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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

FOR PUBLIC INSPECTION

December 8, 2000

EX PARTE OR LATE FILED

BY HAND DELIVERY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: **Applications of America Online, Inc. and Time Warner Inc. for  
Transfers of Control (CS Docket No 00-30)**  
**EX PARTE LETTER CONTAINING CONFIDENTIAL  
INFORMATION FILED UNDER SEAL**

Dear Ms. Salas:

Pursuant to the Amended Protective Order in the above-captioned docket adopted and released December 7, 2000 (DA 00-2774), Microsoft Corporation, by its attorneys, hereby files under seal a Stamped Confidential Document containing confidential information. One copy of this confidential document is being submitted with the version of this cover letter marked "CONFIDENTIAL: NOT FOR PUBLIC INSPECTION." It is being filed under seal with the Secretary's Office and should not be placed in the public record in this proceeding. Copies of the confidential document submitted by Microsoft are also being delivered under seal to Karen Onyeije, Susan Eid, David Goodfriend, Sherille Ismail, Royce Dickens, Darryl Cooper, John Berresford, James Bird, Joel Rabinovitz, Pieter Van Leeuwen, and Robert Pepper. A redacted version of the pleading, which contains no confidential information and is intended for public inspection, is attached to this letter.

Please do not hesitate to contact me if we may provide you with further information.

Sincerely,

  
Gerard J. Waldron

Attachment

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December 8, 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***  
**REDACTED VERSION FOR PUBLIC INSPECTION**

Dear Ms. Salas:

On December 7, 2000, Yusuf Mehdi, Vice President of MSN at Microsoft Corporation, and the undersigned, met with members of the Commission's staff to present a clear picture of IM usage and to respond to the confusing information AOL has submitted in the above-captioned proceeding. A list of attendees is attached.

We explained that AOL has offered inconsistent, incomplete and at times misleading figures concerning IM usage. In the early stages of the IM debate, AOL filed extensive pleadings comparing persons who had simply "registered" for an IM service with users who actively used an IM service.<sup>1</sup> As IM Unified described in its September 5 filing, such an apples-to-oranges comparison is meaningless and should be ignored.<sup>2</sup>

Seemingly recognizing the inherent flaws in this comparison, AOL then supplied the Commission with Media Metrix "Unique User" figures in support of its claim that MSN's "active user" base experienced remarkable growth.<sup>3</sup> However, these "Unique User" figures do not measure "active" use; indeed, the numbers for any given month could be comprised solely of one-time "test"

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<sup>1</sup> See e.g., August 28, 2000, letter from AOL and Time Warner in response to August 14, 2000, letter from the Commission, at pp. 8-11.

<sup>2</sup> See September 5, 2000, *Ex Parte* filing of iCast and Tribal Voice.

<sup>3</sup> See October 20, 2000, *Ex Parte* Letter of Peter D. Ross, Wiley, Rein & Fielding, on behalf of AOL, pp 2-3 (relying on Media Metrix data, which is based on "unique users" to claim MSN had a total of 10 million active users as of July); November 17, 2000, *Ex Parte* Letter of Peter D. Ross, Wiley, Rein & Fielding, on behalf of AOL, pp 2-3 (relying on same data to argue the number of MSN actual users grew from zero to 10 million in August).

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REDACTED VERSION FOR PUBLIC INSPECTION

users who do not use the IM program again. Such figures, which can be affected by heavy advertising and/or promotional offerings, tell the Commission very little about which IM program people are using on a regular basis to send and receive instant messages. Accordingly, figures based on "Unique Users," despite all the hype AOL has generated around them, are not relevant to a discussion of IM marketplace dynamics.

To give the Commission a complete picture of the actual IM market, we supplied specific data demonstrating the misleading nature of the "Unique User" numbers and giving the Commission the facts it needs to find AOL has a dominant share of the IM market.

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We also discussed the myriad ways in which IM has the potential to become a robust platform that will be a critical feature to consumers and business. However, that potential depends

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on IM interoperability. Unfortunately, AOL has violated this core principle of interoperability by blocking the ability of other companies to exchange messages with AOL customers. We addressed how the merger of AOL with Time Warner, unless conditioned by the Commission, will strengthen AOL's dominant position in the IM market and result in fewer consumer choices and less innovation in this vital area.

To address these concerns, Mr. Mehdi emphasized that the Commission should exercise its jurisdiction and require a combined AOL/TW to cease IM blocking immediately, to work to develop an interoperability standard with IETF, and to adopt and implement that standard.

Please direct any questions regarding this matter to the undersigned.

Sincerely,

  
Gerard J. Waldron  
Erin M. Egan

Attachments

cc: Karen Onyeije, Legal Advisor, Office of Chairman Kennard  
Susan Eid, Legal Advisor, Office of Commissioner Powell  
David Goodfriend, Legal Advisor, Office of Commissioner Ness  
Deborah Lathen, Bureau Chief, Cable Services Bureau  
Sherille Ismail, Deputy Bureau Chief, Cable Services Bureau  
Royce Dickens, Deputy Chief, Policy and Rules Division, Cable Services Bureau  
Darryl Cooper, Cable Services Bureau  
John Berresford, Common Carrier Bureau  
James Bird, Assistant General Counsel, Office of the General Counsel  
Joel Rabinovitz, Office of the General Counsel  
Pieter Van Leeuwen, Office of the General Counsel  
Dr. Robert Pepper, Office of Plans and Policy



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# AOL Buddy List (BL) - Proprietary

C:\Documents and Settings\Julieo\Local Settings\Temp\ao16buddylist.jpg

C:\Documents and Settings\Julieo\Local Settings\Temp\ao16buddylist.jp

File Edit Print Window Sign Off Help

Go Stop Print Favorites

Comments?

More Choices

Hide Channels Back Forward Stop Reload

People IM Chat AOL Services AOL Anywhere AOL Shop AOL Keywords or Web Addresses here Go

My Favorites Calendar Quines Search Keyword

AMERICA Online

Welcome, Stevenstanzel!

AMERICA Online

You've Got Mail

You've Got Pictures

My Calendar

Chat

Welcome

- Autos
- Careers & Work
- Computer Center
- Entertainment
- Games
- Health
- House & Home
- International
- Kids Only
- Local Guide
- Music
- News
- Parenting
- Personal Finance
- Research & Learn
- Shopping
- Sports
- Teens
- Travel
- Women

Nov 16

Get your forecast

Try AOL TV  
Get AOL on your TV  
Sign up now and watch one month free.

Nation in Limbo, Day 9  
--Get Election Update

AOL Plus

**AOLPLUS**

Gwyneth & Ben Go "Bounce" On Big Screen - And They're Just Friends

Need a Laugh? Yuck It Up With Cartoon Network

Get Digital Music from

**Welcome to AOL**

**Bounce-ing Into His Arms**  
Gwyneth, Ben Fall in Love --Soul Mate: Found Yours?

**Great Offer**  
10% off or free shipping at Tower.com.

Exclusive on AOL: Send Holiday

**Buddy List**

- Buddies (0/1)
- Family (0/1)
- Co-Workers (0/0)
- loserlounge (1/6)
- Stevenstanzel
- kijhkhjk (1/1)
- Stevenstanzel

Send IM Chat Locate

Away Notice Setup Help

Keyword: BuddyView

Start

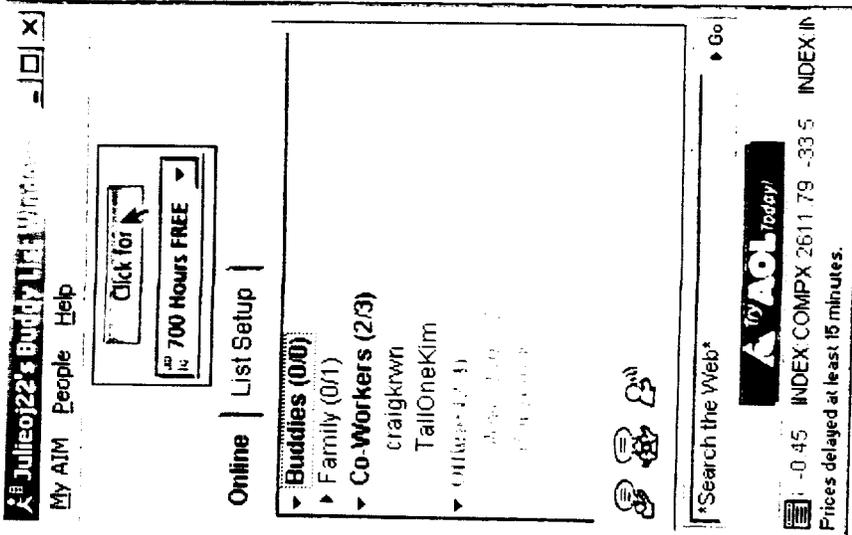
9:56 AM

# AOL Instant Message - Proprietary

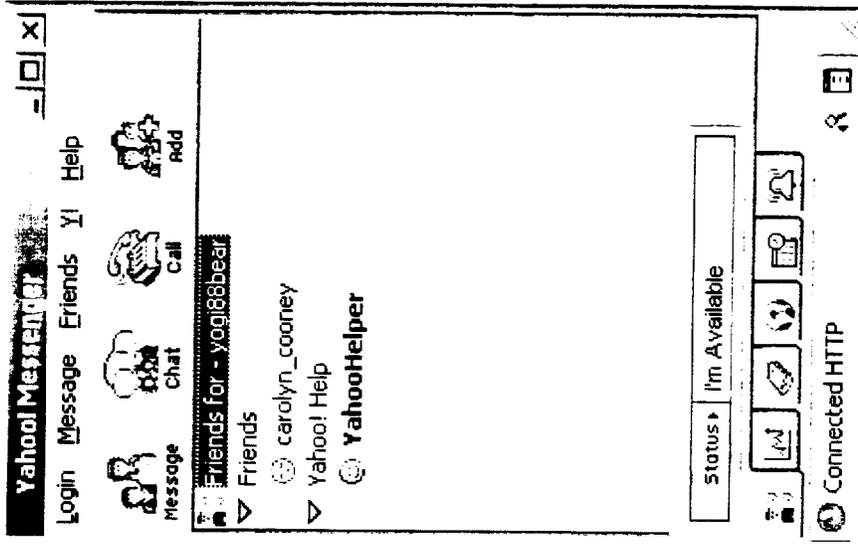
C:\Documents and Settings\Julieo\Local Settings\Temp\aoainstantmessage1.jpg

The screenshot displays the AOL Instant Messenger (AIM) interface. At the top, the menu bar includes File, Edit, Print, Window, Sign Off, and Help. Below the menu is the AOL logo and navigation buttons for Home, Write, People, IM, Chat, and AOL Services. The address bar shows the local path: C:\Documents and Settings\Julieo\Local Settings\Temp\aoainstantmessage1.jpg. The main content area features a 'Welcome to AOL' banner with a date of Nov 16 and a local forecast. Below the banner is a navigation menu with categories such as Autos, Careers & Work, Computer Center, Entertainment, Games, Health, House & Home, International, Kids Only, Local Guide, Music, News, Parenting, Personal Finance, Research & Learn, Shopping, Sports, Teens, Travel, and Women. A 'Send Instant Message' dialog box is open in the foreground, showing the recipient's name 'Stevenstanzel' and a text input field. The dialog includes buttons for 'Send', 'Available?', and 'Send Instant Message'. In the background, a 'Buddy List' window is visible, listing contacts: Buddies (0/1), Family (0/1), Co-Workers (0/0), loserlounge (1/6), Stevenstanzel, and Kijhkhjik (1/1). The system tray at the bottom right shows the Start button, taskbar icons, and the system clock displaying 9:56 AM.

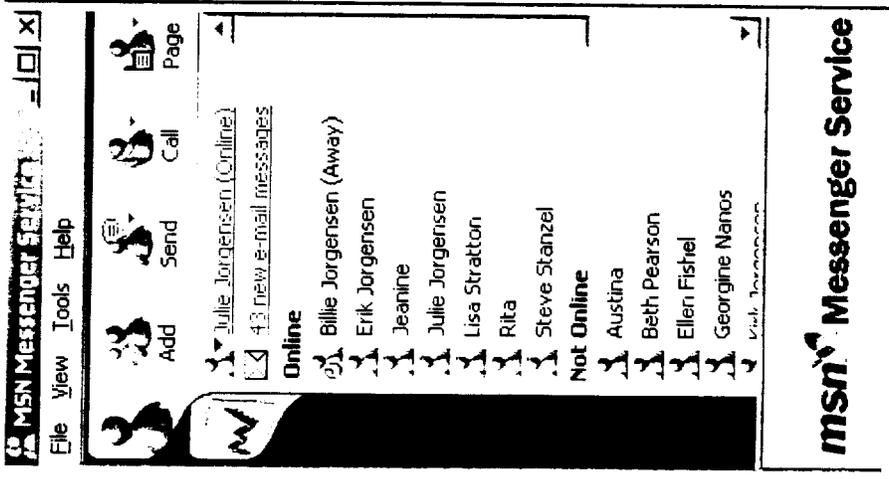
# Free IMs



AIM



Yahoo!



MSN