National Broadcasting
Company, Inc.

1299 Pennsylvania Avenue, N.W.
11th Floor
Washington, DC 20004
202 637-4535
202 637-4530 Fax

Diane Zipursky
Vice President
Washington Law and Policy

ORIGINAL

NBC

EX PARTE OR LATE FILED

September 13, 2000

RECEIVED
SEP 13 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325
Washington, D.C. 20554

Re: National Broadcasting Company, Inc.
Notice of *Ex Parte* Presentation
CS Docket No. 00-30

Dear Ms. Salas:

National Broadcasting Company, Inc. ("NBC"), pursuant to Section 1.1206(b)(2) of the Commission's rules, submits an original and one copy of a notice regarding a permitted oral *ex parte* presentation in the above-referenced proceeding. On September 8, 2000, Richard Cotton, Executive Vice President and General Counsel, NBC, Diane Zipursky, Vice President, Washington Law and Policy, and Robert Okun, Vice President, Washington, NBC, met with David Goodfriend, Legal Advisor to Commissioner Ness, to discuss NBC's concerns regarding the proposed AOL/Time Warner merger.

At this meeting, NBC addressed on the implications the proposed merger could have on content providers who are unaffiliated with Time Warner and AOL, and ultimately the consumer. NBC asked that as a condition of the FCC merger approval, AOL/Time Warner guarantee nondiscriminatory access to video or Internet content providers on AOL/Time Warner's Internet and broadband platforms. NBC's comments closely tracked the statements previously set forth to the FCC in an *ex parte* letter dated July 24, 2000.

At the meeting, NBC expanded on these concerns. AOL and Time Warner together would control assets that are critical to the development of broadband services, including interactive television. AOL is the dominant internet service provider and internet portal today, and is by far the dominant provider of combined ISP/portal services, facing little competition in that arena. AOL's established dominance in the internet marketplace, powerful brand, enormous customer base, and dominant "sticky" services like Instant Messenger give it a strong entry advantage as it develops AOL TV. Time Warner is a cable monopolist in many areas of the country, including the critically important New York City area, and accounts for 20% of cable subscribers nationwide. Time Warner's share of cable households gives Time Warner the power to block new cable services by denying prospective entrants the ability to achieve the nationwide

No. of Copies rec'd 0+1
List A B C D E

penetration that is critical to the successful launch of a new cable offering. In addition, Time Warner has a very large portfolio of programming content for cable television, broadband services, and interactive television.

In that regard, NBC provided the staff with details of the company's experience in negotiating with Time Warner as a cable system operator. Specifically, NBC explained in connection with Time Warner's acquisition of Turner Broadcasting, but for the FTC's requirement that Time Warner offer another cable news channel on its systems besides its affiliated service, CNN, NBC's cable news channel, MSNBC, would not have been launched as a strong national competitor to CNN. NBC also related to the staff our recent experience in negotiations with Time Warner over carriage of our Olympics programming on its cable systems (via CNBC and MSNBC) and Time Warner's refusal in those negotiations to consider NBC's requests for discussions relating to providing NBC nondiscriminatory access to Time Warner's broadband facilities.

NBC advised the staff of its belief that the competitive concerns raised by the proposed combination of AOL and Time Warner would not be adequately addressed by a condition requiring the merged entity to provide access on its cable system to multiple ISPs and broadband service providers. While such a condition is important, such a provision alone would not be adequate to prevent the competitive harm that is likely to result from other forms of discrimination – including discrimination in placement and navigation – that the merged entity would have the ability and incentive to employ against unaffiliated content providers.

NBC also suggested that given the emerging nature of the broadband marketplace, any conditions that the agency placed on the merger could expire after a period of time provided the agency determined that the conditions were no longer required to ensure effective competition in the marketplace.

Respectfully submitted,

Diane Zipursky

Diane Zipursky

cc: David Goodfriend
ITS