

1           We have not asked for any kind of preferential  
2 anything. In fact, we're having a hard time trying to think  
3 of all the questions we asked. And the bottom line -- and  
4 you'll see this in the letters -- we asked of Time Warner,  
5 just assure us that the system will function for consumers  
6 when they're seeking to interact with our content the same  
7 way it does when they're seeking to interact with your  
8 content.

9           COMMISSIONER NESS: Response from Time Warner or  
10 AOL.

11           MR. PARSONS: There'll be one from both actually.  
12 First of all, one of the differences between us and Disney,  
13 I think, is they seem to think they know how the world of  
14 interactivity is going to roll out in the future and,  
15 therefore, can answer all the questions today. Our concern  
16 was and is -- and it should be a concern of this Commission  
17 as well -- that no one really knows how these interactive  
18 services and how interactivity, once introduced into  
19 television, will roll out and that it should be determined  
20 by the players in the marketplace and by customer and  
21 consumer demand, as opposed to trying to lay the tracks now  
22 that will keep the train from going where it needs to go but  
23 put it on a path that someone thought may happen.

24           Secondly, I have to disagree respectfully with Mr.  
25 Padden's characterization of what they asked for.

1 Essentially, they asked for parity with all of our services  
2 and it's, so that, you know, instead of nondiscrimination on  
3 the basis of affiliation. And when I responded -- well, I  
4 won't get into all of the discussions, but they were  
5 essentially saying, protect us, and we're fine. Promise to  
6 do for us everything that you do for your own services, and  
7 we're fine.

8           The fact that that might, and would in fact,  
9 preclude other services that consumers might want -- we  
10 don't even, we don't even, as the Commission well knows,  
11 carry all of our services, because we're guided by the  
12 consumer demand. So I think the ask was a lot more  
13 substantial, and I think that the concern was -- what Disney  
14 was trying to do, and what we hope this Commission will  
15 refrain from doing, is to lay some tracks across the  
16 wilderness when we don't know where the watering holes are,  
17 when we don't know where the customer demands are, where we  
18 don't know how this is going to roll out, because the  
19 marketplace needs to determine that. But I know that Barry  
20 wanted to add something.

21           MR. SCHULER: I just wanted to add that laying the  
22 tracks means even though there are digital set top boxes out  
23 there, in order to enable the kinds of applications that Mr.  
24 Padden is talking about, interactive, more information on  
25 news, playing along with games, you need software, you need

1 services, you need technology to be able to run on those  
2 platforms. It may be that the current platform today can't  
3 necessarily support that, but we did introduce, just  
4 introduced a platform that does do it and, again, I will  
5 repeat, gave ABC the opportunity to do exactly what they're  
6 asking to do without charging any money, and they said no.

7 So I don't know exactly what their issue and  
8 concern is, because AOL TV does enable exactly the kind of  
9 technologies they're talking about, to do single screen  
10 work, to read those triggers he's talking about and enable  
11 them. And so, given the opportunity, the answer was no.

12 CHAIRMAN KENNARD: Commissioner Tristani.

13 COMMISSIONER TRISTANI: I wanted to go into  
14 another area. Mr. Weed asked a question that I would like  
15 you to address. And by the way, Mr. Weed, I really  
16 appreciate the work that a lot of your members do in the  
17 rural communities, in hard-to-serve communities, in  
18 communities where no other players will go so -- he said  
19 that he's received inconsistency responses from AOL Time  
20 Warner on the question whether you will require carriage of  
21 AOL services as a condition of access to Time Warner  
22 programming. Which is the answer? Unequivocally?

23 MR. PARSONS: Unequivocally. We will not. We  
24 will not tie them together in that way. We had thought, we  
25 had thought we were clear in our previous submissions.

1 Obviously, we weren't. Mr. Weed has raised the point. But  
2 we're being unequivocal now. We will not tie them.

3 CHAIRMAN KENNARD: Commissioner Powell and then  
4 Commissioner Furchtgott-Roth.

5 COMMISSIONER POWELL: I want to briefly go back to  
6 this interactive television issue, because there's a lack of  
7 clarity here that I think has a lot to do with merger  
8 specificity that's important to distinguish. We have being  
9 discussed what is essentially two different products or  
10 platforms with two different potential problems or not  
11 problems, and they're not necessarily interchangeable.  
12 There is AOL TV, a product, as I understand, sold at retail.  
13 A product, as I understand has a relatively open opportunity  
14 for programming interoperability.

15 And then there is the potential for Time Warner  
16 digital set top box problems. And I want to get clear from  
17 ABC whether they're concerned about both of those, or  
18 principally about the cable set top box as a gateway with  
19 Time Warner, which does not capture or bring in the AOL TV  
20 product. You have tended to answer Mr. Schuler's question  
21 about programming by going back to the cable box, which is  
22 not his product. And I'm not so sure your concern, if its  
23 exclusive to one of those, is necessarily specific to the  
24 combination.

25 MR. PADDEN: Well, you're right. They're two

1 separate products. I would, we certainly have a concern  
2 that I hope we've articulated about the, what we believe is  
3 going to be a cable bottleneck for the delivery of broadband  
4 two-way interactive television. But with respect to the  
5 stand-alone AOL TV box, my understanding, Mr. Schuler, is we  
6 have not said "no."

7 Various parts of our company were approached by  
8 AOL, and the offer was we -- AOL will make available or  
9 proprietary offering tools to enable you to create content  
10 for this AOL TV stand-alone box that is for now, anyway,  
11 unconnected to their cable distribution. We had an internal  
12 meeting, and each of our divisions either has or will be  
13 getting back to AOL TV to seek more information about  
14 exactly what they're talking about. I will say that the  
15 minute we heard proprietary offering tools, a bunch of  
16 caution flags went up around our company, because today the  
17 beauty of the narrowband Internet is you don't need any, you  
18 don't need to rent anybody's -- or have them loan initially  
19 before they have any market penetration loan them for free  
20 -- you don't need anybody's proprietary offering tools.

21 The, you have end-to-end connectivity, anybody can  
22 play. What, we're going to explore the AOL TV stand-alone  
23 box offer more specifically, but we have concerns about the  
24 standards issue.

25 COMMISSIONER POWELL: Just one thing quickly about

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1 that. I'm not so sure, when you have a stand-alone  
2 technological product, I assume with some form of operating  
3 system, that there are often proprietary tools for writing  
4 to that system. I mean certainly the case is true of  
5 Microsoft operating systems or any other operating systems,  
6 that you have to have the APIs and protocol in order to  
7 write effectively. I'm not so sure that that's --

8 MR. PADDEN: Well, that's why I said caution flags  
9 went up and we will be getting each of the operating  
10 divisions, I mean they came separately to ESPN, to Disney  
11 channel, to ABC, and they're each going to be getting back  
12 to them.

13 COMMISSIONER POWELL: Time's short, so I don't --

14 CHAIRMAN KENNARD: Go ahead, Mr. Melcher, quickly.

15 MR. MELCHER: I'd like to just raise a point that  
16 I think this is obviously an important discussion for Disney  
17 and Time Warner on open access with regards to open access  
18 with regards to content. I think up until very, very  
19 recently, open access has always focused on open access to,  
20 via, or for Internet access via a new technology.

21 And so I would hope we make sure the distinction  
22 is kept separate, that whether or not you agree Disney  
23 should have open access in terms of content, what is, I  
24 think, more of immediate interest to the American public is  
25 that they have access to this cable technology for Internet

1 access, and not necessarily to watch interactive TV but to  
2 surf the Internet, to use it for work, to use it in all the  
3 ways that we use the Internet.

4 And that's what I think we'd like to focus on as a  
5 service provider. We want access to this technology on a  
6 wholesale basis, equal access, to use it in whatever way we  
7 see fit to serve the American public as they use the  
8 Internet, not interactive TV. Thank you.

9 CHAIRMAN KENNARD: Thank you.

10 COMMISSIONER POWELL: Mr. Chairman, I had one more  
11 point.

12 CHAIRMAN KENNARD: Oh did you? I'm sorry. Go  
13 ahead, Commissioner Powell.

14 COMMISSIONER POWELL: We've heard a lot of talk  
15 about instant messaging and AOL's interoperability. I  
16 assume you're going to tell me Tribal Voice has no problem  
17 inter-operating with any and all other IM providers?

18 MR. BAGULLY: We are, actually two points,  
19 Commissioner. One, we are completely free and agreeable to  
20 inter-operate with anybody that wants to, and we openly  
21 exchange protocols. But we are part of a new group called  
22 IM Unified, which, in fact, consists today of about eight,  
23 and it's a rapidly growing number of Internet, or instant  
24 messaging companies that have committed to publishing  
25 standard for interoperability among our companies in the

1 next six to eight weeks, and to have complete  
2 interoperability among our companies by the end of the year.  
3 We think the long-term solution is, in fact, the IETF  
4 publishing standards, but rather than wait, we've decided to  
5 go ahead and do this on our own.

6 COMMISSIONER POWELL: Okay. I want to jump in,  
7 because I want to be clear. That's an announcement just  
8 this week.

9 MR. BAGULLY: Yes sir.

10 COMMISSIONER POWELL: But for the last year, if I  
11 downloaded any of these other IM products -- Microsoft's,  
12 Yahoo's, yours -- would I have inter-operating functionality  
13 that we're insisting that AOL have? Is the answer to that  
14 yes or no?

15 MR. BAGULLY: It's yes with Microsoft. It's yes  
16 with AT&T. It's no with Yahoo, though we are working with  
17 them. They're part of this organization too.

18 COMMISSIONER POWELL: So Microsoft's IM product  
19 can talk to anybody's IM products except AOL.

20 MR. BAGULLY: Can talk to ours. I don't know --  
21 and it cannot talk to AOL's. Beyond that, I don't know.

22 COMMISSIONER POWELL: So all these other IM  
23 products are not necessarily yet reached this same level of  
24 interoperability that's so important.

25 MR. BAGULLY: No. The difference, Commissioner,

1 is that everybody else, or all the other IM companies, are  
2 striving, working together to try to make this happen as  
3 quickly as possible, as opposed to what we believe is a  
4 stalling tactic.

5 COMMISSIONER POWELL: Okay.

6 CHAIRMAN KENNARD: Okay. Commissioner  
7 Furchtgott-Roth.

8 COMMISSIONER FURCHTGOTT-ROTH: Thank you, Mr.  
9 Chairman. I do have a question for the panel, but before I  
10 get to that, I think I may owe you a bit of an apology, Mr.  
11 Chairman. We did hold a hearing on December 14th, 1998,  
12 that looked at mergers generally, and there were single  
13 panels on each of three license transfer applications before  
14 the Commission -- AT&T, TCI, Bell Atlantic GTE, SBC  
15 Ameritech -- although those license applications for Bell  
16 Atlantic GTE, SBC Ameritech were subsequently withdrawn and  
17 resubmitted in radically different forms. There were no  
18 CEOs at those hearings.

19 COMMISSIONER TRISTANI: Yes there were.

20 COMMISSIONER FURCHTGOTT-ROTH: Not all of them.  
21 Who was there?

22 CHAIRMAN KENNARD: Actually, you were doing pretty  
23 well. Let him finish, okay?

24 COMMISSIONER FURCHTGOTT-ROTH: There was a general  
25 review of mergers. It was not particularized to one merger.

1 Notabart (phonetic) was in Illinois on that Monday.

2 COMMISSIONER TRISTANI: Well, somebody, somebody

3 --

4 CHAIRMAN KENNARD: All the CEOs were there, as I  
5 recall, but no need to belabor the point here.

6 COMMISSIONER FURCHTGOTT-ROTH: Not according to  
7 Com Daily.

8 COMMISSIONER TRISTANI: Oh, don't trust everything  
9 you read in Com Daily.

10 COMMISSIONER FURCHTGOTT-ROTH: Oh, I do. Anyway,  
11 if one looks at all of the major license transfer  
12 applications we've had before the Commission while we've  
13 been here as a Commission, even if one counted all three --  
14 and I'm not sure I would -- that's just a small minority of  
15 the major applications that have been before this  
16 Commission. But I do accept there has been a hearing in the  
17 past.

18 The issue that the gentlemen here raise are all  
19 very important issues. I don't mean to suggest otherwise.  
20 What I would suggest is, in some instances, these are issues  
21 that may well be being reviewed by the Federal Trade  
22 Commission. In other instances, they're not being reviewed  
23 by the Federal Trade Commission because, frankly, it's not  
24 clear they are narrowly related to the license transfer or  
25 the merger but rather to general problems between the cable

1 industry generally and the broadcast industry, or electronic  
2 messaging generally.

3 The question I have is, for instance, Mr. Padden,  
4 are these issues that are narrowly related to just AOL Time  
5 Warner, or are these problems that are more generic that  
6 need to be reviewed by the Commission industrywide. Do you  
7 have the same problems as a broadcaster in dealing with  
8 other cable operators? And the same for the folks involved  
9 in electronic messaging. Is this narrowly involve just AOL?  
10 Or are these issues that, frankly, may be more amenable to  
11 generalized rulemaking rather than rules that would apply to  
12 just one player in the industry and not to anyone else?

13 MR. PADDEN: I can certainly say for our part, we  
14 are here because of the specific collection of assets in  
15 this merger and our specific history of problems with these  
16 companies. We've not had other Internet service providers  
17 ask us, insist that we remove consumer links that would  
18 allow consumers to navigate more freely in order to do  
19 business with them. Disney channel was being carried on the  
20 basic tier in 60 million American homes while Time Warner  
21 refused to carry it.

22 So we certainly are here because of this specific  
23 merger, the marriage of the AOL closed, proprietary,  
24 walled-garden marketing environment with the Time Warner  
25 content assets and cable bottleneck distribution. That is,

1 we believe, a deadly combination for consumer choice, and  
2 that's why we're here.

3 MR. PARSONS: May I, Commissioner, because I  
4 think, first of all, you've put your finger on something  
5 that I think is very fundamental. Let's take IM for one  
6 second. There's nothing about this merger that implicates  
7 the IM issue. Time Warner isn't in the business. It's,  
8 there is no question as to somehow by the joining up of  
9 these companies, will the IM situation get better or worse?  
10 It will be stay the course.

11 So one question is, is this, a license application  
12 like this, an opportunity to sort of open up the entire  
13 business practices of both companies and look around and see  
14 what you would do differently if you ran the company? I  
15 mean, there is no jurisdictional relationship, for example,  
16 between the IM issue and the merger. So I think that's one  
17 set of questions.

18 But the second is, are these, is this a spillover  
19 of business disputes now dressed up to look like important  
20 public policy issues. And I submit it, that's exactly what  
21 it is. There is no question. It's well-documented.  
22 Everybody sort of had an opportunity to have their, their  
23 fling at the media about the well-publicized disputes  
24 between Time Warner and Disney.

25 But to then, to then dress it up as a public

1 policy issue, as Preston said earlier that, well, there are  
2 conflict of interest, Time Warner has the Cartoon Network  
3 and everybody else put Disney down on basic. It's money.  
4 That's all it is.

5 CHAIRMAN KENNARD: I need to follow up on that. I  
6 need to follow up if you'll permit me. I'm not sure if you  
7 finished. But in the interchange we saw a few minutes ago,  
8 it did sound like what was fundamentally at stake here was a  
9 contractual dispute between ABC/Disney and Time Warner.

10 And I have to ask you very bluntly, Mr. Padden,  
11 because I've seen this happen before -- in fact, you were  
12 involved -- when NBC brought allegations against News  
13 Corporation when you were at News Corporation. Serious  
14 public policy issues were addressed. We developed a record.

15 Then there was a deal that was made between NBC  
16 and the Fox network. Suddenly, their allegations  
17 disappeared. And we don't like to have our processes here  
18 used as leverage in a contractual dispute. And you alluded  
19 to some meetings coming up, and is this the kind of  
20 allegations that suddenly we're going to see ABC/Disney  
21 disappear from this proceeding, because their issues are  
22 resolved at the negotiating table?

23 MR. PARSONS: No, Mr. Chairman. And I appreciate  
24 the opportunity to answer the question, because I think what  
25 you have here is sort of the reverse of the situation you

1 described with NBC and News Corp a few years ago. Here, the  
2 commercial deal got done, and the public policy dispute  
3 follows. So we can't possibly be here trying to gain  
4 leverage in the commercial transaction, because we did that  
5 transaction.

6           What happened is we raised in our commercial  
7 negotiation with Time Warner -- and again, the letters are  
8 in the record -- we raised a host of what we believe are  
9 public policy issues involving nondiscrimination, one of the  
10 core principle of the enabling statute of this agency. And  
11 running through a whole host of operating parameters,  
12 knowing that we were doing a contract that was going to run  
13 seven years into the future, and without being able to know,  
14 even, all the right questions to ask, our core ask in a  
15 public policy sense was, just tell us that you're not going  
16 to discriminate in the functionality of this system for  
17 consumers depending on whether they're trying to interact  
18 with your content or with ours. And it runs through all the  
19 issues. Caching, return path, data rates, all of it.

20           But what happened in the negotiation is they said,  
21 we will conclude the financial negotiation and you take  
22 those public policy issues to Washington, because we're not  
23 going to deal with just you on them, because if we give  
24 this, if we agree to be nondiscriminatory to you, we have to  
25 be agree to be nondiscriminatory to everybody, to which we

1 said, well, of course.

2 So we ended up doing what they asked. We closed  
3 the commercial deal. That's over. And we are here  
4 advancing the public policy issues to this agency.

5 CHAIRMAN KENNARD: Mr. Melcher, Mr. Schuler and  
6 then Commissioner Ness has some questions.

7 MR. MELCHER: Two quick points, Mr. Chairman.  
8 Thank you. I have, while I welcome the participation of Mr.  
9 Padden at Disney, I have questions, as well. Recently, it  
10 was announced that AT&T secured an agreement with Quest and  
11 U.S. West that they would not participate in the AT&T cable  
12 license transfer. Specifically, it was a deal so that if  
13 U.S. West Quest did not come in and say that the cable  
14 should be open for open Internet access, that AT&T would not  
15 oppose the U.S. West Quest merger. And that deal was just  
16 publicized through the efforts of a commission in  
17 Washington, I believe. So I have suspicions.

18 Secondly though, more importantly, I think this  
19 issue may be drawing some attention away from what I, again,  
20 believe to be the most significant issue, which is open  
21 Internet access, not whether the Disney content gets on Time  
22 Warner but whether the American public gets the superior  
23 Internet access product, which is cable. I believe it will  
24 be. And I think, following up on Mr. Reddersen's comment  
25 earlier, I think FCC could do well to codify the agreement

1 that AT&T, that AOL and Time Warner have all stepped up and  
2 said that they will honor open access, make them codify it  
3 and enforce it.

4 I think a rulemaking really is appropriate, but  
5 time is running out. And I would agree with Mr. Padden on  
6 that point. Time is running out. There is no time to wait.  
7 We need to make conditions now on this merger and get into a  
8 rulemaking, because if we don't, I think we'll have an  
9 architecture that's built out in the next six to eight, 12  
10 months, which will prevent open Internet access.

11 And that is my fear. That AT&T and AOL and Time  
12 Warner right now are building out an architecture with  
13 billions of dollars that will prevent open access. If you  
14 do not act quickly, you will lose the opportunity.

15 CHAIRMAN KENNARD: Thank you. Mr. Schuler, very  
16 briefly, and then Commissioner Ness.

17 MR. SCHULER: Very briefly. To your point about  
18 Disney's motivations in using these proceedings. If you go  
19 to page 47 of their own filing, they say right here in black  
20 and white, "AOL Time Warner can prove Disney wrong. All it  
21 has to do is come to the negotiating table and agree to  
22 arrangements with Disney." Blah, blah, blah, blah, blah.

23 MR. PADDEN: No. Don't do blah, blah, blah.  
24 Finish. It says to provide nondiscriminatory access.  
25 That's all we're looking for.

1 MR. PARSONS: No, no, no. You have it exactly  
2 right, Mr. Chairman. It's the same dance, it's just a  
3 different order of the steps.

4 COMMISSIONER TRISTANI: I just want to comment  
5 that I think AOL shouldn't talk about the same dance or not  
6 using proceedings and then changing course. It used the 9th  
7 circuit very effectively till it got a reason not to do it.  
8 That's the American way.

9 COMMISSIONER NESS: Mr. Melcher, you mentioned Mr.  
10 Reddersen, who was commenting also on nondiscriminatory  
11 access to programming and his concern about multiple cable  
12 provides not effectively, not enabling companies that are  
13 providing DSL service, for example, from getting access to  
14 the programming, be it AOL or Time Warner. Is that, that  
15 was the essence of your testimony. Is that right?

16 MR. MELCHER: One of the three points, yes,  
17 Commissioner.

18 COMMISSIONER NESS: Okay. Can Time Warner and AOL  
19 please comment about whether they will be making, on a  
20 nondiscriminatory basis, programming available to DSL  
21 providers.

22 MR. SCHULER: I can say that on AOL's part, we  
23 have gone to every DSL provider in the country to cut deals  
24 to offer our services over DSL. We have cut deals with  
25 everybody except Bell South, who has not wanted to do a deal

1 with us. So our intent is to offer ubiquity of broadband  
2 services everywhere, whether it's cable or satellite or  
3 broadband wireless or DSL, because that's what makes our  
4 business work.

5 COMMISSIONER NESS: Mr. Reddersen, would you like  
6 to respond?

7 MR. REDDERSEN: Yeah, I was about to say earlier  
8 that I didn't think I was in a contract dispute with these  
9 people, so I couldn't comment, similar to Mr. Padden, but  
10 obviously I am. Since Mr. Schuler has brought it up, I will  
11 tell you he is right. We do not have an agreement where  
12 they will provide AOL service over Bell South's DSL service.  
13 The reason we don't is because they want substantially  
14 better terms and conditions than anyone in the marketplace  
15 and they won't do a deal without them.

16 We have available wholesale tariff and we have  
17 volume discounts on that wholesale tariff, and there are  
18 many large ISP's out there participating on it and they can  
19 participate in that tariff anytime they want to do that.  
20 Let me finish now, Mr. Schuler, please. The issue, I think,  
21 that was brought up earlier is really important. And that  
22 is, the real issue, while there's an issue of cable access  
23 here and it's very, very important, the real bottleneck here  
24 going forward is the AOL environment. I think that's what  
25 Ms. Dyson was describing.

1           And when we talk about and when Disney talks about  
2 that control environment and the content flow in and out of  
3 it, what we're really describing is whether other content  
4 players will have open access to that environment and  
5 whether content that flows from Time Warner through that  
6 closed AOL environment will be available to other Internet  
7 service providers.

8           Let me give you a simple and easy example. If the  
9 Braves games are available on streaming media but only  
10 available on the AOL environment in Atlanta, then all other  
11 ISPs providing broadband streaming media might as well close  
12 shop in Atlanta. So this is a two-way issue here for  
13 content providers having reasonable market terms and  
14 conditions into that environment and for the Time Warner  
15 content to be made available openly to other ISPs. So if  
16 both parties are concerned about that control point, there  
17 must be some reason for that. And it's not a contract  
18 dispute on our part. I will guarantee you that.

19           COMMISSIONER NESS: Time Warner, go ahead.

20           MR. PARSONS: Well, I submit though, that the  
21 beginning of Mr. Reddersen response puts this all in  
22 context. He says AOL wants too much money. They say he  
23 won't pay them the fair amount. Business dispute, you know.  
24 And I, and I do think that, when I say it's the same dance  
25 that, with our friends at Disney, it isn't just a question

1 of nondiscrimination because, as I said, we put that on the  
2 table. What they wanted was -- and if you look at their  
3 letters and read them carefully -- they wanted to be treated  
4 exactly the same way in all instances that we treat our own  
5 content.

6 So does that mean, for example, if you put a CNN  
7 box on some web site, that you have to put an ABC News box  
8 on the web site. Those things have to be negotiated in the  
9 marketplace. You can't, this Commission, I don't think, can  
10 deal with the subtleties and the nuances and the  
11 complexities of trying to arrange business arrangements that  
12 are going to enable a business to grow and be dynamic and  
13 innovation to occur. You've just got to leave that to the  
14 marketplace.

15 Now, what we have done is we've committed to open  
16 access on the broadband platform. I will tell you, we've  
17 heard Gerry Levin say it, I will say it. Time Warner, we  
18 make stuff. And the way you maximize the value of making  
19 stuff is you sell it to as many distribution channels and  
20 across as many, as many outlets as you can.

21 And if you look at the way we manage our business  
22 now, that's what we do. That's what we've said we're going  
23 to do in the new environment.

24 COMMISSIONER NESS: Mr. Reddersen response,  
25 please.

1           MR. REDDERSEN: Very simply, and please don't let  
2 this whole debate and the issues get narrowed down to any  
3 dispute between Disney and Time Warner AOL. The whole  
4 message being brought to you by Time Warner AOL, both  
5 excellent companies -- I marvel at the products and services  
6 that they bring to the marketplace -- is twofold. First,  
7 it's "Trust me, I will be open, in a world where I may not  
8 have been in the past, but trust me in the future. I will  
9 be." I would urge you, having tried that argument over the  
10 last 15 years in the telecom industry -- it probably didn't  
11 work -- not to take that argument here.

12           The second issue and more important issue may be  
13 let the market work. Well, the only other player out there  
14 that has the potential to provide the leverage against AOL  
15 Time Warner to make the market work is AT&T TCI Media One,  
16 and there are so many interlocking relationships between  
17 those two entities, that it's unlikely that they will  
18 establish market terms and conditions between the two  
19 parties that are at all reasonable to the rest of the  
20 industry. So I urge you, if you can establish that  
21 separation, you may at least have a large player out there  
22 that can establish market prices and terms and conditions  
23 that are reasonable. Thank you.

24           CHAIRMAN KENNARD: I'm sorry, but that'll have to  
25 be the last word for this panel. I'm sorry, we're running

1 way over, and I want to hold at least 15 minutes so that we  
2 can have some statements from people in the audience who  
3 have been waiting throughout this entire panel. So thank  
4 you all very much. I thought we had a really good, robust  
5 debate there, and I appreciate your participation.

6 We'll take 15 minutes and 15 minutes only for  
7 anyone in the audience who would like to make a statement  
8 for the record in this proceeding. I'll ask that you speak  
9 for no more than two minutes, and I'll ask our timekeeper  
10 here to make sure that we keep everybody on the clock.  
11 Okay, please begin here on my right. Nancy? Welcome.

12 MS. BLOCK: Hello, my name is Nancy Block, and I'm  
13 the executive director of the National Association of the  
14 Deaf, an independent consumer-based nonprofit association  
15 representing 28 million deaf and hard-of-hearing Americans.  
16 As advocates for communications accessibility, we are, of  
17 course, deeply interested in all technologies that can solve  
18 particular challenges for people who are deaf, late  
19 deafened, hard of hearing and deaf-blind.

20 In its current incarnation, instant messaging  
21 enables deaf-to-deaf and deaf-to-hearing seamless  
22 communication for people with computers and Internet  
23 connections, but only as long as they share the same  
24 provider. Therefore, we have a strong interest in making  
25 sure that open and interoperable communication functions

1 that have helped fuel the explosive growth of the Internet  
2 continue as the medium makes new forms of communication  
3 possible.

4 As instant messaging technology develops and  
5 instant messaging moves on to wireless devices such as  
6 pagers and cell phones, the possibilities for enhanced  
7 communication become even more exciting. A fundamental  
8 principal of accessibility is that users of critical  
9 communications functions should be able to communicate with  
10 all others, even those who have different service providers.  
11 Ease of communication, regardless of the provider, is  
12 important to all consumers, and especially so to deaf and  
13 hard of hearing people, for whom instant messaging  
14 represents an important new advance.

15 Recently, at our biannual convention -- sorry --  
16 our biannual national conference earlier this month,  
17 delegates passed a resolution calling for FCC and FTC  
18 attention to the issue of instant messaging, open access and  
19 interoperability. It is of particular importance that  
20 people who are deaf, late deafened hard of hearing and deaf-  
21 blind be able to take advantage of the many advantages that  
22 instant messaging has to offer for seamless, instantaneous  
23 and barrier-free communication. Attention must also be  
24 given to the universal design and the importance of planning  
25 for access right from the start. Thank you.

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1           CHAIRMAN KENNARD: Thank you, Nancy. We  
2 appreciate you being here. Yes sir.

3           MR. STEINHORN: My name's Barry Steinhorn. I'm  
4 the associate director at the American Civil Liberties  
5 Union. I hadn't actually originally planned to speak during  
6 this session, but the last panel gave me the impression that  
7 perhaps I should. I don't think the Commission should be  
8 diverted from some of the main issues here by a concern  
9 about whether or not some of the comments at the  
10 presentations of the last panel were based on business  
11 disputes rather than important public policy issues.  
12 Perhaps they were, perhaps they weren't.

13           But there are important public policy issues here.  
14 In particular, there's the issue of open access. And I want  
15 to endorse the proposal that was made by Mark Cooper and  
16 others -- and I won't repeat that -- but I want to put it in  
17 a slightly different context. ACLU, for example, has on a  
18 number of occasions represented a small Web site, operates  
19 in the city of Philadelphia, called the Critical Path AIDS  
20 project. Critical Path AIDS project, as the name suggests,  
21 provides information about sexually transmitted disease,  
22 partly sexually transmitted disease. They are somewhat  
23 controversial. They have been threatened on a number of  
24 venues with various kinds of punitive actions.

25           We are very concerned that if this walled garden

1 that others have described does in fact occur, it's not so  
2 much that Disney may have difficulty getting into the walled  
3 garden, because we assume that there, the marketplace  
4 perhaps would be able to solve these problems, but the  
5 Critical Path AIDS Project and other small providers, who  
6 the Internet has given an opportunity to speak to audiences  
7 large and small will, in fact, be walled off. That they  
8 will not, for example, have the same access as, perhaps, Web  
9 MD, or some other large medical Web site, which may not be  
10 affiliated with Time Warner AOL or with AT&T, but may have  
11 an arrangement or even a credibility with Time Warner AOL or  
12 AT&T that may lead them to get preferential treatment in all  
13 the ways that you've discussed here -- caching and access  
14 streaming video, et cetera.

15 So we urge you to enact an open access requirement  
16 rather than simply trusting the marketplace to solve that  
17 problem, and to keep in mind the small content providers,  
18 not simply the large commercial providers. Thank you.

19 CHAIRMAN KENNARD: Thank you for that statement.  
20 Jeff Shester.

21 MR. SHESTER: Thanks. And Barry has stated some  
22 of my concern, that what was in part missing from today is  
23 the role that the Internet plays in our democracy and that  
24 the mission that we have, I think, that you have, historic  
25 mission that you have at this point is to make sure that

1 this end-to-end architecture principal that has allowed all  
2 of this diversity, content diversity, including  
3 noncommercial and independent voices to exist and flourish,  
4 as well as competition, to help them make the transition to  
5 the broadband environment, which will be dominated by the  
6 ITV space.

7           Mr. Parsons, I have to say I follow what you're  
8 doing, and you're running the tracks, you're creating the  
9 railroad, you're creating the engines and a closed system is  
10 moving into place, and we have to ensure that an open access  
11 policy ensures that those noncommercial diverse community  
12 voices are as powerful in some way as the Disneys and the  
13 NBCs. Thank you.

14           CHAIRMAN KENNARD: Thank you, Mr. Shester. Are  
15 there any other statements from the public. I don't see  
16 anyone else lined up. Well, thank you all. It's been a  
17 long day, but I think it's been a very worthwhile and  
18 productive day, and I think that you've certainly  
19 enlightened us, and I appreciate your patience and all the  
20 preparation that went into these presentations.

21           I also want to thank the Commission staff who  
22 worked so hard to make this event happen today. Deborah  
23 Lathan, chief of our cable services bureau and her great  
24 team, including Royce Dickens and John Norton in the cable  
25 bureau and Ruth Dancey, who we're happy to have back at the

1 Commission. Also Michelle Ellison and Michelle Rouseau and  
2 Darrell Cooper were very instrumental in making this happen  
3 today. So thank you all very much and this hearing is  
4 adjourned.

5 (Whereupon, at 6:04 p.m., the hearing in the  
6 above-entitled matter was adjourned.)

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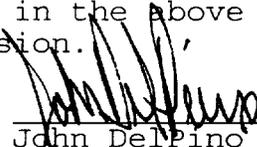
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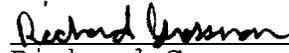
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