 20, 2000, “it could be argued that a default will occur,” thereby giving your NECN partner the right to declare a breach of the NECN Joint Venture Agreement and the right to purchase AT&T’s interest in NECN at 20% below fair market value. In order to avoid a default and in order to keep NECN operating, AT&T requests that it be permitted to attend the July 20, 2000 Management Committee meeting to discuss the following items:

1. The October 31, 2000 expiration of the term of the Agreement, the future structure of the partnership, including the buy/sell provisions of the Agreement, and the continued existence of the NECN service.
2. The manner in which the NECN service will be governed and managed during the Safeguards compliance period. Specifically, AT&T would reiterate the restrictions on its participation in the management and operation of NECN and seek agreement from Hearst that AT&T’s failure to attend NECN board meetings will not be considered a breach of the Joint Venture Agreement. AT&T would also request that Hearst provide advance notice to AT&T counsel of board items that, pursuant to the Joint Venture Agreement, require unanimous approval of the partners so that AT&T can determine whether they are items that would have a significant

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NECN, but later withdrew two requests. *See* July 18 Garavito Letter at 2.

¹² *Id.*

¹³ July 11 Garavito Letter at 2.

¹⁴ *Id.*

¹⁵ *Id.* (citing paragraph 10.3 of the Agreement).

¹⁶ *See Merger Memorandum Opinion and Order*, FCC 00-202 Appendix B ¶ 12.

impact on NECN and are not directly related to Video Programming activities.¹⁷

AT&T also requests that it be permitted to discuss these issues for a reasonable period following the board meeting.¹⁸

AT&T's request to discuss the first subject listed above – the October 31, 2000 expiration of the Agreement – is granted. The second request is granted subject to the following guidelines: Paragraphs 12 and 13 flatly prohibit AT&T's involvement in NECN and specifically forbid NECN from sending information to AT&T. Nevertheless, according to your letters, under the current Agreement, NECN may not be capable of operating without AT&T involvement because many NECN Management Committee items require unanimous partner approval, which appears to constitute a significant impact on NECN under paragraph 14 of the Safeguards.¹⁹ In order to keep NECN operating and to enforce paragraphs 12 and 13 at the same time, we expect that AT&T's discussions will center on modifying or waiving parts of the Agreement such that AT&T's involvement in NECN is not necessary during the Compliance Period, as that term is defined in the Safeguards.²⁰ Your letters do not specify what board items would require unanimous approval. Where possible, we expect AT&T to waive its rights under the Agreement to request unanimous approval of board items. Where such waiver is not possible, we expect AT&T to negotiate with Hearst a modification to the agreement to remove the unanimous approval provisions. In sum, the goal of the discussions should be AT&T's complete noninvolvement in NECN during the Compliance Period.

After your discussions with Hearst, unanimous approval of NECN Management Committee items should no longer be necessary. Thus, it is not necessary to address your request that Hearst be permitted to provide "advance notice to AT&T counsel of board items that, pursuant to the Joint Venture Agreement, require unanimous approval." However, to the extent that NECN or Hearst determine that AT&T's involvement in a matter is necessary to avoid a significant impact on NECN, Hearst and NECN may communicate this fact to AT&T, and AT&T may request appropriate relief under paragraph 14 of the Safeguards.

¹⁷ July 18 Garavito Letter at 1-2.

¹⁸ *Id.* at 2.

¹⁹ *See Merger Memorandum Opinion and Order*, FCC 00-202 Appendix B ¶ 14.

²⁰ *See id.* at ¶ 2(e).

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In addition, AT&T is granted 30 days from the date of this letter's release to continue its discussion of these issues with Hearst. At that time, AT&T should report to the Cable Services Bureau the progress of its discussions. Please note that, pursuant to paragraph 14 of the Safeguards, the discussions should be "limited to the specific matters that are the subject of the request."²¹ Finally, as a condition of the grant of AT&T's request, the Cable Services Bureau will accept AT&T's proposal that the Corporate Compliance Officer, appointed pursuant to paragraph 16 of the Safeguards, or her designee, attend the meeting and all other discussions with Hearst.²²

Sincerely,

Deborah A. Lathen
Chief
Cable Services Bureau

²¹ *See id.* at ¶ 14.

²² July 18 Garavito Letter at 2.