

ORIGINAL

EX PARTE OR LATE FILED

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW WASHINGTON, DC
WASHINGTON, DC 20004-2401 NEW YORK
TEL 202.662.6000 LONDON
FAX 202.662.6291 BRUSSELS
WWW.COV.COM SAN FRANCISCO

RECEIVED

SEP 26 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 26, 2000

Commissioner William E. Kennard
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: ***CS Docket No. 00-30; In the Matter of Applications of America Online, Inc. and Time Warner, Inc. for Transfers of Control Ex Parte Communication***

Dear Commissioner Kennard:

Enclosed, for your review, is a September 26, 2000, article from the *Wall Street Journal*, entitled "Instant Message Services at AOL Quietly Linked." The article notes:

America Online Inc. may be further along in the integration of its two, different, instant messaging systems – AOL Instant Messenger and ICQ – than it has been letting on.

Though AOL hasn't yet publicized the capability, it now is possible for many users of ICQ, which AOL purchased two years ago, to sign on to AOL Instant Messenger and communicate with other ICQ users. The compatibility suggests that AOL may be on its way toward creating a world-wide instant messaging system with 138 million potential users.

AOL has repeatedly blocked attempts by other IM competitors to achieve interoperability with AIM while, as the *Wall Street Journal* suggests, it has worked toward interoperability with its own ICQ. This further indicates that the only realistic means of ensuring competition in the instant messaging market is for the Commission to require, as a condition for approval of the joint transfer application, that AOL work toward interoperability with other competitors in the IM market.

No. of Copies rec'd 015
List A B C D E

COVINGTON & BURLING

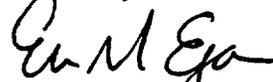
Commissioner William E. Kennard

September 26, 2000

Page 2

This also establishes that AOL controls, and always has controlled, interoperability between IM systems. By exercising its control to achieve interoperability, AOL will now exercise integrated control over its 138 million potential users. Any Commission analysis of market control must take this integration into account.

Sincerely,



Gerard J. Wadron

Erin M. Egan

Enclosure

cc: Ms. Magalie Roman Salas
Karen Onyeigi, Legal Advisor

Instant Message Services at AOL Quietly Linked

By JULIA ANGWIN

Staff Reporter of THE WALL STREET JOURNAL

America Online Inc. may be further along in the integration of its two, different, instant messaging systems—AOL Instant Messenger and ICQ—than it has been letting on.

Though AOL hasn't yet publicized the capability, it now is possible for many users of ICQ, which AOL purchased two years ago, to sign on to AOL Instant Messenger and communicate with other ICQ users. The compatibility suggests that AOL may be on its way toward creating a worldwide instant messaging system with 138 million potential users.

AOL's dominance of instant-messaging technology, the kind of real-time e-mail that also lets users know when others are online, has emerged as a major concern of regulators scrutinizing the company's planned merger with Time Warner Inc. Competitors to Instant Messenger, such as Microsoft Corp. and Yahoo! Inc., have been pressing the Federal Communications Commission to force AOL to make its services compatible with competitors'. Numerous systems are already interoperable. The FCC is considering forcing AOL to open up once it combines its system with ICQ, or within six months of the merger, whichever comes first.

AOL, which has an interest in remaining closed for as long as possible, has told regulators it isn't ready to open Instant Messenger to competitors and so far hasn't provided a time frame for when it would be ready. AOL argues that it wants to make its service work with competitors', but that it is concerned how that may affect the security and privacy of its users. AOL is working with an industry group to create a standard way for different instant messaging services to communicate.

When asked, AOL acknowledged that an ICQ user can now log on to AOL Instant Messenger, which is known by the acronym AIM. The spokeswoman said the capability is a byproduct of a test being conducted by engineers as it explores how to make its systems interoperate with others. The feature doesn't work in the other direction, allowing an AOL user to log on to ICQ.

"Rest assured, when the industry arrives at interoperability standards that protect consumers' privacy and security, ICQ along with all the other instant messaging services will be able to interoperate with AIM," said AOL spokeswoman Tricia Primrose. "We would not have ICQ interoperating with AIM ahead of any other instant messaging service."

Still, AOL's quiet changes have caught the eye of competitors, which believe it strengthens their

Please Turn to Page B4, Column 3

The Wall Street Journal

9/26/00

AOL Quietly Links Message Units

Continued From Page B1

argument in favor of immediately opening up AOL's instant messaging system. Brian Park, senior producer of instant messaging at Yahoo, said that if AOL makes its two services work together more fully, "it opens the door for us to argue for interoperability."

AOL created Instant Messenger 11 years ago with its well known "buddy list," the feature that lets users know when somebody on their list is online. Today, AIM has 65.5 million registered users. ICQ, created by an Israeli company, is targeted at a more technically oriented audience, including people who build more sophisticated online chat areas. With 73 million registered users, it is the largest instant messaging service in the world. Each on its own is more than three times the size of the closest competitor.

Until recently, each AOL system was completely separate. But starting in April, some ICQ users suddenly found themselves able to communicate using AOL Instant Messenger, which is available as a free download on the Web as well as within the AOL service. The feature isn't promoted anywhere on ICQ or AOL.

A person familiar with AOL's situation says the company is taking some steps internally to make AIM and ICQ interoperable, but that it faces challenges meshing the cultures of the two companies and also

with the kind of users signed onto each system. ICQ users tend to use a lot of extra features such as one that allows them to filter their incoming messages with an "authentication" device. AIM users tend to be less savvy and use different features, this person said.

Some rivals speculate that AOL's ultimate goal isn't interoperability between

AOL says the AIM-ICQ linkage is the byproduct of a test being conducted by engineers.

the two services, but rather to migrate ICQ users to AOL's instant messaging service.

"They're trying to push folks away from ICQ and consolidate and further build their monopoly in the AOL Instant Messenger product," said Bill Kirkner, chief technology officer at Prodigy Communications Corp., an instant messaging competitor.

The AOL spokeswoman responded: "These are two very unique communities and we plan to keep them separate."