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November 22, 2000

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

Re: 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 Time Warner Inc. ("Time Warner") and America Online, Inc. ("AOL") (collectively, the "Applicants"), submitted herewith pursuant to Section 1.1206(b)(2) of the Commission's rules are an original and one copy of this notice regarding permitted ex parte presentations in the above-referenced proceeding. On November 21, 2000, representatives of Time Warner and AOL met with David Goodfriend, Legal Advisor to Commissioner Ness; Kyle Dixon, Legal Advisor to Commissioner Powell, and Helgi Walker, Senior Legal Advisor and Chief of Staff to Commissioner Furchtgott-Roth, to discuss issues relating to AT&T's interest in Time Warner Entertainment Company, L.P. ("TWE"), including the means by which AT&T may divest itself of its interest in TWE. Applicants' positions on these subjects are set forth in three ex parte submissions - - a submission to Ms. Lathen dated October 5, 2000, and submissions to Ms. Brown dated October 13, 2000 and November 16, 2000. The two ex parte submissions to Ms. Brown, which were discussed most directly, are attached.

Attending the meetings on behalf of Time Warner were Robert Marcus, Executive Vice

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President, Business Development, Time Warner Digital Media; Catharine R. Nolan, Vice President, Law & Public Policy, Time Warner Inc.; and the undersigned. Attending on behalf of AOL were Steven N. Teplitz, Vice President, Telecommunications Policy and Peter D. Ross, Wiley, Rein & Fielding.

Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Arthur H. Harding

Arthur H. Harding

cc: David Goodfriend, Esq.
Kyle Dixon, Esq.
Helgi Walker, Esq.
Royce Dickens, Esq.
Linda Senecal, Esq.
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TIME WARNER

Catherine R. Nolan
Vice President-Law
and Public Policy

November 16, 2000

Ms. Kathryn C. Brown
Chief of Staff
Office of Chairman Kennard
Federal Communications Commission
445 Twelfth Street, S.W.
8-B201
Washington, D.C. 20554

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

Dear Ms. Brown:

I am writing in response to the November 8, 2000 *ex parte* letter from James W. Cicconi, General Counsel and Executive Vice President of AT&T, in which AT&T suggests that the negotiated exit options available to it under the Time Warner Entertainment Company, L.P. ("TWE") partnership agreement cannot take place without government intervention. Notably, AT&T does not deny that the TWE agreement provides three distinct options that may be exercised unilaterally by AT&T to achieve a timely exit. Instead, AT&T appears to be seeking government assistance in negotiating a better price from Time Warner in the sale of AT&T's interest in TWE.[1]

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[1] AT&T suggests that the government should ensure that AT&T obtains a "fair price" for its interest in TWE. As noted in our October 13 letter, the parties freely negotiated numerous protections in the TWE agreement to facilitate a fair exit. To the extent AT&T believes that Time Warner is unwilling to pay a "fair price," AT&T is free to seek a better price from a third party. And if AT&T elects the registration rights process, by definition it will obtain a price fairly established in the public market. In the alternative, assuming AT&T delivers its registration rights

AT&T's letter suggests that Time Warner has somehow delayed AT&T's ability to pursue its exit options by failing to provide relevant financial information. That claim is simply untrue. Indeed, as AT&T notes, much relevant financial information relating to TWE is publicly available. In addition, just this August, Time Warner responded to AT&T's request for valuation materials by providing:

- Board Approved Long Term Plan financial projections for TWE businesses (essentially includes 2001 budget as first year of plan);
- Discounted cash flow valuation analysis (including 10 year financial projections for TWE businesses);
- Access by AT&T's bankers to Long Term Plan narrative (which includes sensitive strategic material);
- TWEAN partnership standalone financial projections;
- Cable subscriber breakdown by legal entity;
- Information regarding projected employee stock option grants;
- TWE historical financial statements;
- TWE consolidating balance sheet; and
- TWEAN historical financial statements.[2]

Contrary to the implication of its November 8 letter, AT&T has never asked for any additional information. Nor has AT&T identified any third party purchasers of AT&T's stake in

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demand notice on January 1, 2001, Time Warner could, by March 16, 2001, elect not to reconstitute TWE as a corporation. In such event, AT&T would have the right to put its Registerable Amount to TWE at appraised value by April 5, 2001, which in essence would require Time Warner to acquire such interest from AT&T.

[2]/Time Warner did decline to provide certain competitively sensitive information requested by AT&T, such as cable system rate adjustment strategies on a system-by-system basis. As AT&T surely knows, provision of such information could raise significant antitrust consequences. Time Warner has also been careful not to provide information regarding the price, terms and condition relating to TWE's carriage of video programing, as provision of such information would cause AT&T to violate the AT&T/Media One Order, Appendix B, Sec. II. 5.

TWE, but if AT&T should do so, Time Warner stands ready to cooperate fully in the customary due diligence process.

AT&T also does not dispute the summary in Time Warner's October 13 letter of the registration rights process unilaterally available to AT&T under the TWE agreement, but rather implies that Time Warner might subvert that approach by failure to provide information reasonably necessary for the underwriting process. Should AT&T exercise its unilateral right to trigger that process, Time Warner will cooperate fully and supply all necessary information, as it is obligated to do under the TWE agreement.

The result of any such IPO would undoubtedly affect valuations of significant Time Warner businesses, which in turn could affect Time Warner's stock. Thus, there is no merit to AT&T's suggestion that Time Warner would have "every incentive" to "artificially suppress the price" of an IPO. To the contrary, Time Warner has every incentive to ensure that the values of its businesses are fully recognized by public markets.

In short, the choice among the exit mechanisms established in the TWE agreement is entirely within AT&T's control, and Time Warner commits to continued full cooperation with AT&T to carry out the express terms of the TWE agreement. But there is absolutely no basis in the record, or in law or equity, for the Commission to rewrite the exit mechanisms in the TWE agreement or otherwise to influence any private negotiations between Time Warner and AT&T relating to AT&T's disposition of its TWE interest.[3]

AT&T's plea for government intervention to rewrite the freely negotiated exit mechanisms in the TWE agreement is entirely consistent with a now familiar pattern. As you know, in order to obtain Commission approval of its acquisition of control of MediaOne Group, Inc. ("MediaOne"), AT&T agreed to a "non-severable condition" that AT&T must complete one of three options to achieve compliance with the cable horizontal ownership cap no later than May 19, 2001.[4] The ink barely was dry on that obligation when AT&T began seeking relief from every

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[3]/It is well settled that the Commission will not adjudicate a private contractual disputes or even prejudge the outcome of such a dispute. Listeners' Guild, Inc. v. FCC, 813 F.2d 465 (D.C. Cir 1987). The Commission must reject AT&T's attempts to force arbitration of a purely private issue, particularly where the exit mechanisms contractually agreed to by the parties do not contemplate arbitration.

[4]/Applications for Consent to the Transfer of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee, CS Docket No. 99-251, FCC 00-202 (rel. June 6, 2000) ("AT&T/MediaOne Order "), ¶4. The proposed merger of AOL and Time Warner has no effect on the limited existing relationships between AT&T and Time Warner recently approved by the Commission (and antitrust regulators as well). And the presence

branch of government: the courts, the Congress and the White House, in an effort to escape its commitment.

AT&T suggests that it should not have to bear "a greater share of the burden" involved in its divestiture of its TWE interest than Time Warner. But the Commission must not lose sight of the undeniable fact that AT&T voluntarily acquired its interest in TWE and assumed the risk that its interest would have to be divested.[5] Thus, any "burdens" resulting from AT&T's voluntary acquisition of its interest in TWE must fall squarely on AT&T. There is absolutely no basis for governmental intervention in a private negotiation in order to achieve a timely divestiture of AT&T's interest in TWE,[6] particularly when the inevitable outcome of such intervention would result in a pricing mechanism vastly different than the parties voluntarily accepted in the TWE

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of AOL does nothing to alter whatever marketplace incentives AT&T might have by virtue of its limited ownership interest in TWE. See Letter from Peter D. Ross and Arthur H. Harding to Deborah Lathen, Chief, Cable Services Bureau, dated October 5, 2000. To the extent the Commission seeks to "unwind" any "alignment of interests" caused by AT&T's acquisition of the passive, minority interest in TWE formerly held by MediaOne, the only appropriate vehicle for doing so is the pending reconsideration of the AT&T/MediaOne Order.

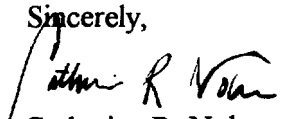
The analogy drawn in the November 14, 2000 letter from Media Access Project et al. to the requirement that AT&T divest the interest in Road Runner it gained through its acquisition of MediaOne only serves to reinforce this point. AT&T acquired its interests in both Road Runner and TWE in the MediaOne transaction; any divestitures necessitated by AT&T's acquisition of such interests must be directed solely at AT&T and in the context of the AT&T/MediaOne proceeding.

[5] Id. at ¶68. It bears noting that AT&T has been on notice of its divestiture schedule since at least June 6, 2000. AT&T could have easily expedited this process, for example, by notifying the Cable Services Bureau of AT&T's chosen compliance option well before the December 15, 2000 deadline. Thus, any delays thus far must be attributed to AT&T's own inaction.

[6] Even if an IPO could not be fully completed prior to May 19, 2001, there is no reason why AT&T's stock could not be transferred to a trustee prior to that date for orderly disposition, as expressly contemplated by the Commission's AT&T/MediaOne Order. AT&T/MediaOne Order, ¶71. Similarly, if AT&T elects to pursue a private sale of its limited partnership interest to Time Warner or a third party, there is no reason why AT&T's interest could not be placed in a disposition trust prior to May 19, 2001. Thus, contrary to AT&T's suggestion, there is absolutely no reason why Time Warner and AT&T must necessarily "remain partners" after May 19, 2001. Indeed, Time Warner stands ready to assist AT&T in implementation of the trustee mechanism well before that date.

agreement. To be sure, AT&T's divestiture of its interest in TWE is a multi-billion dollar proposition. But there are no jurisdictional or policy grounds for the government to interfere with the exit procedures and pricing mechanisms agreed to by the parties in the TWE agreement.

Sincerely,



Catherine R. Nolan
Vice President
Law and Public Policy

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