

**ORIGINAL**

EX PARTE OR LATE FILED

October 6, 2000

Magalie Roman-Salas  
Secretary, Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: CS Docket No. 00-30

Notice of *Ex Parte* Presentation  
AOL-Time Warner Merger

**RECEIVED**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Ms. Roman-Salas:

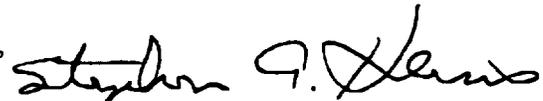
Pursuant to Section 1.1206(b)(2) of the Commission's rules, this letter memorializes a meeting held on October 5, 2000, between myself and Kathy Brown, Chief of Staff to Chairman Kennard. I attended this meeting as Chairman of the Issues Committee of the WI-ISP.

At the meeting, we discussed the attached term sheet Time Warner has offered to ISPs who want to interconnect under the AOL and Time Warner's Memorandum of Understanding on open access. I called attention to the fact that, under the term sheet offered, Time Warner is under no obligation to negotiate in good faith. I said the whole tenor of the terms was anticompetitive and contrary to what AOL and Time Warner were saying publicly.

I also discussed AOL's history of anticompetitive practices. I explained that AOL version 5.0 interferes with the ability of the consumer to use a different ISP, unless you actually remove AOL v5.0 and all other files from your machine and re-install your other ISP's software. We also discussed the discrimination in Instant Messaging, and the ability of AOL Time Warner to discriminate in the set-top box middleware.

I stressed the important role that independent ISPs have played in supporting new Internet users and users in niche markets not served by large ISPs like AOL. Finally, I said that the FCC's policy on allowing the market to develop open access without intervention has been ineffectual.

Sincerely,



Stephen A. Heins  
Director of Marketing  
NorthNet  
311 Park Plaza  
Oshkosh, WI 54901  
(800) 276-2955

Attachment

cc: Kathy Brown (w/attachment)

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**CONFIDENTIAL**  
**August 11, 2000**

### **Term Sheet for ISP/TWC Broadband ISP Service**

This term sheet (the "Term Sheet") is a list of key business points that are intended to be memorialized in a definitive agreement (the "Definitive Agreement") between Time Warner Cable ("TWC") and the Internet Service Provider (the "ISP") identified below. Except for the provisions of Section 21 of this Term Sheet, this Term Sheet is not intended to create any rights for, or impose obligations upon, either party, including without limitation any obligation to negotiate in good faith. 

#### **1. Service.**

The "Service" will be ISP's Internet access, content, applications and functionality delivered over TWC's broadband cable infrastructure, as jointly provided by the parties within the Network Architecture to be specified by TWC in the Definitive Agreement. The Service will be tiered based on a maximum line speed and overall consumption of bits per billing period. Initially, the parties will offer two tiers of Service. The maximum line speeds for the lower tier Service will be 2 mbps, downstream, and 384 kbps, upstream. Line speeds for the initial higher tier of Service, and bit consumption for both initial tiers of Service will be specified in the Definitive Agreement. Following execution of the Definitive Agreement, the parties may modify the foregoing service specifications and/or add service levels solely upon mutual written agreement.

The Service will be optimized for the personal computer, but the parties understand that the Service may be capable of working on another device if so connected by a customer. TWC's obligations under the Definitive Agreement will be limited to a customer's use of the Service through a personal computer.

**2. Non-Exclusive.** The parties' rights and obligations under the Definitive Agreement will be non-exclusive.

**3. Scope and Rollout.** The rollout of the Service will be on a TWC divisional level, except with respect to the National Division, for which rollout will be on a cable system by cable system level (Each division, and in the case of the National Division, each system, may be referred to herein as an "Operator"). Each Operator will have the option (but not the obligation) to rollout the Service to potential customers in its operating area, subject to ISP's agreement to offer the Service through such Operator and subject also to ISP's payment of the Advance (as defined herein) with respect to each Operator that offers the Service. Rollouts will occur 30 days after the Operator determines that its cable systems are capable of providing the Service. TWC will have the right to terminate the Definitive Agreement with respect to Operators which are divested or are no longer under management by TWC. Systems which are acquired by TWC after the effective date of the Definitive Agreement but during the term thereof will have the option to offer the Service under the terms of the Definitive Agreement. 

4. Distribution. Each of ISP and TWC will sell the Service and will determine the pricing of the Service when sold by it.

5. Subscriber Revenue Splits. TWC shall retain seventy-five percent (75%) of gross Service subscription revenues and ISP shall receive twenty-five percent (25%) thereof. Notwithstanding the foregoing, for subscriptions to the lower tier Service: (a) TWC shall receive a minimum monthly payment of \$30 for each subscription sold by ISP to existing TWC cable television service subscribers; and (b) ISP shall receive a minimum monthly payment of \$10 for each subscription sold by TWC. TWC shall be entitled to higher minimum monthly payments, specified in the Definitive Agreement, with respect to subscriptions sold by ISP to customers who are not TWC cable television service customers. *1st Annual*

6. Service Home Page. ISP will have sole control of, and responsibility (including without limitation editorial and technical responsibility) for the homepage for the Service, provided however that: (a) the home page will be subject to TWC's approval; and (b) at all times during the term of the Definitive Agreement there will be a dedicated availability of prominent above-the-fold areas on the home page of the Service for use by the Operator in its discretion, but which may, without limitation link to content, applications, services and functionality provided by such Operator. The Operator presence on the home page for the Service shall be defined in the Definitive Agreement.

7. Advertising and Other Fees. TWC will receive twenty-five percent (25%) of gross revenues received by ISP for advertising, transactions, communications, premium services, e-commerce and other fees (e.g. web hosting surcharges) related to ISP's ability to offer the Service ("Ancillary Revenues"). Except as expressly set out in this Term Sheet, all revenues generated by the Operator in connection with the Service and whether or not through the Service Home Page (including advertising, transactions, communications, premium services, e-commerce and other fees and service revenues) will be retained by TWC.

*1st*  
*Need to discuss these*

8. Advance. ISP will pay TWC an advance payment to be recouped against revenues to be received by TWC under the Definitive Agreement in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) for each Operator which the parties agree shall offer the Service (the "Advance"). The Advance will be due and payable thirty (30) days following ISP's receipt of notice from TWC that the Pre-Existing Obligations have terminated. The Advance will be applied to revenues due to TWC hereunder until such advance has been fully recouped, at which time TWC and ISP shall make appropriate payments as set forth herein. The advance is refundable upon expiration of the Agreement, provided however that in the event the Definitive Agreement terminates for any reason before TWC has earned at least \$50,000, TWC will be entitled to retain an amount equal to the difference between \$50,000 and the actual amounts earned by TWC under the Definitive Agreement.

9. Minimum Subscriber Level. TWC will have the right to terminate the Definitive Agreement with respect to any particular Operator after one year from the commencement of rollout by such Operator unless the Service has, upon the one-year anniversary of the rollout, in such Operator's operating area, a number of subscribers

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equal to the greater of (a) 100 or (b) .5% of homes passed by the particular Operator.

10. Marketing and Service Packages. ISP will market and promote the availability of the Service. TWC may package the Service with TWC's other services, subject to the terms and conditions of the Definitive Agreement, including without limitation the payment of minimum fees.

11. Facilities.

TWC will be responsible for all aspects of the Service infrastructure facilities from a point of demarcation at the Operator headend to Service subscribers. TWC will provision and install (except to the extent that self-provisioning is available) the Service for users using personal computers to utilize the Service. Whichever party sells the Service to a customer will determine whether it wishes to charge an installation fee. Notwithstanding the foregoing, if ISP sells the Service, ISP will reimburse TWC, at TWC's cost without markup, for TWC's direct costs (including labor and equipment) of provisioning and installing the Service. \*

ISP will be responsible for all aspects of the Service, infrastructure facilities, software, hosting, caching, peering and general Internet connectivity and transport to the point of demarcation at the Operator headend. ISP's transport facilities to the TWC headends will meet maximum and minimum capacity specifications as will be specified in the Definitive Agreement. If tunnelling protocols are used, the tunnels will terminate at TWC headend. ISP will be responsible for obtaining and managing blocks of IP addresses to support the Service.

The Definitive Agreement will set forth minimal technical performance requirements with which the ISP must comply. The Definitive Agreement will provide for appropriate credits for Service outages caused by failure of either party's facilities to meet specifications. If outages or performance failures reach a specified level, or if the ISP does not respond reasonably to increased volume or usage of the Service in any particular operating area, TWC may terminate the Definitive Agreement with respect to the Operators in such areas.

12. Billing and Customer Service.

TWC will invoice the customers to which it sells the Service. ISP shall have the option to invoice customers to which it sells the Service, or to have TWC invoice such customers at a monthly billing charge payable by ISP of \$.50 per Service subscriber invoiced. The invoicing party will remit payment to the other party for the other party's share of subscriber revenues no later than 30 days after the end of month in which such revenues were received revenues from Service customer. If a TWC invoiced customer pays only a partial payment, the payment will be allocated proportionately among the Service and other TWC services, with TWC remitting twenty-five percent (25%) of the amount allocated to the Service to ISP (subject to minimum payments as set forth herein. TWC will have sole discretion over Subscriber termination policies, including without limitation for non-payment. ISP will remit to payment to TWC for TWC's share of Ancillary Revenues no later than 30 days after the end of the month in \*

which ISP received such revenues.

The Definitive Agreement will define "Tier I" and "Tier II" issues. Each party will handle any Tier I calls or emails directed to it, with a handoff to the other party if necessary. ISP will handle Tier II customer service, except that TWC will handle Tier II customer service for those aspects of the service and facilities TWC is responsible for providing.

13. Local Franchise Requirements. ISP will agree to abide by the terms of any local franchise obligation regarding the provision of the Service on the TWC cable systems that, in TWC's judgment, are applicable to it, including, without limitation (x) charging and remitting to TWC for payment to local franchise authorities (or, if directed by TWC, paying to franchise authorities directly) the applicable franchise fee on the Service when sold by ISP; and (y) complying with any customer service, disclosure, quality of service and other requirements (including providing subscribers with copies of the privacy policy); and (z) the provision of the Service to persons, places or institutions without charge. TWC will provide ISP with notice of such requirements and the parties will cooperate on such compliance matters.

14. Privacy. Each party will comply, and assist the other in complying, with all applicable laws and regulations respecting collection, use, disclosure and protection of subscriber information. TWC shall use reasonable efforts to comply with ISP's customer privacy policies, provided however that to the extent ISP's privacy policies are inconsistent with, and in some way a limitation on TWC's current or anticipated business uses of such information, ISP agrees to take whatever action necessary to modify its policies with respect to conform with TWC's business objectives.

15. Customer Policies and Procedures. The parties will agree upon policies and procedures to be maintained by each of them with regard to the customers, for the benefit of each other and the customers. Areas will include, without limitation, (i) acceptable use policies; (ii) procedures to enable each party to take advantage of the notice and takedown provisions of the Digital Millennium Copyright Act; (iii) procedures for other takedowns of posted content and denial of service; (iv) response to subpoenas; (v) response in emergency situations; and (vi) minimum standard service terms, including limitations of liability for the benefit of both parties.

16. Video Streaming; Telephony. Video streaming and telephony will be permitted as part of the Service, subject to the following provisions:

The Service will not include any local telephony services requiring special gateways, powering, software or equipment, or that otherwise could cause TWC to be subject to regulation as a common carrier of telecommunications services by any state public utilities commission, the FCC or otherwise, or other adverse regulatory consequence.

TWC will not be required to provide QoS support for telephony or video streaming for the Service. QoS may be provided upon request and at an additional cost.

To the extent ISP wishes to offer any functionality as part of the Service which: (a) is outside the scope of the Network Architecture; or (b) requires an Operator to acquire

equipment or software or implement a change in the way the Operator processes, TWC shall have the right to approve such new functionality, provided however that in the event TWC approves such functionality, ISP will be obligated to reimburse for TWC its direct, out-of-pocket costs in implementing such new functionality.

17. Term. With respect to each Operator, three years from launch of the Service by such Operator.

18. Responsibility. Subject to any restrictions and exceptions specified in the Definitive Agreement, ISP will have control over and responsibility for all content, applications, functionality and services included in the Service, except that TWC will have control over and responsibility for the portion of the Service allocated to the TWC local service.

19. Subject to Pre-existing Obligations. Any Definitive Agreement which the parties may reach will be subject to TWC's compliance with pre-existing obligations, including those with ServiceCo LLC d/b/a/ Road Runner, as described in the Memorandum of Understanding dated February 29, 2000 between AOL and Time Warner (the "Pre-Existing Obligations").

20. Costs. Except as specifically provided in the Definitive Agreement, or as otherwise agreed by the parties, each party will bear the costs of performing its obligations.

21. Confidentiality. ISP agrees to keep this Term Sheet, any of the terms set forth herein, and any discussions with respect to the contemplated arrangement confidential, and ISP agrees not to disclose such information to any person except employees or agents of ISP with a need to know in connection with the services they provide to ISP. Each party agrees not to make any press release or public announcement mentioning the other party's name or identity without such other party's express written consent. The provisions of this Section 21 are intended to be binding.

Time Warner Cable, a division of Time Warner Entertainment Company, L.P.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_