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COMMENTS TO FCC
December 5, 2000

DECLARATION IN CONJUNCTION WITH THE DISNEY CORPORATION CONCERNING THE AOL - TIME MERGER

DECLARATION OF DOUGLAS L. YOUNG

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Pursuant to 28 U.S.C. § 1746, I, DOUGLAS L. YOUNG, hereby make the following statement:

1. My name is DOUGLAS L. YOUNG. I am the Executive Director of Business Development for HJN Telecom, Inc. ("HJN"). I joined HJN about a year and a half ago. The company was formed in 1998. We are an Integrated Communications and Content Provider (ICCP) which "bundles" broadband/ISP/content and telecommunications services. We have provisional patents that relate to video over broadband, including DSL, a broadband video browser, and interactive TV. We are licensed for the provision of local or long distance telephone and other wide area service in forty-eight (48) states. The opportunity to "bundle" cable, broadband ISP cable access and compelling content is crucial to our survival. The market leaders in the ISP and content markets, AOL and Time Warner, respectively, will be able to offer a bundle of these services. HJN will not be able to compete with AOL Time Warner since it does not have cable access or competitive, compelling content. If the AOL Time Warner merger is approved without safeguards to assure nondiscriminatory access, not only to cable, but also to compelling content, there will be no fair competition in the broadband/ISP/content provision market for emerging or developing companies.

2. HJN has already filed two separate comments with the FCC, FTC, and Commerce Commission concerning the AOL Time Warner merger with a focus on cable access and content. HJN and Disney attorneys have been in contact to discuss enjoining

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these comments. Based upon HJN's concerns, Disney asked if we would look at a proposed declaration. Upon review of that declaration from my experience, the concerns appear valid and consistent with those already expressed by HJN. Accordingly, it is urged that the following be considered and incorporated into and as the comments of HJN.

3. America Online, Inc.'s (AOL's) acquisition of Time Warner Inc. marries two companies that are uniquely powerful, AOL with its narrowband Internet dominance and Time Warner, the world's largest media company, with its huge collection of content properties – music, print media, movies, cable and broadcast networks. HJN is concerned that America Online, Inc.'s (AOL's) acquisition of Time Warner Inc. will threaten the "end-to-end" openness of the Internet. In addition, as the Internet becomes intertwined with cable television, the acquisition will lessen competition and diversity across a broad swath of electronic media.

4. At present, AOL dominates the narrowband Internet access market with more than one-half of the residential ISP market. AOL also controls several powerful brands, an Instant Messaging monopoly, and 1,400 chat rooms. AOL manages to attract disproportionate advertising revenue, by keeping its users within AOL's "Walled Garden" 85 percent of the time, unlike most ISPs, which make it easy for their customers to access the World Wide Web..

5. Despite AOL's advantages, at least smaller broadband/ISPs, such as HJN have access to telephone lines on a relatively equal basis. However, the merger threatens even this access to the Internet.

6. Internet access is undergoing a transition from narrowband to broadband delivery. This transition will transform the Internet while threatening AOL's dominance. New broadband competitors will emerge to compete with AOL, particularly cable companies, which can offer broadband access to the home through the television cable. But this merger threatens to stifle that new competition. Indeed, it may further

entrench AOL. At least now, ISPs can compete with AOL through telephone lines. In the future, AOL/Time Warner may have unequal access to broadband cable modem service.

7. In the 20 percent of the country covered by Time Warner's cable systems, AOL/Time Warner can deny competing ISPs broadband access by making AOL the exclusive or preferred ISP for delivery through a cable modem, in essence replacing Time Warner's Road Runner cable modem service with AOL.

8. In non-Time Warner cable markets, the combined AOL/Time Warner would leverage Time Warner's extensive cable programming to become the exclusive ISP on the third party cable system. AOL/Time Warner would simply bundle its must-have cable programming with its broadband ISP service. If the cable operator did not agree to an AOL exclusive, AOL/Time Warner might charge the operator higher prices for programming or simply deny the operator that programming. Competing ISPs would find themselves without broadband cable access in both Time Warner and non-Time Warner cable territories.

9. The coming paradigm shift from broadband Internet to interactive television would cement AOL/Time Warner dominance. Interactive television is a combination of the Internet and television. In the next several years, many users will begin accessing the Internet through their television sets. Here, the key to control is the set-top box, which accesses the Internet and makes interactive television possible. The merger will make it possible for AOL/Time Warner to be the exclusive Internet Service Provider through the set top box.

10. In Time Warner territories, the merged company will simply make AOLTV the set-top box for interactive television. In non-Time Warner territories, it will again leverage Time Warner's must-have programming and AOL Internet content to convince cable operators to adopt AOL as the exclusive Internet provider through the TV set-top box. Few residents will want to have two ISP connections: one for

interactive television and a separate one for their home computer. If AOL/Time Warner monopolizes the set-top box for interactive television, it will ultimately monopolize the ISP market as well.

11. Another way in which the merger will harm competition is in the Digital Subscriber Line ("DSL") sphere. Before the announcement of the acquisition, AOL spearheaded efforts by ISPs to work with telephone companies to roll-out DSL technology. Following the merger, with AOL no longer promoting DSL, this alternative form of residential broadband access will languish.

12. Content providers will also be harmed by the merger. Because AOL/Time Warner will discriminate against unaffiliated content, content providers will invest less and there will be fewer and less diverse products available. Ultimately, this will harm the remaining ISPs because they will have less content to choose from and will be increasingly dependent on AOL/Time Warner content.

13. Broadband Internet and Interactive television hold much promise: ferocious competition, rich and diverse content, and a diversity of views. The merger threatens all of that, as AOL through the Time Warner acquisition will be able to move its Walled Garden to broadband Internet and interactive television.

14. We urge the FTC to intervene on our behalf to negotiate or require conditions to ensure fair competition and enhance consumer choice. This means more than just cable ISP access, it means the opportunity to provide a competitive "bundled" service offering which includes "content." The ongoing examination of whether to regulate Internet cable access does not preclude the agency from imposing conditions on any specific case under review. Accordingly, the AOL Time Warner case presents the opportunity for the FTC and the FCC to place conditions on the merger, such as access to Time Warner content, which will enhance assurances that there will be fair competition and nondiscriminatory "opportunity." Again, competition should be in the <u>marketplace</u> in order to optimize consumer choice, not in the <u>opportunity</u> to

access essentials to the competition owned by those that pose a threat to monopolize an industry and freeze out developing companies by virtue of the combination of their vast customer base and media resources. HJN urges the FTC and FCC to view the AOL-Time Warner merger as an opportunity to assure fair competition for emerging and developing telecommunications/broadband/Internet companies and that action be taken that makes this opportunity a reality.

15. The actions of the FTC and FCC, at this time in protecting consumers and competitors of AOL Time Warner from unfair monopolistic competition, are necessary, appropriate, and within the bounds of properly exercised authority. Proper action at this time, may prevent or reduce the potential for future burdens upon State and Federal anti-trust arms, avoid instability in the stock market, enhance consumer choice, contribute to insuring fair competitive pricing, encourage market entry by new companies, stimulate entrepreneurial invention, and otherwise enhance a fair and competitive market for the telecommunications/broadband/content provision market. Resolving doubt in favor of fostering competition, preventing monopoly, and protecting the consumer requires that safeguards be made a condition of the AOL Time Warner merger. Being right may be more important than being fast. Caution to duty is urged.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted, December 5, 2000

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