

AGREEMENT RELATING TO THE CONSENT OF THE PUBLIC CABLE TELEVISION
AUTHORITY TO THE CHANGE OF CONTROL
OF THE FRANCHISE AGREEMENT HELD BY

DRAFT

THIS AGREEMENT (the "Transfer Agreement") is entered into this _____ day of _____, 2000, between and among the PUBLIC CABLE TELEVISION AUTHORITY, (the "Authority") TIME WARNER, INC. (the "Transferor"), AOL TIME WARNER, INC. (the "Transferee"), and _____ (the "Franchisee").

WHEREAS, Board of Directors entered into a Franchise Agreement (the "Franchise") with a subsidiary of the Transferor pursuant to the provisions of the an Ordinance of the Authority (the "Ordinance") to operate a cable television system within the boundaries of the Authority (the "System"); and

WHEREAS, the Transferor has filed a written application to the Authority, (the "Application") wherein it has requested the consent of the Authority to the assignment of control of the Franchise to the Transferee (the "Transfer"); and

WHEREAS, it is the intent of the Authority to approve the transaction whereby control of the Franchise and the cable system (the "System") shall be held by the Transferee and guaranteed by the Guarantor; and

WHEREAS, the Franchisee will remain in place and continue to hold the Franchise;

WHEREAS, the Board of Directors of the Authority has reviewed the Transfer as well as all relevant documents, Staff Reports and recommendations; and

WHEREAS, pursuant to the Ordinance, the Transfer is subject to written consent of the Board of Directors; and

WHEREAS, based upon the evidence presented to the Board of Directors, it has determined that it would be in the public interest to conditionally approve the Transfer.

NOW, THEREFORE, it is agreed by and between the parties as follows:

1. The Board of Directors of the Authority hereby gives its consent and approval to the Transfer as described herein.
2. The granting of this consent to the Transfer does not render or waive the right of the Authority to approve any subsequent change in the ownership of the Franchise or the ownership or legal or operating control of the Transferee where required by the Ordinance and there shall be no further material change, amendment, or modification of the ownership or equity composition of the Transferee which requires advance consent of the Authority pursuant to the Ordinance without further written consent of the Board of Directors.
3. By executing this Transfer Agreement, the Transferee agrees and acknowledges that (1) this Transfer Agreement and the approving resolution is not a new franchise agreement,

the granting of a franchise, or the renewal of the existing franchise, but rather is exclusively an agreement to transfer control of the franchise and said Transfer Agreement neither affects nor prejudices in any way the Authority's or Transferee's rights under the Franchise; (2) under Section 625 of the Cable Act, the term "commercially impracticable" means, with respect to a cable operator, that it is commercially impracticable for the operator to comply with such requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based. Transferee agrees that in judging whether particular obligations are commercially impracticable, the parties will not consider the economic burden of debt service and equity requirements incurred directly or indirectly to fund the Transfer to the extent such debt service and equity exceeds the debt service and equity requirements of the Transferor as they existed prior to the Transfer.

4. By executing this Transfer Agreement, the Transferee hereby accepts all the terms and conditions of the Franchise, the Ordinance, **[ALL PRIOR TRANSFER AND EXTENSION AGREEMENTS – LIST BY TITLE AND DATE]** any lawful orders or directives of any administrative agency relating to the Franchise or the System including, but not limited to, the Federal Communications Commission (the "Commission") and this Transfer Agreement (collectively, the "Franchise Documents") and Transferee represents and warrants that it has examined the requirements of the Franchise Documents as well as the applicable federal, state, or local laws or regulations, and agrees to abide by all the terms and conditions thereof.

Transferee acknowledges its review of the Franchise Documents and that its understanding of the Franchise Documents is consistent with that of the Franchisee. Transferee agrees and acknowledges that neither the Change of Control nor the Authority's approval of this Application shall in any respect relieve Franchisee or any of its successors-in-interest of the responsibility for past acts or omissions, known or unknown, or for any obligations or liabilities pursuant to the Franchise Documents.

The Transferee agrees and acknowledges that it has found the Franchise Documents specified herein to be legally sufficient, enforceable, valid, and binding and accept the same without condition or reservation. Transferee shall assume all rate refund obligations and possessory interest tax refund liability, if any, both actual and contingent, of the Transferor. The Transferor agrees to cooperate and furnish relevant information in relation to any audit and/or investigation relative to any audit and/or investigation relative to breaches and/or defaults accruing subsequent to the Transfer.

To the extent that the Transferee or Franchisee, or any related person or entity, challenges the validity or interpretation of the Franchise Documents in the future in any administrative proceeding or court of law, such a challenge shall be subject to all defenses which would have been available to the Authority had the Transferor, or any related person or entity, brought said challenge(s) including, but not limited to, waiver, estoppel, consent, unclean hands and accord and satisfaction, as well as any and all defenses independently available to the Transferee or Franchisee.

5. The parties acknowledge and recognize that the Authority has expressed a concern regarding the effect which the Transfer may have upon the amount or level rates subject to the jurisdiction of the Authority under existing and future provisions of regulations of the Commission and has further expressed its intent that it would not approve the Transfer if the Transfer or the Authority's consent thereto, could in any way be utilized by Franchisee to justify rates subject to the jurisdiction of the Authority higher than could be justified in the absence of the Transfer.

The Franchisee hereby covenants, represents and warrants to the Authority, as partial consideration for the Authority's approval of the Transfer and this Transfer Agreement as follows:

A. Franchisee will specifically identify any Goodwill, as that term is defined in paragraph 99 of that Report and Order and further Notice of Proposed Rule Making (MM Docket No. 93-215, CS Docket No. 94-28) March 30, 1994 (the "Cost of Service Report") that is included in any filing to the Authority or the Commission relating to the calculation or determination of a permitted Basic Service Rate or other rates subject to the jurisdiction of the Authority. To the extent that any such Goodwill was created solely as a consequence of the Transfer ("Change of Control Goodwill"), Franchisee will include adjustments and/or modifications to the calculation or determination of a permitted Basic Service Rate or other rates subject to the jurisdiction of the Authority ("Regulated Rates") that remove the effect of any Change of Control Goodwill on the calculation or determination of any such rate(s); however, to the extent that any Goodwill arose prior to the Change of Control, and/or was not created as a result of the Change of Control Agreement to include such Goodwill in the calculation or determination of any such rate to the extent permitted under then applicable rules of the Commission.

B. Franchisee expressly waives any right it may have under current Commission rules to claim that facts exist which would rebut the presumption of the Cost of Service Report that Transfer Goodwill should be disallowed from the rate base for the purpose of any proceeding to calculate or determine any Regulated Rate.

C. If, and to the extent, either Franchisee or any related person or entity, files any documents with the Authority or Commission which is inconsistent with the requirements of Section 5(A) above, Franchisee shall, upon notice from the Authority, promptly resubmit the affected documents in a manner which conforms to the requirements of Section 5(A) above. If Franchisee fails to resubmit the affected documents within thirty (30) days of receiving notice from the Authority, then Franchisee shall indemnify the Authority and pay all of its reasonable costs including the costs of attorney's accountants, financial consultants, experts, and staff time necessary to determine and remove from the rate calculations contained in the document the impact of any Change of Control Goodwill that should have been removed pursuant to the requirements of Section 5(A) above. Said amounts shall be paid, on an ongoing basis, within thirty (30) days of receipt of an invoice by the Authority and failure to pay said amounts in a timely manner shall constitute a material breach of the Franchise and this Change of Control Agreement.

D. The reservation of rights and expression of intent and understanding set forth in this section are not intended by the parties, nor shall they be construed or operate, to permit the Authority to revoke, or further condition or qualify, its consent to the Change of Control or invalidate this Change of Control Agreement. Neither party's entry into this Change of Control Agreement nor the Authority's approval of the Change of Control shall, in any way, prejudice the position of either party in any subsequent proceeding for the setting, making, adjustment, or modification of any Regulated Rate, except as expressly provided herein.

The terms of this Section 5 are elective until the earlier of a substantive modification of the Commission's existing Cost of Service Regulations so that Change of Control Goodwill, or a portion thereof, is expressly provided as being includable in the calculation of any Regulated Rate or the Fifth Anniversary of the Closing of the Proposed Transaction. Except as expressly provided herein, the Transferor, Transferee and Franchisee do not waive any right which they may possess in relation to rate regulation.

6. On or before the Effective Date, the Transferor, or its designee, shall pay to the Authority up to the sum of _____ Thousand Dollars (\$_____), as invoiced by the Authority, which amount is paid in, and only in, complete satisfaction and reimbursement of all third-party costs incurred by the Authority in relation to the Transfer (the "Payment"). In regard to said Payment, the parties expressly agree and covenant as follows:

A. The Payment is within the exclusions from the term "franchise fee" set forth in Section 622(g)(2) of the Cable Act (47 U.S.C. §542(g)(2)); and

B. The Payment shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability or other fees or charges which the Transferor or the Transferee shall be required to pay to the Authority or to any state or federal agency or authority; and

C. Neither the Transferor, the Transferee nor the Franchisee shall have or make any claim or any deduction or other credit of all or any part of the amount of the Payment to be made pursuant to the franchise from or against any Authority or other governmental taxes of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is duly discriminatory against cable operators or cable subscribers or income taxes) or other fees or charges which the Transferor, the Transferee or the Franchisee is required to pay to the Authority or other governmental agency; and

D. Neither the Transferor, the Transferee, nor the Franchisee shall apply or seek to apply all or any part of the amount of the Payment to be made pursuant to this Transfer Agreement as a deduction or other credit from or against any Authority or other government taxes of general applicability (other than income taxes) or other fees or charges; and

E. Neither the Transferor, the Transferee nor the Franchisee shall apply or seek to apply all or any part of the amount of any Authority or other government taxes or other fees or charges of general applicability (including any such tax, fee, or assessment imposed on

both utilities and cable operators or their services) as a deduction or other credit from or against the Payment to be made pursuant to this Transfer Agreement; and

7. In regard to the Payment made to the Authority pursuant to this Transfer Agreement, the Transferor, Transferee, Franchisee, or any affiliate party, will not pass through, externalize, or otherwise attempt to add the costs of the Payment pursuant to Paragraph 6 hereof, to any regulated rate.

8. Transferee and Franchisee represent that the letter of credit, insurance and bonding required by the Franchise Documents have been obtained, and that there will be no gaps in required coverages or liabilities. Transferee will continue to maintain the letter of credit and bonds that it was required to maintain under the Franchise notwithstanding the Transfer.

9. Transferee and Franchisee represent and warrant that the Transfer of the Franchisee complies with and is not in violation of any applicable federal, state, or local law, statute, and/or regulation. Franchisee agrees to defend, indemnify and hold the Authority harmless against any loss, claim, costs, damage, liability or expense (including, without limitation, reasonable attorney's fees) arising out of this Transfer Agreement and/or incurred as a result of (i) any representation or warranty made by Transferor, Transferee or Franchisee herein or in the Application or in connection with the Authority's review of the Transfer which proves to be untrue or inaccurate in any material respect or (ii) any violation of any federal, state or local law, statute and/or regulation relative to Transferee's ownership or control of the Transferor, the Franchisee, the Franchise or the System. In the event the Authority receives any such notice of a loss, claim, damage, liability or expense, the Authority shall promptly notify Transferee and Franchisee which shall, at the sole discretion of the Authority, assume sole and direct responsibility for defending against any such loss, claim, damage, liability or expense.

10. This consent is not an affirmation that Transferor or Franchisee is currently in compliance with the Franchise. Any consent given by the Authority in this Transfer Agreement and any resolution approving this Transfer Agreement is not a finding that, after the Transfer, Transferor, Franchisee, or Transferee will be financially, technically or legally qualified, and no inference will be drawn, positively or negatively, as a result of the absence of a finding on this issue. Any consent is therefore made without prejudice to, or waiver of, the Authority's right to fully investigate and consider Transferor or Transferee's financial, technical and legal qualifications and any other relevant considerations during any proceeding including by way of example and not limitation, any future transfer or renewal proceeding. Without limiting the foregoing, any approval of the Transfer is not a finding or representation that the Franchise will be renewed or extended (and approval shall not create an obligation to renew or extend the Franchise); that Transferor, Franchisee or Transferee is "financially, technically or legally" qualified to hold a franchise; or that any other renewal issue that may arise with respect to past performance or future cable-related needs and interests will be resolved in a manner favorable to Transferor, Franchisee, or Transferee. Unless provided for within this Transfer Agreement, nothing in this Transfer Agreement shall constitute a waiver of any of Transferor's, Transferee's, Franchisee's, or Authority's rights or remedies under federal, state or local law.

11. The Transferee and Franchisee expressly agree that any litigation arising from or relating to the Franchise Documents shall be filed and litigated exclusively in the Superior Court,

County of Orange, State of California or, if jurisdictional requirements are otherwise met, the Federal District Court for the Central District, California. Transferee and Guarantor hereby jointly accept service of process by way of service upon the General Manager of the local office of the Franchisee or Transferee.

12. Any violation of this Transfer Agreement or any of the terms contained in the Franchise Documents shall be deemed to be a violation of the Franchise and the Ordinance.

13. Transferor represents and warrants that it has received cash refunds from Orange County relating to possessory interest tax payments for tax years _____ to _____ (the "Tax Years"). All, or a portion of these tax payments, were collected from subscribers as line item surcharges on monthly cable bills. Not later than four (4) months from the Effective Date, Transferee agrees to provide a written accounting to the Authority of the total amount collected from PCTA subscribers for the Tax Years (the "Subscriber Payments"), the amount of the total refund received from Orange County for the Tax Years (the "Total Refund"), the amount of the Total Refund allocable to PCTA Subscribers on a pro rata subscriber basis (the "Gross PCTA Refund"), the amount of expenses allocable to PCTA Subscribers (the "Expense Allocation"), and the "Net Refund" due PCTA Subscribers, which is the Gross PCTA Refund less the Expense Allocation. The Expense Allocation shall not exceed ten percent (10%) of the Gross PCTA Refund. The Net Refund shall be credited to current subscribers no later than six (6) months from the Effective Date and written proof of said refund shall be submitted to the Authority no later than eight (8) months from the Effective Date.

14. Transferee will provide interactive high speed cable modem services to buildings owned or controlled by the Authority or its member cities at most favorable commercial or governmental rate offered anywhere in its California systems by the Transferee, the Franchisee, or any Affiliate thereof.

15. Non-Discriminatory Access to Cable Distribution System.

A. Provision of Open Access. The Franchisee shall be required to provide non-discriminatory mandatory access to its cable distribution system to requesting Internet Service Providers, irrespective of whether such providers are affiliated with the Franchisee, when one of the following conditions precedent is met.

i) Franchisee or any affiliated entity controlled by Transferee enters into an agreement with a federal, state, or local government franchising authority to provide non-discriminatory access to its cable distribution system to unaffiliated providers of Internet access service; or

ii) It is determined by a court of competent jurisdiction possessing the legal ability or is not barred that a local franchising authority to impose a requirement on a franchisee to provide non-discriminatory access to its cable distribution system to unaffiliated Internet access service provider(s);

Provided, however, that (1) any requirement imposed pursuant to subparagraph 15(a)(i) would be subject to equivalent terms and conditions, and (2) prior to the enactment of any such requirement pursuant to Subparagraph 15(a)(i) above by the Authority, the Authority agrees that

Franchisee shall be given reasonable notice and an opportunity to be heard including the right to present evidence on any findings made by the Authority with respect to such a requirement. If following such a hearing the Authority decides to require such a non-discriminatory access provision, Franchisee agrees to modify the Franchise to incorporate such nondiscriminatory access provisions into the Franchise consistent with the terms of such judicial decision or other agreement.

B. Compliance with Lawful Order. Franchisee agrees to comply with all lawful federal, state, and local requirements with respect to nondiscriminatory access to Franchisee's cable distribution system for providers of Internet access service. The Authority approval of the Transfer shall not be deemed to be a waiver of any such rights it may have to impose any requirement relating to nondiscriminatory access at a later date regardless of whether a transfer or renewal is pending. Except as expressly provided herein, Franchisee, likewise, does not waive any right it may have with respect to the imposition of such a condition.

C. Transferor and America Online, Inc. ("AOL") represent and warrant they have entered into and executed a Memorandum of Understanding dated February 29, 2000, regarding Open Access Business Practices (the "MOU"). Franchisee and Transferee hereby agree to and covenant: (i) to diligently perform, or cause to be performed, the obligations set forth in the MOU; (ii) not to materially amend, modify, or reduce the commitments to open access set forth in the MOU; and (iii) to implement the MOU in the franchise area in such a manner as to allow non-discriminatory open access to all ISPs, as defined in the MOU, which seek said access upon non-discriminatory terms and conditions.

16. Transferor, Transferee and Franchisee represent and warrant that the Transfer will not result in any increase in subscriber rates.

17. The definition of "Gross Annual Receipts" or "Gross Receipts" as found in the Franchise and/or the Ordinance is hereby amended to read as follows:

"Gross Annual Receipts" or "Gross Receipts" means all revenue, as determined in accordance with Generally Accepted Accounting principles, which is received, directly or indirectly, by Grantee and by each Affiliated Person from or in connection with the distribution of any Cable Service in the Authority, and any other Service which may, under now or then applicable federal law, be included in the definition of Cable Service for the purpose of calculating and collecting the maximum allowable franchise fee for operation of the System, including, without limitation, leased or access channel revenues, advertising revenues, cable modem service revenues, internet access service revenues, revenues, by whatever name, paid by programmers to the Grantee or any affiliated person for or relating to carriage of any programming service, lease or rental payments from a user, affiliated or non-affiliated, of the Cable System which provides a service which is not independently subject to a franchise fee, with the distribution of Cable Service on the Cable System. It is intended that all

revenue collected by the Grantee, and by each Affiliated Person, from the provision of Cable Service over the System to the extent that such revenue is derived through any means that has the effect of avoiding the payment of fees payable under the Franchise Agreement be included in this definition. Gross Annual Receipts also specifically includes: (i) all revenues paid by Subscribers for any Cable Service which are paid by Subscribers for any Cable Service which are paid to the Grantee, any Affiliate, or any party in contractual privity with the Grantee or any Affiliate thereof; (2) any bad debts recovered; (iii) a pro rata portion (based on the number of subscribers residing in the Authority) of all advertising revenue which is received directly or indirectly by Grantee, any Affiliated Person, or any other Person from or in connection with the distribution of any Service over the System in the Authority or the provision of any Service-related activity in connection with the System in the Authority. Gross Annual Receipts shall be calculated at proportional discounts associated with the bundling or packaging of Cable Services with non-cable services. Notwithstanding anything to the contrary in the foregoing, Gross Annual Receipts does not include: (i) the revenue of any Person to the extent that said revenue is also included in the Gross Annual Receipts of Grantee; (ii) taxes imposed by law on Subscribers which Grantee is obligated to collect; (iii) any other revenue which must be excluded pursuant to applicable law.

18. Transferor, Transferee, and Franchisee acknowledge that the Authority's consent to the Transfer is DENIED unless the conditions set forth herein are satisfied. To this end, the Transferor, Transferee, and Franchisee agree that if any such conditions is challenged in federal, state or local court or agency proceedings, directly or indirectly, by claim or defense, on any ground, by or at the behest of any of the Transferor, Transferee, and Franchisee, or any affiliate, then the Authority's consent shall be of no force or effect, and only the introductory recitals and the denial of consent to the Transfer shall survive, and shall be effective as if such clauses were the only clauses adopted.

19. Franchisee shall perform the obligations set forth on Exhibit A.

20. The Authority hereby gives notice that the Grant or Transfer of the Franchise may create a taxable possessory interest upon which the Transferee may be liable for the payment of certain property taxes. The Franchisee and Transferee hereby acknowledges that it has received actual notice as provided by Revenue and Taxation Code Section 107.6.

21. This Transfer Agreement shall be deemed effective upon the closing of the Transfer (the "Effective Date").

22. This Transfer Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. The parties agree that this Transfer Agreement will be considered signed when the signature of a party if

delivered by facsimile transmission. Such facsimile signature shall be treated in all respects as having the same effect as an original signature.

[SIGNATURE BLOCK NEXT PAGE]

PUBLIC CABLE TELEVISION AUTHORITY
(the "Authority")

By _____
Its _____

ATTEST:

Secretary of the Board of Directors

APPROVED:

RUTAN & TUCKER, LLP

By _____
William M. Marticorena
Special Counsel

TIME WARNER, INC.
(the "Transferor")

By _____
Its _____

AOL TIME WARNER, INC.
(the "Transferee")

By _____
Its _____

(the "Franchisee")

By _____
Its _____

EXHIBIT A

A. If, and to the extent, Franchisee removes, causes to be removed, or allows to be removed the local affiliate of any national over-the-air broadcasting network including, without limitation, ABC, CBS, NBC, FOX, and UPN, for any reason other than the technical lack of availability of said local broadcasting affiliate, it shall provide an automatic credit to all subscribers affected by said channel removal without the requirement of a specific subscriber request in the amount of the greater of fifty cents (\$.50) or one percent (1%) of the rate for the Basic Service Tier for each calendar day, or portion thereof, during the month for which the channel is not provided and the subscriber has made an advance payment for cable service for that month.

B. The violation of any statute, Rule, or Regulation or order of the Commission relating to the carriage or noncarriage of any programming source or channel shall be deemed a material breach of the Franchise.



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February 25, 2000

AOL Time Warner Inc.
c/o Time Warner Cable
41725 Cook Street
Palm Desert, CA 92211

Time Warner Inc.
c/o Time Warner Cable
290 Harbor Drive
Stamford, CT 06904-2210

Re: Cities of Hawthorne, Indian Wells, La Quinta, Lawndale, Poway, Torrance and the Public Cable Television Authority, California (the "Franchising Authorities"); FCC Form 394, dated February 11, 2000 (the "Application") Relating to Change of Control of Cable Television Franchises (the "Franchises") from Entities Affiliated with Time Warner Inc. (the "Transferor") to AOL Time Warner (the "Transferee") (the "Transfer")

Gentlemen:

PART I.

This office represents the Franchising Authorities in relation to the Application and the Transfer. In regard to said Application, the Franchising Authorities, through this office, request that the Transferor, the Transferee, its parents, subsidiaries, and affiliates (collectively, the "Operator"), provide certain information regarding the potential economic impact of said Transfer upon the rates which will be, or may be, charged for the provision of regulated and unregulated services within the Franchising Authorities. More specifically, and without limitation, the Franchising Authorities are concerned whether the Transfer, considering its totality of its economic impacts, will preclude or impede the Operator from realizing a reasonable return pursuant to the Federal Communications Commission's (the "Commission") Benchmark Regulations, as currently found in the Second Order on Reconsideration, Fourth Reporting Order, and Fifth Notice of Proposed Rulemaking (MM Docket No. 92-266, FCC 94-38, released March 30, 1994) (the "Second Order on Reconsideration"), as amended and

"D"

AOL Time Warner Inc.
Time Warner Inc.
February 25, 2000
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currently codified at 47 C.F.R. § 76.922(i) and whether the Transfer may or will cause the Operator, or any entity related thereto, to file a new or amended Cost of Service submission pursuant to the Report and Order and Further Notice of Proposed Rulemaking (MM Docket No. 93-215, CS Docket No. 94-28, FCC 94-39, released March 30, 1994) (the "Cost of Service Report and Order") and the Second Report and Order, First Order on Reconsideration, and further Notice of Proposed Rulemaking (MM Docket No. 93-215, CS Docket No. 94-28, FCC 95-502, released January 26, 1996) (the "Final Cost of Service Report and Order") (collectively, the "Cost of Service Rules").

The Franchising Authorities hereby request that the Operator, or any entity related thereto which will control the Franchises or the actual franchisees (the "Franchisees"), certify in writing that based upon conditions known to it at this point in time, and taking into account the close of the Transfer and the economic burdens and benefits associated therewith, the rates which can be charged by the Operator, or any entity related thereto which will control the Franchises or the Franchisee, pursuant to the Second Order on Reconsideration, and without any filing of a Form 1220 pursuant to the Cost of Service Rules, will provide the Operator, or any entity related thereto which will control the Franchises or the Franchisee, with a reasonable and adequate rate of return and will contractually agree to do so. If the Operator is not in the position to provide this certificate to the Franchising Authorities, or declines to do so, then the Operator, or any entity related thereto which will control the Franchises or the Franchisees is hereby requested to provide the following information in writing within fifteen (15) days of the date of this letter:

(1) Has the Operator carefully read and considered the Commission's adoption of a presumptive original cost approach to system valuation, as found in the Cost of Service Report and Order, Paragraphs 53 - 67, prior to its entry into this transaction?

(2) Is the Operator willing to value its acquired plant on Form 1220 pursuant to the original cost approach specified by the Commission in Paragraphs 53 - 67 of the Cost of Service Report and Order or the limited "step-up" basis allowed pursuant to the Final Cost of Service Report and Order?

(3) If the Operator values its rate base pursuant to a strict application of the original cost approach as specified in Paragraphs 53 - 67 of the Cost of Service Report and Order or the limited "step-up" basis allowed pursuant to the Final Cost of Service Report and Order, and applying the other standards articulated by the Commission in said Cost of Service Report and Order including, but not limited to, the targeted rate of return, will such an application produce an acceptable overall rate of return to the Operator or will the application of these criteria without modification result in a confiscatory or otherwise unlawful rate of return?

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(4) Does the Operator contend that all or any portion of the acquisition price for the cable system constitutes "organizational costs" within the meaning of Paragraph 86 of the Cost of Service Report and Order? If so, specify the amount or percentage that the Operator contends constitutes organizational costs and provide a detailed and specific justification for said allocation.

(5) Does the Operator contend that all or any portion of the acquisition price for the cable system constitute "Franchises costs" within the meaning of Paragraph 87 of the Cost of Service Report and Order? If so, please specify the amount or percentage which the Operator contends should be allocated to Franchises costs and provide a detailed and specific justification for said allocation.

(6) Does the Operator contend that all or any portion of the acquisition price for the cable system constitutes consideration paid for "customer lists" within the meaning of Paragraph 88 of the Cost of Service Report and Order? If so, please specify the amount or percentage which the Operator contends should be allocated to customer lists and provide a detailed and specific justification for said allocation.

(7) Does the Operator maintain that all or any portion of the acquisition price for the cable television system constitute accumulated start-up losses within the meanings of Paragraphs 70 - 73 of the Cost of Service Report and Order? If so, please specify the amount or percentage which the Operator contends constitutes accumulated start-up costs and provide a detailed and specific justification for said allocation.

(8) Does the Operator contend that all or any portion of the acquisition price for the cable system constitutes consideration for "patent rights" within the meaning of Paragraph 99 of the Cost of Service Report and Order? If so, please specify the amount or percentage of the acquisition price which the Operator contends is consideration for patent rights and provide a detailed and specific justification for said allocation.

(9) Does the Operator contend that the allowance of "goodwill," as that term is defined in Paragraph 99 of the Cost of Service Report and Order, into the rate base would result in reasonable rates? If so, please provide a specific and detailed explanation and justification for said contention.

(10) Does the Operator contend that any and all goodwill which it proposes to include within the rate base was the result of an arms-length transaction? If so, provide a specific and detailed justification for this contention.

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(11) Does the Operator contend that any and all goodwill which the Operator contends should be included in the rate base has produced for subscribers concrete benefits that would not have been realized otherwise? If so, please provide a specific listing of said consumer benefits including a valuation for each benefit, a collective valuation, and a specific and detailed explanation as to why those benefits would have not been realized had the transaction not taken place.

(12) What amount or percentage, if any, of the acquisition price as it relates to the cable system constitutes goodwill?

(13) Does the Operator contend that a strict application of the cost of service criteria as contained in the Cost of Service Report and Order, including a complete disallowance of all goodwill as defined therein, would threaten the financial health of the Operator and its continued ability to provide cable service as that phrase is utilized in Paragraph 292 of the Cost of Service Report and Order? If so, does the Operator contend that it would be eligible for hardship rate relief within the meaning of Article X of the Cost of Service Report and Order? If so, provide a detailed and specific explanation and justification for this contention.

(14) Please provide an immediately preclosing and immediately post-closing balance sheets for the following entities:

- a) The Franchisee
- b) The Transferor
- c) The Transferee
- d) America Online, Inc. ("AOL")
- e) TWI Cable Inc.
- f) Time Warner Companies, Inc.

(15) Has the Operator, or any entity that controls or is controlled by the Operator filed an FCC Form 1220 with any jurisdiction in which any cable television plant was valued, or attempted to be valued, in any manner other than the presumptive original cost standard as found in the Cost of Service Report and Order, Paragraphs 53-67, and/or any acquisition costs, of any kind, were included in the cable system valuation? If so, please provide all such Form 1220's or substantively equivalent document along with any other supporting documents filed with the relevant jurisdictions.

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I have had the opportunity to preliminarily review your Application along with its various attachments. Although my analysis of the tendered documents is not yet completed, given the need for prompt action upon your Application, the Franchising Authorities request that you provide the following additional information specified in this letter as expeditiously as possible. Of course, the information requested in this letter is not necessarily exhaustive and the Franchising Authorities, either directly, through this office, or through other consultants, may request additional information during the review process.

Please provide the following information and/or documents to me on behalf of the Franchising Authorities:

PART II.

(1) A complete and nonredacted copy of the Agreement and Plan of Merger between the Transferor and AOL, dated January 10, 2000 (the "APM") with all exhibits, schedules, supplements, and amendments thereto.

(2) A complete and nonredacted copy of the application, with all exhibits, schedules, supplements and amendments thereto, relating to approval pursuant to the Hart-Scott-Rodino Act.

(3) Financial statements setting forth the financial position of the current Franchisees for the past five (5) years including the current year-to-date. Also, please provide an income and financial statement for the operations of the current Franchisees in each of the Franchising Authorities together with the rationale for the allocation of joint or common costs, investment, revenues, etc. for each of the past five (5) years including the current year-to-date.

(4) Financial pro formas for the operations of the Franchisee and the Transferee and its control entities for the next ten (10) years including income statements, balance sheets and cash flow projections for operations within each of the Franchising Authorities.

(5) Any and all contractual and/or management agreements to which the Operator, or any related entity is a party relating to or concerning the Transfer or the cable television system serving the Franchising Authorities (the "System").

(6) Any and all plans and commitment for upgrading the System.

(7) A summary, verified by any and all lenders, of the terms and conditions of any lending agreement or equity purchase agreement relating to the Transfer or the System.

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(8) Please provide, if they exist, any and all agreements, trust agreements, trust indentures, management agreements, or any other document which exists in the hands of the Operator, or any related entity, or both, regarding the System or Transfer.

(9) Please provide, as of the current date and the projected closing date, a summary of all of the Transferee's outstanding long-term indebtedness for borrowed money, including the current portion thereof and including any accrued but unpaid interest thereon and any prepayment premium or penalty with respect thereto.

(10) Please provide a complete copy of any and all partnership agreements, or shareholder agreements or member agreements concerning, directly or indirectly, the Operator and the System.

(11) Please provide a listing of the cable systems operated by the Transferee and/or AOL, or any party in control thereof, and its affiliates or related entities. Please provide or state as to each system:

- a) The initial channel capacity of the system (indicate dates).
- b) The current channel capacity of the system (indicate dates where appropriate).
- c) The number of PEG channels.
- d) The yearly budget for local origination programming.
- e) The yearly budget for PEG programming.
- f) Whether the Operator has expanded channel capacity or services in excess of Franchises requirements.
- g) Any Franchises enforcement actions, the dates, the subject matters, and the resolution.
- h) Any fines, penalties, or other enforcement actions undertaken by the franchising authority.
- i) The operator's compliance, or lack thereof, with either federal minimum customer service standards or customer service standards adopted by the local franchising authority.

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j) The cable system's rate history both prior to September 1, 1993 and thereafter.

k) Any customer service/satisfaction surveys conducted by the Transferee or its franchising authority since the inception of the franchise.

(12) Please provide a narrative summary of how the proposed financing of the Transfer will work. Indicate and describe each legal entity and credit facility involved.

(13) Please provide copies of signed and completed loan documents or a signed loan commitment, if applicable, which contains the following information:

a) All material terms of the financing commitment including, without limitation, maximum available loan proceeds, interest rates, repayment schedule, reserve or set-aside requirements, rate covenants, operating covenants, revenue covenants, negative covenants, prepayment options, commissions, underwriting fees, points, costs, collateral or security requirements, and financing fee requirements.

b) A statement of all conditions of closing or other conditions to the commitment of the lender to close the Transfer.

c) A written commitment of the lender not to materially modify any of the terms and conditions of the lending commitment as set forth in the commitment letter subsequent to its submission to the Franchising Authorities without the written consent of the Franchising Authorities.

d) A list of all lenders or participants in any lending syndicate (the "Lenders").

e) A schedule of the amount of loan proceeds which each of the Lenders have committed pursuant to any lending syndication (the "Individual Lending Amounts").

f) Sufficient financial disclosure information upon each of the Lenders to demonstrate that each of those entities possesses sufficient monetary resources to fund, without the need to raise additional capital or further syndicate the lending, its Individual Lending Amount.

g) A pro forma "Sources and Uses of Funds" which will show the actual uses of loan proceeds as of the Closing Date.

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- h) A projected debt service schedule showing interest payments, sinking fund payments, if any, principal payments, and other required payments.
- i) A schedule showing all required and/or projected capital expenditures from all of its existing franchises plus the projected rebuild costs for all of its franchises.
- j) A letter of representation from any Lender(s) addressed to the Franchising Authorities as to the following:
 - i. The copies of any commitment letter and summary of lending conditions provided to the Franchising Authorities constitute full, complete and nonredacted copies of said documents without deletion, addition, or modification.
 - ii. Any summary of lending conditions contains all of the material conditions of the borrowing.
 - iii. The material terms and conditions of any borrowing as set forth in any summary of lending conditions will not be modified, amended, supplemented, or otherwise altered without prior written notice to and the written consent of the Franchising Authorities between the date hereof to the Closing Date of the Transfer.

Although the Franchising Authorities will commence financial review upon the receipt of a commitment letter which meets the above-described qualifications, the Franchising Authorities will require, prior to any formal approval of the Transfer, complete and executed lending documents which are consistent with the material terms of the commitment letter.

(14) Pro forma financial projections which reveal, as underlying assumptions, any and all rate covenants or operating covenants which are or will be included in any loan or equity financing documents, for a period of five (5) years, demonstrating the level of rates and average subscriber revenues which must be earned by the System in order for the Franchisee and/or Operator to be in compliance with any and all operating covenants and/or rate covenants to which the Operator will be bound pursuant to the terms and conditions of its financing documents as well as required or anticipated rate of return on equity capital.

(15) Copies of all financial projections, pro formas, pro forma balance sheets, pro forma income statements, and other financial documents submitted to any and all buyers, purchasers, lenders, lending institutions, institutional investors, private investors, or other individuals which have been approached by the Operator, or any related entity, to provide equity or debt financing in relation to the Transfer or in relation to a sale of the franchises or equity interests in the franchises.

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(16) Copies of any and all internal memoranda, reports, analyses, correspondence, financial projections, or other documents prepared by the Transferor, the Transferee, AOL, and/or Operator, or any agent thereof, relating to the determination, calculation, negotiation, or method of determining the Exchange Ratio, Time Warner Consideration, and America Online Consideration..

(17) Copies of any reports, studies, opinions, opinion letters, or other documents prepared by independent parties, including but not limited to any "fairness opinions" relating to the Transfer, presented to, considered by, or available to the board of directors of the Transferor, the Transferee, the Operator and/or AOL, or any affiliate or subsidiary thereof, concerning the economic viability of the Transfer, the fairness of the Transfer, or which will be used, in whole or part, as the basis for any recommendation to the owners of the Operator, or any affiliate or subsidiary thereof, concerning a proposed action or vote upon the Transfer.

(18) Copies of any and all appraisals of the Systems, or any portion thereof, prepared in final form or draft within the last twelve (12) months.

(19) Please describe, in detail, the role if any that Transferee will play in the ownership, operation, and/or control of the Transferee.

(20) Please provide comprehensive information regarding the background of Transferee, its financial capacity to control the Transferee, and its experience in operating cable television systems.

(21) For Calendar years 1995-1999, and each of them, please provide the following information for each of the Franchising authorities:

a) Total Gross Revenues from all sources, collected from subscribers or any other parties by the Franchisee or any affiliated party.

b) Total Gross Revenues reported to the Franchising Authorities.

c) List by category and amount revenues collected by the Franchiser or any affiliated party which were not reported to the Franchising Authorities and/or a franchise fee was not paid.

d) Did you include, in whole or in part, the franchise fee itself as a portion of Total Gross Revenues? If not, how much would have Total Gross Revenues been if the franchise fee was included?

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e) If the franchise fee was excluded, in whole or in part, from the Total Gross Revenues, when did this practice commence and end?

f) Total possessory tax liability imposed upon the Franchisee or any affiliated party.

g) Total possessory interest taxes paid.

h) Total possessory interest tax surcharges, by whatever name, collected from subscribers.

i) Total possessory interest tax refunds.

j) Total possessory interest tax surcharges by whatever name, returned, refunded or credited to subscribers.

(22) Please provide a complete and non-redacted copy of the following documents, with exhibits, attachments, and schedules, all of which are referenced or cited in the APM:

a) AOL Disclosure Schedule.

b) Time Warner Disclosure Schedule.

c) Forms F-4.

d) Joint Proxy Statement/Prospectus.

e) Opinion of Salomon Smith Barney, Inc. to AOL.

PART III.

Largely through the advocacy of such entities as AOL, both on its own behalf and through its participation in the Open Net Coalition, franchising authorities throughout this Country have become sensitized to the issue of non-discriminatory access to broadband cable modem pipelines by multiple internet service providers ("ISP"). Within the past year, numerous public entities have adopted ordinances, resolutions, and regulations imposing mandatory obligations upon cable operators to provide non-discriminatory access to cable modem pipelines by multiple ISP's by way of conditions contained in transfer approvals and/or franchise renewals. The Franchising Authorities in this matter feel compelled, at a minimum, to consider whether or not the Transfer should be approved upon, among other things, a condition that the Franchisee and Transferee provide non-discriminatory economic and physical access to its broadband

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platform within the jurisdiction of the Franchising Authorities to multiple and competing ISP's on a fair and reasonable basis (such a mandatory requirement when translated into legally-enforceable statutory or contractual language shall hereinafter be referred to as "Open Access") as a condition of transfer renewal. At this point in time in the due diligence process, the primary concern of the Franchising Authorities is whether the concept of mandatory Open Access will be imposed and, if so imposed, whether it would be accepted by the Transferee as a condition of Transfer approval. To the extent that an Open Access condition is imposed by one or more of the Franchising Authorities in relation to this Transfer, the Franchising Authorities will, at a later time, consider and discuss with the Franchisee and Transferee appropriate language and format for the imposition of such a Transfer condition. However, before reaching that level of analysis and application, the Franchising Authorities request that the Franchisee and Transferee respond to the following questions and inquiries regarding Open Access:

(1) Will the Transferee certify in writing that, as a condition of Transfer approval and as partial inducement to the Franchising Authorities for approval of the transfer, it will accept without protest, challenge, or litigation a mandatory Open Access provision in the applicable Transfer approval document? If the Transferee's response to this inquiry is in the affirmative, it need not respond to the following questions contained in this Part III. However, to the extent that the Transferee chooses not to respond to this question, or responds with anything less than an unconditional affirmative response, it should then respond to the following questions contained in this Part III.

(2) Does the Transferee contend that a franchising authority does not possess the legal authority to impose an Open Access requirement as a condition of approval of the Transfer? If so, please provide a summary of the Transferee's legal arguments in relation thereto with appropriate citation to statutory provisions and judicial precedent.

(3) Has the Transferee, AOL, or any entity of which AOL is a member including, without limitation, the Open Net Coalition, advanced, orally or in writing, a legal position inconsistent with that set forth in the response to Question 2 above? If so, please identify each and every case in which a contrary legal position was asserted, the form in which said assertion was made, the party or parties making said assertion, the result of said proceeding, and provide any and all written documents tendered to any franchising authority, reviewing body, state public utilities commission, or other governmental entity relating thereto.

(4) Has the Transferee, AOL, any affiliate or subsidiary thereof, or any organization in which AOL is a member including, without limitation, Open Net Coalition, advocated, requested, or otherwise lobbied for the inclusion of a mandatory Open Access requirement in any transfer approval or other cable television franchise-related document? If so, please identify said instances with the degree of specificity set forth in Question No. 3 above.

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(5) Please provide copies of any and all legal pleadings, by whatever name, filed by the Transferee, AOL, any affiliate or subsidiary thereof, and any organization in which AOL is a member including, without limitation, the Open Net Coalition, relating to the subject matter of Open Access.

(6) To the extent that the Transferee is taking a legal or policy position in relation to Open Access in this proceeding different than that taken by the Transferee, AOL, any affiliate or subsidiary thereof, or any organization in which AOL is a member including, without limitation, the Open Net Coalition as identified in the responses to Questions Nos. 2-5 above, please explain in detail why a different position is being taken in relation to this Transfer, the policy justifications for rejection of the prior positions taken and advocacy of the positions now taken, and the legal justifications for the rejection(s) of the positions prior taken and the positions now taken.

Please deliver the above-requested information to me, on behalf of the Franchising Authorities, within ten (10) days of the date of this letter, and I will assure distribution to relevant staff.

Very truly yours,

RUTAN & TUCKER, LLP



William M. Marticorena

WMM:ctm

cc: Vangie Schock, City of Lawndale
Thomas Strickfaden, City of Lawndale
Larry Bender, City of Hawthorne
Russell Miyahara, City of Hawthorne
Michael Smith, City of Torrance
John Fellows, Esq., City of Torrance
Mary Morales, PCTA
Troy Butzlaff, City of Indian Wells
Britt Wilson, City of La Quinta
Patrick Foley, City of Poway

