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August 24, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Deborah Lathen
Chief, Cable Services Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: 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. Lathen:

Please find enclosed the original version of the Declaration of Barry Schuler, dated August 17, 2000. A faxed copy of this Declaration was attached to the *ex parte* letter submitted to you by the parties on August 22, 2000 in the above-referenced proceeding.

Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Peter D. Ross

cc: Magalie Roman Salas, Secretary (2 copies)
Attachment

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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AUG 24 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Applications of America Online, Inc.) CS Docket No. 00-30
and Time Warner Inc. for)
Transfers of Control)

To: The Commission

DECLARATION OF BARRY SCHULER

1. My name is Barry Schuler, and I am the President of AOL's Interactive Services Group. I am responsible for the flagship AOL Service, Netscape Communications, CompuServe, and the AOL Devices group, which is currently developing non-PC connected products such as AOLTV. Upon consummation of the proposed merger, I will become Chairman and Chief Executive Officer of America Online, Inc.
2. Prior to its acquisition by AOL in 1995, I was CEO and co-founder of Medior Inc. Medior pioneered the use of interactive multimedia for such applications as electronic commerce, entertainment products, and corporate information systems, and was acclaimed for its work in user interface design. Prior to co-founding Medior in 1989, I served as President and CEO of Cricket Software, an early developer of Macintosh graphics software, where I oversaw breakthroughs in the development of software for business presentations and color imaging. I joined Cricket after 10 years at CMP Communications, a high-technology marketing and communications company, which I also co-founded.
3. I am submitting this declaration in support of the pending applications in the above-referenced proceeding, which seek FCC approval of the transfer of licenses associated with the merger of America Online, Inc. ("AOL") and Time Warner Inc. ("Time Warner") (collectively, the "Applicants"). The purpose of my declaration is to describe some of the public interest benefits that the Applicants expect to bring to consumers as a result of our merger.
4. The Applicants intend to act quickly, following the closing of the transaction, to improve and expand on the existing online services now being offered by our two companies. By using AOL technology, facilities, and online expertise, the newly merged entity plans to improve existing Time Warner web sites and to develop additional Time Warner Internet

- services. The companies intend to make Time Warner's content more widely available to online consumers more quickly than would otherwise be the case.
5. Specifically, our efforts will include, but are not limited to, improving existing Time Warner web sites and developing additional Time Warner Internet services; making Time Warner music, television programs and movies, cable programming, and magazine content more widely available online; and developing interactive packages of services focused on particular topics such as personal finances, which can be customized to meet individual consumer needs. Because many of these products and services will be web-based, these offerings will be available to all Internet users.
 6. The expedited time frame will occur in part because AOL has a centralized and efficient cost structure for operating interactive sites, including larger web hosting facilities and internal Internet production and design operations than Time Warner.
 7. The Applicants are beginning to discuss ways to improve consumer satisfaction with the online versions of Time Warner video programming services such as CNN and the Cartoon Network. These discussions also have explored ideas generally on how to make Time Warner music, television programs and movies, cable programming, and magazine content more widely available to consumers.
 8. AOL expects that because these new and/or improved offerings will be based on widely enjoyed offline products (and will be primarily web-based rather than within AOL's flagship service), they are likely to entice a number of "late adopters"—*i.e.*, people who have been reluctant to venture online—to finally try the new medium. The combination of Time Warner's mass market brands with AOL's proven ability to make online services inviting and easy to use will help make the Internet an even more valuable part of everyday life.
 9. It is my business judgment that as a consequence of AOL Time Warner's efforts in this area, the Applicants will draw a competitive response from rival providers of content, applications, and services, which will result in the delivery of even more choices to consumers.
 10. AOL's intentions for the proposed merger go well beyond simply improving or cross-promoting Time Warner's online offerings. We intend the merged company to break the pattern set by most "traditional" media's use of the Internet, which generally has tended to serve only to promote their more traditional media outlets and services. AOL expects that the new AOL Time Warner will expand upon and enhance Time Warner's traditional content in ways that are unique to the online medium, including but not limited to more extensive interactivity and customization, and thereby transform traditional media websites into new forms of entertainment and information services.
 11. Stated more broadly, AOL is pursuing this merger because of our business judgments concerning the next phase of the online medium's development. AOL expects that the combined company's talents and resources will allow it to develop and deliver

innovative, easily accessible, and widely available interactive services that today are only in their initial stage of development or not yet fully conceptualized.

12. It is my business judgment that because AOL Time Warner will be able to bring creative minds together from all divisions of the new company, including content creators, distribution network specialists, and online experts, the new company will be able to more quickly solve the so-called “chicken or egg” problems that have slowed the development and delivery of advanced services such as interactive television. The “chicken or egg” problem refers to the marketplace conundrum in which providers of two key inputs—(1) new interactive content and applications, and (2) new platforms—have been reluctant to make substantial investments without knowing that the other necessary component is in place.
13. For example, with respect to interactive television, the merger will allow AOL to work closely with Time Warner’s video programming properties to develop innovative and compelling interactive features. It is my business judgment that these types of enhancements of AOLTV will prompt other video programmers to work more quickly to develop interactive television offerings that may be available on AOLTV and on other platforms (such as Microsoft’s WebTV) that will compete with AOLTV.
14. AOL will also be better positioned to work closely with Time Warner cable systems to create interactive video programming for AOLTV that is tailored to local communities. The Applicants anticipate that the combined company’s efforts in this area will provide a model for other cable operators or alternative video distributors to develop and market such community-oriented interactive TV services using the open standards upon which AOLTV is built. AOL believes that the end result will be a wholly new kind of service that offers integrated, interactive content linked to video program services and created by a variety of sources, including entities unaffiliated with AOL Time Warner.
15. It is my business judgment that a merger will allow AOL and Time Warner to work to develop all facets of interactive television—both content and platform—more quickly and effectively than the two companies could through a joint venture or other contractual arrangement. I expect this to be the case in part because the ultimate business objectives of all the facets of the project will be aligned, thereby reducing the potential for delay or disagreements over resources, management, and business strategy.
16. It is my business judgment that interactive television offerings such as AOLTV will have even more to offer consumers once they become available on broadband platforms.
17. AOL also expects the proposed merger to help overcome the obstacles now impeding innovation in the online delivery of music services. Although there is current market demand for a commercially viable means of online distribution of music and other traditional media content found in books, magazines, video programming, and films, the copyright holders for intellectual property in these traditional media formats have had difficulty in developing and deploying easy-to-use, affordable, and secure means of tapping this demand. AOL expects that the new company will be able to develop and

- deploy the easy-to-use, affordable, and secure technologies needed to move the marketplace to online distribution more quickly than would either company on its own.
18. It is my business judgment that AOL Time Warner will speed the advent of digital downloading and other such offerings in a way that the marketplace generally will emulate, both with respect to our solutions for protecting intellectual property and with respect to the actual new services that we will offer. This will help the Internet fulfill its potential as a new forum for the creation and distribution of entertainment.
 19. The potential for the new company to offer IP Telephony service appears to be high, given the combination of Time Warner's expertise in broadband cable system architecture and AOL's extensive Internet knowledge and experience. AOL believes that the new company would be well positioned to bring to market a commercially viable IP telephony offering more quickly than either AOL or Time Warner could do alone. This will present an important opportunity to provide additional competition to the services of incumbent local exchange carriers.
 20. AOL also expects that the new company will be well positioned to lead the next wave of online development, which AOL believes will center around helping consumers make effective use of the complex technology and distinct communications offerings available to them. AOL is particularly interested in serving what we perceive as consumers' increasing demands for obtaining the same interactivity, range of choices, and convenience and control from all interactive devices and to have those devices connected and seamlessly integrated for everyday uses.
 21. It is my business judgment that the Applicants would not be able to bring the benefits in new or improved online content, services, and applications discussed above to consumers as quickly or with the same certainty through a joint venture or other contractual arrangement with each other as they will through a merger of the two companies. Specifically, absent the merger, AOL would be unable to develop on its own the breadth or depth of content-generating efforts that Time Warner brings to this proposed company, and which AOL believes is necessary for fulfilling the emerging online medium's full potential.
 22. It is my business judgment that it also would not be feasible for AOL and Time Warner to negotiate a series of contracts that could cover the far-reaching, unprecedented plans that the Applicants have for the merged company. Even negotiating individual contractual relationships would be very difficult given the rapidly changing marketplace. The negotiation of individual joint venture agreements for each separate endeavor—or categories of endeavors—that AOL and Time Warner contemplate would involve delays and inefficiencies inherent in establishing the formal relationship necessitated by agreements among independent, publicly traded companies.
 23. The development of our Memorandum of Understanding ("MOU"), which sets forth key principles for implementing open access on Time Warner Cable facilities, was a direct outgrowth of AOL's merger talks with Time Warner. The impending merger produced a

new model for more effectively addressing the complicated issues involved in resolving the open access debate. This cooperative approach led to the rational, marketplace-driven commitments embodied in the MOU.

24. It is my business judgment that this agreement would not have been reached as quickly, or the commitment to implement a multiple ISP model felt so urgently, if AOL and Time Warner had attempted to pursue a joint venture or other contractual arrangement rather than this merger.
25. In developing the MOU, the Applicants understood and intended that the agreement would move to the forefront of the marketplace in affording consumers a choice among multiple Internet service providers via broadband cable systems. It is my business judgment that our MOU has, in fact, had a significant impact on the marketplace's approach to the open access issue, including but not limited to prompting other cable operators to begin considering how to implement multiple ISP choice on their own systems. Furthermore, it is my business judgment that affording subscribers a choice among multiple ISPs on AOL Time Warner cable systems will attract consumers who are accustomed to having similar choices in the "dial-up" (*i.e.*, narrowband telephony) context.
26. AOL is participating in a technical and operational trial of multiple ISP offerings in Time Warner's Columbus, Ohio cable system. In addition, AOL is working expeditiously to enter into a commercially negotiated agreement with Time Warner in order to be able to offer AOL's ISP service to consumers via Time Warner's cable systems.
27. The Applicants expect that the new and improved offerings of online content, applications, and services we will offer by virtue of our merger will have a positive effect on the deployment of broadband services. It is my business judgment that these offerings will help to spark greater consumer demand for broadband capacity than would otherwise occur and that this demand, in turn, will encourage broadband providers to deploy high-speed architectures more quickly than they would have absent the merger and will encourage financing sources to make more investment capital available more quickly to broadband facilities providers than would occur absent the merger.
28. The Applicants also expect our merger to have a positive impact on Time Warner's deployment of its own broadband facilities by focusing more of the combined company's attention on optimizing the use of such facilities for Internet access and other interactive services. Specifically, AOL expects to provide critical expertise to the combined company in investing in and deploying the hardware and software needed for optimal broadband cable delivery of interactive content, applications, and services.
29. It is my business judgment that by optimizing the AOL Time Warner cable systems for Internet access and other interactive services, we will improve our own competitiveness and thereby prompt rival facility providers to deploy upgraded broadband architectures in order to protect their own competitive positions in the marketplace—and to do so more

quickly than they would have absent our merger. This therefore will ultimately provide consumers with even more choices.

30. It is my business judgment that implementing our MOU also will play a significant role in making the Time Warner cable systems more appealing to consumers interested in high-speed Internet service. Affording consumers a choice among ISPs is a significant advantage in competing for Internet users who are accustomed to having such choices in the dial-up context and therefore continue to demand it. It is my business judgment that this will spur other broadband platform providers, such as telephone companies offering DSL, to more aggressively make their services widely and ubiquitously available.
31. It is my business judgment that the merged company's effect on spurring broadband deployment will be further enhanced by the "AOL Anywhere" strategy. AOL Anywhere is a consumer-centric plan to extend AOL's hallmark convenience and ease-of-use to consumers through every possible platform. The Applicants intend that AOL Time Warner will continue to adhere to this multi-platform distribution plan.

VERIFICATION

I, Barry Schuler, declare under penalty of perjury that the foregoing is true and correct. Executed on August 17, 2000.

A handwritten signature in black ink, appearing to read 'Barry Schuler', written over a horizontal line.

Barry Schuler
President, Interactive Services Group
America Online, Inc.