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October 13, 2000

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Salas:

This letter is to inform the Commission that on October 12, 2000, Bill Kirkner, Chief Technology Officer from Prodigy; Ross Bagully from CMGI; Andrew Garen, Senior Project Manager from Prodigy; Chris Huber, from Crowell & Moring as counsel to Prodigy; Marc Berejka from Microsoft; and the undersigned as counsel to Microsoft met with Commissioner Powell and Kyle Dixon, legal advisor to Commissioner Powell; Karen Onyeije, legal advisor to Chairman Kennard; David Goodfriend, senior legal advisor to Commissioner Ness; and Jay Friedman, senior legal advisor to Commissioner Tristani, to discuss Instant Messaging ("IM") in the context of the above-captioned merger.

Mr. Kirkner explained how and why IM will be as critical to the next generation of the Internet as "http" was to the dot com revolution. We also explained that AOL's own actions establish conclusively that IM interoperability is easily achievable (in fact, already has been accomplished). Specifically, we explained that AOL has already published the TOC protocol, which would enable other companies using the real time messaging platform of IM to interact with AIM/ICQ. We also emphasized that IM is not just an application but a real time messaging platform that can be utilized by many different applications. IM, with its presence detection features, is a critical platform for the current and future generation of communications and distribution of content over the Internet. We also explained that IM interoperability is easily scalable: the evidence for this is that AOL is willing to license its protocol. This means that interoperability is not a technical question but a business decision.

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We also compared the evolution of interoperability in the email market to the development of IM interoperability. Email was initially developed and deployed by Prodigy and a few other companies, each controlling roughly equal shares of the market. Although initially each email provider's platform was not interoperable with the others, eventually the providers agreed that interoperability was in the best interests of their customers and therefore of their respective companies. But the next step towards interoperability has been frustrated here because AOL dominates the IM market, with an 80-90% market share. Because AOL controls such a large portion of the market, it has no incentive to develop interoperability with other IM providers. Absent the Commission requiring IM interoperability by a date certain, AOL will not make its dominant IM platform compatible with any other provider's IM program. This is the critical reason why IM interoperability will not develop among private parties in the market in the same way that email interoperability did and why Commission action in the context of this merger is required.

Please do not hesitate to contact me if we may provide you with further information.

Sincerely,



Gerard J. Waldron

cc: Commissioner Michael Powell
Ms. Karen Onyeije
Mr. David Goodfriend
Mr. Kyle Dixon
Mr. Jay Friedman