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EX PARTE OR LATE FILED

May 3, 2000

Ex Parte Presentation

MAY 3 2000

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, SW
Washington, D.C. 20554

ORIGINAL

Re: Applications of America Online, Inc. and Time Warner Inc. for Transfers of Control (CS Docket No. 00-30)

Dear Ms. Salas:

The attached letter was delivered to Deborah A. Lathen, Chief, Cable Service Bureau, today. Please enter it into the record of the above referenced proceedings.

If you have any questions, please do not hesitate to call me.

Sincerely,

Priscilla Hill-Ardoin

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CC: Deborah A. Lathen

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May 2, 2000

Ex Parte Presentation

Deborah A. Lathen
Chief, Cable Service Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C740
Washington, D.C. 20554

Re: Applications of America Online, Inc. and Time Warner Inc. for Transfers of Control (CS Docket No. 00-30)

Dear Ms. Lathen:

SBC Communications Inc. filed comments in the above proceeding on April 26, 2000. As SBC pointed out in those comments, the proposed merger between AOL and Time Warner poses a severe threat to competition. The merger will create a dominant broadband consortia that will have the incentive and the ability to leverage both content and distribution to dominate completely the markets it serves. The risk of exclusionary and discriminatory conduct is overwhelming.

Since SBC filed its comments, Time Warner has engaged in conduct that, as the attached editorial from today's New York Times explains, offers "an alarming glimpse of the possible shape of the future in telecommunications." Time Warner has unilaterally stopped carrying ABC on its network. According to the New York Times, a major factor in the underlying dispute is Time Warner's refusal "to provide assurances that it would provide [technical] features on a non-discriminatory basis" to unaffiliated content providers such as Disney. If Time Warner feels free to engage in such conduct now, against a media powerhouse like Disney, one can only imagine what would happen if Time Warner were linked to an AOL/AT&T/ MediaOne conglomerate. As the New York Times explains,

> the pending merger between AOL and Time Warner will make the cable owner all the more powerful. The merged company will own not only the pipeline that brings video programming into millions of homes, but also many of the most popular programs and Internet services provided by the cable service. The threat to Disney is that Time Warner will give its own cable channels better technical features than those of the Disney channels it carriers.

I understand that this particular dispute has now been settled. But the underlying threat remains. Today Disney was the victim, tomorrow it could be any other competitor. As the editorial explains, "the Disney-Time Warner flap should compel the commission" to take a long and serious look at the threat to competition posed by the AOL-Time Warner merger and the lack of open access requirements for cable.

I have attached a copy of the editorial for your convenience.

Sincerely,

Priscilla Hill-Ardoin

Priscilla Hill-Ardoin
Senior Vice President

cc: Chairman Kennard
Commissioner Ness
Commissioner Tristani
Commissioner Powell
Commissioner Furchtgott-Roth
Thomas Power, Senior Legal Advisor to Chairman Kennard
David Goodfriend, Legal Advisor to Commissioner Ness
Rick Chessen, Senior Legal Advisor to Commissioner Tristani
Marsha J. MacBride, Legal Advisor to Commissioner Powell
Helgi Walker, Senior Legal Advisor to Commissioner Furchtgott-Roth
Paul A. Jackson, Special Assistant to Commissioner Powell

The New York Times

Founded in 1851

TUESDAY, MAY 2, 2000

The Blackout Battle

New Yorkers woke up yesterday to find that the ABC channel on their Time Warner cable systems had gone blank. In its place appeared Time Warner's accusation that "Disney has taken ABC away from you." The blackout also struck millions of ABC viewers in several other cities, including Los Angeles and Houston. No "Good Morning America." No ABC news. No Regis Philbin to anoint another millionaire.

On one level, the two corporate behemoths — Time Warner and Disney, the parent of ABC — are engaged in a bruising negotiation over more than $1 billion in cable revenues. They could not agree on another monthly extension of an agreement that expired at the end of last year, under which Time Warner paid Disney for the right to carry its programming. Disney wanted more money for its popular cable channels. Time Warner refused and took ABC off the screens during a critical "sweeps" period when the number of viewers is used to set advertising rates.

Whatever the merits of fierce bargaining among giant corporations, the public interest in broad access to information has been dealt a blow by this blackout of a top-rated news and entertainment network on television. The combatants have to recognize that there is a public service component to what they do, and that there will be limits to public and political patience with blockades on the information highway.

Even more important, the current battle gives us an alarming glimpse of the possible shape of the future in telecommunications. Time Warner had no qualms about dumping even as powerful a corporation as Disney/ABC, and the pending merger between AOL and Time Warner will make the cable owner all the more powerful. The merged company will own not only the pipeline that brings video programming into millions of homes, but also many of the most popular programs and Internet services provided by the cable service. The threat to Disney is that Time Warner will give its own cable channels better technical features than those of the Disney channels it carries.

The threat is real. Cable operators already control access to the Internet, forcing customers to use the operators' choice of Internet service provider. Soon cable companies will also offer customers an array of digital services attached to individual cable channels: Click here to retrieve the batting average of the player kneeling in the on-deck circle; click there to contact the local dealer for the sport utility vehicles advertised between innings.

Disney fears that Time Warner will offer better interactive technology on its own channels, like CNN and HBO, than it offers with Disney's channels. Disney demanded that Time Warner provide assurances that it would provide features on a non-discriminatory basis. But Time Warner refused on the grounds that Disney should be willing to pay for the technical benefits in bargaining over future contracts when the services are real, not just imagined.

The Federal Communications Commission has ducked the issue of Internet and other digital services on the reasonable grounds that it was too early in the process to know how to regulate. But the Disney-Time Warner flap should compel the commission to take another look. It is still too early to issue elaborate rules. But it may not be too soon to put cable operators on notice that in the future the commission may insist that where technically feasible, cable operators will be required — at least in monopoly situations — to make equivalent services available to all channels. Meanwhile, would-be viewers of ABC's news and entertainment offerings should not be shy about protesting this inconsiderate and unnecessary interruption of the cable service they pay for.