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October 6, 2000

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.—The Portals  
TW-B204  
Washington, DC 20554

Re: America Online, Inc. and Time Warner 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"), 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 5, 2000, Steven N. Teplitz, (AOL Vice President, Telecommunications Policy), Catherine R. Nolan (Time Warner Inc., Vice President, Law & Public Policy) and the undersigned met with Jordan Goldstein, David Goodfriend and Bridgett Daniel of Commissioner Ness's office.

The parties reviewed the history of the Commission's cable open access policy beginning with the FCC's first report on Section 706, continuing through its rulings in the AT&T mergers, and including most recently the Commission's second report on Section 706 and its recently released notice of inquiry on cable open access issues. The parties also 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 parties also 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. The parties explained that, led by AOL's pioneering efforts and by the

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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. The parties also explained that AOL has no hold over IM users or competitors, and that IM is an application, not a facility or infrastructure. Thus, AOL's IM service is in no way a barrier to any presence-enabled applications that any other competitor might wish to create or offer. The parties noted that Microsoft is bundling its own IM service into its next generation operating system, and that a host of competitors and services unrelated to IM can and do offer presence detection capabilities. In any event, the parties pointed out that 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,



Peter D. Ross

Counsel to America Online, Inc.

cc: David Goodfriend, Commissioner Ness's Office  
Jordan Goldstein, Commissioner Ness's Office  
James Bird, Assistant General Counsel  
Royce Dickens, Cable Services Bureau  
Linda Senecal, Cable Services Bureau  
International Transcription Services, Inc.