

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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|--------------------------|---|------------------|
| United States of America |) | |
| |) | |
| Plaintiff, |) | Civil Action No. |
| |) | |
| v. |) | Filed: |
| |) | |
| AT&T Corp., and |) | |
| MediaOne Group, Inc. |) | |
| |) | |
| Defendants. |) | |

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, filed its Complaint on May 25, 2000;

AND WHEREAS, plaintiff and defendants, AT&T Corp. (“AT&T”) and MediaOne Group, Inc. (“MediaOne”), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, AT&T and MediaOne agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the reorganization of certain business relationships of AT&T and MediaOne to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires AT&T and MediaOne to restructure certain of their

business relationships for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, AT&T and MediaOne have represented that the restructuring required below can and will be made, that AT&T and MediaOne can assure compliance with the requirements of this Final Judgment, and that AT&T and MediaOne will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions relating to the required restructuring or the limitations on subsequent agreements contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Definitions

As used in this Final Judgment:

A. "Affiliate" means any person, corporation, partnership, or joint venture that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person, corporation, partnership, or joint venture. For purposes of this definition, the term "own" means to own an equity interest (or the equivalent thereof) of 50 percent or more.

B. "AT&T" means AT&T Corp., a New York corporation with its headquarters in

New York, New York, its successors and assigns, and its parents, majority-owned subsidiaries, divisions, groups, and their officers, managers, agents, and employees. For purposes of Section IV of this Final Judgment, “AT&T” or its Affiliates shall not include Liberty Media or any entity which would be included within the definitions of “AT&T” or AT&T’s Affiliates solely because of Liberty Media’s ownership interests.

C. “Cable Modem Service” means any Residential Broadband Service provided over cable facilities.

D. “MediaOne” means MediaOne Group, Inc., a Delaware corporation with its headquarters in Englewood, Colorado, its successors and assigns, and its parents, majority-owned subsidiaries, divisions, groups, and their officers, managers, agents, and employees.

E. “Operating Agreement” means the agreement entitled Amended and Restated Operating Agreement of ServiceCo LLC, dated June 12, 1998, among Cable HoldCo LLC, Microsoft BOV, Inc., and CPQ Holdings, Inc.

F. “Residential Broadband Service” means any service offered to residential customers in the United States of America that permits users to transmit and receive information using Internet protocols at speeds which may exceed 128 kilobits per second.

G. “ServiceCo” means ServiceCo LLC, a Delaware limited liability company.

H. “ServiceCo Interest” means any direct or indirect financial ownership interest in, and any direct or indirect role in management or participation in control of, ServiceCo LLC to be held by AT&T pursuant to AT&T’s acquisition of MediaOne. However, any ServiceCo Interest held as of May 8, 2000 by AT&T or MediaOne solely by virtue of ownership of a limited partnership interest in Time Warner Entertainment Company, L.P. shall not be considered a

ServiceCo Interest for the purposes of this Judgment.

H. “Time Warner” means Time Warner, Inc., a Delaware corporation with its headquarters in New York, New York, Time Warner Entertainment Co., L.P., and ServiceCo, their successors and assigns, and their parents, divisions, groups, and majority-owned subsidiaries; and any legal entity that is subject to a merger or other agreement with Time Warner, Inc. and that would be included within this definition when such agreement is consummated.

III. Applicability

This Final Judgment applies to AT&T and MediaOne, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Restructuring

A. AT&T or MediaOne shall divest the ServiceCo Interest on or before December 31, 2001; provided, however, that this divestiture obligation shall not prohibit AT&T’s or MediaOne’s retention or acquisition of assets dedicated solely to the provision of service to MediaOne customers or any regional data centers that are used predominantly for the provision of service to MediaOne customers as defined in section 6.3(b) of the Operating Agreement (“Assets”).

B. AT&T and MediaOne must satisfy the requirements of Section IV (A) of this Final Judgment through one of the methods described in this Section IV (B) (1) - (3):

(1) AT&T and MediaOne shall take all necessary steps to implement (a) the dissolution of ServiceCo pursuant to the terms of sections 6.1 and 6.2 of the Operating Agreement; and (b) the distribution of the ServiceCo assets pursuant to the terms of

section 6.3 of the Operating Agreement; provided, however, that notwithstanding any other contractual rights of AT&T or MediaOne, AT&T and MediaOne shall consent to the acquisition by Time Warner of any or all of ServiceCo's remaining assets (i.e. those assets remaining after AT&T or MediaOne retain or acquire Assets) at the fair market value of those assets (determined by a third party appraisal if the parties do not agree on valuation) so long as AT&T or MediaOne are permitted to lease capacity on those assets and transitional support services at fair market value until June 30, 2002 in order to maintain the quality of Cable Modem Services that AT&T and MediaOne offer to their customers; or

(2) AT&T and MediaOne shall take all necessary steps to divest the ServiceCo Interest pursuant to section 9.3 of the Operating Agreement; or

(3) AT&T and MediaOne shall implement an alternative plan for divestiture of the ServiceCo Interest that has been agreed to by AT&T and MediaOne and approved in writing by Plaintiff in its sole discretion.

C. If the remaining parties to the Operating Agreement whose consent is required offer to allow AT&T and MediaOne to terminate their affiliation agreement and divest the ServiceCo Interest pursuant to either of the methods specified in Section IV (B) (1) or (2) above after the closing of the merger between AT&T and MediaOne and prior to December 31, 2001, AT&T and MediaOne shall accept that offer and divest the ServiceCo Interest on the date proposed by the other parties; provided that AT&T or MediaOne are permitted to lease capacity on those assets and transitional support services at fair market value until June 30, 2002, in order to maintain the quality of Cable Modem Services that AT&T and MediaOne offer to their

customers.

V. Limitations on Subsequent Agreements

A. Prior to the earlier of December 31, 2003 or two years after AT&T's and MediaOne's divestiture of the ServiceCo Interest, unless they obtain the prior consent of Plaintiff, AT&T, MediaOne, and their Affiliates shall not (1) enter into any contractual or other arrangement with Time Warner to jointly offer or provide any wholesale or retail Residential Broadband Service; (2) enter into any contractual or other arrangement with Time Warner that has the purpose or effect of preventing AT&T, MediaOne, their Affiliates or Time Warner from offering or providing a wholesale or retail Residential Broadband Service in any geographic region or to any group of customers; or (3) enter into any contractual or other arrangement with Time Warner that has the purpose or effect of preventing (a) AT&T, MediaOne, their Affiliates or Time Warner from including any content, services, capabilities, or features in any wholesale or retail Cable Modem Service offered by AT&T, MediaOne, their Affiliates, or Time Warner; or (b) AT&T, MediaOne or their Affiliates from granting preferential treatment in any wholesale or retail Cable Modem Service offered by AT&T, MediaOne or their Affiliates to content, services, capabilities, or features offered by any person other than Time Warner, or Time Warner from granting preferential treatment in any wholesale or retail Cable Modem Service offered by Time Warner to content, services, capabilities, or features offered by any person other than AT&T, MediaOne or their Affiliates.

B. Plaintiff shall consent to a proposed contractual or other arrangement if it determines in its sole discretion that such arrangement will not substantially lessen competition between AT&T and its Affiliates, and Time Warner in any market. Plaintiff shall be deemed to

have consented to the proposed arrangement if Plaintiff has not provided written objection within 30 days of the submission of a request for Plaintiff's consent. If Plaintiff provides a written objection to a request within the 30 day period, Plaintiff's determination shall be final and binding unless, on application by AT&T or MediaOne, the Court concludes that Plaintiff abused its discretion in refusing to consent to an agreement.

C. AT&T's and MediaOne's participation in the management and governance of ServiceCo prior to completion of the restructuring required by Section IV in accordance with the requirements of Section VI and its agreement to receive transitional services in accord with Section IV shall not violate the restrictions of Section V.

VI. AT&T's and MediaOne's Interim Participation in the Management and Governance of ServiceCo

Until the divestiture required by this Final Judgment has been accomplished, AT&T and MediaOne shall conduct their relationship with ServiceCo in accordance with all of the requirements specified below, except as Plaintiff may otherwise consent in writing:

A. Except as necessary to comply with this Final Judgment, AT&T and MediaOne shall take all necessary steps to ensure that the management of the ServiceCo Interest will be kept separate and apart from, and not influenced by, the operation of AT&T and its Affiliates, and all books, records, and competitively-sensitive sales, marketing, and pricing information associated with ServiceCo will be kept separate and apart from the books, records, and competitively-sensitive sales, marketing, and pricing information associated with AT&T's and its Affiliates' other businesses.

B. AT&T and MediaOne are prohibited (1) from participating in or attempting to

influence any decision by ServiceCo regarding ServiceCo's offering of wholesale or retail residential broadband services to any customer other than AT&T's, MediaOne's and Time Warner's cable systems; (2) from participating in or attempting to influence any decision by ServiceCo relating to the content or services provided by any person other than Time Warner to ServiceCo subscribers; and (3) from impeding ServiceCo's ability to obtain additional capital from other direct or indirect holders of equity in ServiceCo.

C. Upon closing of the merger of AT&T and MediaOne, AT&T shall appoint a person or persons (the "Appointee") to oversee the ServiceCo Interest, who will also be responsible for AT&T's and MediaOne's compliance with this section. The Appointee shall have complete managerial responsibility for the ServiceCo Interest, subject to the provisions of this Final Judgment and subject to review and direction by AT&T's Chairman of the Board, its Chief Financial Officer, its Chief Operating Officer, General Counsel, and its Board of Directors. In the event that the Appointee is unable to perform his or her duties, AT&T shall appoint a replacement within ten (10) working days. The Appointee shall have the authority to act on AT&T's and MediaOne's behalf in exercising the rights under the Operating Agreement and the Affiliation Agreement that AT&T and MediaOne are permitted to exercise under the terms of this Final Judgment.

1. The Appointee shall be permitted to consult with individuals whose responsibilities pertain to the MediaOne cable systems only when necessary to exercise rights under the Operating Agreement and the Affiliation Agreement that AT&T and MediaOne are permitted to exercise under the terms of this Final Judgment. The Appointee may disclose non-public information regarding ServiceCo's operations to personnel whose

responsibilities pertain to the MediaOne cable systems only when necessary to exercise AT&T's and MediaOne's management rights, and no such information regarding ServiceCo's operations may be disclosed by the Appointee or by personnel whose responsibilities pertain to the MediaOne cable systems to other personnel of AT&T or its Affiliates.

2. The Appointee shall not communicate with any individuals employed by AT&T, MediaOne or their Affiliates with responsibilities relating to the operations of Excite@Home or AT&T cable systems other than those acquired from MediaOne. The Appointee shall not be given access to any nonpublic information regarding the operations of Excite@Home or AT&T cable systems other than those acquired from MediaOne.

3. Except for those circumstances provided for in this Section or as may otherwise be required by law, in no event shall any employee of AT&T, MediaOne or their Affiliates, other than the Appointee, have access to any nonpublic information regarding the operations and management of ServiceCo.

VII. Compliance Inspection

For the purposes of determining or securing compliance of defendants with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to AT&T or MediaOne made to its principal office, shall be permitted without restraint or interference from AT&T and MediaOne:

1. to have access during office hours of AT&T or MediaOne to inspect and copy or,

at plaintiff's option to, request AT&T or MediaOne to provide copies of all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of AT&T or MediaOne, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, and to take sworn testimony from the officers, directors, employees, or agents of AT&T and MediaOne, who may have their individual counsel present, relating to any matters contained in this Final Judgment.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, made to AT&T or MediaOne, AT&T or MediaOne shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this section shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, or to the FCC (pursuant to a customary protective order or a waiver of confidentiality by AT&T or MediaOne), except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by AT&T or MediaOne to plaintiff, AT&T or MediaOne represent and identify in writing the material in any such information or documents as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10)

calendar days' notice shall be given by Plaintiff to AT&T or MediaOne prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which AT&T or MediaOne is not a party.

VIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purposes of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

IX. Further Provisions and Termination

A. The entry of this judgment is in the public interest.

B. Unless this Court grants an extension, this Final Judgment shall expire on the tenth anniversary of the date of its entry.

Date: _____

Judge, United States District Court