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September 8, 2000

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.—The Portals  
TW-B204  
Washington, D.C. 20554

**Re: America Online, 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"), 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 September 6, 2000, Peter D. Ross of this firm spoke with Darryl Cooper of the Commission's Cable Services Bureau. During that conversation, Mr. Ross discussed instant messaging ("IM") in the context of this merger, including the September 5, 2000 *ex parte* filing of Tribal Voice and iCast.

Mr. Ross noted that, despite their belated filing attempting to cast the IM interoperability debate as one specific to this merger and appropriate for FCC action, these IM competitors' submissions:

- recognize IM as a feature of Internet service that is given away free, and fail to demonstrate that IM would nonetheless constitute a distinct product market;
- concede that IM is "one of the fastest growing segments of the Internet" and part of an Internet marketplace characterized by an "unprecedented pace of innovation."
- fail to rebut or even address instant messaging's clear status as an information service—and the FCC's long-standing determination not to regulate information services;

Ms. Magalie Roman Salas  
September 8, 2000  
Page 2

- suggest that, when offered in connection with an interactive television service, IM should be regulated as a cable service—a position premised on a mischaracterization of the use of IM in the AOLTV service and the reasoning of which would (without any relevant support or analysis in this record) likewise have the Commission rule here that e-mail, Internet access or any other feature of interactive television service offered over cable should be regulated as a cable service;

- rely, in their strained efforts to find a specific statutory source of FCC jurisdiction, upon a provision that, in fact, expressly codifies the national policy for an Internet free market unfettered by regulation;

- attempt to show merger specificity through a series of speculative assertions about possible conduct concerning potential future services involving IM or presence detection—yet make plain through the litany of remedies they seek that their real grievance is not with potential AOL Time Warner conduct, but with their pre-existing desire to gain interoperability to AIM on their terms;

- recognize that true interoperability must be achieved in the marketplace through industry standards-setting efforts—citing ongoing IETF efforts that, in fact, focus on server-to-server approaches to interoperability as urged by AOL.

Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Wayne D. Johnsen

cc: Darryl Cooper, Cable Services Bureau  
Royce Dickens, Deputy Chief, Policy and Rules Division, Cable Services Bureau  
James Bird, FCC Assistant General Counsel  
Linda Senecal, Cable Services Bureau  
International Transcription Services, Inc.