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Assistant General Counsel



March 22, 2000

Mr. William M. Marticorena
Attorney at Law
Rutan & Tucker
611 Anton Boulevard
Suite 1400
Costa Mesa, California 92626-1998

**Via Facsimile
& Via Federal Express**

Re: Proposed merger of America Online, Inc. and Time Warner Inc.

Dear Mr. Marticorena:

I am writing in response of your letter dated February 25, 2000 requesting certain additional information on behalf of the Cities of Hawthorne, Indian Wells, La Quinta Lawndale, Poway, Torrance and the Public Cable Television Authority (hereinafter the "Cities") regarding the pending merger of America Online, Inc. ("AOL") and Time Warner Inc. ("TWI") into AOL Time Warner Inc., a subsidiary of which ("TWC"), holds a franchise for the provision of cable services in each of the Citics. I will respond to each section of your letter individually below.

As a matter of background, it might be helpful for me to describe the pending transaction in more detail. As demonstrated by the Application, the merger is a parent-level transaction through which Time Warner and AOL will merge into a new entity, AOL Time Warner, Inc. ("AOL Time Warner" or "Transferee"). This merger will be effected by a debt-free all-stock transaction in which existing AOL and Time Warner stock will be exchanged for stock in AOL Time Warner. Both Time Warner and AOL will continue to exist as separate and wholly-owned subsidiaries of AOL Time Warner. In addition, all current subsidiaries of Time Warner, including the franchisee(s), will remain unchanged. In other words, each Time Warner cable entity will continue to hold the same franchises, licenses, and other authorizations to operate a cable system as before the merger. Thus, the application does not seek approval of, and the Merger will not result in, a change in the current Franchisee(s). After the merger, the Franchisee(s) will remain the same entities responsible for the management of the cable system operated pursuant thereto. Indeed, the only change as a result of the merger will be that Time Warner Inc., the current ultimate parent of the Franchisee(s), will become a wholly owned subsidiary of the new AOL Time Warner which results from the merger of Time Warner Inc. and America Online, Inc.

In light of the above description of the transaction, a number of inquiries set forth in your letter are simply inapplicable. For example, many questions contemplate a Transferee taking

A Division of Time Warner Entertainment, L.P.

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over management of the system or assuming the obligations of the Franchisee(s) under the Franchises. As explained above, neither of these circumstances is present under the Merger.

In addition, much of the information sought by your letter appears beyond the limited scope of the Cities's review of the Application. Under federal law, the authority of the Cities to request information, in addition to that provided in the Application, is limited to "such additional information as is reasonably necessary to determine the qualifications of the proposed transferee." Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Memorandum Opinion and Order on Reconsideration, 10 F.C.C.R. 4654, 4676, ¶52 (1995). In the present case, the only change occurring as a result of the Merger is that the current ultimate corporate parent of the Franchisee will merge with AOL to form a new entity. Thus, the only question is whether the new merged entity, AOL Time Warner Inc. will continue to possess the legal, technical and financial qualifications to be the ultimate parent company of the Franchisee(s). The Merger does not affect the financial, legal and technical qualifications of Time Warner or the Franchisee(s), all of which the Cities have previously approved. Therefore, any information sought by the Cities that do not relate to the financial, legal and technical qualifications of the newly formed AOL Time Warner is beyond the scope of this proceeding and may not be the subject of the Cities' review of the Application.

While faithfully responding to the Cities's request for relevant information, the responses provided in the attached recognize the nature of this transaction and the limitations of the Cities' scope of review. To the extent responses contain information beyond the Cities' scope of review, such responses are for informational purposes only and are not intended as waiver of any rights which the Franchisee(s) or Transferee(s) may have to object to the Cities' review of such information in the context of this proceeding.

I trust this letter and its attachment is responsive to your requests, please do not hesitate to contact me should you have any questions.

Very truly yours,



Gary J. Malt

cc: Bob Barlow (w/o enclosures)
Tom Fiege (w/o enclosures)
Kristy Hennessey (w/o enclosures)
Jeff Schwall (w/o enclosures)

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PART I

Your initial question is whether TWC will certify that the FCC's benchmark rate methodology will provide it with a "reasonable and adequate rate of return" and therefore that recourse to the FCC's cost-of-service rate methodology will not be necessary. TWC will not so certify. While Time Warner has heretofore used the cost-of-service methodology sparingly, it would be inappropriate to make a binding commitment going forward. Circumstances may change and/or the FCC's rules may change. TWC therefore will not give up its right to choose between rate-setting methodologies in the future.

1. TWC has read the cited paragraphs.
2. TWC will abide by the applicable FCC rules and policies.
3. TWC cannot answer this question since it has not calculated what its rates could be utilizing the cost-of-service methodology. Moreover, it should be pointed out that, even if the rates were set using Form 1220, the result would only govern the basic service tier rate. An increasing amount of a cable system's revenue is derived from non-regulated services.
- 4-12. TWC cannot answer these questions with the requested specificity since it has not done a cost-of-service analysis for the subject communities. In addition, since the transaction at issue is a merger of the Franchisee's ultimate parent entity with another corporation, and not the acquisition of a system or systems, there has been no calculation of the acquisition price of the subject cable systems.
13. For the reasons set forth above, TWC does not know whether a cost-of-service showing will be necessary or desirable. Based on TWC's experience, however, it seems reasonably safe to state that a request for hardship rate relief should not be necessary.
14. The FCC Form 394 submitted to the Cities included copies of the most recent annual report, SEC Form 10-K and SEC Form 10-Q filed by each Time Warner and America Online. Thus, the Cities have more than enough financial information to determine that the AOL/TWI merger will have absolutely no adverse consequences on the franchisee's continued financial qualifications to operate the respective cable system(s) after consummation of the AOL/TWI merger, which is the only legitimate financial inquiry open to the Cities in connection with Time Warner's application. Additional financial information is contained in the *pro-forma* consolidated financial statements for AOL Time Warner Inc. contained on SEC Form 8-K filed on January 10, 2000 and the S-4 filed by AOL Time Warner Inc. on February 11, 2000. See Attachments 1 and 2. Further evidence of the combined financial strength of the merged AOL Time Warner entity is set forth in the independent in-depth reports prepared by Merrill Lynch & Co., Paine Webber and Goldman Sachs. See Attachments 3, 4 and 5.

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15. No. TWC inherited some pending Form 1220 showings when it acquired CVI in 1996. The FCC ultimately approved those rate showings. However, TWC has filed no Form 1220s since it entered into the Social Contract in 1995.

PART II

1. Please note that the Merger Agreement that was provided to the Cities was not redacted. In Exhibit (2) of the Form 394, we indicated that while the Agreement does in fact embody the full and complete agreement between the parties, certain schedules referenced in the Agreement contain confidential trade, business, pricing or marketing information which is not necessary to the Cities review of the transaction. Nevertheless, such documents are available for the inspection of the Cities upon scheduling of a mutually convenient time and location and in a manner that ensures the protection of confidentiality.
2. Copies of the application related to federal government approvals under the Hart-Scott-Rodino Act are voluminous and not necessary in order to understand the terms of the transaction. Substantively, Hart-Scott-Rodino compliance falls exclusively within the jurisdiction of the federal government. The relevance of the application to the transaction is simply that closing is conditioned on the expiration or termination of any Hart-Scott-Rodino waiting period. Furthermore, federal law prohibits disclosure of any such information or documentary material filed in connection with Hart-Scott-Rodino. See 15 U.S.C. Sec. 18a (h).
3. Please see our response to Part I, No. 14 above.
4. We do not prepare financial projections for specific operating units or franchise areas. However, pro forma projections for the merged AOL Time Warner are included. See Attachment 2.
5. There are no such agreements other than the Merger Agreement.
6. Neither the franchisee, its immediate parents, nor the current local management of the system(s) serving the Cities will change as a result of the subject transaction. The daily ongoing technical operations of the system(s), including any plans for the upgrade of the system(s) serving the Cities, will be maintained in the same manner by the same entities as exist today. There are no plans to change the services or operations of the system as a consequence of this transaction.
7. No such documents exist other than that included in the FCC Form 394.
8. No such documents exist.
9. This information is included in the SEC Form 8-K and Form S-4. See

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Attachments 1 and 2.

10. No such documents exist.
11. Based upon the information available to us, we do not understand the relevance of this question in determining the legal, technical and financial qualifications of AOL Time Warner. Neither the franchisee, its immediate parents, nor the current local management of the system will change as a result of the pending transaction. The daily ongoing technical operations of the system(s) serving the Cities will be maintained in the same manner by the same entities as exist today. We believe that the documentation previously provided in the Form 394 adequately demonstrates the qualifications of AOL Time Warner.
12. There is no financing associated with this transaction.
13. There are no loans or loan commitments associated with this transaction.
14. As stated above, pro forma projections for the merged AOL Time Warner are included as part of the Forms 8-K and S-4. See Attachments 1 and 2.
15. As stated above, pro forma projections for the merged AOL Time Warner are included as part of the Forms 8-K and S-4. See Attachments 1 and 2.
16. Any such documents are confidential and proprietary and not necessary for the Cities' review of the applicant's legal, technical and financial qualifications.
17. Any such documents are confidential and proprietary and not necessary for the Cities' review of the applicant's legal, technical and financial qualifications.
18. Any such documents are confidential and proprietary and not necessary for the Cities' review of the applicant's legal, technical and financial qualifications.
19. Neither the franchisee, its immediate parents, nor the current local management of the system(s) serving the Cities will change as a result of the subject transaction. The daily ongoing business management of the system(s) will be maintained in the same manner by the same entities as exist today.
20. Neither the franchisee, its immediate parents, nor the current local management of the system(s) will change as a result of the subject transaction. Additional financial information is contained in the *pro-forma* consolidated financial statements for AOL Time Warner Inc. contained on SEC Form 8-K filed on January 10, 2000 and the S-4 filed by AOL Time Warner Inc. on February 11, 2000. See Attachments 1 and 2. Further evidence of the combined financial strength of the merged AOL Time Warner entity is set forth in the independent in-depth reports prepared by Merrill Lynch & Co., Paine Webber and Goldman

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Sachs. See Attachments 3, 4 and 5.

The daily ongoing technical operations of the system(s) serving the Cities will be maintained in the same manner by the same entities as exist today. Time Warner, through its cable management division, Time Warner Cable, currently serves approximately 12.6 million subscribers in 33 states. We believe that the documentation previously provided in the Form 394 adequately demonstrates the qualifications of AOL Time Warner and Time Warner Cable.

21. We do not understand how the information requested in this question is relevant to the Cities review of the applicant's legal, technical and financial qualifications. We have provided the Cities all information required by the franchise concerning our payment of franchise fees to the Cities, which the Cities may audit at their discretion.
22.
 - A) For information regarding the AOL Disclosure Schedule, please see Exhibit 2 to the FCC Form 394 and our response at Part II, Number 1, above.
 - B) For information regarding the Time Warner Disclosure Schedule, please see Exhibit 2 to the FCC Form 394 and our response at Part II, Number 1, above.
 - C) We assume that the reference to Forms F-4 is a typographical error meant to refer to SEC Form S-4. Please see Attachment 2.
 - D) The Joint Proxy Statement/Prospectus is included in the SEC Form S-4. Please see Attachment 2.
 - E) The opinion of Salomon Smith Barney regarding the proposed merger has not yet been finalized.

Part III

You also asked about "open access." As you may know, when we announced the merger of AOL and Time Warner on January 10, 2000, both Steve Case (CEO of AOL) and Jerry Levin (CEO of Time Warner) made clear that the combined company would support open access and implement it on the Time Warner Cable systems. After that initial announcement, the companies worked expeditiously to develop further details on how open access would be implemented so that Time Warner cable customers could be guaranteed choice and competition in cable Internet services. The result of that effort was an 11-point Memorandum of Understanding on Open Access Business Practices (the "MOU"), announced by AOL and Time Warner on February 29, 2000. A copy of the MOU is provided as attachment 6.

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In that document, the companies committed to a number of key practices which have been at the heart of the push for open access. The key elements of the MOU include commitments to:

* **Offer Consumers Choice:** AOL Time Warner is committed to offer consumers a choice among ISPs. Consumers will not be required to purchase service from an ISP that is affiliated with AOL Time Warner in order to enjoy broadband Internet service over AOL Time Warner cable systems.

* **Diversity of ISPs:** AOL Time Warner will not place any fixed limit on the number of ISPs with which it will enter into commercial arrangements and it will offer those ISPs the choice to partner on a national (on all AOL Time Warner cable systems), regional or local basis, in order to facilitate the ability of consumers to choose among ISPs of different size and scope.

* **Direct Relationship with the Customer for ISPs:** AOL Time Warner is also committed to allow both the cable operator and the ISP to have the opportunity to have a direct relationship with the consumer. Accordingly, both the cable operator and the ISP will be allowed to market and sell broadband service directly to customers. When an ISP sells broadband Internet service directly to a customer, it may, if it so chooses, bill and collect from the customer directly.

* **Video Streaming:** AOL Time Warner will allow ISPs to provide video streaming. AOL Time Warner recognizes that some consumers desire video streaming, and AOL Time Warner will not block or limit it.

While AOL and Time Warner's MOU is subject to existing Time Warner obligations, such as its contracts with Road Runner (an ISP in which Time Warner has a minority interest), AOL and Time Warner are committed to providing a choice of ISPs over Time Warner Cable as quickly as possible. Time Warner will work with its Road Runner partners to try to achieve that goal even before its current obligations expire at the end of 2001.

We have been very pleased by the response to our MOU. For example, FCC Chairman Kennard stated: "For some time now, I have encouraged the fast-moving broadband marketplace to find business solutions to consumer demand as an alternative to intervention by government. Today's announcement is a significant step in the right direction ... I commend America Online and Time Warner for their leadership." The MOU was also hailed by many of the proponents in the open access movement, including openNET, which you mention in your letter. Greg Simon, co-director of the OpenNet Coalition, noted that "[t]oday, AOL Time Warner hit the fast-forward button for open access."

You asked specifically about our views on the legal authority of LFAs to impose open access obligations as a condition of transferring cable franchises. In addition to the legal question, you asked whether we would accept such a condition by an LFA as a condition of transfer. While AOL and Time Warner have had different views in the past on the legal authority of LFA's to enact open access conditions, the companies firmly believe that, given the announcement of our MOU on Open Access Business Practices, given the personal commitments made by Steve Case and Jerry Levin on this subject, and given the dramatic movement in the marketplace to enact

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open access -- placing such a condition on our merger at this time is unnecessary as we are committed to providing consumer choice in the provision of broadband Internet service throughout our franchise areas.

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To-RUTAN & TUCKER LLP.

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August 4, 2000

Mr. William M. Marticorena
Attorney at Law
Rutan & Tucker
611 Anton Boulevard
Suite 1400
Costa Mesa, California 92626-1998

RE: America Online - Time Warner Inc. Merger

Dear Bill:

I am writing to you regarding the review of the pending America Online ("AOL") - Time Warner Inc. ("TWI") merger presently being undertaken by your office on behalf of certain California local franchising authorities (Poway, Torrance, Hawthorne, Lawndale, PCTA, Indian Wells, and LaQuinta) to determine whether the transaction will result in any change of control of the Franchisees under the respective cable television franchises.

As you may recall, you presented to Time Warner Cable a draft Resolution and Transfer Agreement prepared in conjunction with your clients that addressed certain concerns regarding the pending merger. We have had one face-to-face meeting together with several telephone conversations for purposes of discussing the Transfer Agreement. We are pleased with the progress that has been made to date and we are optimistic that this process might be brought to a timely conclusion. It is my understanding, based upon conversations with our local counsel, Mr. Larson Jaenicke, that we have one outstanding global issue: your request that we incorporate the Memorandum of Understanding ("MOU") between AOL and TWI regarding "open access" into the Transfer Agreement. I would like to take this opportunity to explain below why we believe incorporating the MOU into the Transfer Agreement, as you have requested, is (i) unnecessary and (ii) beyond the clear authority of the local franchising authorities in California. Lastly, I have set forth below a compromise which we believe addresses the reasonable and legitimate interests of both your clients and Time Warner Cable.

I. Incorporating the MOU is unnecessary

When the merger of AOL and Time Warner was announced on January 10, 2000, both Steve Case (CEO of AOL) and Jerry Levin (CEO of Time Warner) made clear that the combined

Time Warner Cable, a division of Time Warner Entertainment Company, L.P.

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To: RUTAN & TUCKER LLP,

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company would support open access and implement it on Time Warner Cable systems. After that initial announcement, the companies worked expeditiously to develop further details on how open access would be implemented so that Time Warner cable customers could be guaranteed choice and competition in cable Internet services. The result of that effort was the 11-point MOU.

In that document, the companies committed to a number of key practices which have been at the heart of the push for open access. The key elements of the MOU include commitments to:

- **Offer Consumers Choice:** AOL Time Warner is committed to offer consumers a choice among ISPs. Consumers will not be required to purchase service from an ISP that is affiliated with AOL Time Warner in order to enjoy broadband Internet service over AOL Time Warner cable systems.
- **Diversity of ISPs:** AOL Time Warner will not place any fixed limit on the number of ISPs with which it will enter into commercial arrangements and it will offer those ISPs the choice to partner on a national (on all AOL Time Warner cable systems), regional or local basis, in order to facilitate the ability of consumers to choose among ISPs of different size and scope.
- **Direct Relationship with the customer for ISPs:** AOL Time Warner is also committed to allow both the cable operator and the ISP to have the opportunity to have a direct relationship with the consumer. Accordingly, both the cable operator and the ISP will be allowed to market and sell broadband service directly to customers. When an ISP sells broadband Internet service directly to a customer, it may, if it so chooses, bill and collect from the customer directly.
- **Video Streaming:** AOL Time Warner will allow ISPs to provide video streaming. AOL Time Warner recognizes that some consumers desire video streaming, and AOL Time Warner will not block or limit it.

While the MOU is subject to existing Time Warner obligations, such as its contract with Road Runner (an ISP in which Time Warner has a minority interest), AOL and Time Warner are committed to providing a choice of ISPs over Time Warner Cable as quickly as possible. Time Warner will work with our Road Runner partners to try to achieve that goal even before its current obligations expire at the end of 2001.

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There are numerous examples demonstrating the parties' commitment to implementation of the undertakings set forth in the MOU:

- Time Warner Cable has entered into a binding agreement with Juno Online Services, Inc. for the provision of high-speed Internet service over Time Warner Cable's broadband network. We believe this announcement is yet another significant step showing that AOL and Time Warner are in fact implementing the framework outlined in their February 12, 2000 "Memorandum of Understanding."
- Time Warner has commenced discussions with its partners regarding the restructuring of the Road Runner partnership consistent with the Justice Dept. order that AT&T divest its interest. Such a restructuring is likely to lead to an early termination of restrictions limiting the ability of Time Warner Cable to offer multiple ISPs.
- Time Warner Cable has begun a technical and operational trial of multiple ISP offerings in Columbus, Ohio. In addition to AOL and Road Runner, other ISPs, including Juno, have been invited to participate in this trial.
- Time Warner is continuing its discussions with AOL and numerous other ISPs. We hope to have additional deals to announce as soon as possible.

Through their leadership, AOL and Time Warner are fostering a marketplace solution to the open access debate, helping to establish a vibrant competitive environment where consumers will enjoy many choices.

Time Warner Cable operates under approximately 3400 franchises across the United States. At this time, we have either secured approvals or no approvals were deemed necessary by all but approximately 35 local franchising authorities. While several local franchising authorities have expressed an interest in open access or the MOU, no local franchising authority has imposed such an open access requirement or incorporated the MOU, as you propose, as part of the AOL-Time Warner merger review. We believe that those local franchising authorities that have explored this issue have ultimately concluded that an open access requirement or incorporating the MOU into an approval document, as you have requested, is unnecessary in light of Time Warner's demonstrated commitment to providing consumers a choice of ISPs on our cable television systems.

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Moreover, incorporating the MOU into the Transfer Agreement as you have proposed would effectively create an open access requirement that will, in fact, be counter-productive to our common goal of having cable television operators provide their customers multiple ISPs. Imposing a regulatory scheme upon Time Warner Cable when we have been in the forefront of implementing the principles of open access will only dissuade other cable television operators from joining us.

In sum, given the AOL-Time Warner MOU, the personal commitments made by Steve Case and Jerry Levin on this subject, the dramatic movement in the marketplace to enact open access, the progress to date as described above and the lack of legal authority of a California city to take such action - incorporating the MOU in the Transfer Agreement as you have proposed is unnecessary.

II. Incorporating the MOU into the Transfer Agreement is beyond the clear legal authority of the local franchising authorities

As we have discussed during previous conversations, we believe that attempting to incorporate the MOU into the Transfer Agreement, as you have proposed, is equivalent to imposing an open access requirement upon Time Warner Cable. This is clearly beyond the authority of the communities.

As you know, the U.S. Court of Appeals for the Ninth Circuit invalidated Portland, Oregon's requirement that AT&T provide open access in order to obtain the City's consent to a change of control of the cable franchise. The Ninth Circuit, in reaching this result, interpreted the definition of "cable service" under the Communications Act and concluded that Internet access provided by AT&T was not a "cable service" within the meaning of the law. Since the Internet service provided by AT&T through the @Home cable modem access was found not to be a "cable service" under the Communications Act, the Ninth Circuit was quite clear that Portland could not regulate those services through its franchising authority. In fact, the court stated:

... AT&T need not obtain a franchise to offer cable broadband ...
Portland may not impose any requirement that has "the purpose or effect of prohibiting, limiting, restricting or conditioning" AT&T's provision of cable broadband ... Portland may not order AT&T to discontinue cable broadband ... and Portland may not require AT&T to provide cable broadband as a condition of the franchise

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transfer . . . Therefore, under the several provisions of Section 541(b)(3), Portland may not regulate AT&T's provision of @Home in its capacity as a franchising authority, and the open access condition contained in the franchise transfer agreement is void. (Emphasis added.)

In short, the law is quite clear in the Ninth Circuit, including within the State of California. A community may not regulate a cable television operator's provision of cable Internet service in its capacity as a franchising authority and any open access condition contained in a franchise transfer agreement is void as being beyond the legal authority of the community. Similarly, it is beyond the legal authority of the California communities to try to reach this same result in an indirect manner by incorporating the MOU into the Transfer Agreement.

III. Conclusion

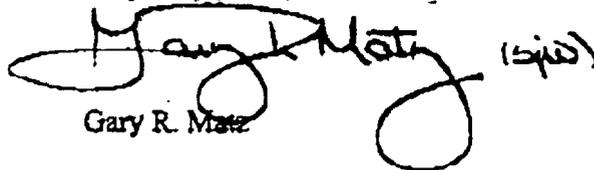
I trust that the discussion set forth above has clarified Time Warner Cable's commitment to providing our customers a choice among ISPs offered on our cable television systems. While we cannot agree to incorporating the MOU into the Transfer Agreement for all of the reasons set forth in part II. above, we nevertheless appreciate the importance that your clients attach to addressing this issue. Accordingly, we would propose that the following language be included in the Transfer Agreement.

The City and the Grantee acknowledge that TWI and AOL have entered into a Memorandum of Understanding ("MOU") dated February 29, 2000, a copy of which is attached hereto as Attachment A, setting forth certain commitments that Time Warner Cable will undertake to enable customers to obtain cable modem service from unaffiliated ISPs. Included among those commitments is the commitment of Time Warner Cable to offer consumers a choice among multiple ISPs and that consumers will not be required to purchase service from an ISP that is affiliated with Time Warner Cable in order to enjoy broadband Internet Service over the Time Warner Cable system. The Grantee acknowledges that the City is granting its consent to any change in control of the Grantee taking into account the commitment by TWI and AOL as expressed in the MOU and the Grantee to implement the principles expressed in the MOU.

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We believe that this language meets the legitimate needs and interests of both the communities and Time Warner Cable. On the one hand, the communities are on record as having clearly communicated to Time Warner Cable the importance that they attach to their constituents having a choice among multiple ISPs on the Time Warner Cable systems. At the same time, the proposed language recognizes, and is consistent with, the clear mandate of the Ninth Circuit that a local franchising authority may not condition its approval of any change in control of a Franchisee on an open access requirement.

Once you have had an opportunity to review this letter and the proposal set forth above, please do not hesitate to contact Mr. Jaenicke or myself with any questions. We believe it is important that this matter be resolved shortly, as Time Warner Cable is not prepared to grant any extensions beyond the current deadline of August 31, 2000.

Very truly yours,
 (sjw)
Gary R. Matz

GRM/sjw

cc: Tom Feige
Kristy Hennessey
J. Larson Jaenicke
Rob Moel



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RESOLUTION NO. 2000-102**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LA QUINTA, CALIFORNIA CONDITIONALLY APPROVING THE TRANSFER OF CONTROL OF A CABLE TELEVISION FRANCHISE GRANTED TO SUMMIT CABLE SERVICES OF GEORGIA TO AOL TIME WARNER, INC.**

WHEREAS, the City Council of the City of La Quinta (the "City") adopted an Ordinance establishing regulations for granting and operating cable television systems (hereafter referred to as the "Ordinance"); and

WHEREAS, pursuant to the Ordinance, the City entered into a Franchise Agreement with Summit Cable Services of Georgia, Inc. (hereinafter referred to as the "Franchisee"), (hereinafter referred to as the "Franchise Agreement"). The Ordinance and the Franchise Agreement constitute, and will be hereinafter referred to as the "Franchise;" and

WHEREAS, the Ordinance requires City Council consent to any transfer or change of control of the Franchise or the Franchisee; and

WHEREAS, FCC Regulations (47 CFR Section 76.502(1)(1) require that in order for a cable operator to obtain approval of a transfer or change in control of the Franchise or the Franchisee, it must submit an FCC Form 394 and any other information as may be required by the City; and

WHEREAS, the Franchisee has requested the consent of the City to transfer control of the Franchise and Franchisee to AOL Time Warner, Inc. (the "Transferee"); and

WHEREAS, the Transferee has filed an FCC Form 394 with the City requesting City Council approval of the transfer of control of the Franchise to the Transferee (hereinafter referred to as the "Transfer"); and

WHEREAS, in support of its Form 394 Application, the Franchisee and the Transferee have submitted to the City certain documents which are on file with the City Clerk, and are collectively referred to as the "Transfer Documents;" and

WHEREAS, the City, through its attorneys and consultants, submitted an Information Request to the Franchisee and Transferee on or about February 15, 2000 (the "Information Request"); and

WHEREAS, the Franchisee and Transferee have not fully and completely responded to the Information Request; and

Resolution No. 2000-102
Conditional Approval of Transfer
Summit Cable Svcs. To AOL Time Warner
Adopted: August 15, 2000
Page 2

WHEREAS, the City Council has determined that the combination of Time Warner, Inc. ("TWI") and America Online, Inc. ("AOL") into the Transferee could reduce competition for both video programming and the provision of Internet Service Provider ("ISP") services over the cable system of the Franchisee and potentially subject subscribers to a loss or lack of choice in terms of the selection of both video programming sources and/or the selection of an appropriate ISP; and

WHEREAS, TWI and AOL have entered into and executed a Memorandum of Understanding dated February 29, 2000, regarding Open Access business practices (the "MOU"); and

WHEREAS, the City Council expressly finds that the parties to the MOU entered into and executed the MOU, at least in part, to induce the Federal Communications Commission (the "Commission") and local franchising authorities to approve the Transfer; and

WHEREAS, the Franchisee's compliance with the terms and conditions of the MOU has been relied upon by the City in conditionally approving the Transfer and constitutes material consideration and inducement thereto; and

WHEREAS, the City Council hereby finds that the Franchisee's compliance with the MOU constitutes a mitigating factor supporting conditional approval of the Transfer; and

WHEREAS, it would be fundamentally unfair and constitute a fraud upon the administrative process if the parties to the MOU were allowed to utilize the MOU as material inducement to approve the Transfer and then subsequently cancel, repudiate, denounce, or materially degrade the requirements thereof; and

WHEREAS, the City and Franchisee have conditionally prepared an agreement entitled "Agreement Relating To The Consent Of The City of La Quinta, California To The Transfer Of Control Of The Franchise Agreement Held By Summit Cable Services of Georgia, Inc." (hereinafter referred to as the "Transfer Agreement"), attached as Exhibit A; and

WHEREAS, the City Council has determined that the Transfer should not be approved unless the Franchisee, agree to the conditions contained within the Transfer Agreement.

Resolution No. 2000-102
Conditional Approval of Transfer
Summit Cable Svcs. To AOL Time Warner
Adopted: August 15, 2000
Page 3

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of La Quinta does hereby order as follows:

SECTION 1. The City Council hereby approves and consents to the Transfer, subject to the Franchisee executing, delivering, and complying with the terms and conditions of this Resolution as provided herein. This approval and consent shall be deemed effective as of the date of closing of the Transfer.

SECTION 2. Unless the Transfer Agreement is executed and delivered to the City by all parties specified on the signature page thereof, other than the City, on or before 5:00 pm on September 30, 2000, (the "Acceptance Date") the Transfer shall be deemed denied, without further action of the City Council, as of the date of this Resolution. Staff is hereby authorized and directed to present to the City Council at its first regularly scheduled meeting subsequent to the Acceptance Date a resolution setting forth the specific grounds for denial which grounds shall be consist with the recitals set forth herein and the requirements set forth in the Transfer Agreement.

SECTION 3. Upon the close of the Transfer, Transferee shall comply with and be bound by the following documents:

1. The Ordinance;
2. The Franchise Agreement;
3. The Transfer Agreement and all prior Transfer and Extension Agreements;
and
4. This Resolution.

SECTION 4. The Mayor is authorized to execute the Transfer Agreement attached hereto and incorporated herein with such changes as approved by Special Counsel. The City Manager, the City Attorney, Special Counsel or their designees, are hereby authorized and empowered to execute any documents necessary, in their discretion, to implement the approval contained herein.

PASSED, APPROVED and ADOPTED at a regular meeting of the La Quinta City Council, held on this 15th day of August, 2000 by the following vote:

AYES: Council Members Henderson, Perkins, Sniff

NOES: None

ABSENT: Council Member Adolph

ABSTAIN: Mayor Peña


STANLEY SNIFF, MAYOR PRO TEM
City of La Quinta, California

ATTEST:


JUNE S. GREEK, CMC, City Clerk
City of La Quinta, California
(City Seal)

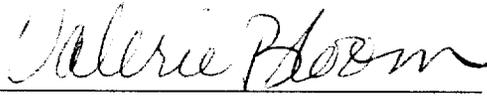
APPROVED AS TO FORM:


M. KATHERINE JENSON, City Attorney
City of La Quinta, California

CERTIFICATE OF SERVICE

I, Valerie Bloom, do hereby certify that on September 28, 2000, I caused one copy of the attached *Petition for Special Relief* to be served by U.S. Mail upon the parties listed below:

Office of General Counsel Federal Communications Commission Room 614 1919 M. Street, NW Washington, DC 20554 (VIA FEDERAL EXPRESS)	Deborah Lathen Bureau Chief Cable Services Bureau Federal Communications Commission 445 12 th St., SW, Room 3-C 830 Washington, DC 20554 (VIA FEDERAL EXPRESS)
George Vradenburg, III Jill A. Lesser Steven N. Teplitz America Online, Inc. 1101 Connecticut Ave., N.W., Suite 400 Washington, DC 20036	Timothy A. Boggs Catherine R. Nolan Time Warner, Inc. 8900 Connecticut Ave., N.W., Suite 800 Washington, DC 20006
Richard E. Wiley Peter D. Ross Wayne D. Johnsen Wiley, Rein & Fielding 1776 K St., N.W. Washington, DC 20006 Counsel for America Online, Inc.	Gary R. Matz Assistant General Counsel Time Warner Cable 290 Harbor Drive Stamford, CT 06902
Aaron I. Fleischman Arthur H. Harding Craig A. Gilley Fleischman & Walsh, LLP 1400 Sixteenth St., N.W., Suite 600 Washington, DC 20036 Counsel for Time Warner	J. Larson Jaenicke Rintala, Smoot, Jaenicke & Rees 10351 Santa Monica Blvd., Suite 400 Los Angeles, CA 90025 Counsel for Time Warner Cable and America Online, Inc.



Valerie Bloom