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To the FCC Commissioners:

I am writing in response to the proposed merger of America On-Line (AOL) and Time Warner Communications. While this proposal has much merit, as the petitioners have made very clear, there are two elements in the proposal that greatly concern me. I would hope that the Commissioners would carefully consider these in making their decision.

The development and evolution of the Internet is a study in how a system without artificial limits can exceed anyone's expectations. The 'rules of the road' for the information superhighway, such as they are, have been agreed upon by community consensus and is a marvelous example of market forces at work. One of the guiding principles evolved within the community is the open and free exchange of information, much as there is within the academic environment that fostered the early years of the Internet. Not at all parenthetically, I would observe that this is also reflective of the freedoms guaranteed under the First Amendment to the Constitution.

The proposed merger as set forth in proceeding # 00-30 contains language contrary to this principle. Specifically, the proposal states that:

TIME WARNER COMMUNICATIONS SHALL HAVE THE SOLE AND UNREVIEWABLE RIGHT TO DETERMINE WHETHER CONTENT VIOLATES THESE STANDARDS.

This language is quite frightening, given that it grants license to censor to a corporate entity subject to bottom line economic forces. Our guarantee under the Constitution was designed by its authors to be beyond those forces for good reason. They recognized that such a fundamental right to freedom could never be effectively overseen by a purely commercial, or even political, entity. I believe that the Commissioners would be well served to remember that example, and move to strike that language from the proposal.

My second concern is related, although it could never have been foreseen by our Founding Fathers. Bandwidth, that is the amount of data that can be transmitted per unit of time, is fundamental to the ability to communicate on the Internet. In the not so distant past, communication on the Internet was limited to short, typed messages, much like the telegraph and teletype communications that preceded the internet. The advent of technology that increases available bandwidth has prompted an explosion of creativity, with sound, color and motion adding to both the allure and armamentarium of this medium. Here again, Time Warner Communication proposes to hold a noose around the available bandwidth, and, subject to their whim alone, choke off access to those they deem unacceptable. Specifically, they state:

IF TIME WARNER DETERMINES THAT THE SUBSCRIBER HAS FAILED TO COMPLY WITH THE SERVICE'S STANDARDS OF CONDUCT OR LIMITS ON BANDWIDTH UTILIZATION, TIME WARNER MAY SUSPEND SUBSCRIBER'S ACCOUNT.

Argument has been made that since the new Time Warner owns the infrastructure, they should be allowed to determine how their property is used. I would counter, as I hope would the Commissioners, that access is analogous to the use of the telephone. There, barring actual interference with the physical operation of the equipment, the courts alone can determine whether such constructs as 'community standards' or 'acceptable use' have been violated. Allowing Time Warner to function as stated in their proposal would effectively regulate away a public good, and should not, in my opinion, be allowed.

It appears that the Commissioners will approve the AOL/Time Warner merger in some form. This is not necessarily a bad thing, and I do not object to the merger provided certain changes have been made to the proposal as published. I do object, however, to granting a corporate entity the right to determine whether or not I am allowed to exercise my constitutionally guaranteed freedoms, and I do object to ceding a public good to a corporate entity. If these issues can be addressed to the satisfaction of the Commissioners, and to the Internet community, then I believe that Time Warner's proposal will be a net benefit to all users of their service. If they are not addressed, the corporatization of the Internet will have advanced itself greatly at the expense of our joint and several freedoms.