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December 7, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W. – The Portals
TW-B204
Washington, DC 20554

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

Dear Ms. Salas:

On behalf of America Online, Inc. (“AOL”) and Time Warner Inc. (“Time Warner”), submitted herewith pursuant to Section 1.1206(b)(2) of the Commission’s rules, are an original and one copy of this notice regarding a permitted oral *ex parte* presentation in the above-referenced proceeding. On December 6, 2000, Steve Case, Chairman and CEO of AOL; George Vradenburg III, Senior Vice President, Global and Strategic Policy, AOL; Steven N. Teplitz, Vice President, Telecommunications Policy, AOL; and Richard E. Wiley and the undersigned of Wiley, Rein & Fielding, on behalf of AOL; and Richard Parsons, President, Time Warner Cable; and Catherine R. Nolan, Vice President, Law and Public Policy of Time Warner, on behalf of Time Warner, met with Chairman William E. Kennard; FCC Chief of Staff Kathy Brown; Michelle Ellison, FCC Deputy General Counsel; Jim Bird, FCC Senior Counsel; and Robert Pepper, Chief of the Commission’s Office of Plans and Policy.

The parties reviewed several issues raised in this proceeding. The parties discussed their commitment to providing consumers with a choice of multiple Internet service providers over Time Warner cable systems and how this can be achieved through contractual provisions and private enforcement mechanisms. With regard to interactive television, the parties stressed that any issues that may emerge in this nascent arena are industry-wide, not merger-specific. In addition, the parties noted the inappropriateness of imposing in the context of this merger any structural remedy or other FCC requirement in connection with the interest in Time Warner Entertainment Company, L.P. that AT&T obtained as a result of its recent acquisition of MediaOne.

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The parties also addressed the issue of instant messaging (“IM”) interoperability, as set forth in AOL’s *ex parte* notification of December 5, 2000. AOL discussed the recent Media Metrix data confirming that, by any measure, Microsoft’s MSN Messenger and Yahoo! Messenger are growing at rates faster than AOL’s IM services.

As to potential harms that Microsoft, *et al.* claim could arise in conceivable extensions of IM and presence detection applications if (despite the clear evidence to the contrary) IM was in fact “tipping” to AOL, not one of the series of assumptions underlying this theory has been shown likely, much less been proven, in this record. In particular, AOL noted that if an “advanced IM” business were to emerge, other leading e-commerce and communications companies with a substantial online user base could readily enter and effectively compete in any such “market.”

Finally, AOL explained how FCC intervention in the IM interoperability issue would risk harm to consumers, competition, and innovation. Beyond that, FCC intervention in the terms of IM-related service offerings would constitute an unprecedented regulation of information services and, indeed, herald the FCC’s initiation of regulation of the Internet. To do so in the absence of any reliable record evidence of market failure in these nascent (if not wholly speculative) Internet services—and, further, in the face of compelling factual evidence disproving any tipping toward AOL in IM services—would be to embrace a strikingly low standard for intrusion in the Internet arena that the Commission has heretofore proclaimed off limits to regulation. And to do so unilaterally as to AOL, at a time when Microsoft has enjoyed unprecedented growth and now has bundled its IM service with its soon-ubiquitous operating system, would be to engage in a wholly unwarranted picking of “winners and losers” in this highly fluid Internet marketplace.

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Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/ Peter D. Ross

Peter D. Ross

Attachment

cc: Chairman William E. Kennard
Kathy Brown, FCC Chief of Staff
Michelle Ellison
James Bird
Robert Pepper
Sherrille Ismail
Royce Dickens
Linda Senecal
International Transcription Services, Inc.