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VIA HAND DELIVERY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Portals II
445 Twelfth Street, S.W.
TW-A325
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. Roman Salas:

Sinclair Broadcast Group, Inc. ("Sinclair"), owner, applicant or operator of 62 television broadcast stations, hereby comments on the proposed merger of America Online, Inc. ("AOL") and Time Warner Inc. ("Time Warner"). Sinclair believes that the merger of AOL and Time Warner has the potential to promote the development and delivery of new informational and entertainment products and services to consumers. Without appropriate safeguards, however, the merger will almost certainly stifle competition and promote a multimedia monopoly, and the potential benefits will never be realized. Accordingly, Sinclair urges the Commission to condition the AOL/Time Warner merger on the companies' divestiture of all content in which they have a financial stake or, in the alternative, to impose strict nondiscrimination requirements on the merged company and prohibit AOL/Time Warner from degrading or blocking customer access to any part of the digital broadcast signals carried on its infrastructure that could be received by its customers free over the air.

Sinclair believes that these conditions are necessary to ensure that the benefits of vigorous competition, technical innovation, and expanded consumer choice are realized. Unless the Commission ensures that the merged company cannot discriminate against nonaffiliated content providers, the merger will be contrary to the public interest.

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List A B C D E

I. The Commission Should Condition the AOL/Time Warner Merger on the Companies' Divestiture of all Content in Which They have a Financial Stake or, in the Alternative, Impose Strict Nondiscrimination Requirements

Both AOL and Time Warner hold ownership interests in a vast array of content. Time Warner owns a broadcast network, a movie studio, and several cable networks, as well as interests in various magazines and record labels. AOL's content includes video, audio, games, and online catalogue shopping. With respect to the approximately 13 million subscribers currently served by Time Warner's cable network, the company currently has a monopoly over the distribution of video content and, with the merger with AOL, stands poised to be able to provide these customers with additional content over the Internet. Similarly, AOL will gain access to Time Warner's high-speed broadband cable network for delivery of its content. While AOL/Time Warner has indicated that it will provide open access to multiple ISPs and will offer content over its network from a multiplicity of sources, such a pledge would appear to be nonbinding, and it is unclear what remedies would be available to the Commission should the merged company fail to abide by its pledge.

More importantly, AOL/Time Warner has given no indication that it will offer competing content providers access on the same terms as its own affiliates. Without such a nondiscrimination requirement with regard to all aspects of content, from price to electronic program guides, navigation, bit rates and data speeds, AOL/Time Warner's promise to provide open access is illusory. There is already some evidence of Time Warner's predilection toward discrimination in favor of its own content. *See Petition for Special Relief of Gemstar*, Docket No. CSR-5528-Z, filed March 16, 2000. Accordingly, it is essential that the Commission ensure nondiscrimination by either requiring AOL and Time Warner to divest their interests in content prior to consummating the merger or by imposing strict guidelines requiring AOL/Time Warner to provide open access to its broadband network to content providers on the same terms as those provided to AOL/Time Warner affiliates.

II. The Commission Should Prohibit AOL/Time Warner from Degrading or Blocking Subscriber Access to Any Part of the Digital Broadcast Signal that Could be Received Free Over the Air

Moreover, should the Commission choose not to require AOL and Time Warner to divest their interests in content, the Commission should require the merged company to transmit all portions of the digital broadcast signals carried on its network that could be received by subscribers free over the air without any degradation of those signals. Such a requirement is essential to ensure that AOL/Time Warner does not favor its own content by blocking subscriber access to competing programming and services or by degrading the signals of these competing services so that they appear less attractive to viewers than AOL/Time Warner programming.

III. The Commission Should Assure that Consumers Have Access to a Free Over-the-Air DTV Broadcast Signal

The Commission can mitigate some of the relief sought herein and can reign in some of the business practices of a merged AOL/Time Warner if it takes steps that ensure consumer access to an over-the-air DTV system that provides ease of reception through simple antennas. As the Commission is aware, Sinclair has advocated that the Commission supplement its DTV modulation system with COFDM. If this modification is made by the Commission, not only will it accelerate the development of digital service, it will provide a means through which consumers can reliably receive over-the-air signals, an outcome that should prevent a repeat of the recent episode during which Time Warner blacked out ABC's programming. With broadcasters' use of COFDM-based technology, a cable company may think twice about blacking out signals which are available over-the-air, because consumers will have a readily available alternative for program delivery. In contrast, the 8-VSB modulation system simply does not provide ease of reception with simple antennas.

Therefore, the adoption of a COFDM alternative: (1) provides demonstrated over-the-air reception to consumers; (2) acts as a check on the rogue actions of multichannel video distributors; and (3) relieves the Commission of the burden of adopting unnecessary regulations.

For the foregoing reasons, Sinclair urges the Commission to condition the AOL/Time Warner merger on the companies' divestiture of all content in which they have a financial stake or, in the alternative, to impose strict nondiscrimination requirements on the merged company and prohibit AOL/Time Warner from degrading or blocking customer access to any part of the digital broadcast signals carried on its network that could be received by its customers free over the air. The Commission should also take steps to assure that consumers have ease of reception through simple antennas of free over-the-air broadcast signals.

Respectfully submitted,

SINCLAIR BROADCAST GROUP, INC.

By: Martin R. Leader

Martin R. Leader
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Its Attorneys

cc: See attached service list

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CERTIFICATE OF SERVICE

I, Deniece B. Mayberry, do hereby certify that I have this 11th day of May, 2000, mailed by first-class United States mail, postage prepaid, copies of the foregoing comments of Sinclair Broadcast Group, Inc. to the following:

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