

COVINGTON & BURLING

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

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LONDON
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December 20, 2000

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

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

Dear Ms. Salas:

This letter provides notice that on December 19, 2000, Yusuf Mehdi, Bob Visse and the undersigned of Microsoft, Jon England of Excite@Home, Alex Diamandis of Odigo, and Susan Biddel of MessageVine met with Commissioner Gloria Tristani and her legal advisor William Friedman to discuss the importance of interoperability to the future of IM and the need to impose a meaningful IM interoperability condition on a combined AOL/Time Warner.

We discussed the fact that AOL dominates the IM market with numbers that it does not refute give it an overwhelming share of IM usage. We specifically discussed the relevance of “minutes of use” data compiled by Media Metrix that demonstrates AOL has unwavering command of the IM market. We emphasized how the merger of AOL with Time Warner, unless conditioned by this Commission, will strengthen AOL’s position in the IM market and its incentive not to work toward interoperability with other IM providers.

We discussed the concept of “advanced IM” and explained that this concept has serious conceptual flaws but at a minimum must include any IM service that AOL offers over the advanced broadband infrastructure of Time Warner’s cable systems. We also emphasized that any remedy to the problem of AOL leveraging its dominance of IM to broadband facilities must require AOL to work toward interoperability with other competitors in the IM market – i.e., enable customers of third-party IM providers to communicate with AOL’s IM customers.

We discussed the inherent problems with the proposed remedies AOL has advanced in an effort to circumvent immediate IM interoperability. We emphasized the serious flaws with any remedy that enables AOL to avoid working toward a broad IM interoperability solution by agreeing to interoperability terms with one other IM competitor. We also discussed the problems with provisions that enable AOL to avoid interoperability by relying on misleading data concerning

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market dominance or simply asking for a waiver. We emphasized that these remedies ignore the importance of immediate IM interoperability to innovation and competition in the IM marketplace.

Sincerely,

Gerard J. Waldron

cc: Commissioner Gloria Tristani
William Friedman
Royce Dickens
Linda Senecal
International Transcription Services, Inc.