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October 19, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.—The Portals
TW-B204
Washington, D.C. 20554

**Re: America Online, Inc. Notice of *Ex Parte* Presentation
Applications of America Online, Inc. and Time Warner Inc.
for Transfers of Control, CS Docket No. 00-30**

Dear Ms. Salas:

On behalf of America Online, Inc. (“AOL”) and Time Warner Inc. (“Time Warner” and, together with AOL, the “Applicants”), submitted herewith pursuant to Section 1.1206(b)(2) of the Commission’s rules, are an original and one copy of this notice regarding a permitted oral *ex parte* presentation in the above-referenced proceeding. On October 18, 2000, representatives of AOL and Time Warner met with Deborah Lathen, Chief, Cable Services Bureau; Michelle Ellison, FCC Deputy General Counsel; and James Bird, FCC Assistant General Counsel, to review a range of issues raised in the course of this proceeding. Attending on behalf of AOL were George Vradenburg III, AOL Senior Vice President, Global and Strategic Policy; Steven N. Teplitz, AOL Vice President, Telecommunications Policy; and the undersigned. Attending on behalf of Time Warner was Catherine R. Nolan, Time Warner Vice President, Law and Public Policy.

The Applicants addressed issues regarding their commitment to provide consumers with a choice of multiple Internet service providers (“ISPs”) over Time Warner cable systems. The parties explained the unprecedented nature of both their Memorandum Of Understanding and the ensuing negotiations with unaffiliated ISPs that Time Warner has undertaken in pursuit of the expedited offering of multiple ISP choice over its cable systems. The Applicants also described how, consistent with Commission precedent in support of market-based solutions to open access, contractual and private enforcement mechanisms could be used to ensure unaffiliated ISPs of the merged entity’s compliance with the MOU. The parties noted, of course, that this merger will serve only to promote the cause of multiple ISP access over cable systems—an issue, in any event, that the Commission has consistently ruled inappropriate for merger-specific action.

The Applicants also noted their two recent written *ex parte* submissions to Ms. Lathen (dated October 5, 2000 and October 13, 2000) regarding relationships between the merged entity and AT&T. As explained in those filings, neither through ownership nor contractual relations will this merger give rise to any “AT&T connection” that would harm competition in any relevant arena. Indeed, the factors that supported the Commission’s decision in *AT&T/MediaOne* to allow AT&T to acquire and retain an interest in Time Warner Entertainment Company, L.P. (“TWE”) apply here with even greater force: the combination of AOL and Time Warner raises no new competitive or “AT&T connection” issues with respect to the provision of video programming, telephony, or broadband Internet access—and the merger will only help to spur pro-competitive results in each. Our recent *ex parte* letters also explained that, to the extent it elects to do so, AT&T’s ability to divest its interest in TWE would be wholly unaffected by the merger.

The parties also noted their September 29, 2000 *ex parte* letter discussing AOL’s interactive television (“ITV”) offering and related issues. As explained in that letter, interactive television is a still-nascent service with a range of entrants whose offerings incorporate a variety of different functions. AOL’s entry in the newly emerging ITV marketplace—AOLTV—is built upon open standards and platform independence. Further, as explained in our prior letter, the “cable return path” model advanced by some does not exist, is not necessary to ensure the viability of competitive interactive TV, and may not lawfully be mandated. In any event, “cable return path” concerns are not caused by or specific to the AOL/Time Warner merger.

The parties also briefly addressed issues regarding instant messaging (“IM”), detailed in AOL’s written *ex parte* presentation submitted to Cable Services Bureau Chief Deborah Lathen on September 29, 2000. That letter explained that, led by AOL’s pioneering efforts and by the competitive response of many large and small companies, IM today is robustly competitive, is free of barriers to entry or innovation, and offers vast consumer choice. Thus, AOL has no hold over IM users or competitors, and AOL’s IM services are in no way a barrier to any presence-enabled applications that any other competitor might wish to create or offer.

In fact, new IM services are being introduced, and competition and innovation are flourishing. Moreover, Internet users can and do use multiple IM services simultaneously. AOL internal data on AIM active users (both at home and at work) indicates a significant degree of overlapping usage between AIM, MSN Messenger, and Yahoo! Messenger:

- 45 percent of AIM active users reported using at least one other IM service;¹
- 31 percent of AIM active users reported using Yahoo! Messenger;
- 26 percent of AIM active users reported using MSN Messenger; and

¹ See chart entitled “45% of AOL Instant Messenger (“AIM”) Users Also Use at Least One Other IM Service,” attached.

- 13 percent of AIM active users reported using all three services.²

Thus, IM subscribership is not a “zero sum” game, and the early lead of the pioneering IM provider in no way precludes other IM providers from achieving comparable or greater subscribership.

Recent data on active user base growth makes this abundantly clear. According to Media Metrix, and as illustrated in the attached chart,³ AOL’s IM rivals today enjoy remarkable growth rates:

- Yahoo! Messenger’s active users grew by 22 percent, or 1.9 million, just in the month of July—for a total of 10.6 million active users; and
- MSN Messenger’s active users increased by 21 percent, or 1.5 million, in the month of June, and 44 percent, or 3.1 million, during June and July—for a total of 10.0 million active users.

And the growth rate of Microsoft, in particular, is only expected to increase. As described in the attached excerpt from its web site, Microsoft has embedded the MSN Messenger IM software into the latest consumer version of its operating system software, Windows Me.⁴ Accordingly, in the not so distant future nearly every consumer with a computer will have MSN Messenger on their desktop.

Further, innovation continues at an increasing pace in this dynamic field. For example, AT&T Wireless recently announced that it “will jump-start the two-way messaging phenomenon in the United States by [allowing] subscribers [to] send and receive short text messages from their compatible wireless phones.”⁵ Also, Sprint PCS today introduced three new wireless services available via its web-enabled wireless phones—AIM, Short Mail, “which creates shortcuts for sending text messages to other Sprint phones;” and Wireless Chat.⁶ Thus, the range of opportunities for providers of IM and related services continues to expand.

² See chart entitled “A Large Portion of AOL Instant Messenger (“AIM”) Users Also Use Yahoo! Messenger or MSN Messenger (And Many Use All Three),” attached.

³ See chart entitled “MSN Messenger and Yahoo! Messenger Are Experiencing Tremendous Growth,” attached. Note that these numbers are based on home and work usage combined.

⁴ See “Microsoft Window Me Product Guide: Send instant messages,” <<http://www.microsoft.com/windowsME/guide/internetexperience/messenger.asp>>, attached.

⁵ See AT&T Wireless Services, Inc. Press Release, “AT&T Wireless Brings the International Text Messaging Craze to the U.S.,” October 17, 2000, <<http://www.att.com/press/item/0,1354,3405,00.html>>, attached.

⁶ See, e.g., Roy Furchgott, “Sprint PCS Customers Get Instant Messages,” *The New York Times*, <<http://www.nytimes.com/2000/10/19/technology/19GEE1.html>>, attached; see also AOL

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In any event, as our September 29 letter explains, the industry debate regarding IM interoperability predates and has nothing to do with the merger. Further, FCC intervention in IM services would represent an unwarranted reversal of FCC policy against regulation of the Internet and information services generally.

Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/ Peter D. Ross

Peter D. Ross

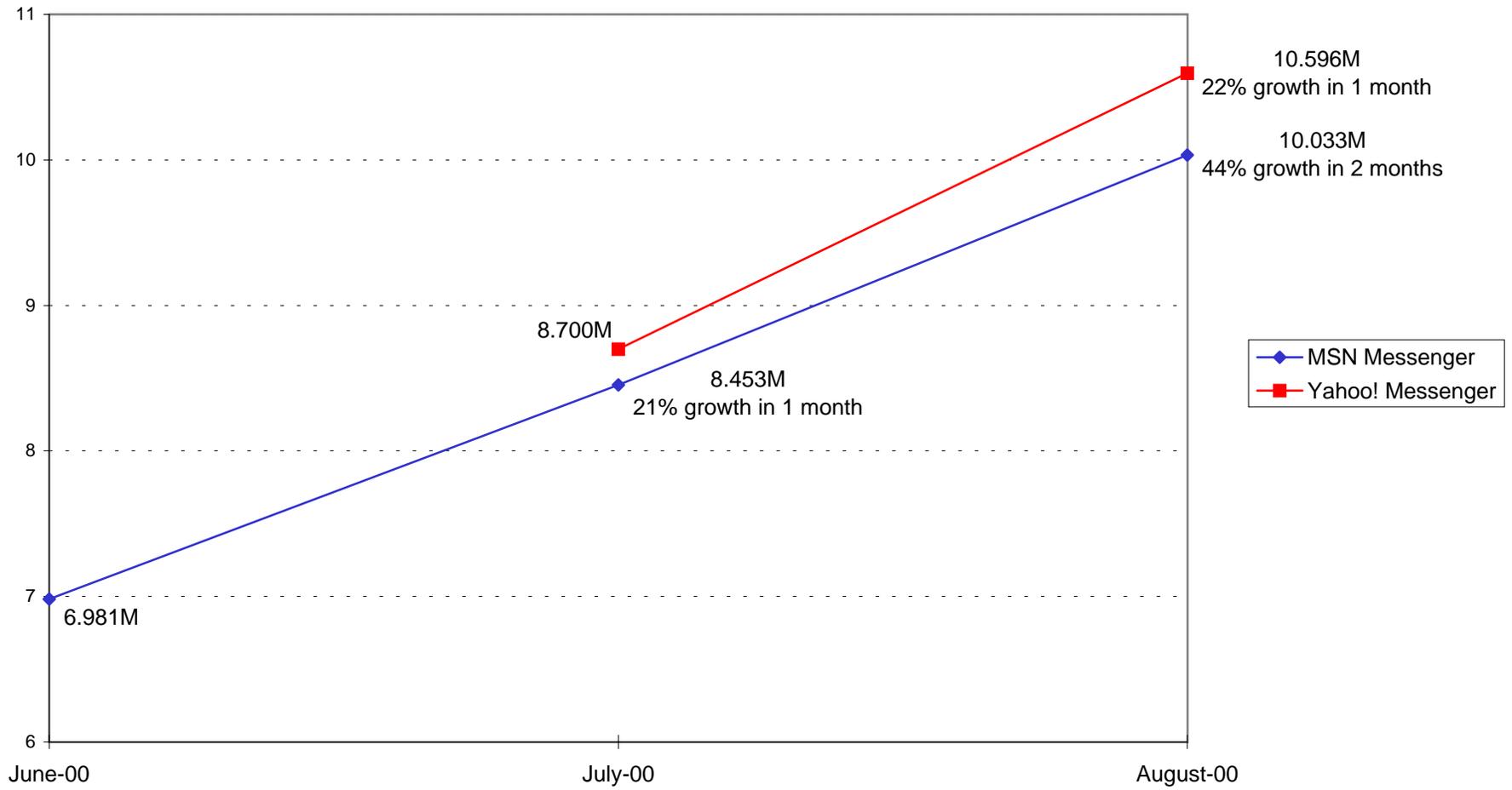
Attachments

cc: Deborah Lathen, Chief, Cable Services Bureau (w/ attachments)
Michelle Ellison, Deputy General Counsel (w/ attachments)
James Bird, FCC Assistant General Counsel (w/ attachments)
Royce Dickens, Deputy Chief, Policy and Rules Division,
Cable Services Bureau (w/ attachments)
Linda Senecal, Cable Services Bureau (w/ attachments)
International Transcription Services, Inc. (w/ attachments)

(...Continued)

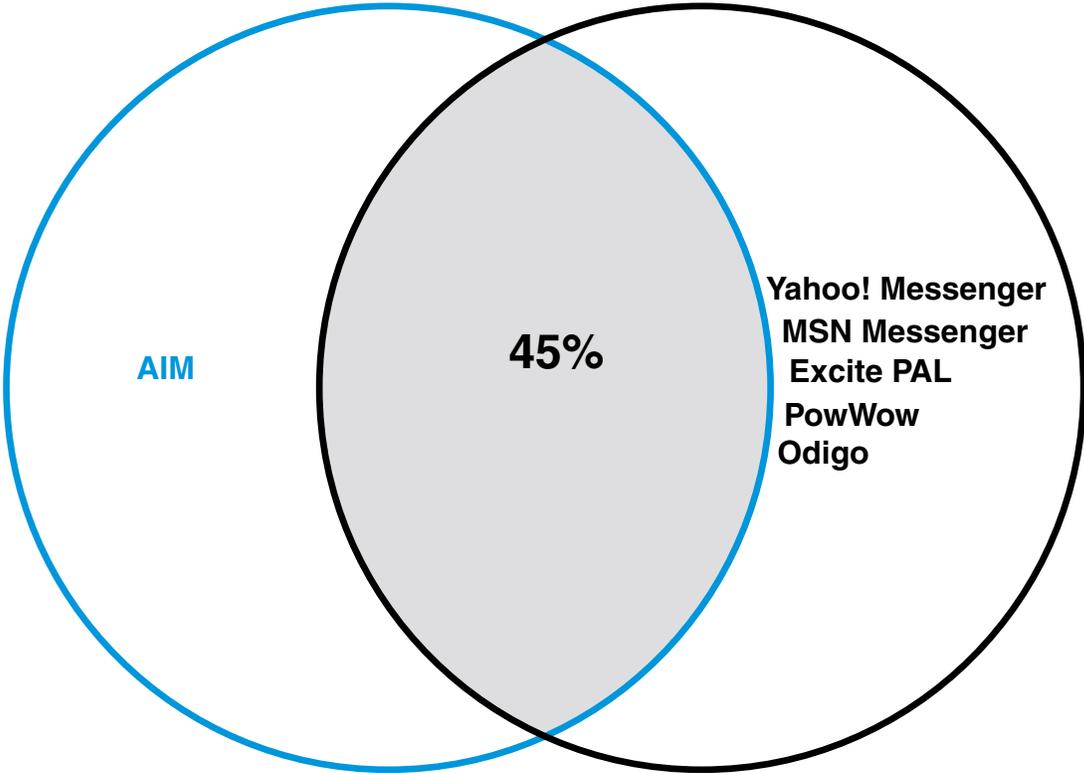
Press Release, "Sprint and America Online Launch The AOL Instant Messenger Service On The Sprint PCS Wireless Web," October 19, 2000, <http://media.web.aol.com/media/press_view.cfm?release_num=45250413&title=Sprint%20And%20America%20Online%20Launch%20The%20AOL%20Instant%20Messenger%20Service%20On%20The%20Sprint%20PCS%20Wireless%20Web>, attached.

MSN Messenger And Yahoo! Messenger Are Experiencing Tremendous Growth



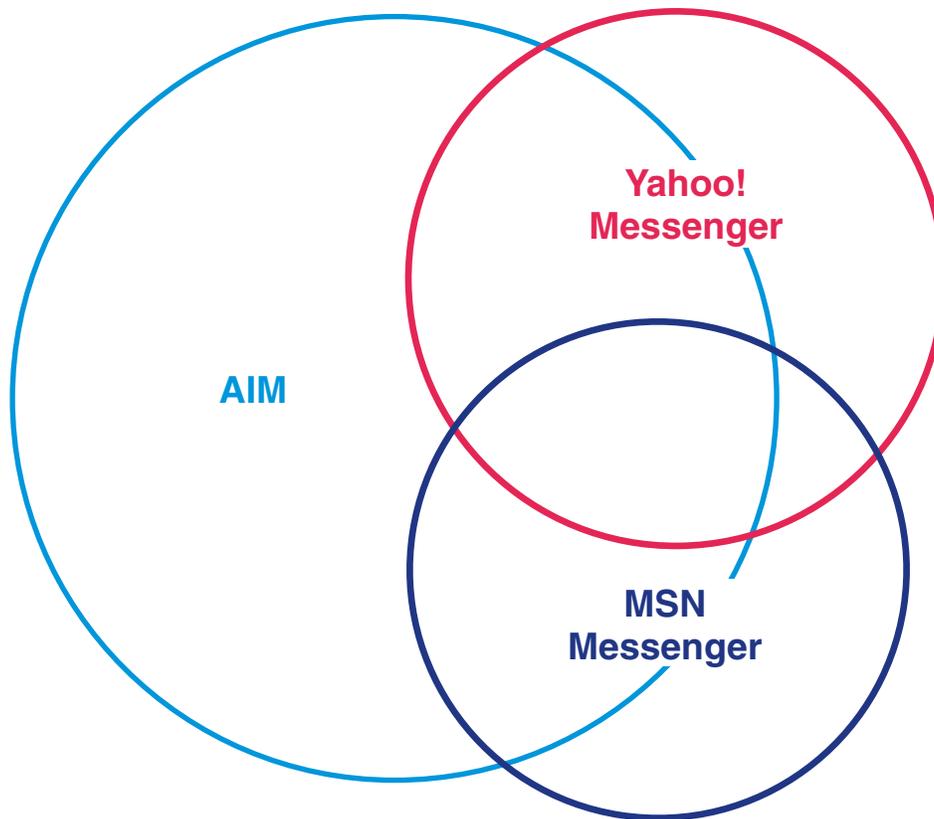
Source: Media Metrix

45% of AOL Instant Messenger ("AIM") Users Also Use at Least One Other IM Service



Source: AOL Internal Data

A Large Portion of AOL Instant Messenger ("AIM") Users Also Use Yahoo! Messenger or MSN Messenger (And Many Use All Three)



- 31% of AIM active users also use Yahoo! Messenger
- 26% of AIM active users also use MSN Messenger
- 13% of AIM active users also use both Yahoo! Messenger & MSN Messenger

Source: AOL Internal Data



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- Go instantly from a text chat to a video conversation with NetMeeting® 3.1.
- Invite a friend to play a DirectPlay® game directly from within MSN Messenger Service.

MSN Messenger Service is also integrated with the new MSN.com Message Center, so you can now use your Internet start page to manage all of your online communication.





News Release

FOR RELEASE TUESDAY, OCTOBER 17, 2000

AT&T Wireless Brings the International Text Messaging Craze to the U.S.

Two-way text messaging now available through AT&T Wireless

REDMOND, WA, October 17, 2000—Hot new phones zoom short messages through the air as AT&T Wireless now offers subscribers the ability to "text" as well as talk.

AT&T Wireless will jump-start the two-way messaging phenomenon in the United States by offering AT&T Text Messaging at a special introductory price: **free and unlimited** messaging services through February 28, 2001.

AT&T 2-Way Text Messaging service lets subscribers send and receive short text messages from their compatible wireless phones. Text messages are perfect for complete, unobtrusive communication — [at the movies](#) or a concert, in a meeting or at a rowdy football game. Two-way text messaging is a whole new trend in keeping people connected.

"AT&T 2-Way Text Messaging service is a fantastic complement to voice services - customers can choose their chat: voice or text. It's fast, fun and easy to use," said Kim Whitehead, AT&T Wireless senior vice president of marketing. "We're evolving how, when and where people communicate by giving them more ways to keep in touch."

This week will also mark the availability of two-way text messaging for customers of Rogers AT&T Wireless in Canada, which allows for messaging across U.S.- Canadian borders.

AT&T 2-Way Text Messaging service is available [on a variety of AT&T Digital multi-network phones](#). Nokia models 5160i, 6160m, 6162m and 8260 are all available today. These sleek phones offer great style at an affordable price (phones start at just \$99.99), so you can be seen as well as heard.

After the free promotional period, customers have two choices to continue service. For just \$4.99, AT&T Text Messaging customers can send, receive and reply to as many as 500 messages a month. This means AT&T Text Messaging service could cost as little as a penny per message! Additional messages sent and received cost just \$.10 each.

A second option offers customers up to 250 incoming messages per month at no charge – customers pay only \$.10 each for messages sent or for additional messages received.

AT&T Text Messaging service also offers easy-to-use features that let users reply, forward, store and retrieve messages right from their phone. Messages of up to 150 characters can be sent between compatible phones and to Internet e-mail addresses – including e-mail addresses for pagers, handheld devices or web-enabled phones.

AT&T Wireless has also enhanced its AT&T Personal News service, offering more information sources and lower prices. Customers can sign up to receive up to three daily text messages on topics such as weather, sports

scores and news reports at no charge. Eight additional selections can be made from more than 30 information sources for \$3.99 per month.

An Overseas Blockbuster

Two-way text messaging, also known as short message service (SMS), has been all the rage in Europe and Asia with staggering month-over-month growth rates - and no signs of the trend slowing. The industry reports that, worldwide, nine billion SMS messages were sent in August alone and predicts that this number will climb to 15 billion by December of this year, compared to one billion a month just a year and a half ago.

SMS messaging has spurred a sub-culture of SMS phrases and usage patterns. The UK's Mobile Data Association reports that SMS messages are sent in waves - often based on the time of year for teenagers, its most enthusiastic users. For example, a 50-million message increase in the month of August was attributed to school grades being reported and from students "on holiday." Reports out of the UK also point to an SMS language of abbreviations catching on such as PC (please call) and BCNU (be seeing you) and a resurgence in use of the old telegram favorites such as TTFN (ta ta for now). With American teenagers already well-practiced in e-mail shorthand, we're sure to see cryptic messages coming to small screens throughout the U.S.

About AT&T Wireless Group

AT&T Wireless Services, Inc. (NYSE: AWE), a wholly owned subsidiary of AT&T Corporation (NYSE: T), operates one of the largest digital wireless networks in North America. With more than 14 million subscribers, AT&T Wireless is committed to being the premier provider of high-quality wireless communications services, whether mobile or fixed, voice or data, to businesses or consumers, in the U.S. and internationally www.attws.com.

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October 19, 2000

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NEWS WATCH

Sprint PCS Customers Get Instant Messages

By ROY FURCHGOTT

Sprint PCS users will find today that the phone fairies have been hard at work overnight, installing three new messaging services on all of their Web-enabled phones.

At 2 a.m. Central time, Sprint activated AOL Instant Messenger, which sends real-time messages between wired and wireless devices; Short Mail, which creates shortcuts for sending text messages to other Sprint phones; and Wireless Chat, a real-time chat room.

Sprint's AOL Instant Messenger is similar to the desktop version. The user will create a Buddy List of friends' AOL user names, and the phone will show which of those friends are online or have their phones ready to receive.

Instant messages set off alerts to signal when new messages have arrived. Users can block their names from the Buddy List when they don't want to be interrupted.

The phone version of Instant Messenger saves triple-tap typing through a menu of 22 prepared messages under headings like these: Greetings ("How's it going?"), Coordination ("Where are we meeting?") and Smiley's, which send emoticons like wink (;-) or cool (8-).

Short Mail also shortcuts typing though 26 prepared messages ("Call me ASAP"), but also lets users create 35 custom responses, like "I swear I'm not at the track." It can also send e-mail to other Sprint PCS phones by using the phone numbers, rather than requiring the e-mail addresses, of the phones' owners. ATT announced a similar feature, ATT Wireless Two-Way Messaging, two days ago.



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The real-time chat room, powered by Jumbuck WAPchat, acts just like any online chat room, allowing up to 20 people per room to discuss topics like Teens, Sports and Hollywood.

The difference is that this version is restricted to phone users so people with a keyboard won't have an advantage over those laboriously tapping out their messages on a phone keypad.

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Sprint And America Online Launch The AOL Instant Messenger Service On The Sprint PCS Wireless Web

Customers Nationwide to Enjoy the Clear Benefits of Wireless Instant Messaging

Kansas City, MO and Dulles, Virginia, October 19, 2000 - Sprint PCS (NYSE: PCS), the nation's fastest-growing wireless service provider, and America Online, Inc., the world's leading interactive services company (NYSE: AOL), today announced the nationwide availability of the AOL Instant Messengersm (AIM) service on Internet-ready Sprint PCS Phones(tm).

Using AOL Instant Messenger, AOL members, AIM users and Sprint PCS customers have a clear and convenient, new way to see when family, colleagues, and friends are available and can communicate with them in real-time directly from any of more than 15 models of Internet-ready Sprint PCS Phones. With today's announcement, AIM becomes another component of the AOL Mobilesm services already available on the Sprint PCS Wireless Web. Sprint PCS is the first to offer wireless access to the AOL Instant Messenger service to customers nationwide via the nation's largest all-digital, all-PCS wireless network.

AIM's instant messaging features on Internet-ready Sprint PCS Phones introduces a new level of convenience for consumers by giving them additional ways to stay in touch via their wireless phones with those they care about. People "on-the-go" can enjoy sending and receiving private text messages in real-time with others directly from their wireless phones. With AIM's Buddy List(r) feature, they will know when personal contacts are connected online and available to receive instant messages - whether they are on the Sprint PCS nationwide wireless network or on their PC.

"Sprint PCS is the first wireless provider to offer the popular AOL Instant Messenger service to customers nationwide," said Charles Levine, chief operating officer of Sprint PCS. "By offering wireless instant messaging on the Sprint PCS Wireless Web, we are providing customers with an additional option when deciding how they want to communicate with others on their wireless phones."

"As the worlds of the Internet and wireless continue to converge, Sprint PCS is pleased to announce the nationwide launch of what we believe is the next transformation of the Wireless Web: instant messaging on wireless phones," added Levine.

"As the interactive experience becomes a part of people's everyday lives, more and more are interested in accessing their favorite features - like instant messaging - from a variety of devices in addition to the PC," said Dennis Patrick, president of AOL Wireless.

"AIM on Internet-ready Sprint PCS phones is part of our "AOL Anywhere(sm)" strategy to make AOL's popular interactive brands and features available to online consumers across multiple platforms and through a range of devices," said Patrick.

AIM is a new component of the AOL Mobile service that launched on the Sprint PCS Wireless Web in July 2000. By using any Internet-ready Sprint PCS Phone, customers can clearly connect to AOL Mobile services, including access to popular features such as e-mail, news, weather and stock quotes, as well as local content from AOL's Digital City, MapQuest and MovieFone.

Accessing AIM's instant messaging features via an Internet-ready Sprint PCS Phone is seamless - since the browser is built into the phone, there is no special software to download to get started. From the phone's opening screen, Sprint PCS customers select "AOL" and then "AOL IM" to access AOL Instant Messenger. Customers can also choose to navigate to AIM by choosing "Messaging" and then "AOL IM." To "sign on" to use AIM, current AIM and AOL members can just enter their screen name and private password. If a Sprint PCS customer doesn't have an AIM screen name and password, they can register for free at www.aol.com/aim or www.sprintpcs.com.

Sprint PCS customers can also maintain and manage their personalized AIM Buddy List on the Sprint PCS Wireless Web. AOL or AIM screen names can be added to their Buddy List directly from Internet-ready Sprint PCS Phones, so customers can see whenever people they want to reach are online to begin instant communication.

America Online has also created a wireless AIM Quick Reply feature to make instant messaging easy via wireless phones. With AIM Quick Reply, Sprint PCS customers can select from several stored responses and questions, such as "How's it going?", "Thanks", "Goodbye", "Where are you?", and more - all with a single tap. Customers receive a notification when receiving an instant message with Sprint PCS Web Alerts(SM), a convenient feature which links the user directly to the new message on the Sprint PCS Wireless Web. AOL Instant Messenger also offers users privacy preferences to customize from which individuals they want to receive an instant message.

There is no extra service charge to access AIM while on the Sprint PCS Wireless Web. Customers can choose Sprint PCS Wireless Web as their free option as part of any Sprint PCS Free & Clear Plan and use their minutes for voice or data at the same rate. Sprint PCS customers who choose not to select a Wireless Web Service Plan can still access the service for a default per minute rate. For more information or to purchase a Sprint PCS Internet-ready Phone or Sprint PCS service, consumers can visit www.sprintpcs.com or AOL Keyword: Sprint PCS.

Sprint PCS launched its Sprint PCS Wireless Web service in late September 1999, offering customers a suite of simple, user-friendly wireless data products and services. By using Internet-ready Sprint PCS Phones, customers can now conduct several services, including: instant message, e-mail, shop, trade stocks, browse select text-based Internet content in real time, receive automatic personalized news features, weather, stock quotes, and e-mail updates, and connect to the Internet or corporate Intranet by using their Sprint PCS Phone in place of a modem.

About Sprint PCS Sprint PCS operates the largest 100 percent digital, 100 percent PCS nationwide wireless network in the United States, already serving the majority of the nation's metropolitan areas including more than 4,000 cities and communities across the country. Sprint PCS has licensed PCS coverage of nearly 270 million people in all 50 states, Puerto Rico and the U.S. Virgin Islands. For more information, visit the Sprint PCS web site at www.sprintpcs.com. Sprint PCS is a wholly-owned tracking group of Sprint Corporation trading on the NYSE under the symbol "PCS."

Sprint is a global communications company - at the forefront of integrating long-distance, local and wireless communications services, and a large carrier of Internet traffic. Sprint built and operates the United States' first

nationwide all-digital, fiber-optic network and is a leader in advanced data communications services. Sprint has \$20 billion in annual revenues and serves more than 20 million business and residential customers.

About America Online, Inc. Founded in 1985, America Online, Inc., based in Dulles, Virginia, is the world's leader in interactive services, Web brands, Internet technologies and e-commerce services.

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