

# COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20004-2401  
TEL 202.662.6000  
FAX 202.662.6291  
WWW.COV.COM

WASHINGTON  
NEW YORK  
LONDON  
BRUSSELS  
SAN FRANCISCO

January 4, 2001

## **BY ELECTRONIC FILING**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Counter TW-A325  
Washington, D.C. 20554

**Re: *Ex Parte Presentation* – Applications of America Online, Inc.  
and Time Warner Inc. for Transfers of Control (CS Docket  
No. 00-30)**

Dear Ms. Salas:

On December 29, 2000, Time Warner, Inc. submitted for the public record in connection with the above-captioned proceeding a copy of a letter dated June 15, 2000, from the General Counsel of Time Warner Cable (TWC) to the General Counsel of Gemstar-TV Guide International, Inc. That letter contained TWC's undertaking to desist from interfering with the delivery of Gemstar's electronic program guide data to TWC's customers during the pendency of the Commission's consideration of the Gemstar Petition for Special Relief seeking a ruling that cable systems may not strip such data from the signals of broadcast stations they carry.<sup>1</sup>

We are writing solely to note that Time Warner's decision to desist from stripping, as it is expressed in that letter, does not address any of the fundamental issues raised in Gemstar's Petition to Impose Conditions in this proceeding<sup>2</sup> or in the Petition for Special Relief. Time

---

<sup>1</sup> Petition for Special Relief of Gemstar International Group, Ltd. and Gemstar Development Corp. for Enforcement of the Communications Act of 1934, as Amended, and the Commission's Must-Carry Rules, CSR 5528-Z (filed March 16, 2000; Public Notice issued March 24, 2000 (DA 00-670)).

<sup>2</sup> Petition of Gemstar to Impose Conditions on AOL/Time Warner, *Applications of America Online, Inc. and Time Warner Inc. for Transfers of Control*, CS Docket No. 00-30 (Apr. 26, 2000).

COVINGTON & BURLING

Ms. Magalie Roman Salas  
Secretary  
January 4, 2001  
Page 2

Warner neither acknowledges that stripping is a violation of the FCC's rules and policies, nor undertakes that it will not resume stripping without awaiting definitive FCC action. TWC only offers what is in effect a temporary cease-fire, capable of being ended whenever TWC – in its sole discretion – concludes that the Commission has not acted with sufficient speed to resolve this matter.

All of Gemstar's concerns regarding the anti-competitive nature of Time Warner's behavior, spelled out in the Petition to Impose Conditions in this matter and in the Petition for Special Relief, remain open. We think it is clear that the Commission must deal with the issues Gemstar has raised in this proceeding, without regard to the unilateral but highly limited step TWC has taken, because that step fails to resolve any of the matters set forth in Gemstar's Petition.

Respectfully,

Gerard J. Waldron  
Jennifer A. Johnson

*Counsel for Gemstar-TV Guide International, Inc.*

cc: Chairman William E. Kennard  
Commissioner Harold Furchtgott-Roth  
Commissioner Susan Ness  
Commissioner Michael K. Powell  
Commissioner Gloria Tristani  
Deborah Lathen  
William Johnson  
Jim Bird  
Royce Dickens  
Roy Stewart  
Susan Fox  
Linda Senecal