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December 19, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W. --- The Portals
TW-B204
Washington, DC 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"), submitted herewith pursuant to Section 1.1206(b)(2) of the Commission's rules are an original and one copy of this notice regarding permitted oral ex parte presentations in the above-referenced proceeding. On December 18, 2000, Steven N. Teplitz, Vice President, Telecommunications Policy of AOL had separate conversations with Karen Edwards Onyeije of Chairman Kennard's office, David Goodfriend of Commissioner Ness's office, Kyle D. Dixon of Commissioner Powell's office, and William J. Friedman of Commissioner Tristani's office.

Mr. Teplitz discussed AOL's strong interest in a prompt conclusion to these proceedings to avoid the substantial burden and expense of closing the proposed merger after the end of this year. Specifically, Mr. Teplitz explained that if the parties are unable to close this transaction by year end, AOL and Time Warner would bear the burden and expense of: the need to file over ten thousand partial-year state and local income tax returns; the need to make additional filings with the Securities and Exchange Commission; the undertaking of costly and duplicative audit and accounting reviews, along with significant modifications to internal accounting systems; as well as other costs associated with closing the merger beyond the end of the calendar year.

With Ms. Onyeije, Mr. Teplitz also discussed issues regarding instant messaging ("IM") raised in recent meetings between AOL, Time Warner and FCC staff as set forth in AOL's December 1, 2000, December 5, 2000, and December 12, 2000 *ex parte* notices from those meetings. Throughout these discussions, AOL has reiterated the parties' view that the record evidence, *inter alia*, demonstrates: IM has not "tipped" (and is not on the verge of "tipping") to AOL; Microsoft, having now bundled its MSN Messenger IM service with its next-generation operating system, is uniquely

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positioned to boost its already unprecedented growth in this arena; the fact that Time Warner is an owner of cable systems and video content does not render the issue of IM interoperability specific to this merger; concerns about a possible future marketplace for "advanced IM" services -- including presumptions about any potentially "essential" inputs for such services, the potential providers of such inputs, and the potential substitutes for such advanced services -- remain matters of unsupported, and at best premature, speculation; and the IM feature of Internet service (as well as suggested "advanced IM" services) fall squarely into the category of "information services" as to which the FCC has steadfastly embraced a longstanding policy of "unregulation."

AOL has noted, in any event, that -- to the extent the Commission might deem it appropriate to monitor future developments in IM -- the FCC could rely on any number of potential marketplace developments that will serve to confirm that a merged AOL Time Warner will hold no irreversible position in any "market" that encompasses "advanced IM" services. Among the potential indicia would be: continued rapid growth by competitors (*i.e.*, evidence of the trend in the "share" of active users of AOL's own interoperable IM "network" as compared to the active users of other IM "networks"); rival offerings of "advanced IM" services (*i.e.*, evidence of a significant competitor already offering an "advanced IM" service prior to any such AOL Time Warner offering); industry adoption of a true interoperability standard (*i.e.*, the development of a server-to-server IM interoperability standard promulgated or endorsed by a widely-recognized standards-making body and then adopted by AOL Time Warner); marketplace progress toward a *de facto* standard (*i.e.*, the implementation of server-to-server interoperability through terms and conditions mutually agreed upon by AOL Time Warner and a significant actual or potential competitor in IM or "advanced IM" service); or various other demonstrations inconsistent with the notion that AOL Time Warner is likely or able to dominate "advanced IM" services.

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Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/ Peter D. Ross

Peter D. Ross

cc: Karen Edwards Onyeije, Chairman Kennard's Office
William J. Friedman, Commissioner Tristani's Office
Kyle D. Dixon, Commissioner Powell's office
David Goodfriend, Commissioner Ness' Office
Sherille Ismail, Deputy Chief, Cable Services Bureau
James Bird, Assistant General Counsel, Office of General Counsel
Royce Dickens, Deputy Chief, Policy and Rules Division, Cable Services Bureau
Linda Senecal, Cable Services Bureau
International Transcription Services, Inc.