

Ex Parte Filing By David Robertson, President, Texas Internet Service Provider's Association

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

On Thursday, October 19, 2000, a meeting was held with Chairman Kennard on the AOL Time Warner Merger. Docket 00-30. The participants included:

Gene Crick, Executive Director of the Texas ISP Association. <www.tispa.org>. PO Box 328, Bastrop, TX 78602, (512) 303-6246, (512) 303-5472 fax

David Robertson, President of the Texas ISP Association. <www.tispa.org>; Vice President and General Manager of STIC.NET <www.stic.net>; Vice President, TXNet Communications, Inc., Texas Based CLEC. David Robertson, Stic.net, 2438 Boardwalk, San Antonio, TX 78217-4429, Tel: 210-477-3283 Fax: 210-828-7165

Douglas H. Hanson Chairman, President and CEO, RMI.net. Doug Hanson, RMI.NET, 999 18th Street, North Tower, Suite 2201, Denver, CO 80202, Tel: 303-672-0700 Fax: 303-313-0698

Steven Heins, Director Marketing, Northnet.net; ISP Issue Committee, Wisconsin ISPs, Member Organization of the Wisconsin State Telecommunications Association. 311 Park Plaza Oshkosh, WI 54901 phone: 920.233.5641 facsimile: 920.233.5691

Chairman William Kennard, FCC

- Michele Ellison, FCC OGC
- James Bird, FCC OGC
- Deborah Lathen, Chief, CSB
- Erez Kalir, FCC OGC
- Royce Dickens, FCC CSB
- Sherille Ismail, FCC CSB
- Karen Onyeije, FCC Office of the Chairman
- Robert Cannon, FCC OPP
- Robert Pepper, FCC OPP
- Peter Friedman, FCC CSB

The primary discussion of the presentation was the Time Warner Term Sheet for ISPs. The term sheet was publicly available to the FCC staff who had before them a copy acquired through the ISPWorld website. Also before the FCC staff was the following documents: Time Warner Terms For Cable Criticized, Oct 10, 2000, The Washington Post < <http://www.washingtonpost.com/wp-dyn/articles/A28372->

2000Oct6.html>; FTC, FCC Receive Details Of Time Warner's Term Sheet To ISPs, Oct 10, 2000, ISPworld <http://www.ispworld.com/src/OA_101000.htm>; Letter to Ch Kennard from NorthNet 10/10/2000 <http://northnet.net/Press/FCC___FTC_Open_Letter.pdf>.

The following is a summary of participant's arguments:

Gene Crick:

For most of Texas, cable will be only viable broadband. Cable is only game in town. Built on public trust, government sanction, and rate payer fees - it should serve the people.

David Robertson:

Having been constantly negotiating with TW on how to get access to network. Progress is slow to the point of a delay tactic on part of TW.

Terms of the TW term sheet are not binding and can be revised at any time. Presents a barrier in that the rules of the game are unknown and can be changed at any time on ISPs. TW can set up partnership with ISPs only to, the next day, change the terms and make an offering that undercuts ISPs.

Terms of the TW term sheet are onerous for ISPs and present a barrier to entry to the market. Largest ISPs in markets would struggle meet the \$50,000 barrier. Small ISPs in market cannot meet it. Logic of TW is respectable; it wants ISPs that will have the skill, experience and strength to provide a reliable service. There are other means however of measuring the reputability of ISPs including experience, subscribers, churn rate, or other factors. TW has agreed to accept recommendations for criterion for selection of ISPs it will allow on the network.

Each term if not modified would put TW in a monopoly position that would put us back in time. If TW is allowed to continue without open access, there will not be a market, except for itself and AOL. Deployment of DSL was damaged greatly by the incumbent's ability to delay entry into the market of competition.

We are ready to engage in trials. Ready in Texas but TW said trials will be in Ohio. We are ready in two weeks for trials. They say delay. According to what TW tells us, would not be able to hook up service till some time mid year next year. Competition in this market is good and part of the public trust. "Mid-year, next year" is not a test in good faith, it is a ploy to delay. Trials need to be done quickly.

TW Terms do not provide for sufficient profitability for ISPs.

Difference between dial up ISPs and cable ISPs is that at the time of the beginning of dial up ISPs, BOCs did not want in that market. This let ISPs be first movers. Now BOCs have woken up and want in that market. With cable, from the beginning, they want into the market, cutting out competition.

Solution is to provide access and let ISPs pay for it. Access alone is not enough if we get it 2 years later, letting cable get first mover advantage. Suggestion made was to require 50 ISPs have agreements in place and be on-line in at least 25 markets before allowing the merger.