



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

October 6, 2000

The Honorable Tom Bliley
Chairman
U.S. House of Representatives
Committee on Commerce
Rayburn House Office Building, Room 2125
Washington, D.C. 20515-6113

Dear Chairman Bliley,

By letter dated September 26, 2000, you asked me to respond to several questions in connection with the Federal Communications Commission's review of AOL-Time Warner merger. Your questions and my responses are set forth below.

1. Do you believe that the imposition of open access provisions to the proposed merger between AOL and Time Warner could violate the First Amendment of the U.S. Constitution? Has the FCC analyzed this issue in connection with its review of this merger?

I have not formed an opinion on the question of whether an open access condition would violate the First Amendment. None of the parties to the merger proceeding has raised First Amendment concerns in connection with the issue of open access. If this issue were to be raised in the AOL-Time Warner proceeding, I would fully consider any input from the parties before making a decision.

2. On what statutory authority would the FCC be relying if it were to mandate open access as a condition of approving the AOL-Time Warner merger?

The FCC's authority to require cable open access is discussed in our recently issued Notice of Inquiry in GN Docket No. 00-185 (Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities). A copy of the NOI is attached for your convenience. If the Commission were to mandate open access as a condition of approving the AOL-Time Warner merger, it could also rely on its authority under Sections 214(a) and 310(d) of the Communications Act, 47 U.S.C. §§ 214(a), 310(d), to ensure that the transfer of ownership or control of Commission licenses and authorizations serves the public interest, convenience, and necessity, and its authority under Section 303(r), 47 U.S.C. § 303(r), to impose conditions on the grant of license transfer applications.

The Honorable Tom Bliley
October 6, 2000
Page 2

3. Please describe the nature of the relationship between the FTC and the FCC during the pendency of this particular merger. Specifically, please explain the different roles played by the FCC and FTC, the degree of interaction between the FTC and FCC, the mutual and separate issues being worked on by the FTC and FCC, the type of information that has been and continues to be shared between the FTC and FCC, and, whether there will be a joint FTC/FCC decision.

As the Commission has explained in prior merger orders, the FCC and the antitrust authorities – the Department of Justice and the Federal Trade Commission – each have independent authority to examine communications mergers, but the standards governing the FCC's review differ from the standards applicable to the DOJ and the FTC. The FTC, for example, must examine whether a merger will harm competition. The FCC, on the other hand, must determine whether the transfer of Commission licenses in connection with a merger will serve the public interest, convenience, and necessity. The FCC's review encompasses an examination of any anticompetitive effects the merger might create, but it also focuses on issues solely within the FCC's purview -- whether the merger would violate the Communications Act or Commission rules, whether the merger would substantially frustrate or impair the Commission's implementation or enforcement of the Communications Act, and whether the merger would interfere with the objectives of the Communications Act or other statutes.

The FTC and FCC have met on a number of occasions to discuss the status of each agency's investigation and to share information about each agency's analysis of particular issues. In addition, with the written permission of AOL and Time Warner, FCC staff have reviewed confidential information AOL and Time Warner have provided to the FTC. Finally, the FTC and FCC have met jointly with outside parties on two occasions, once with representatives of AOL and Time Warner concerning the Applicants' Memorandum of Understanding on the technological issues of ISP access to the Time Warner systems, and once with representatives of the Walt Disney Company concerning interactive TV service.

It is my understanding that Commission staff briefed your staff on issues the parties have raised in this proceeding.

4. In the past, the Commission has stated that it is encouraged that, as the demand for broadband capability increases, methods for delivering digital information at high speeds to consumers will emerge in virtually all segments of the communications industry, *i.e.*, wireline, wireless, satellite, and cable. Please describe how the Commission is considering the alternative methods of high-speed Internet access.

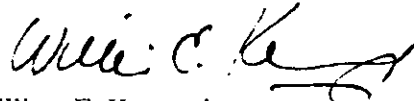
The Commission has analyzed the emergence of alternative methods of high-speed Internet access most recently in its second annual report on the deployment of advanced telecommunications capability, CC Docket No. 98-146, which was released on August 21, 2000 (Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To

The Honorable Tom Bliley
October 6, 2000
Page 3

Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996). The report addresses the status of deployment of advanced services over wireline, wireless, satellite, and cable facilities. A copy is attached for your convenience.

I appreciate this opportunity to address your questions about the FCC's review of the AOL-Time Warner merger.

Sincerely,



William E. Kennard
Chairman
Federal Communications Commission

cc: The Honorable John D. Dingell
The Honorable William J. (Billy) Tauzin
The Honorable Edward J. Markey