

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Applications for Consent to the)	
Transfer of Control of Licenses and)	
Section 214 Authorizations by Time Warner Inc.)	CS Docket No. 00-30
and America Online, Inc., Transferors, to AOL)	
Time Warner Inc., Transferee)	

ORDER

Adopted: September 11, 2012

Released: September 12, 2012

By the Commission:

1. By this Order, we grant the request of Time Warner Cable, Inc. (“TWC”)¹ to terminate the remaining condition attached to the Commission’s approval of the transfer of control of certain licenses and authorizations resulting in the merger of Time Warner Inc. (“Time Warner”) and America Online, Inc. (“AOL”) in 2001.² No party responded to the public notice seeking comment on TWC’s request.³ In furtherance of our broader efforts to remove unnecessary regulations, based on information TWC submitted to the Commission and information ascertained by Commission staff, we conclude that changed circumstances have eliminated the rationale underlying the condition at issue and that removal of the condition is warranted for the same reasons we previously removed other conditions.⁴

2. At the time of the merger, AOL was the world’s largest Internet Service Provider (“ISP”).⁵ Time Warner was the second largest cable provider in the United States, possessed one of the world’s largest content libraries, and controlled the nation’s second largest broadband ISP, Road Runner.⁶ In its review of the proposed merger, the Commission expressed concerns about the merger’s potential harm to the high-speed Internet access market. To address these concerns, the Commission, among other

¹ Letter from Matthew A. Brill, Counsel for Time Warner Cable Time Inc., to Marlene H. Dortch, Secretary, FCC, CS Docket No. 00-30, at 3-4 (Mar. 7, 2012) (“Time Warner Cable Letter”). Throughout this Order, we refer to the merged firm as AOL Time Warner.

² *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, CS Docket No. 00-30, Memorandum Opinion and Order, 16 FCC Rcd 6547, 6600-02, ¶ 126 (2001) (“*AOL-Time Warner Merger Order*”).

³ *Commission Seeks Comment on Time Warner Cable’s Request to Terminate Remaining AOL Time Warner Merger Condition*, CS Docket No. 00-30, Public Notice, 27 FCC Rcd 6217 (2012).

⁴ See *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, CS Docket No. 00-30, Order, 27 FCC Rcd 638 (2012) (“*AOL Time Warner Termination Order*”).

⁵ *AOL-Time Warner Merger Order*, 16 FCC Rcd at 6551, ¶ 8. AOL provided “narrowband” Internet access service over traditional telephone lines and served more than 26 million subscribers. *Id.* at 6551, 6557-58, ¶¶ 8, 28. AOL also had the largest share of subscribers to instant messaging (“IM”) services. *Id.* at 6552, ¶ 10.

⁶ *Id.* at 6552, 6561, ¶¶ 11, 37.

requirements, conditioned its approval of the merger on a requirement prohibiting TWC, a subsidiary of Time Warner at the time, from discriminating on the basis of affiliation against any third-party ISPs permitted to use TWC's facilities to provide Internet service to subscribers.⁷ Specifically, this condition prevents TWC from discriminating against unaffiliated ISPs providing service to TWC customers, based on the ISP's lack of affiliation with TWC, with respect to (1) the customer's ability to select any ISP that is authorized by contract to serve TWC's customers; (2) the ISP's ability to determine the contents of its subscribers' Internet start-up screen; (3) the billing relationship between the ISP and the subscriber; or (4) the technical performance of the ISP.⁸ The condition also includes terms governing the disclosure of AOL Time Warner's contracts with third-party ISPs and enforcement provisions.⁹ TWC claims that this condition no longer has any purpose or effect given the fundamental adjustments to the business relationships among Time Warner, AOL, and TWC.¹⁰

3. In approving the merger, the Commission also imposed a condition concerning contracts with AT&T, then the nation's largest cable system owner, a related certification requirement, and other certification and notification requirements.¹¹ The Commission terminated those conditions in January 2012 in response to a request from Time Warner.¹² In so doing the Commission acknowledged that AOL, Time Warner, and TWC severed their corporate ties in 2009.¹³ In addition, the Commission determined that Time Warner did not maintain any ownership interest in AOL, its subsidiaries, or any other ISP and had no overlapping officers or directors with AOL or its subsidiaries.¹⁴ Similarly, the Commission found that AOL and TWC did not have any ownership interest in each other or any overlapping officers and directors.¹⁵ The Commission therefore decided "the rationale supporting adoption of the conditions [at issue in the *AOL Time Warner Termination Order*] no longer exists. Thus, [it] conclude[d] that . . . [those conditions were] no longer necessary in the public interest and should be terminated."¹⁶

⁷ *Id.* at 6600-02, ¶ 126.

⁸ *Id.*

⁹ *Id.*

¹⁰ Time Warner Cable Letter at 3-4.

¹¹ See *AOL Time Warner Termination Order*, 27 FCC Rcd at 639, ¶ 3.

¹² See generally *AOL Time Warner Termination Order*. The order terminated conditions that: (1) prohibited AOL Time Warner from entering into any agreement with AT&T that gave AOL or any other AOL Time Warner ISP exclusive carriage rights on AT&T's cable systems and further prohibited AOL Time Warner from entering into any agreement with AT&T for the purpose of limiting in any way AT&T's ability to enter into agreements with non-AOL Time Warner ISPs; (2) required AOL Time Warner to certify annually its compliance with the foregoing condition; (3) required AOL Time Warner to annually certify compliance with section 631 of the Communications Act, which requires cable operators to inform subscribers of, among other things, the nature of personally identifiable information the cable operator will collect and how the information will be used; and (4) required AOL Time Warner to notify the Commission of any transaction that increased its ownership in General Motors and/or its subsidiary, Hughes Electronics Corporation. *Id.* at 639, ¶ 3. The Commission had previously terminated a condition relating to AOL Time Warner's instant messaging service. *Id.* at 638, ¶ 2 n.3. See also Letter from Paul T. Cappuccio, Executive Vice President and General Counsel, Time Warner Inc., to Marlene H. Dortch, Secretary, FCC, CS Docket No. 00-30 (Jan. 6, 2010).

¹³ *AOL Time Warner Termination Order*, 27 FCC Rcd at 639-40, ¶ 4.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 640-41, ¶ 6.

4. In evaluating whether to terminate a merger condition, the Commission considers whether post-merger circumstances have changed in a material way that undermines the purpose of the condition.¹⁷ The Commission then assesses whether the condition remains necessary in the public interest based on that analysis.¹⁸ In this instance, as the Commission previously noted, corporate restructuring has severed the ties among AOL, Time Warner, and TWC.¹⁹ In addition, AOL no longer operates as a broadband ISP.²⁰ Given these findings, we conclude that the rationale supporting the adoption of the remaining *AOL-Time Warner* condition set forth in paragraph 2 above no longer exists. Therefore, this condition is no longer necessary in the public interest and should be terminated.²¹

5. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and (j), 214(a), 214(c), 309 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, 310(d), that the condition contained in paragraph 126 of the *AOL-Time Warner Merger Order*²² IS TERMINATED effective immediately.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁷ See, e.g., *id.* at 640, ¶ 6; *General Motors Corporation, Hughes Electronics Corp., Transferors and The News Corporation, Limited, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, 24 FCC Rcd 8674, 8678, ¶ 8 (2009).

¹⁸ See, e.g., *AOL Time Warner Termination Order*, 27 FCC Rcd at 640-41, ¶ 6; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner, Inc., Transferee, Petition of AOL Time Warner Inc. for Relief from the Condition Restricting Streaming Video AIHS*, CS Docket No. 00-30, Memorandum Opinion and Order, 18 FCC Rcd 16835, 16841, ¶ 14 (2003). *But cf. Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, Order, 17 FCC Rcd 8985, 8985-86, ¶¶ 2-3 (2002) (noting that the Commission adopted a condition to alleviate regulatory and competition concerns but a subsequent divestiture meant there was no longer a “regulatory reason” to maintain the condition).

¹⁹ See *supra* note 13.

²⁰ Time Warner Cable Letter at 4.

²¹ *AOL-Time Warner Merger Order*, 16 FCC Rcd at 6600-02, ¶ 126.

²² *Id.*