

Control Analysis of Time Warner Inc. as of 11/15/2005

- A. Incorporation and Operation:** Time Warner is incorporated as a Delaware Company (Charter § 1) and headquartered in One Time Warner Center, New York, NY 10019 (Fact Sheet of Official Website). Note, Time Warner is a holding company and has a number of operating subsidiaries.
- B. Shares:** Charter § 4.1 authorizes 25 MM of Common Stock, 1.8 MM of Series Common Stocks and 750M of “blank check” Preferred Stocks (Charter § 4.2). As of 10/28/05, Time Warner has 4,575,364,733 outstanding Common Stocks (10Q 11/2/05) and 87,245,036 shares of outstanding Series LMCN-V Common Stock, all of which are held by Liberty Media Corporation (“LMC”). (10Q 11/2/05, Proxy ‘05). **Series LMCN-V Common Stocks:** Series LMCN-V Common Stock is convertible into a number of shares of Common Stock equivalent to the Formula Number. Series LMCN-V Common Stock has a number of votes on the election of the director equivalent to 1/100 of the Formula Number. Other than the election of the director and charter amendment adversely affecting the rights of Series LMCN-V Common Stocks, Series LMCN-V Common Stock has no voting rights under any circumstances. (Certificate of Series LMCN-V Common Stock) According to Proxy ‘05, the Formula Number applicable as of 1/1/05 is 1.000. However, it may be changed afterwards, because Time Warner paid dividends to Common Stocks. According to 10K ‘05, LMC has no vote regarding the Series LMCN-V Common Stock.
- C. Shareholders:** Although Capital Research and Management Company holds more than 5% (239,003,200 shares) of the Common Stock as an institutional investment manager (13F 11/14/05), no other persons has more than 5% of beneficiary ownership of Time Warner. According to Vicker Stock Research, approx. 73 % of outstanding shares are held by institutional & mutual fund owners.
- D. Insider Holding:** Mr. Parsons, Chairman & CEO, holds 636,742 shares (0.01%) of Common Stocks and stock options representing 650,000 Common Stocks. 10 executive officers including Mr. Parsons hold 3,033,843 shares (0.07%) of Common Stocks and stock options representing 2,116,000 shares of Common Stocks (F-4s filed until 11/15/05).
13 Directors other than Mr. Parson hold 37,992,979 shares (0.83%) of Common Stocks and stock options representing 136,000 shares of Common Stocks. Among Directors, Mr. R.E. Turner, founder of Turner Broadcasting System, holds 35,998,658 shares (0.79%) of Common Stocks. (F-4s filed until 11/15/05)
Although all the stock options will be exercisable immediately if the director does not stand for re-election or is not re-elected, they represent just less than 0.05% of outstanding shares.
- E. Action by Shareholders:**
Special Meeting: Under DGCL § 211(d), special meetings may be called by such person(s) as may be authorized in the charter or bylaws in addition to the Board, Charter § 6 and Bylaws § 2.3 vest the power only to the CEO or a majority of the entire Board.
Written Consent: Although DGCL § 228 permits written consent in lieu of meetings as a default rule, Charter § 6 prohibit shareholder actions by written consent.
Amendment of Charter: Although DGCL § 242(b)(1) requires only a majority of voting presented as a default threshold, Charter § 8 requires the affirmative vote of 80% or more of then outstanding shares in order to amend certain Articles in the Charter.
Amendment of Bylaws: Although DGCL § 109(a) vests the power to amend by-laws in the shareholder majority vote as a default rule, Charter § 7 and Bylaws § 11 provides that either of the vote of a majority of the entire Board or the affirmative vote of 80% or more of then outstanding shares is required for amendment of the By-laws.
- F. Annual Shareholder Meeting:** The last annual shareholder meeting was held in 5/20/05 (Proxy ‘05). DGCL § 211(c) requires a Delaware company to hold an annual shareholders meeting within 13 months from the last annual shareholders meeting.
- G. Directors:** The number of Directors shall be determined by the Board (Bylaws § 3.2) and currently set at 15 (8K 4/4/05). However, because of resignation of Steve Case on 10/31/05, there is one vacancy (10Q 11/2/05). According to Bylaws 16 3.2, a majority of the members shall be “independent” directors in accordance with the NYSE criteria. In addition, according to Proxy ‘05, the Board has determined that 11 of the 15 nominees are independent. In fact, 11 of 14 directors are independent directors (Proxy ‘05).
Elections; Bylaws § 3.2 provides the “plurality” voting rule. Shareholders can nominate persons for election if a written notice is made not less than 90 days nor more than 120 days prior to the first anniversary date of the last annual meeting (Charter § 5.2; Bylaws § 3.3).
Charter § 5.1 opts out the written ballot requirement under DGCL § 211(e).
Term: Charter § 5.1 provides that all directors shall be elected at each annual meeting and hold office until the next annual meeting (See DGCL § 211).
Removal; DGCL § 141(k) permits the removal without cause by the majority vote of shareholders. Charter or Bylaws is silent.
Vacancies; Charter § 5.3 and Bylaws § 3.13 provide that any vacancies shall only be filled by the Board, the affirmative vote of a majority of the remaining directors.
- H. Unusual Charter or Bylaw Provisions:** The Board has the power to redeem any shares of any class of stocks held by Disqualified Holder, whose holding may result in the loss of any license or franchise from any government agency held by Time Warner or any subsidiaries. (Charter § 4.5).
- I. Antitakeover Measures:** Although Time Warner currently has no shareholder rights plan (See Joint Proxy 2000), there are no legal obstacles against introducing “morning-after” pill. Charter contains no provisions to “opt-out” of DGCL § 203.
- J. Special Regulatory Approvals:** Since Time Warner operates various kinds of business through its subsidiaries, further inquiries are necessary whether any regulatory approval is required when the control is transferred from public to certain controlling shareholder. For example, as to the cable business, a prior approval by FCC may be required under the Communication Act. In addition, if an acquirer is a foreign corporation, Exon-Florio Act should be taken into account.
- K. Time to Takeover:** Although shareholders may not call on shareholders meeting nor remove incumbent directors by written consent, all the directors are up for election at the next annual meeting, and could be replaced in a proxy fight at that time, once you could get a majority of shares at hand. Please note that the Board may implement a shareholders rights plan and regulatory approval may cause a delay in acquisition of majority of shares or exercise of its voting power.