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AOL – Time Warner Merger

COMMENTS TO FCC

"Furthering The Telecommunications Act of 1996 Through Fair Competition"

By

HJN TELECOM, INC.

In the Matter of

THE AOL-TIME WARNER MERGER

FCC DOCKET NO. 00-30

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1. Overview.

HJN Telecom, Inc. ("HJN") is a CLEC, licensed to provide local and long distance and other wide area telephone service in 48 states. We are a CLEC that resulted from the Telecommunications Act of 1996. We focus on the true convergence of telecommunications services to the PC and the television. HJN plans a nationwide streaming content transmission network and intends to provide broadband services as an ISP with competitive, broadcast-quality programming. Our focus, as well as our streaming content transmission network, requires high-speed Internet access and content which is competitive.

Since the adoption of the Telecommunication Act of 1996, the provision of telecommunication services has changed greatly and has had to evolve to meet the demands of the Internet and the development of broadband technology. For CLECs such as HJN to survive, much less thrive, they must to meet market trends and consumer demands. In order to effectively compete, a CLEC or ISP must be able to bundle services and provide high-speed broadband Internet access, telecommunications services, and quality content. Today's CLEC must compete with cable and satellite content providers, as well as ISPs who are offering telecommunications services as part of their bundle.

HJN urges open access to the Time Warner cable network and that content be made accessible on a reasonable basis that fosters competition, rather than inhibits it. This access should be available not only to ISPs, but to telecommunications companies as well. The merger can either be a threat to competition or an opportunity to enhance competition depending upon the conditions of the merger and the openness of AOL-Time Warner to deal fairly with rivals and potential rivals.

Access to a cable network without content will provide but part of the essentials necessary to fair competition. From the standpoint of a company emerging out of the Telecommunication Act of 1996, in order to compete in the evolving telecommunication/ broadband/Internet industry, we must be able not only to offer competitive broadband services, but also competitive content. Content is the thing that gives meaning to broadband.

HJN Telecom, at a minimum, should be permitted to opt-in to the Earthlink – Time Warner agreement. Earthlink has no greater national potential than HJN since has nationwide licensing (48 States) for local and long distance telephone services, existing contracts with all the major ILECs nationwide, a nationwide ISP model. If the Earthlink – Time Warner deal has been required as a format or as a guideline for other deals and to insure competition, then HJN should be permitted to opt-in to the Time Warner cable network on the same terms and conditions Earthlink. Otherwise HJN cannot be competitive.

Competition should be in the marketplace in order to optimize consumer choice, not in the opportunity to access essentials to the competition owned by those that pose a threat to monopolize and industry and freeze out developing companies by virtue of the combination of their vast customer base and media resources. HJN urges the FCC that the AOL-Time Warner merger be seen as an opportunity for developing telecommunications/broadband/Internet companies and that action be taken that makes this opportunity a reality.

A.

Emerging Telecommunications Companies Should Not Be Overlooked and Action That Furthers The Telecommunications Act Of 1996 Should Be Considered As Condition Of Merger

Required deals that provide guidelines for access should not overlook smaller emerging or developing telecommunications companies who may have difficulty dealing with AOL-Time Warner due to their size and may have different incentives and interests than the major ISPs, such as Earthlink and MSN. The real threat to competition may be to the smaller companies that are the heart of efforts by Congress to open competition in the Internet and telecommunications industry. The argument made by big companies that "one is not big enough" is real and poses a threat to market entry for companies with little or no market share.

The FCC should require as a condition of the merger that a deal with developing telecommunication/Internet provider such as HJN be made in order to provide a benchmark for future deals. This would assist the FCC in making sure that the agreement shows that developing telecommunications companies will have a fair opportunity to offer their services to the public. Non-discrimination is essential at all levels, and there may be discrimination against emerging telecommunications companies if their interests, which are in some ways different from those of major ISPs, are not considered and protected.

B.

Offering Service Over Time Warner's High-Speed Cable Lines

The ISPs have been fighting for years to obtain cable access, but due to a lack of regulation of cable companies, similar to the Bells being required to unbundle their services to permit competition, the cable companies have not been required to open access of their cable networks. Time Warner has a cable pipeline through which it can deliver high-speed Internet to about 22% of U.S. homes. Concerns about a possible AOL monopoly over that coveted cable conduit in many markets are being addressed. We urge the FCC to require AOL-Time Warner open its cable systems to outside Internet service providers and telecommunications/ISP companies so that one company does not have a competitive advantage in the services that it bundles. Cable will provide the high-speed data transmission needed to deliver interactive television, a two-way service that would allow consumers to watch their favorite movies, sports or game shows on television and simultaneously play along, participate in polls or surf the Web.

The AOL-Time Warner merger could provide a significant opportunity for ISPs and telecommunications companies. The merger could help developing companies if there is open the access to a substantial cable network. The merger opportunity should be acted upon in such a way as to enhance competition and consumer choice. Any action should provide assurances that the telecommunications companies have open access to the same extent that ISPs will.

C.

Concern That Time Warner Will Deny Access or Charge High Prices, and Offer Other Unfavorable Terms to ISPs and Telecommunications Companies, Effectively Shutting Them Out And Giving AOL a Monopoly Over High-Speed Cable Lines In Time Warner Markets.

FTC officials and others are concerned that Time Warner will charge high prices and offer other unfavorable terms to ISPs and telecommunications companies, effectively shutting them out and giving AOL a monopoly over high-speed cable lines in Time Warner markets. This is not without basis. According to reports in the media, in written proposals to several ISPs, Time Warner demanded a $50,000 upfront payment, 75% of the ISP's monthly customer fee, or $30, and 25% of the ISP's advertising and e-commerce revenue. It is reported that Time Warner also demanded a presence on the ISP's home page.

Upfront Fees. The $50,000 upfront is of particular concern of to HJN as a developing company which is seeking additional funding and which must guard expenditures. The $50,000 may not pose a barrier to a company like Earthlink or MSN, but to the emerging CLEC that exists on a local or regional basis, the $50,000 could provide an insurmountable obstacle. A $50,000 upfront fee for cable service would create a barrier to competition even greater than that what now exists since it would provide the majors with access to a cable network that may be beyond the reach of some smaller companies.

Continuing Fees and Revenue Sharing. HJN urges that the fees for access to the Time Warner cable network parallel those charged for access to the Bell Company (ILECs) network. NorthNet has suggested that Time Warner's cut of the subscriber fee not exceed $10 a month, roughly the same cut the regional Bells take from ISPs in exchange for access to high-speed phone lines.

Advertising. Although ISPs do not share in their advertising and e-commerce revenue with the Bells, HJN does not have a problem with revenue sharing since it provides opportunity for both parties to acquire revenue without substantial additional investment. AOL-Time Warner could be entitled to some portion of that revenue, though surely 25% is too high, unless they obtain the advertising for space allocated to them for that purpose.

Tariffs. Whatever the charges or conditions, they should be non-discriminatory and not bar evolving companies. The rates charged should have some form of tariffs, and they should be made available to interested parties to assure fairness to all competitors on a non-discriminatory basis. A requirement that AOL-Time Warner file tariffs of its charges for cable access and content will assure that all companies can know what is charged and that they are charged the same as other companies.

Opt-in to Earthlink – Time Warner Agreement. Time Warner Cable has agreed to allow Earthlink to sell high-speed access over its lines nationwide. Reportedly, under this agreement, EarthLink's full package of high-speed Internet access, content and applications, including video streaming, will be made available to about 20 million homes passed by Time Warner's broadband-capable cable networks.[1] HJN Telecom, at a minimum, should be permitted to opt-in to the Earthlink – Time Warner agreement. Earthlink has no greater national potential than HJN since has nationwide licensing (48 States) for local and long distance telephone services, existing contracts with all the major ILECs nationwide, a nationwide ISP model. If the Earthlink – Time Warner deal has been required as a format or as a guideline for other deals and to insure competition, then HJN should be permitted to opt-in to the Time Warner cable network on the same terms and conditions Earthlink.

D.

Meaningful, Enforceable Commitment By AOL-Time Warner To Provide Non-Discriminatory Assurance That It Will Not Withhold Time Warner Music, Movies And Other Offerings From Rival ISPs and Others.

Without content, the purpose and benefits of broadband and high speed Internet access are greatly reduced, if not defeated entirely. HJN has experienced some difficulty in obtaining quality content that can be competitive with cable and satellite networks. This is in part due to the number of existing broadband users and the state of evolving technology, but the "majors" have an edge in getting this content because of their site traffic or large numbers of existing customers. In order for developing companies to be competitive, they must not only have cable access, but must have content competitive with that of rivals. It is urged that as a condition of the AOL-Time Warner merger that there be equal access to the Time Warner content on a non-discriminatory basis. HJN urges that television shows, music and other content made by Time Warner's subsidiaries, including Warner Brothers, CNN and HBO, be made accessible on

[1] The Atlanta Journal-Constitution, Tuesday, November 21, 2000, "KEY TO A MERGER: Earthlink Strikes A Major Deal With Time Warner Cable" by Frances Katz - Staff

meaningful, enforceable commitment by AOL-Time Warner to provide non-discriminatory access to all its content.

E.

Ongoing Examination Of Whether To Regulate Internet Cable Access Does Not Preclude The Agency From Imposing Conditions On Any Specific Case Under Review

Ongoing examination of whether to regulate Internet cable access does not preclude the agency from imposing conditions on any specific case under review. Accordingly, it is urged that the FCC negotiate or impose conditions upon the AOL-Time Warner merger that will provide meaningful, enforceable commitment by AOL-Time Warner to provide non-discriminatory access to their cable network as well as their content.

F.

Imposing Conditions That Will Assure Open Access To Time Warner's Cable Network And Content Will Further The Purposes Of The Telecommunications Act Of 1996

The Federal Communications Commission ("FCC") adopted rules to promote competition for advanced telecommunications services, by directing local telephone companies to share their telephone lines with providers of high speed Internet access and other data services.[2] The FCC Order is intended to ensure that as many companies as possible will be able to deploy new technologies on an faster, more cost-effective basis and should accelerate the ability of residential and small business customers to access competitive broadband services from their choice of providers.

Due to the development of the Internet and broadband technologies, a CLEC established under the Telecommunications Act of 1996 must bundle services that include high-speed Internet access and provide value-added content in order to compete and to survive in an ever changing and evolving telecommunication industry. Many CLECs have failed or are failing. If CLECs cannot compete with AOL-Time Warner, the purposes of the Telecommunication Act of 1996 will be frustrated. Conditions imposed upon the AOL-Time Warner merger should help CLECs to compete with ISPs, utility companies, cable companies, and others who are bundling telecommunications services with their services at this time.

2. Conclusion.

HJN Telecom urges the FCC and the FTC to take steps to assure that a national company, such as HJN that provides broadband, ISP services and content, be able to fairly compete in the marketplace by having access not only to cable networks but also to content. Without content, access to the cable network has less meaning and it can be argued that there is no meaningful competition. AOL is already the largest ISP. Time

[2] Action by the Commission November 18, 1999, by Third Report and Order (FCC 99-355). Chairman Kennard, Commissioners Ness, Powell and Tristani with Commissioner Furchtgott-Roth concurring and dissenting in part in issuing a statement.

Warner is the second largest cable network, and they have substantial content libraries, including music, movies, CNN, HBO, and magazines, such as Sports Illustrated, etc. If AOL alone gets this content, it can only bar competition and market entry by emerging companies. Competition will be enhanced and the purposes of the Telecommunications Act of 1996 furthered by negotiating or requiring open access not only to the Time Warner cable network but also to its content.

Competition should be in the marketplace in order to optimize consumer choice, not in the opportunity to access essentials to the competition owned by those that pose a threat to monopolize and industry and freeze out developing companies by virtue of the combination of their vast customer base and media resources. HJN urges the FCC that the AOL-Time Warner merger be seen as an opportunity for developing telecommunications/broadband/Internet companies and that action be taken that makes this opportunity a reality.

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FCC Commissioner Gloria Tristani recently stated: "Protection of the public interest is our touchstone, and I will not hesitate to act while the answers to these questions are still meaningful for America's citizens." The questions we present concerning the telecommunications affect of the AOL-Time Warner merger are meaningful to competition, consumer choice, and furtherance of The Telecommunications Act of 1996.

Respectfully Submitted

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