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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marsha J. MacBride
Vice President
Government Relations

September 14, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB204
Washington, D.C. 20054

Ex Parte Presentation in Docket No. 00-30

Dear Ms. Roman Salas:

Pursuant to Section 1.1206 of the Commission's rules, an original and one copy of this letter are being filed as notice that representatives of The Walt Disney Company (Disney) held a telephonic conference on September 7, 2000, with the following members of the FCC's Cable Services Bureau: William Johnson, Deputy Chief; Royce Dickens, Deputy Chief, Policy and Rules Division; Darryl Cooper, Attorney Advisor; and Nancy Stevenson; Attorney Advisor to discuss issues relating to the pending merger between AOL and Time Warner. Representing Disney were Lou Meisinger, Executive Vice President and General Counsel, Preston Padden, Executive Vice President, Eric Haseltine, Executive Vice President, Larry Shapiro, Executive Vice President of Corporate Development and General Counsel, Peter Seymour, Vice President of Strategic Planning, Phil Lelyveld, Director of Digital Industry Relations, Amy Rabinowitz, Strategic Planning, Jonathan Leess, Senior Vice President and General Manager (ABC, Inc.), James Olson and Mark Schildkraut (Legal Counsel, Howrey Simon Arnold & White), Larry Sidman (Legal Counsel, Verner, Liipfert, Bernhard, McPherson & Hand, Chtd., and myself.

The parties discussed issues raised by Disney in its comments and letters filed in this proceeding. Specifically, Disney addressed concerns regarding the technical ability of the merged entity to discriminate against non-affiliated program providers. Disney reviewed the elements it believes are necessary to ensure meaningful and non-discriminatory open access.

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List A B C D E

1. Transmission of a Competitor's Video Signal.

The merged AOL/Time Warner should not be permitted to strip out of a competitor's video signal information designed to enable advanced television interaction. For example, the Advanced Television Enhancement Forum (ATVEF) is an industry open

1150 17th Street, NW, Suite 400 Washington DC 20036 / 202 222 4780 / Fax 202 222 4799 / marsha.macbride@disney.com

standard for interactive television supported by 140 major companies. The ATVEF standard currently allows for the transmission of interactive "triggers" and enhanced television content in the vertical blanking interval (VBI) of analog channels and in the data streams of DTV channels. Up to 10 lines of the analog VBI are available for interactive TV applications and each of these lines transmits data at approximately 10 kilobits/second. Therefore, an analog signal could contain up to 100 kilobits/second of data, which is enough to transmit audio and simple video. In the digital context, the capacity increases by a factor of 10, permitting approximately one megabit or more of auxiliary information to be transmitted in the signal.

Through these data streams, the data can be presented to the viewer in one of two ways. Through an icon on the screen, it can either link the viewer through a return path to a web site, or if capacity is sufficient, it can send screens of information along with the video signal.

It is through these mechanisms that consumers are able to interact with content on the screen, drill down to additional information in the signal or reach out to the Internet. Without access to these triggers, consumers will not have the opportunity to interact with any of the content on the screen. And without access to the rich data streams (such as auxiliary audio or video) transmitted in the primary video, consumers cannot enjoy interactive content that must be precisely synchronized with the video program.

2. <u>Display of Competitor's Information on the Screen</u>

In addition to the above, AOL/Time Warner must also allow the information to be displayed on the screen in the same manner as it displays its own content. The triggers and other data in the signal are key to easy and convenient consumer interaction with a site. Therefore, if the data is displayed on a competitor's screen in a manner that makes it difficult or uninteresting for a consumer to use, it will not be as successful as other favored sites with more easily enabled interaction. For example, today, AOL provides a "point and click" interface for its own narrowband content but requires consumers to type in URL's for non AOL-affiliated content. This seemingly trivial difference in customer interface is enough to cause AOL customers to spend 85% of their time inside the AOL walled garden..

3. <u>Link to the Return Path</u>

AOL/Time Warner should permit consumers to have access to a return path either through the AOL ISP or through an alternative ISP. If an alternative ISP is available, then the merged entity must also permit connectivity between the ATVEF triggers in a competitor's content on the video platform and the ISP. This is the only way in which a consumer would be able to use the enhanced services offered in the video signal, which resides in the video platform, and the ISP, which is usually allocated frequencies at the lower and upper spectrum bands.

Providing consumers access to multiple ISPs is trivially simple for AOL/TW. As in all internet appliances, each digital set top box must be assigned a unique identifier, called an IP address, that tells the ISP where to send data that has been requested by a user.

In order, to provide multiple ISP access, AOL/TW only needs to keep track of which users (and corresponding cable modems and IP addresses) are associated with which ISPs, and to use a standard network router in the cable head end to connect users to the right ISPs. Adding or changing ISPs can be done entirely at the head end without modifying the set top hardware or software.

4. Access of Alternative ISPs

Alternative ISPs should also have non-discriminatory access to caching and other methods used by AOL/Time Warner to get information quickly to consumers. For example, the merged entity should permit ISPs to cache through their own servers or to require the merged company to cache the most popular sites, without regard to who owns the content.

5. Connectivity to the Internet

If it is impossible to connect to send information to the screen through the VBI or the digital signal, the consumer must connect back to the Internet in order to enable the desired interactivity. As a result, AOL/Time Warner must not be permitted to treat that connectivity less favorably than it treats its own.

6. Privacy

AOL/Time Warner should not have access to personal data that is transmitted to the ISP regarding a consumer's activity on the site. This includes what interactive sites were visited, how often, and other transactions specific data.

7. Navigation

Sorting preferences should be based on non-discrimination principles for any navigation vehicle. This means that AOL/Time Warner should not favor the placement or display of its own (or its partners') programming or services on browsers, interactive program guides, remote controls or other navigation devices.

8. Integrity of Content

AOL/Time Warner should not be permitted to display its own programming content or services around a competitor's programming or interactive television applications without consent.

9. Open Industry Standards

AOL/Time Warner's interactive television infrastructure, including set top hardware and software, should adhere to open industry standards. They should also be restricted in their ability to add proprietary extensions to these standards that would, in effect, close them to competitors.

10. Community Applications

Applications such as instant messaging, chat, email and video conferencing enhance interactive television programming. Given AOL's dominance in these areas, the merged entity should permit interoperability with open industry standards so that consumers using other systems can openly communicate with others over the platform.

Disney reiterated its concerns that without these safeguards, the proposed merged entity would dominate the interactive television market in such a manner so as to preclude the development of competing providers of these services. As a result, it believes that the merger should be denied, or that, at a minimum, the above listed elements be included in any open access non-discrimination requirement imposed as a condition of the merger.

Yours truly,

M J MacBride

Marsha J. MacBride

cc: William Johnson, Deputy Chief
Royce Dickens, Deputy Chief, Policy and Rules Division
Darryl Cooper, Attorney
Nancy Stevenson, Attorney
James Bird, Office of General Counsel
Linda Senecal, Cable Services Bureau