

[US] Court of Appeals Upholds Cable Television Ownership Rules While the FCC Approves AT&T/MediaOne Merger

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Only days after the United States Court of Appeals for the District of Columbia upheld the Federal Communications Commission's (FCC) cable television ownership rules, the FCC approved a merger between AT&T and MediaOne, creating the nation's largest cable television operator.

On 19 May 2000, the United States Court of Appeals for the District of Columbia upheld the FCC's rules limiting the number of subscribers a cable television operator may serve to 30% of the nation's cable market. In doing so, it rejected the claim of Time Warner Entertainment Co. (Time Warner) that the subscriber limit was a content-based restriction and therefore subject to "strict scrutiny" by the court. Rather, the court concluded that the limit was content-neutral and, as such, would be sustained if it advances important governmental interests and does not burden substantially more speech than necessary to further those interests.

The court concluded that this test was met because the rules advanced the important interest of preventing concentration of media ownership and promoting diversity of information available to the public. Furthermore, the court concluded that Time Warner did not demonstrate that subscriber limits burdened more speech than necessary to advance these government interests. Immediately after the court announced its decision, the FCC announced that it would begin enforcing its cable television ownership rules (which were stayed pending the outcome of the court's decision) in 180 days.

Next, on 5 June 2000, the FCC approved the merger of AT&T and MediaOne, creating the nation's largest cable television operator. Finding that the combined entity would serve approximately 40% of the nation's cable subscribers, the FCC required the company to sell assets necessary to bring it within the 30% cable television ownership cap. This required divestiture is in addition to the sale of RoadRunner, a cable Internet service, which the companies had previously agreed to sell in order to secure a recommendation of merger approval from the Department of Justice. While not dictating which assets the company would have to sell, the FCC gave the company 12 months to meet the 30% ownership cap. It is anticipated that the company will either sell MediaOne's 25% interest in Time Warner Entertainment or sell enough individually-owned cable systems to bring

the company within the ownership cap.

Time Warner Entertainment Co., L.P. v. United States of America, No. 96-5272, (D.C. Cir. Ct. of App.) of 19 May 2000.

