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BERNHARD · McPHERSON LLP HAND  
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901 - 15TH STREET, N.W.  
WASHINGTON, D.C. 20005-2301  
(202) 371-6000  
FAX: (202) 371-6279

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

October 26, 2000

Writer's Direct Dial:  
(202) 371-6206  
lsidman@verner.com

VIA HAND DELIVERY

EX PARTE OR LATE FILED

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-B204  
Washington, D.C. 20554

**RE: Notice of *Ex Parte* Discussion, Applications of America Online, Inc.  
and Time Warner, Inc. for Transfers of Control, CS Docket No. 00-30.**

Dear Ms. Salas:

On October 25, 2000, Jim Bird of the Office of General Counsel and Darryl Cooper of the Cable Services Bureau telephoned the undersigned, seeking comment on two changes being contemplated by the Commission to the Protective Order governing this proceeding. According to Messrs. Bird and Cooper, the first would bar in-house counsel from access to documents stamped confidential or to confidential information contained in such documents. The second would require outside counsel to certify that their firms had procedures in place to safeguard confidential documents/information from disclosure to unauthorized persons. Both of these proposals were to be implemented, if at all, prospectively. Messrs. Bird and Cooper made clear that their inquiry was to be considered part of the unrestricted "permit but disclose" proceeding and not part of the restricted proceeding covered by the Cable Services Bureau's October 10, 2000 Order.

During the conversation, I responded that our firm would have no concern regarding the certification that adequate procedures are in place to safeguard materials subject to the Protective Order. I did raise a real concern, as a matter of broad policy, regarding a proposed prohibition on

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in-house counsel having access to confidential documents/information. Such an approach is overly restrictive and deprives outside counsel of the ability to represent his/her client as effectively as possible, consistent with obligations under the Canons of Ethics. In-house counsel not involved in a competitive decision-making capacity may still have a wealth of knowledge and understanding about the business which could be enormously helpful to outside counsel in formulating arguments based upon, or related to, confidential information. Outside counsel should not be precluded from engaging in that type of consultation. I suggested that the Commission consider a less restrictive approach which might limit access to confidential documents/information to one in-house counsel, the General Counsel or his/her designee.

Beyond the core concern discussed above, there are several additional reasons why a complete bar to access by in-house counsel is problematic. First, there may be instances where small companies do not have the resources to retain outside counsel but still might have compelling reason to be active participants in a proceeding. They should not be put to the burden and expense of retaining outside counsel just to have the same access to confidential documents and information that larger and wealthier competitors would have through outside counsel. Second, representatives of the public interest community also are likely to want to preserve their access to confidential documents/information and might be precluded from doing so by such a sweeping restriction. Finally, the Commission, in the discharge of its statutory responsibility to determine that applications for transfer of control are in the public interest might be injured by this type of prohibition which inevitably would diminish the quality of advocacy the Commission should expect and seek on matters of such significant public import.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, and the suggestion of Messrs. Bird and Cooper, we are filing an original and one copy of this letter.

Sincerely,



Lawrence R. Sidman

CC: Deborah Lathen  
Royce Dickens  
Linda Senecal  
James Bird  
Darryl Cooper