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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission
Washington, D.C. 20554

June 23, 2000

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Fleischman and Walsh, LLP
1400 Sixteenth Street, N.W., Suite 6000
Washington, D.C. 20036

Peter D. Ross, Esq.
Wiley Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

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

Dear Mr. Harding and Mr. Ross:

The purpose of this letter is to inform you that Commission Staff have determined that additional information is required for a complete evaluation of the application filed by America Online, Inc. ("AOL") and Time Warner Inc. ("Time Warner") (collectively, "Applicants") for Commission approval of the proposed transfer of control of Commission licenses and authorizations from Time Warner to AOL Time Warner. Accordingly, we have attached a second set of document and information requests that are intended to assist in our consideration of the merger application. These requests extend to AOL, Time Warner, and each firm's respective affiliates or subsidiaries and cover all forms of documentation, including all electronic versions and any copies with notations or interlineations. Please provide your responses to the document and information requests pursuant to the instructions set forth in the letter to you from To-Quyen Troung, Associate Chief, Cable Services Bureau, dated June 9, 2000.

AOL and Time Warner should provide all requested information and documents by July 17, 2000. If you have any questions or issues regarding these requests, please contact me at 418-7030 or Darryl Cooper at 418-1039.

Sincerely,

Royce Dickens

Royce Dickens
Deputy Chief, Policy and Rules Division
Cable Services Bureau

Attachment

cc: Deborah Lathen
William Johnson
Jim Bird
Darryl Cooper

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List A B C D E

Applications of America Online, Inc., and Time Warner Inc. for Transfers of Control
CS Docket No. 00-30
Document and Information Request No. 2
June 23, 2000

On or before, July 17, 2000, please respond to the following document and information requests pertaining to the proposed merger.

For purposes of the following document and information requests, the term "Hughes" should be construed to include General Motors, Inc., Hughes Electronics Corp., DirecTV, DirectPC and DirectDuo.

AOL-TV

2.1 Please explain AOL-TV's business plan for offering its services to multichannel video programming distributor ("MVPD") subscribers.

a. Describe the general rights, obligations, terms, conditions and prices of the agreements that AOL-TV has negotiated and/or will negotiate with video programming networks for carriage on AOL-TV and its interactive services. In particular, describe what, if any, limitations these agreements may place on the right of a video programming network to obtain carriage of a particular interactive service, particular content, or advertising on the interactive services screen that AOL-TV will provide the video programming network.

b. Please produce all agreements between AOL-TV and all video programming networks (*e.g.*, Starz Encore Group) relating to AOL-TV's interactive service.

c. Must AOL-TV have an agreement with a cable operator in order to offer AOL-TV to that cable operator's subscribers? Describe the general rights, obligations, terms, prices and conditions of such an agreement. Must AOL-TV have an agreement with Hughes in order to provide AOL-TV to DirecTV's subscribers?

d. Please produce all agreements between AOL and Hughes, including but not limited to agreements relating to AOL-TV.

e. Does AOL-TV have an exclusive contract to provide interactive services to DirecTV subscribers?

f. Please produce all agreements between AOL and all cable operators relating to AOL-TV.

g. Does AOL have any exclusive contracts with a cable operator to offer AOL-TV to the cable operators' subscribers? If so, please produce these contracts.

h. Will AOL-TV revenues derived from viewer subscription fees be shared with video programming networks, cable operators and/or Hughes?

2.2 Please describe the services that AOL-TV currently provides and the services that it intends to provide within the next two years. Please produce documents to support your response.

2.3 Will AOL-TV subscribers be able to browse the World Wide Web using AOL-TV?

2.4 Please describe how the AOL-TV set-top box and service operates.

a. What types of software does it use?
b. What companies write the interactive software used on the AOL-TV set-top box?
c. Will the API's for the set-top box operating software be published?
d. How will interactive content be selected?
e. Will interactive content be portable to non-AOL devices or systems, such as set-top boxes of competitors?
f. Who has the right to select the interactive content related to the video programming network's programming?
g. Who manufactures the hardware?
h. Please produce all agreements between AOL and all software manufacturers and hardware manufacturers relating to the AOL-TV set-top box.
i. Please explain the services that the AOL-TV channel navigation software provides.

2.5 Do AOL and/or Time Warner have plans and/or agreements to integrate the AOL-TV set-top box with DirecTV's set-top box and/or any cable set-top boxes? Please describe these plans and/or agreements. Please produce all plans and/or agreements described in your response to this request.

Internet Service

2.6 Does AOL have an exclusive agreement with Hughes by which DirectPC/DirectDuo will offer only AOL ISP services? If so, please produce the agreement.

2.7 Please produce all marketing agreements between AOL and Hughes to market AOL's ISP service over DirectPC/DirectDuo.

2.8 If the proposed merger were to be consummated, would DSL, DirectPC/DirectDuo, and wireless subscribers who reside in homes passed by Time Warner cable systems have the opportunity to subscribe to AOL ISP service via DSL, DirectPC/DirectDuo or wireless?

a. Please produce all documents that reflect any discussions, plans or proposals regarding how AOL ISP service will be offered to viewers who reside in homes passed by Time Warner cable systems if the proposed merger were to be consummated.
b. Please produce all documents that reflect any discussions, plans or proposals regarding how and whether AOL ISP service will be offered to DSL, DirectPC/DirectDuo, and/or wireless subscribers who reside in homes passed by Time Warner cable systems if the proposed merger were to be consummated.
c. Please produce all documents that reflect any discussions, plans and/or proposals for the provision of AOL ISP service over Time Warner cable systems if the proposed merger were to be consummated.
d. How does the proposed merger affect AOL's business plans with respect

to DSL, DirectPC/DirectDuo and wireless carriage of its ISP service? Please produce documents that support your response.

e. If the proposed merger were to be consummated, would not AOL have the economic incentive to withdraw its support from DSL, satellite and wireless broadband technologies? Please describe in detail why AOL would or would not have an economic incentive to do so. Please produce any economic analyses that you have prepared that would support your response. Please produce all documents that reflect discussions, plans and/or proposals regarding AOL's and/or Time Warner's intentions for DSL, satellite and wireless broadband technologies if the proposed merger were to close.

2.9 Please describe AOL's business and marketing plans for the delivery of AOL ISP service over DSL, satellite and wireless for the following periods:

a. pre-merger (from January 1, 1998 to the date of the Merger Agreement);
b. the present (from the date of the Merger Agreement to the present); and
c. post-merger (after consummation of the merger, assuming it is approved).

Explain whether, why and how the marketing and business plans may have changed and/or evolved over time. Please specifically describe the influence that the proposed merger has had on these plans. Please produce all business and marketing plans described in your response.

2.10 How will the proposed merger advance, as the Supplemental Information statement ("SI") claims (at page 16), AOL's commitment to the development of alternative broadband platform technologies? How will the proposed merger improve upon AOL's prior efforts to advance alternative broadband technologies? Please produce documents that support your claims set forth in the SI and any documents that could be viewed as inconsistent with such claims.

2.11 Please produce all agreements that AOL has reached with DSL (including but not limited to SBC, BA, GTE), wireless (including but not limited to Sprint PCS, Nokia, Motorola, Research in Motion, BellSouth, and Arch Communications) and DBS providers.

2.12 How will AOL price its ISP service delivered via DSL, DBS and/or wireless providers as compared with its ISP service delivered via cable providers? Will AOL offer its ISP service on similar prices, terms and conditions regardless of (a) the method that the service is delivered, and (b) the location of the subscriber?

2.13 Please produce all documents relating to discussions, plans, and/or proposals regarding the future of Road Runner if the proposed merger is consummated.

2.14 Does AOL or Time Warner have any plans to develop broadband Internet applications or content that would be specific to its cable platform? If so, please describe such applications and/or content in detail.

2.15 Does AOL or Time Warner have exclusive arrangements (whether by agreement, ownership interest or otherwise) with any developers of broadband Internet applications or software? If so, please produce any such agreements.

2.16 Does AOL or Time Warner have exclusive arrangements (whether by agreement, ownership interest or otherwise) with any Internet content providers, e-commerce providers, Internet portals, or any other content providers for placement of their content on the Internet?

2.17 Does AOL or Time Warner have any plans to develop, whether in-house or in conjunction with another company, broadband Internet software or applications that will incorporate proprietary APIs? If so, describe in detail all such plans.

Benefits

2.18 Please explain how a merged Time Warner and AOL would "spearhead the convergence of traditional media and online technologies," as claimed in the SI at 29. Please produce all documents relating to discussions, plans, and/or proposals that support your response to the request.

2.19 The SI (at page 30) claims that the proposed merger will "make possible [the] acceleration of the development and availability of (1) established media offerings made more widely available and accessible online; (2) new, interactive forms of media content more fully tailored to and enriched by the Internet; and (3) wholly new forms of information, entertainment, communications, and commerce."

a. Please explain what types of services are meant by "(1) established media offerings made more widely available and accessible online; (2) new, interactive forms of media content more fully tailored to and enriched by the Internet; and (3) wholly new forms of information, entertainment, communications, and commerce." What types of interactive forms of media content will the proposed merger create? What new forms of information, entertainment, communications and commerce will the proposed merger create? What next generation products does the merged entity intend to develop?

b. Explain in detail how the proposed merger will accelerate the development and availability of these services? Why could this same goal not be accomplished through joint ventures between Time Warner and AOL?

c. Please produce documents to support your responses to these requests.

2.20 Please provide a detailed description of the services and products described in the SI that will be developed by the combined firm or that the SI claims will somehow be improved by the merger. Please explain how the proposed merger will develop and/or improve the described services and products. Please describe the extent to which either Time Warner or AOL has independently developed or could independently develop these new services and products.

2.21 At page 31, the SI states that one factor motivating the merger was the existence of "cost efficiencies in launching and operating interactive extensions of Time Warner brands." Please fully describe these cost efficiencies and produce documents that support your response.

2.22 Please produce all documents relating to discussions, plans and/or proposals regarding business plans for a merged Time Warner and AOL and business plans regarding the services described in the SI that the merged firm would provide.

Ownership Interests

2.23 Please identify all companies in which AOL or Time Warner holds a 5% or greater equity ownership interest. For these companies, please identify AOL's or Time Warner's percentage ownership and the percentage ownership of all other owners of the company who own 5% or more of the company's equity.

2.24 Please identify all partnerships in which AOL or Time Warner is a partner. Please identify all partners in each partnership identified and each partner's percentage equity interest.

2.25 Please identify all telecommunications companies, including but not limited to those that offer telephone service; multichannel video programming distributors ("MVPDs"); video programming networks (*e.g.,* Home Box Office); ISPs; Internet content providers; cable and broadcast content providers; telecommunications, cable and Internet equipment manufacturers; and software manufacturers with which AOL or TW has joint ventures, strategic alliances, and/or marketing agreements. Please describe the nature and/or purpose of the ventures, alliances, and/or agreements.

2.26 Please identify all companies for which AOL or TW has the right to appoint members of the board of directors or company officers, including the number and type of appointments and the total number of board members for the company.

2.27 Please give a detailed description of AOL's investment in TiVo and agreements that AOL has with TiVo, including:

a. What rights the investment grants AOL, including but not limited to appointment of directors and company officers, and discounts on purchases of TiVo equipment.
b. The size of the investment.
c. The percentage voting stock in TiVo that AOL holds.
c. The obligations that any agreements impose on AOL, including but not limited to volume of purchases and exclusivity of purchase of TiVo equipment.
d. What obligations any agreements impose on TiVo, including exclusivity of selling to AOL-TV, or certain features of equipment that can only be

offered to AOL-TV.

e. Identify the other owners of TiVo.

f. Please produce all agreements between AOL and TiVo.

g. Please describe AOL's plans to use TiVo's personal video recorder on the AOL-TV set-top boxes.

Memorandum of Understanding ("MOU")

2.28 If and when AOL Time Warner reaches agreements with unaffiliated ISPs pursuant to the MOU, please describe in detail how the ISP customer's Internet "start page" (the first page that the ISP customer sees when the customer accesses the Internet) will be configured.

2.29 Assuming that an AOL Time Warner customer chooses an unaffiliated ISP for Internet access, will content affiliated with AOL Time Warner (whether by contract or ownership interest or any other manner) be placed, featured, given priority, or otherwise promoted on the customer's start page?

2.30 Please describe the manner in which AOL and Time Warner intend "to encourage actively other cable operators similarly to provide consumers with a choice of broadband ISP offerings." MOU at ¶ 2.

2.31 At paragraph 3, the MOU states that AOL Time Warner "will provide consumers with a broad choice among ISPs, consistent with providing a quality consumer experience and any technological limitations in providing multiple ISPs on its broadband cable systems."

a. Please describe in detail any limitations on consumer choice that are anticipated in order to provide "a quality consumer experience."

b. Please explain in detail what is meant by "any technological limitations in providing multiple ISPs on its broadband cable systems."

c. Please identify and provide copies of all studies and other documents that explain and/or evaluate the technological limitations referenced in paragraph 3.

d. Describe all efforts undertaken to date by AOL or Time Warner to identify and address these technological limitations. Please provide copies of all documents that support your response.

e. Describe any plans for any future projects/efforts by either AOL or Time Warner to address these technological limitations.

2.32 The MOU states (¶ 5) that "[t]he terms of the commercial agreements between AOL/Time Warner and ISPs wishing to provide broadband service will not discriminate on the basis of whether the ISP is affiliated with AOL Time Warner." The MOU goes on to state in the same paragraph that "the economic arrangements reached by AOL Time Warner and [unaffiliated ISPs] will vary depending on a number of factors (such as the speed, marketing commitments, and nature and tier of the service desired to be offered). . . ." Please describe in detail (providing examples when appropriate) how each of the factors mentioned in the MOU may cause the economic terms of AOL Time Warner

agreements with unaffiliated ISPs to vary.

2.33 Please describe in detail how AOL Time Warner will establish a price for unaffiliated ISPs to gain access to AOL Time Warner cable systems.

2.34 The MOU states (¶ 11) that "[a]ll of the foregoing is subject to all pre-existing obligations of Time Warner, including without limitation Time Warner's agreements with Serviceco, LLC (d/b/a Road Runner) and its fiduciary and other obligations to its partners." Please describe in detail all such "pre-existing obligations of Time Warner" and how they may affect the terms and conditions of AOL Time Warner's anticipated agreements with unaffiliated ISPs.

2.35 Has AOL Time Warner generated any economic studies on the profitability of its open access proposal? If so, please produce any such studies.

2.36 Paragraph 9 of the MOU states, inter alia, that "[w]hen AOL Time Warner's cable systems sell broadband Internet service to a customer, they will be entirely responsible for billing and collection." Does the phrase "broadband Internet service" refer only to broadband Internet service provided by AOL or Road Runner, or is the phrase intended to encompass broadband Internet service provided by an unaffiliated ISP? When, pursuant to the MOU, AOL Time Warner offers customers a choice among broadband ISPs, and the customer chooses an ISP other than AOL, are there any circumstances under which AOL Time Warner would be considered to have "sold" broadband Internet service to that customer, and therefore, pursuant to the third sentence of paragraph 9 of the MOU, would be entitled to bill and collect from the customer?

2.37 Would Time Warner have made commitments similar to the ones made in the MOU absent the proposed merger?

Time Warner Cable Systems and Video Programming

2.38 Please provide a map of all Time Warner Cable system clusters in the United States. Please describe how many subscribers you serve in each of these clusters and the names of the franchise areas where the systems are located. In addition, please explain if there are any competitive wireless or wireline MVPDs in those clustered regions.

2.39 Please provide one channel line-up card for a representative system in each of Time Warner cable system clusters (*e.g.*, one channel line-up card for a system in the New York City cluster, one channel line-up card for a system in your Orlando, Florida cluster).

2.40 Does Time Warner have any exclusive carriage contracts with video programming networks (including but not limited to local sports networks, regional programming networks, and national programming networks such as Home Box Office)? Is so, please produce any such contracts.

2.41 Does Time Warner have an attributable interest (as that term is defined in 47 C.F.R. § 76.1000) in any video programming network that is not transmitted via satellite? Is so, please identify all such video programming networks.

2.42 In Time Warner and AOL's reply comments in this proceeding dated May 11, 2000 at page 45, the Applicants state that it would be counterproductive to condition access to Time Warner's affiliated video programming upon carriage of AOL's ISP service. If the merger is consummated, will AOL and Time Warner require an MVPD to carry AOL's ISP service as a condition of granting the MVPD access to Time Warner's affiliated video programming?