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FLEISCHMAN AND WALSH, L. L. P.

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ATTORNEYS AT LAW  
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION  
1400 SIXTEENTH STREET, N. W.  
WASHINGTON, D. C. 20036  
TEL (202) 939-7900 FAX (202) 745-0916  
INTERNET www.fw-law.com

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P. C.  
CHARLES S. WALSH  
ARTHUR H. HARDING  
STUART F. FELDSTEIN  
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AIMEE E. KNAPP+  
MICHAEL W. RICHARDS+

August 1, 2000

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\*\* MA BAR ONLY  
\*\*\* MI AND IL BAR ONLY  
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++ IL BAR ONLY  
+++ NY BAR ONLY

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W. - The Portals  
TW - B204  
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

On behalf of Time Warner Inc. ("Time Warner") and America Online, Inc. ("AOL"), submitted herewith, pursuant to Section 1.1206(b)(2) of the Commission's rules, is an original and one copy of this summary of a permitted oral presentation to Commission officials regarding the above-cited proceeding. On July 26, 2000, Time Warner and AOL representatives met with certain members of the Commission's staff, at their request, to discuss issues relating to the "Memorandum of Understanding Between Time Warner Inc. and America Online, Inc. Regarding Open Access Business Practices" ("MOU") dated February 29, 2000.

Attending the meeting on behalf of the Commission were Deborah Lathen, William Johnson, Royce Dickens, Nancy Stevenson, Carl Kandutsch, Anne Levine and Darryl Cooper from the Cable Services Bureau; John Berresford from the Common Carrier Bureau; Michael Kende from the Office of Plans and Policy and Doug Sicker from the Office of Engineering and Technology. Attending on behalf of Time Warner were Ed Weiss, Vice President and Associate General Counsel of Time Warner; Catherine Nolan, Vice President, Law and Public Policy of Time Warner; Marc Apfelbaum, Senior Vice President and General Counsel of Time Warner

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Secretary  
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Cable; and Arthur Harding of Fleischman and Walsh, L.L.P. Attending on behalf of AOL were George Vradenburg III, Senior Vice President, Global and Strategic Policy of AOL; Paul Cappuccio, General Counsel of AOL; Steven Teplitz, Senior Director of Telecommunications Policy for AOL; and Peter Ross of Wiley, Rein & Fielding.

A summary of the points emphasized by Time Warner and AOL representatives at the meeting is attached.

Kindly direct any questions regarding the matter to the undersigned.

Respectfully submitted,

  
Arthur H. Harding  
Counsel for Time Warner Inc.

cc: Deborah Lathen  
William Johnson  
Royce Dickens  
Nancy Stevenson  
Carl Kandutsch  
Anne Levine  
Darryl Cooper  
John Berresford  
Michael Kende  
Doug Sicker  
Linda Senecal  
International Transcription Service

- The FCC has consistently advocated a marketplace solution to achieve multiple ISP choice for cable modem service.
  - Regulatory “open access” conditions were rejected in the AT&T/TCI and AT&T/MediaOne mergers.
  - Mandatory open access has been rejected in various FCC proceedings pursuant to Sec. 706 of the 1996 Telecommunications Act.
- The MOU is in fact leading to such a marketplace solution.
  - Catalyst for major cable MSOs to embrace multiple ISP approach.
  - AT&T and Charter have announced multiple ISP technical trials.
- AOL and Time Warner have taken affirmative steps to implement the MOU, thereby mooting concerns that the MOU is “unenforceable” or that the Commission should not simply trust the parties to implement the MOU.
  - Time Warner Cable is at an advanced stage of discussions not only with AOL, but with other ISPs as well, over agreements to offer high speed Internet service.
  - As an outgrowth of the Justice Department order that AT&T divest its interest in Road Runner, Time Warner has begun discussions with its partners regarding restructuring of Road Runner. Any such restructuring can be expected to lead to an early termination of restrictions in the Road Runner contract limiting the ability to offer multiple ISPs prior to December 31, 2001.
  - Time Warner Cable has begun a technical and operational trial of multiple ISP offerings in Columbus, Ohio. In addition to AOL and Road Runner, other ISPs have been invited to participate in this trial.
- As promised in the MOU, AOL Time Warner will not discriminate against ISPs on the basis of affiliation.
  - Marketplace negotiations will determine price, terms and conditions.
  - Discussions with various ISPs thus far demonstrate that different terms and conditions are important to different ISPs.
  - Multiple ISP choice is crucial for cable modem service to be competitive with DSL and other alternative broadband platforms. We will have to treat ISPs fairly in

order to attract the mix of multiple ISPs necessary to remain competitive.

- - Ownership affiliation will not be a factor in establishing the mix of rates, terms and conditions with any ISP.
- Given the pace of progress in the marketplace, governmentally mandated open access obligations would be counterproductive.
  - - Other MSOs have followed the lead of AOL and Time Warner to embrace multiple ISP choice precisely because we have developed a marketplace solution.
  - - Switching to a policy of governmental mandates would likely meet with resistance from the cable industry, which could lead to years of judicial proceedings and uncertainty.
  - - A government mandate would stifle the flow of capital investment for cable broadband deployment.
  - - A regulatory approach would be contrary to previous FCC pronouncements.
    - \* Any potential shift in FCC policy to facilitate multiple ISP choice can be considered in the upcoming FCC proceeding announced by Chairman Kennard in the aftermath of the Portland decision.
    - \* There is no merger-specific basis to impose a mandatory ISP access on the two parties to this merger who have played a leadership role in implementing a marketplace solution.
- AOL will continue to support DSL and other broadband platforms even after it enters into agreements with cable operators.
  - - DSL, satellite, wireless and any other broadband platforms are essential to successful implementation of the AOL Anywhere strategy.
  - - Time Warner's cable systems only pass about 20% of US homes.
    - \* Alternative platforms such as DSL and satellite are necessary to reach the other 80%.
    - \* Alternative platforms are also critical to reach non-cable homes even within Time Warner Cable service areas.

- - Multiple broadband platforms continue to be deployed at an ever - accelerating pace.
  - \* DSL continues to roll out rapidly.
  - \* Capital markets continue to show high confidence in wireless technologies, particularly for broadband data applications.
- - Remaining platform agnostic has been a key to AOL's success.
- - Similarly, Time Warner has a long history of making its programming services available through multiple distributors.
- As promised in the MOU, there will be no arbitrary limit on the number of ISPs with which AOL Time Warner would be willing to enter into cable modem service agreements.
  - - The Columbus trial is designed to identify and resolve technical, operational or other issues that may arise from a multiple ISP environment.
    - \* We will be testing the first generation of a super intelligent router that is needed to ensure that packets of information from the customer are routed back to the appropriate ISP.
    - \* Additional software also needs to be developed to facilitate multiple ISP arrangements.
- The AOL Time Warner pledge of nondiscrimination against unaffiliated ISPs can be enforced in the marketplace.
  - - As the Commission's AT&T/MediaOne decision implicitly recognizes, the choice of platforms is the best insurance against discrimination.
    - \* Consumers want choices among multiple ISPs.
    - \* Alternative broadband platforms offer multiple ISPs.
    - \* Cable operators will have to bargain fairly to attract multiple ISPs and to remain competitive with alternative broadband platforms.
  - - Parties to commercial transactions routinely protect against discrimination through contractual provisions.
  - - Independent audit mechanisms are often employed, so that confidential contracts

with third parties are disclosed only to an independent auditor.

- - Arbitration or other alternative dispute resolution mechanisms are often employed where the auditor finds evidence of discrimination.
- - A complaint-driven enforcement mechanism is unnecessary, lacks any factual predicate, and would be unworkable in an environment of vigorous competition between cable and other forms of broadband delivery.
- Unaffiliated ISPs will have the ability to directly bill the customers they sign up.
  - - Maintaining a direct relationship with the customer is an issue of critical importance to many ISPs.
  - - Thus, an ISP would have the ability to market a broadband upgrade to its dial-up customers and maintain its billing relationship with those customers.