

Ex Parte Filing

Re: AOL/Time Warner Application for Consent to Transfer of Control

On September 22, 2000, a telephonic meeting was held, at the request of the FCC staff, with FCC Staff Member Royce Dickens and Carl Kandutsch on the AOL Time Warner Merger. Docket 00-30. The participants included:

Chris J. Melcher, Vice President & General Counsel, Ehud Gavron, Chief Technical Officer, and Simon Drummond, Director of Network Administration, RMI.NET, Inc., 999 18th Street, North Tower, Suite 2201, Denver, CO 80202, Tel: 303-672-0700 Fax: 303-313-0698

- Royce Dickens, FCC CSB
- Carl Kandutsch, FCC CSB

The primary discussion of the presentation was the issues surrounding the proposal to open the Time Warner cable network system to multiple ISP's to offer Internet Access, and how that issue affected the AOL/Time Warner Merger

The following is a summary of statements of Mssrs. Melcher, Gavron, and Drummond, and the discussion:

RMI.NET, Inc. (RMI) has sought since early summer 2000 to be a part of TW Cable Open Access Multiple ISP trial, being held in Columbus Ohio. RMI had not yet been successful. RMI is currently a participant in the AT&T Open Access Cable Trial for Multiple ISP's, being held in Boulder, CO. RMI had received an NDA from TW, which it signed, but has yet to receive the Terms of the Trial or the Proposed Term Sheet for ISP Access to the TW cable system. It has been a struggle to negotiate this with TW. It will be a long delay from trials to actual entrance into market.

FCC should take same approach to cable as it has with BOCs and unbundling of the BOC networks. This would enhance competition and drive down prices. The current ISP relationship with the BOCS on providing dial-up internet access to retail customers, and the current relationship between ISP's, BOCS, and wholesale DSL providers on providing DSL to retail customers, both provide the best framework for the FCC approach to internet access over the cable technology.

Technically, trials are not necessary. No reason to test capability of the system. Believe that trials are part of strategy simply to appease FCC. Do not see how will get open network without regulatory intervention.

Solution is a level playing field for ISPs, with mandatory open access for ISP's to the AT&T and TW cable systems, on a "common carrier" model. The FCC should mandate that TW (and other cable system owners and operators) permit the ISPs to pay a fair price to utilize cable system, at wholesale pricing on the same terms and conditions with either affiliated or unaffiliated ISP's given access to the TW system. This is critical when the cable system is owned or controlled by an entity that is also offering retail ISP services through a partner or affiliate entity.

Lastly, ISPs need to have relationships directly with customers that they own and control, without any interference from the cable owner (like TW) and without any requirement that the cable owner be allowed to own the "first page" on the Internet access product or force a co-branding relationship.