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December 15, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CS Docket No. 00-30 *In the Matter of Applications of America
Online, Inc. and Time Warner, Inc. for Transfers of Control
Ex Parte Communication*

Dear Ms. Salas:

We file this letter to reiterate the importance of interoperability to instant messaging (IM) and to inform you about recent communications with Commission officials.

Today, IM is a very popular activity on Internet portals and for Internet Service Providers, attracting a wide variety of users around the country (and world) and of all ages. It is also extending to wireless services. Looking ahead, IM will be a platform that enables a range of innovative applications. One of the most powerful and distinguishing features of the IM protocol is "presence detection" – *i.e.*, the ability to allow users, subject to their control, to let others know when they are "online" and available and which Internet-connected device they are using. Competitive delivery of services utilizing the presence detection feature of the IM protocol will bring enormous public benefits. IM can serve as an "intelligent agent," enabling weather alerts, school scheduling information and time-sensitive news to be delivered to any device; IM can support advanced audio and video-based conferencing and other audio and video related services, including collaborative business document sharing; IM can bring additional capabilities to wireless tools, such as telephones and PDA devices; and, IM can play an important role in interactive TV offerings.

Interoperability among IM services is critical to the future of IM. The Commission has repeatedly recognized the need for and the public interest benefits that stem from interoperability. This goal, which the Commission has embraced in a variety of contexts in the last fifteen years, certainly applies to IM. IM's potential to become a robust platform – to the benefit of consumers and a competitive Internet services market – will be fully realized only if IM shares the features of openness and interoperability that characterize both the public telephone network and the Internet.

AOL's documented resistance to interoperability, couple with its extraordinary position in the IM field, requires Commission action. AOL itself initially flirted with interoperability, publishing a standard that detailed the steps other IM providers should take if they wanted to make their systems interoperable with AOL IM. However, once the market was more mature and AOL had the lion's share of IM customers, it apparently determined that blocking interoperability would have little effect

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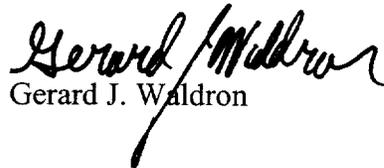
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on its customers but would be devastating to its competitors. Thus, AOL abruptly changed course and began preventing IM traffic even from IM competitors that were willing to employ AOL's published standard. Without interoperability with AOL, innovative IM products currently being developed by competitors are of limited use and competition in Internet-based services in general is impaired. Customers using IM applications have little patience with features and services that cannot easily communicate with the vast majority of IM users. Indeed, the lack of interoperability with AOL likely was a contributing factor in the demise of Tribal Voice and iCast—the two leaders of the IM Competitors.

The merger of AOL with Time Warner, unless conditioned by this Commission, will only strengthen AOL's position in the IM market and result in fewer consumer choices and less innovation in the IM market. Accordingly, as the IM Competitors have advocated throughout this proceeding, the Commission should condition the AOL/Time Warner merger on targeted requirements that foster IM interoperability. *First*, the Commission should require AOL to publish its IM protocol so that other IM providers have the necessary protocol information to exchange IM. *Second*, the Commission should require AOL to work toward, and adopt, a common protocol that will enable server-to-server interoperability among IM providers. Conditioning the merger on these minimal safeguards will help bring about the interoperability necessary to foster innovation and ensure consumers have a range of choices with respect to IM offerings.

Yesterday, these points were raised by Bill Gates, Chairman and Chief Software Architect of Microsoft, in a telephone conversation with Chairman William Kennard, and in separate calls today with Commissioners Susan Ness and Michael Powell. Marc Berejka, Senior Federal Affairs Manager of Microsoft, also raised these issues in separate conversations with David Goodfriend, Legal Advisor to Commissioner Susan Ness, Kyle Dixon, Legal Advisor to Commissioner Powell, and William J. Friedman, Legal Advisor to Commissioner Tristani. In addition, the undersigned spoke with Dr. Robert Pepper of OPP on the need for an effective condition to achieve interoperability.

Sincerely,


Gerard J. Waldron

cc: Chairman William Kennard
Commissioner Susan Ness
Commissioner Michael Powell
Kathy Brown
David Goodfriend
William Friedman
Kyle Dixon
Royce Dickens
Linda Senecal
Dr. Robert Pepper