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September 21, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
E 12th E S.W. The Portals
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

To the Members of This Committee:

The respondent has carefully read the latest submission of Time Warner Communications. Respondent comments that this commission should carefully evaluate the past actions of Time Warner Communications in considering their assurances to this commission. In particular, Respondent calls the commission's attention to the following statement of Time Warner:

> [T]he applicants ***discussed their commitment*** to providing consumers with access to multiple ISPs over Time Warner cable systems[1]… the merger of AOL and Time Warner will only further promote broadband platform competition and market-based open access. ***The parties have committed*** in their MOU to provide consumers with a choice of multiple ISPs over Time Warner cable systems ***as soon as possible***.With the Juno deal, a technical trial, and efforts to restructure Road Runner (and thereby expedite the demise of exclusivity), ***Time Warner is moving to make its joint commitment with AOL a reality***. These concrete steps go far beyond the commitments found to be sufficient by the Commission in the AT&T/TCI and AT&T/MediaOne transactions. Moreover, AOL ***has demonstrated its continuing commitment*** to non-cable broadband platforms, and has explained the ***clear economic and practical rationale*** underlying this position.[2]

Respondent suggests that this commission evaluate the many comments contained in this file which demonstrate exactly how Time Warner has, in the past, committed to various actions, with convincing presentations, presumably replete with multiple promises from top corporate executives, and compare these presentations to the results actually experienced by the parties.

It is significant that, among all the comments presented in this action, only one, the comments of Tucows, Inc. is in any measure favorable to the position of the applicants. Even in this

[1] Letter RE: Notice of Ex-Parte Presentation, Peter D Ross, September 19, 2000, Page 1

[2] Letter RE: Notice of Ex-Parte Presentation, Peter D Ross, September 19, 2000, Page 2

comment, which appeared at first glance to support the position of applicants, applicants were "dam'ned by faint praise." That comment ends by stating "We strongly believe that these assets are a regulated public good and as such access should be provided to third parties on reasonable commercial terms."[3]

As the commercial concerns, and even the end users, may be expected to be somewhat biased in their opinions, this commission could confine its review to the public entities which have had experience in dealing with Time Warner.

The experience of the cities who have accepted these presentations on face value seems to be universally that, upon relying upon the good faith of Time Warner, once Time Warner achieves its objectives it considers the agreement to be so much paper and the public officials are made to appear to their constituents to be fools who have been taken by slick, big city, con artists. Consider the statement of the Town of Cary:[4]

> Unfortunately, as Cary's sole cable television franchise agreement has been transferred over the years to larger and larger companies (now resting with Time Warner Entertainment), we have found that our community's best interests have been served less and less. While the Town is working very hard to muster resources to bring all forms of effective telecommunications competition to Cary, our citizens remain held hostage by Time Warner and its consistent lack of effort in meeting the needs of its subscribers, our citizens. And as we face yet another possible transfer, we have little reason to believe that conditions will improve.

An even stronger statement was made by Richard Quigley, Assistant City Manager, City of Daytona Beach, Florida:[5]

> Time Warner agreed to "respond to cable-related community needs with regard to public and community services and customer service consistent with the Cable Act" in the franchise renewal. Time Warner has consistently refused to comply with this requirement of the transfer consent agreement during the renewal negotiations. Among other things, Time Warner has refused to provide any access channel capacity for any of the five institutions of higher education in our area, including Daytona Beach Community College, a mainstay of the community. Even more surprising, Time Warner has consistently refused to provide the cities with access to emergency alert service despite the fact that serious emergency situations in our area are all too common (e.g., hurricanes, the uncontrollable fires of 1999)… Time Warner appears to believe that it is free to ignore with relative impunity the basic contractual responsibilities established in the transfer consent agreement.

Other cities also expressed dissatisfaction with the integrity of Time Warner Communications. One of the most often made comments, by the public entities and the commercial concerns, was the "creative" method Time Warner has in defining the meaning of words. Petitioner has described how, in his personal case, Time Warner has defined a post to a single USENET newsgroup as "spam," a reference to an IRC channel as "commercial," and a message relating to jazz posted to alt.binaries.sounds.mp3.jazz as "off topic." Similarly, Time Warner apparently defines a private message advertising a household object for sale posted to EBAY or another auction site, as "commercial" and reason for termination of an account. In fact, Time Warner

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[3] Comments of TuCows, Inc, July 31, 2000 Page 2

[4] Letter, Susan Moran Public Information Officer, Town of Cary, May 9, 2000, Page 2

[5] Statement Of Richard F. Quigley, Assistant City Manager, Daytona Beach, Florida, Submitted To Federal Communications Commission In Connection With Its En Banc Hearing On Aug 1 7 2000, Page 4

goes so far as to define a user asking another user for a date as a "commercial message."[6] Respondent would suggest that this committee give great thought to the creative definitions possible to such statements of Applicants as "***as soon as possible***," ***clear economic and practical rationale***," and "***Time Warner is moving to make its joint commitment with AOL a reality***."

It seems obvious that this application has received enormous visibility. In the event that this committee were to be snookered by Time Warner as was the City of Daytona Beach, the ramifications could not be advantageous to the committee.

Many parties, from United States Senators to the Assistant Attorney General of the State of Connecticut, parties who cannot be accused of having any corporate or personal stake in the outcome, other than a concern for the citizens they represent, have commented that this particular action will very possibly have far-reaching effects on the future of the internet. Neither the citizens nor the government will tolerate a major change in the nature of the internet, from a place where "anyone can build a soap box out of web pages and speak her mind in the virtual village green to an audience larger and more diverse than any the Framers could have imagined… [Where] unconventional messages compete equally with the speech of mainstream speakers in the marketplace of ideas that is the Internet"[7] to a mere extension of cable television where true discourse is impossible and the consumer is limited to receiving "content" such as Warner Brothers' cartoons.

This committee should give great thought to the past actions of Time Warner in dealing with other public agencies before accepting at face value its assurances and promises.

If applicants' promises are truly made in good faith, there should be no reasonable objection to this committee giving them the force of law.

Thank you for considering my comments.

Thomas Lewis Bonge

[6] Telephone conversation between Respondent and Colette Lantelme, Security Administrator of Road Runner, on July 31, 2000, memorialized in an affidavit filed in the Fedaral Court Action, Thomas Bonge et al v. Time-Warner Entertainment Co., L.P. et al., Case No. 6:00 CV-1054-ORL-18-A. Neither Time Warner nor Road Runner have asserted that any of the stated activities are not a violation of the contract between themselves and their customers.

[7] American Civil Liberties Union v. Reno, 31 F. Supp.2d 473, (E.D.Pa. 1999)