

Memorandum20Understanding2

Regarding Open Access Business Practices

MEMORANDUM OF UNDERSTANDING Between  
Time Warner Inc. And America Online, Inc.

REGARDING OPEN ACCESS BUSINESS  
PRACTICES

February 29, 2000

1. This Memorandum of Understanding ("MOU") sets out the commitments that AOL Time Warner will make to provide open access (i.e., to make a choice of multiple Internet Service Providers ("ISPs") available to consumers) on its broadband cable systems. It is the intention of the parties to enter into as quickly as possible a binding definitive agreement to provide broadband AOL service on Time Warner's cable systems, which will be used as a model for the commercial agreements that will be available to other ISPs.

2. AOL Time Warner is committed to offer consumers a choice among multiple 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. AOL Time Warner intends to encourage actively other cable operators similarly to provide consumers with a choice of broadband ISP offerings.

3. AOL Time Warner will effectuate such choice for consumers by negotiating arm's-length commercial agreements with both affiliated (such as AOL) and unaffiliated ISPs that wish to offer service on the AOL Time Warner broadband cable systems. Pursuant to such commercial agreements, AOL Time Warner will partner with ISPs to offer consumers a choice of competing broadband Internet service offerings.

4. AOL Time Warner will not place any fixed limit on the number of ISPs with which it will enter into

commercial arrangements to provide broadband service to consumers. AOL Time Warner will provide its 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.

5. The 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. Thus, while the economic arrangements reached by AOL Time Warner and ISPs wishing to provide broadband service 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), AOL Time Warner will not discriminate in those economic arrangements based upon whether or not the ISP is affiliated with AOL Time Warner. In addition, AOL Time Warner will operate its broadband cable systems in a manner that does not discriminate among ISP traffic based on affiliation with AOL Time Warner.

6. 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.

7. AOL Time Warner will allow ISPs to connect to its broadband cable systems without purchasing broadband backbone transport from AOL Time Warner.

8. Consistent with technological capability, AOL Time Warner will offer ISPs the choice to partner with it to offer broadband Internet service 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. AOL Time Warner is committed to bring the benefits of the Internet to all Americans, and will not allow ISPs to offer "redlined" service to only a portion of an AOL Time Warner cable system that is fully enabled to provide broadband service.

9. 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 AOL Time Warner's cable systems sell broadband Internet service to a customer, they will be entirely responsible for billing and collection. When an ISP sells broadband Internet service directly to a customer, it may, if it so chooses, bill and collect from the customer directly.

10. This MOU represents an initial step by Time Warner and AOL to articulate the terms, conditions and parameters under which a combined AOL Time Warner will offer consumers access to multiple ISPs on its broadband cable systems. It is the intention of the parties to continue to refine those particulars in a manner that is responsive to, and consistent with, the desire of consumers to have a choice among multiple ISPs offering broadband service and the still-evolving nature of the cable infrastructure.

11. All 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. However, Time Warner will endeavor to reach agreements and accommodations with third parties to which pre-existing obligations are due that would permit the full implementation of the commitments described herein as quickly as possible.

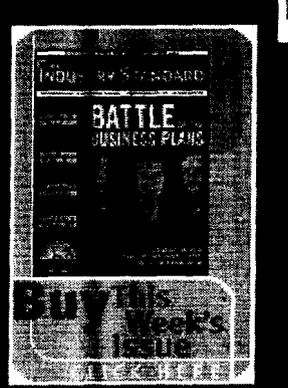
Stephen M. Case Gerald M. Levin America Online, Inc.  
Time Warner Inc.



Search  for

MY ACCOUNT    SUBSCRIBE    NEWSLETTERS    ABOUT US

- NEWS & ANALYSIS
- PEOPLE & CAREERS
- COMPANIES
- RESEARCH
- SUBJECT INDEX
  - Money & Markets
  - Marketing
  - Media
  - Telecom
  - E-Commerce
- Legal**
- Technology
- EVENTS & CONFERENCES
- MAGAZINE



From our editorial partners at



March 02, 2000

## AOL Class-Action Suits Pile Up

By James Niccolai

SAN FRANCISCO – America Online has been slapped with two more class-action lawsuits. The suits allege that the latest version of AOL (AOL)'s Internet software changes customers' PCs in ways that make it hard, if not impossible, for them to connect to alternative Internet service providers.

The most recent lawsuits were filed yesterday in New Jersey and the day before in Oregon. They seek class-action status on behalf of all users in those states who installed AOL version 5.0. They follow similar lawsuits filed earlier this year in Washington, Arizona, Virginia, Colorado and Ohio. The Virginia lawsuit is seeking \$8 billion in damages.

The claims made in all of the lawsuits are similar. They relate to the most recent version of AOL's Internet software, AOL version 5.0, which was released in October 1999.

AOL failed to inform its customers that installing the AOL 5.0 upgrade would make "dramatic changes" to their operating systems and would interfere with their ability to connect to competing ISPs, according to a statement issued by Hagens Berman, a law firm that is handling four of the lawsuits, including the two most recently filed.

"AOL 5.0 promised users 500 free hours of faster, better Internet

**Related Companies**

[America Online](#)  
[AOL \(AOL\)](#)

**Focus on Legal**

[DOJ Takes Last Jab at Microsoft](#)  
(May 26, 2000)

[EBay Wins Legal Bid](#)  
(May 26, 2000)

[U.K. Defends Plan to Snoop on Web Surfers](#)  
(May 26, 2000)

[FTC Backs Its Online Privacy Report](#)  
(May 25, 2000)

**Interact**

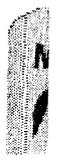
[Email to a Friend](#)  
[Print Article](#)  
[Write the Editor](#)

Got a scoop? Tip us off

INDL  
Ge  
4

List  
iB2  
Ch  
Co

Ve



access," attorney Steve Berman said in yesterday's statement. "But in reality, many novice users found that once they installed AOL 5.0, removing the software was nearly impossible. This was a brazen attempt by AOL to hold these customers hostage as long as they wanted to connect to the Internet."

After filing the initial lawsuit against AOL in Washington, Hagens Berman says it received "hundreds" of phone calls and e-mails from disgruntled AOL users across the country, prompting the law firm to expand its legal efforts to other states.

AOL didn't immediately return a call yesterday about the latest lawsuits. In the past, the company has vehemently denied any wrongdoing, arguing that the features added to AOL 5.0 were requested by AOL members and are designed to provide them with smoother Internet access.

Customers must grant permission before any changes are made to their computer settings, and any users who agree to the changes inadvertently can find instructions in the AOL help area about how to change them back, according to the company. AOL maintains that users can use multiple ISPs with AOL version 5.0.

The various courts have yet to approve class-action status for any of the lawsuits filed against the ISP, a spokesman for Hagens Berman said in a phone interview yesterday. He added that the approval process typically takes from 30 to 90 days. The number of users represented in each lawsuit is expected to run into the tens of thousands, the spokesman said.

The four suits filed by Hagens Berman seek unspecified monetary damages. A different law firm filed a similar complaint in January in the U.S. District Court in Alexandria, Va. That complaint seeks more than \$8 billion in damages.

In cases where several law firms file separate lawsuits alleging the same offense, the courts typically appoint one of the law firms to act as the lead litigator.

*James Niccolai writes for the IDG News Service.*

**Today's News** from The Industry Standard

**[Boo.com Is Picked Apart](#)**

**[Softbank in Stalemate Over Nippon Credit](#)**

**[Riffage.com Nabs Concert Venue](#)**

**[Get the Magazine -- 4 Risk-Free Issues!](#)**

Featured Links

**OpenSite:** Online auction solutions

**Demandline:** Group buying -> Save BIG on BUSINESS SERVICES

Visit **Familymeds.com** and invest a moment in your health

**Quaa:** The all-knowing Web self-help solution

**MadeToOrder.com** for quality, custom logo merchandise online

**neofit:** Outsource your software projects and launch on-time



	<b>CELERON™ PROCESSOR 433 MHz</b>	32MB RAM,	
			<b>invent</b>

HOME

NEWS

PC WEEK RADIO

PC WEEK LAB

PC WEEK STAFF

INTERVIEW SERIES

COMMUNITY

NET RESOURCES

SPECIAL REPORTS

FORUMS

SEARCH

SUBSCRIPTIONS

ABOUT PC WEEK

AD PARTNERSHIPS

CONTACT

January 15, 1997 10:45 AM ET

# AOL slapped with class-action suit

By PC Week Online Staff

Five subscribers to America Online Inc. have filed a class-action suit against the service, seeking damages for what they call fraudulent and malicious misrepresentation, Reuters reported last night.

The suit, which was filed in California Superior Court in Los Angeles on Monday, alleges that AOL offered its subscribers unlimited usage of its services at a flat rate but lacked the equipment to meet the surge in demand.

AOL switched its users to unlimited access for \$19.95 a month in December, bringing its pricing in line with the many Internet access providers who offer unlimited use at flat-rate prices.

But in the past month, during the peak hours of evenings and weekends, users have found it increasingly difficult to sign on to the service.

A spokeswoman for AOL, in Dulles, Va., said the company was in the process of upgrading its network, with a \$250 million program to expand capacity, customer support and thousands of modems a month.

"We expect to prevail in the class-action suits addressing member access to AOL," said the spokeswoman.

The class action, which includes all 7 million-plus subscribers of the company's service, claims the unlimited usage promise was meaningless.

The plaintiffs claim that not being able to connect to the online service subjected them to "unjust hardship." They claim America Online acted with "malice" and "fraud" in violation of the California Consumers Legal Remedies Act.

The class action is seeking punitive and exemplary damages in amounts appropriate to punish the online service.

The plaintiffs are represented by the law firm Marlin & Saltzman, in City of Orange, Calif.



TOP OF PAGE

*Copyright(c) 1997 Ziff-Davis Publishing Company. All rights reserved. Reproduction in whole or in part in any form or medium without express written permission of Ziff-Davis Publishing Company is prohibited. PC Week and the PC Week logo are trademarks of Ziff-Davis Publishing Company. PC Week Online and the PC Week Online logo are trademarks of Ziff-Davis Publishing Company.*

[Send mail to PC Week](#)



Are your customer service solutions outdated?



Click Here



sci-tech > computing > story page

- MAIN PAGE
- WORLD
- U.S.
- LOCAL
- POLITICS
- WEATHER
- BUSINESS
- SPORTS

# AOL could change stance on cable access, FCC official says

January 13, 2000  
Web posted at: 8:49 a.m. EST (1349 GMT)

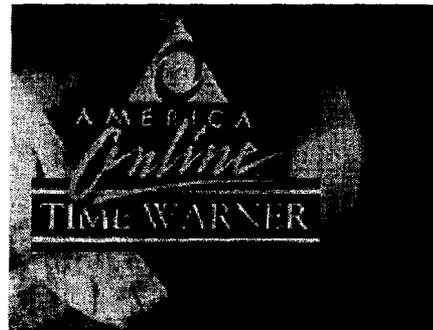
by Jennifer Jones

From...  
**WORLD**  
AN IDG.net SITE

[computing](#)  
[personal technology](#)

- SPACE
- HEALTH
- ENTERTAINMENT
- BOOKS
- TRAVEL
- FOOD
- ARTS & ST
- NATURE
- IN-DEPTH
- ANALYSIS
- myCNN

(IDG) -- In light of its merger with Time Warner, America Online may have a change of heart on its stance that government action is needed to open up the broadband cable industry, Federal Communications Commission (FCC) Chief Technology Officer Stagg Newman said Tuesday in an interview.



CNN/AP/WIDE WORLD

But a representative of the AOL-backed openNet Coalition, which has been pressing for government intervention to open cable systems, said that AOL remains dedicated to the coalition's cause.

Until it joined with Time Warner on Monday, AOL lobbied hard to have government regulators involved in the unfolding broadband cable access industry. Now the company is on the same page with the FCC, which has wanted, at least until now, to stay out of that emerging market, the FCC's Newman said.

"In the past, AOL has advocated [the] FCC becoming much more proactive in the broadband market," Newman said in an interview.

In fact, FCC just last fall in a comprehensive report on broadband issues put AOL in the camp of companies clamoring for "mandated open access."

That is, AOL and others wanted the FCC through regulatory action to pry open the broadband cable market, dominated by AT&T with an exclusive contract with ISP Excite @ Home.

Though the FCC has not intervened, AT&T officials said in early December

[AOL/TW deal may change how companies design Web sites](#)

[AOL unveils new face of AOL.COM](#)

[Microsoft views AOL-Time Warner deal as confirmation of its own strategy](#)

[Repercussions of AOL merger felt Down Under](#)

[Managing the net](#)

Headline News brief  
news quick  
daily almanac

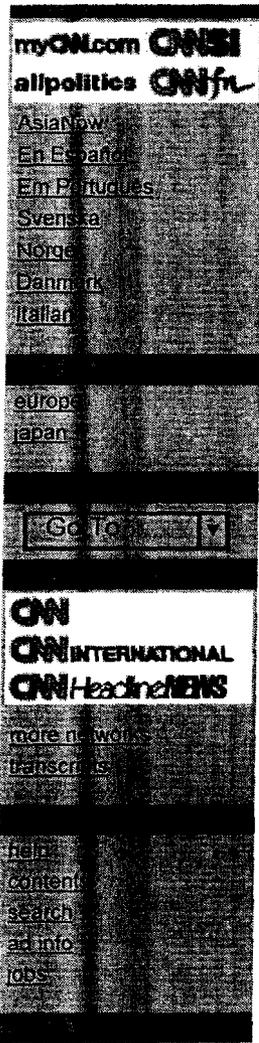
video  
video archive  
audio  
multimedia showcase  
more services

Subscribe to one of our news e-mail lists.  
Enter your address:



Or:  
Get a free e-mail account

[message boards](#)  
[chat](#)  
[feedback](#)



AT&T officials said in early December that the company would not renew the exclusive Excite @ Home deal, which expires next year.

AOL and other ISPs such as MindSpring Enterprises worried that, without government intervention, cable franchise owners would control Internet content and navigational services, according to the FCC report.

However, AOL and Time Warner executives on Monday praised the promise of free-market forces in the broadband access issue.

"In listening to the press conference, what they have said on open access over cable is what the Commission has wanted all along," the FCC's Newman said.

Newman referenced a mid-December speech in which FCC Chairman William Kennard said, "Unless a compelling case can be made for government action - a failure of the marketplace to maximize consumer welfare - then we should give the marketplace a chance to work."

Along with overtly targeting AT&T's exclusivity deals, AOL has been generally unprepared for the advent of broadband, Newman said.

"All of their content was focused on the narrow band world. And more than a delivery architecture, they needed to develop broadband content. Monday's announcement does wonders for that," Newman said.

AOL worked largely through lobbying groups such as the openNET Coalition to push for more government measures to open up the cable market.

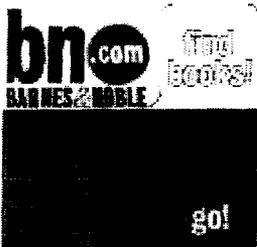
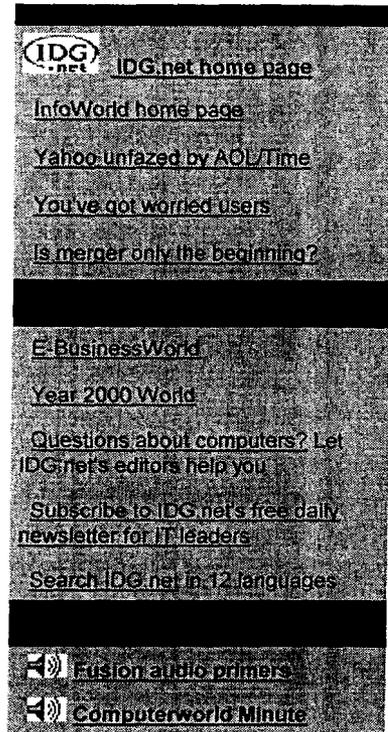
openNET co-director Greg Simon said in a statement that even after the merger, AOL is still pushing for open access.

"[The] announcement by AOL and Time Warner is a wake-up call to the cable industry. The No. 2 cable company has joined AOL, a leading advocate for open access and a continued member of the openNET Coalition, to support consumer choice of Internet Service Providers over cable broadband networks," Simon said in the statement.

Simon said that that openNet will lobby federal regulators to get open access commitments from AT&T and cable company Media One in its ongoing merger review.

The organization will do the same in the AOL Time Warner merger, Simon indicated.

"We will continue to urge the federal government to make open access the rule for the entire cable industry," Simon said



---

**RELATED STORIES:**

[High-speed broadband wireless services go nationwide](#)  
January 7, 2000  
[Mac users get help establishing DSL service](#)  
January 5, 2000  
[Free Internet access to explode in 2000](#)  
January 4, 2000  
[Customers to Compaq: My Presario is freezing up](#)  
January 1, 2000

---

**RELATED IDG.net STORIES:**

[AOL Time Warner: The art of the possible](#)  
*(The Industry Standard)*  
[Microsoft views AOL-Time Warner deal as confirmation of its own strategy](#)  
*(InfoWorld.com)*  
[AOL-Time Warner deal to impact commerce, content and access](#)  
*(InfoWorld.com)*  
[Yahoo unfazed by AOL/Time](#)  
*(Computerworld Australia)*  
[ISPs shouldn't panic over AOL](#)  
*(InfoWorld.com)*  
[15 largest Internet-related merger&acquisition deals of all time](#)  
*(The Industry Standard)*  
[You've got worried users](#)  
*(PC World)*  
[Is AOL-TW merger only the beginning?](#)  
*(Macworld U.K.)*  
**Note: Pages will open in a new browser window**  
*External sites are not endorsed by CNN Interactive.*

---

**RELATED SITES:**

[FCC](#)  
[AOL](#)  
[Time Warner](#)  
[OpenNet Coalition](#)  
**Note: Pages will open in a new browser window**  
*External sites are not endorsed by CNN Interactive.*

**WORLD:**

[Ethiopia declares Horn of Africa war over Syria drops demand for Israeli withdrawal from disputed Shebaa](#)  
[Clinton offers to share missile defense technology](#)  
[Stalled Mideast peace talks could be revived Wednesday](#)

**US:**

[Oregon adoption records open after lengthy legal fight](#)  
[Fire danger remains high in western U.S., Florida](#)  
[Car crash tests: Midsize heavyweights do well](#)  
[If cars could fly](#)

**SCI TECH:**

[Microsoft to file response](#)  
[Atlantis returns to Earth; NASA calls mission success](#)  
[How to fight privacy looters](#)  
[A Web phone is still a phone](#)

**ENTERTAINMENT:**

['Clerks' creator brings animation to small screen on ABC](#)  
[CBS's risk-taking summer schedule about to begin](#)  
['Tex' Beneke, leader of Glenn Miller Orchestra, dies at 86](#)  
[Review: 'Man on the Moon' lands on video](#)

 Launch CNN's **Desktop Ticker** and get the latest news, delivered right on your desktop!

**Today on CNN**

Enter keyword(s)

[Back to the top](#)

© 2000 Cable News Network. All Rights Reserved.  
[Terms](#) under which this service is provided to you.  
[Read our privacy guidelines.](#)

Business World

e-business

Click here >>

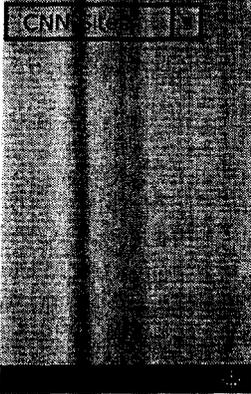


Activate Solution Finder



Click Here

# CNN.com technology > computing



## AOL class-action suits pile up

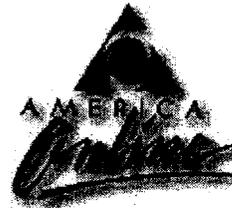
From...



March 3, 2000  
Web posted at: 8:46 a.m. EST (1346 GMT)

by James Niccolai

(IDG) -- The latest version of America Online's Internet software hasn't been receiving a warm welcome in the U.S. AOL 5.0, already faced with several class-action lawsuits, this week finds itself slapped with two more. The lawsuits allege that AOL 5.0 makes changes to customers' PCs that make it hard, if not impossible, for them to connect to alternative Internet service providers.



The most recent lawsuits were filed Thursday in New Jersey and yesterday in Oregon and seek class-action status on behalf of all users in those U.S. states who installed AOL version 5.0. They follow similar lawsuits filed earlier this year in Washington, Arizona, Virginia, Colorado, and Ohio. The Virginia lawsuit is seeking \$8 billion in damages.

The claims made in all of the lawsuits are similar, and relate to the most recent version of AOL's Internet software -- AOL version 5.0 -- released in October of 1999.

AOL failed to inform customers that installing the AOL 5.0 upgrade would make "dramatic changes" to their operating systems and would interfere with their ability to connect to competing ISP networks, according to a statement issued today by Hagens Berman, a law firm handling four of the lawsuits, including the two most recent filings.

"AOL 5.0 promised users 500 free hours of faster, better Internet access," attorney Steve Berman said in Thursday's statement. "But in reality, many novice users found that once they installed AOL 5.0, removing the software was



IDG.net home page

[AOL 5.0 draws more fire](#)

[How safe is AOL 5.0?](#)

[How to avoid crashes in AOL](#)

[Suing for AOL access](#)

[E-Business World](#)

[Year 2000 World](#)

[Questions about computers? Let IDG.net's editors help you](#)

[Subscribe to IDG.net's free daily newsletter for computer geniuses \(& newbies\)](#)

[Search IDG.net in 12 languages](#)

[Fusion audio primers](#)

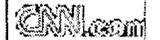
[Computerworld Minute](#)



Upkeep, not determines of older aircraft says U.S. FA

[Play video](#)

[Watch](#)



[TECHNO TOP STC](#)

[Microsoft response](#)

[How to fix looters](#)

[A Web pt a phone](#)

[Atlantis re Earth; NA mission s](#)

[French st warm to c grocery s](#)

[Gateway chip deal](#)

[\(MORE\)](#)

[CNN.com TOP STC](#)

[Police ne with arme holding c hostage i Luxembc](#)

[Clinton o share mi: defense](#)

nearly impossible."

AOL didn't immediately return a call on Thursday about the latest lawsuits. In the past the company has vehemently denied any wrongdoing, arguing that the features added to AOL 5.0 were requested by AOL members and are designed to provide them with more seamless access to the Internet.

Users must grant permission before any changes are made to their computer settings, and any users who agree to the changes inadvertently can find instructions in the AOL help area about how to change them back, according to AOL. The company maintains that users can use multiple ISPs with AOL version 5.0.

The various courts have yet to approve class-action status for any of the lawsuits filed against the ISP, a spokesperson for Hagens Berman says, adding that the approval process typically takes 30 to 90 days. The number of users represented in each lawsuit is expected to run into the tens of thousands, the spokesperson says.

The four suits filed by Hagens Berman seek unspecified monetary damages.

**RELATED STORIES:**

- [German group warns against installing AOL 5.0](#)  
February 7, 2000
- [AOL/TW deal may change how companies design Web sites](#)  
January 13, 2000
- [AOL unveils new face of AOL.COM](#)  
January 13, 2000
- [AOL could change stance on cable access, FCC official says](#)  
January 13, 2000
- [You've got AOL 5.0](#)  
October 6, 1999

**RELATED IDG.net STORIES:**

- [AOL 5.0 draws more fire](#)  
*(PC World Online)*
- [How safe is AOL 5.0?](#)  
*(Network World Fusion)*
- [AOL's Net holiday sales rise to \\$2.5 billion](#)  
*(IDG.net)*
- [How to avoid crashes in AOL](#)  
*(PC World Online)*
- [Microsoft reportedly faces class-action lawsuit](#)  
*(InfoWorld.com)*
- [Suing for AOL access](#)  
*(PC World Online)*
- [You've got AOL 5.0](#)  
*(PC World Online)*
- [Stupid AOL tricks](#)  
*(PC World Online)*

myCNN.com  
allpolitics

Go to  
CNN  
INTERNATIONAL  
Headline NEWS  
RADIO

bn.com  
BARNES & NOBLE  
Find Books!

BUY IT NOW!  
go!

Nasdaq  
1.65%

Ethiopia  
Horn of Africa  
over

(MORE)

CNN  
BUSINESS

Wall  
Street  
wavers

Phone  
rates  
to  
be  
cut

Lucent  
buys  
Chromati

(MORE)

MARKET  
DJIA  
NAS  
S&P

CNN Sports  
SPORTS

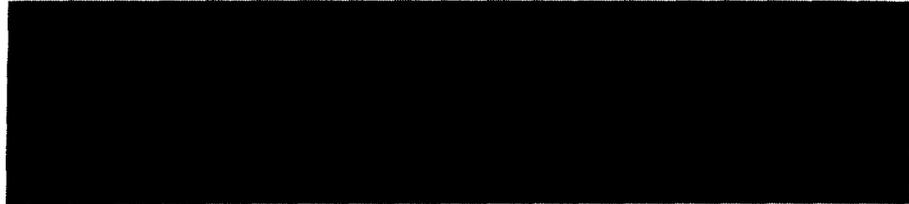
Shaq  
unanimous  
selected  
to  
All-NBA  
first  
team

Davenport  
upset  
in  
French  
Open  
first  
round

**RELATED SITES:**

- [America Online, Inc.](#)
- [Hagens Berman - Attorneys at Law](#)
- [Class Action Lawsuits Filed Against America Online](#)

**Note: Pages will open in a new browser window**  
*External sites are not endorsed by CNN Interactive.*



[More](#)  
[witnesses](#)  
[fail](#)  
[to](#)  
[call](#)  
[Lewis](#)  
[an](#)  
[aggressor](#)

[\(MORE\)](#)

[→ All](#)  
[Scoreboards](#)

[WEATHER](#)

[Enter your](#)  
  
[Click here](#)  
[States or](#)

[WORLD](#)

[Ethiopia](#)  
[declares](#)  
[Horn](#)  
[of](#)  
[Africa](#)  
[war](#)  
[over](#)

[U.S.](#)

[Oregon](#)  
[adoption](#)  
[records](#)  
[open](#)  
[after](#)  
[lengthy](#)  
[legal](#)  
[fight](#)



# CNN.com U.S. News

CNN Sites

**MAINPAGE**  
**WORLD**

- WEATHER**
- BUSINESS**
- SPORTS**
- TECHNOLOGY**
- SPACE**
- HEALTH**
- ENTERTAINMENT**
- POLITICS**
- LAW**
- TRAVEL**
- FOOD**
- ARTS & STYLE**
- BOOKS**
- NATURE**
- IN-DEPTH**
- ANALYSIS**
- LOCAL**

myCNN  
[Headline News brief](#)  
[news quiz](#)  
[daily almanac](#)

[video](#)  
[video archive](#)  
[audio](#)  
[multimedia showcase](#)  
[more services](#)

Subscribe to one of our news e-mail lists.  
 Enter your address:

Or:  
[Get a free e-mail account](#)

[message boards](#)  
[chat](#)  
[feedback](#)

myCNN.com **CNN**  
 allpolitics **CNNfn**

- [AsiaNow](#)
- [En Espa-ol](#)
- [Em Portugu's](#)
- [Svenska](#)
- [Norge](#)
- [Danmark](#)
- [Italian](#)

## ABC wins cable battle; will it win the war?

May 3, 2000  
 Web posted at: 10:13 AM EDT (1413 GMT)

By Matthew Diebel

([TIME.com](#)) -- The ultimate victor, if there is one, in the battle between Time Warner and Disney/ABC over cable access is yet to be declared. For the moment, though, the winner appears to be ABC, which, after being excluded from Time Warner's cable operations for more than 36 hours, was reinstated on Tuesday afternoon. Time Warner, under pressure from a Federal Communications Commission demanding fast answers and from angry viewers demanding the return of Regis Philbin et al., put ABC back on its TV-top boxes and agreed to keep negotiating at least until a July deadline. ABC gets to keep access to 3.5 million households during the important sweeps period, when local advertising rates are set; Time Warner executives, meanwhile, get to work on coming up with a strategy to deal with networks demanding ever-higher fees for their programming.

But that's not all, folks. Apart from the fees spat at the heart of the current dispute, both parties will need to tackle the constantly changing conditions in the cable TV market. The nation's cable operations -- essentially government-sanctioned monopolies -- are facing both negative and positive forces brought on by changes in technology. On the one hand, they are increasingly likely to lose their only-game-in-town status to satellite services. On the other, they stand to benefit from increasing use by Internet customers drawn to their high-speed connections. The latter is not a point lost on Disney, which apart from its TV and movie holdings has considerable aspirations to be an Internet player. During the dispute, Disney was quick to point out its concern that Time Warner's pending merger with Internet leader AOL has the potential to create a barrier to non-AOL Time Warner companies interested in participating in burgeoning Internet and interactive TV technology. So Disney, with an eye on the future, is said to want assurances from Time Warner (which, by the way, owns [TIME.com](#)) that no such favoritism is on the horizon. Time Warner, according to the New York Times, deems such a demand unacceptable, especially because it is unclear what direction the still-emerging interactive television technology will take. We have a suggestion: Regis could be asking if we want to e-mail a friend....

Copyright © 2000 Time Inc.



**RELATED**  
[TheStreet.com](#)  
[Time Warner Reconnects ABC Under Temporary Truce](#)

CNN.com [CNNSI.com](#)  
[CNNfn.com](#) The Web

CNN.com NewsNet

CNN Sites

CNN.com

Find

**U.S.**  
TOP STORIES

[Winds fanning New Mexico inferno expected to die down](#)

[Hot dog! Wiener makes Michigan man a winner](#)

[Clinton dispatches Jesse Jackson to Sierra Leone](#)

[Tornadoes strike Iowa, Kansas](#)

[Joint operating deal ends 100-year circulation war between Denver papers](#)

[Elian Gonzalez spurs interest in international custody cases](#)

(MORE)

**CNN.com**  
TOP STORIES

[Hot dog! Wiener makes Michigan man a winner](#)

[Richard Petty's grandson Adam killed in New Hampshire crash](#)

[Winds fanning New Mexico inferno expected to die down](#)

[Sri Lankan rebels call on civilians to evacuate Jaffna](#)

(MORE)

**CNNfn**  
BUSINESS

[Wall St. grinds higher](#)

[U.S. wholesale prices dip](#)

[WPP buys Young & Rubicam](#)

(MORE)

MARKETS 4:00pm ET, 5/12

<a href="#">DJIA</a>	↑ 65.80	10611.70
<a href="#">NAS</a>	↑ 30.45	3530.03
<a href="#">S&amp;P</a>	↑ 12.60	1420.41

**CNN Sports Illustrated**



[InternetNews.com](http://InternetNews.com)

## ISP News

---

### ISP Angered Over Time Warner Ad Policies

Pamela Parker, [InternetNews.com](http://InternetNews.com) Associate Editor

February 9, 2000

[ISP News Archives](#)

New York-based [GiSCO](#) is raising a stink after having been turned away from buying TV advertising on [Time Warner Inc. \(TWX\)](#) cable systems in its region because it wasn't allowed to advertise in areas where the media giant is rolling out the high-speed [Road Runner](#) service.

Time Warner says it's not a corporate policy, but that regional offices are free to reject such advertising.

"We typically do not accept advertising from companies that offer competing products," says Michael Luftman, vice president of corporate communications for Time Warner Cable. Luftman noted that you're unlikely to see, for example, advertisements for satellite dishes on Time Warner cable systems.

The policy raises big questions about the future, since [America Online \(AOL\)](#), the nation's biggest ISP, has agreed to acquire Time Warner. The deal would effectively give Time Warner an Internet access business in every market, making every other ISP a competitor.

"We first learned of the policy against ISP advertising when we attempted to purchase ad spots in the Syracuse, New York, Market in the fall of 1999. Time Warner refused to run our ads in that market because Road Runner is being offered there," says Paul Barton, president and chief executive officer of GiSCO.

GiSCO charges that the policy inhibits fair competition in the market for Internet service providers.

National ISPs like [EarthLink \(ELNKD\)](#) and [MSN \(MSFT\)](#) are apparently not having the troubles that GiSCO is encountering, evidently because they place their ads through advertising agencies. Or it could be because they, seeking national buys, can deal directly with the cable networks rather than the regional Time Warner cable systems.

The advertising policy may actually become more to GiSCO's liking as the acquisition by AOL comes to fruition, say Time Warner officials. The merged company is already committed to allowing open access to its system, AOL being a founding member of the [openNET coalition](#). That means other ISPs would be able to offer access through Time Warner's cable wires, so, perhaps, every regional office would take advertising from these ISPs, as well. Decisions on these matters are still being worked out.

Copyright 2000 internet.com Corp.  
All Rights Reserved. [Legal Notices](#), [Reprints](#).

<http://www.internet.com>



ISP-Planet

Sponsored by Sprint

Sprint Internet  
Collaboration Center

Meet virtually  
face to face.



**Orbits**

- [Notable Quotes](#)
- [Best of the Lists](#)
- [Business](#)
- [CLEC-Planet](#)
- [Equipment](#)
- [Marketing](#)
- [Market Research](#)
- [News](#)
- [Politics](#)
- [Profiles](#)
- [Resources](#)
- [Technology](#)
- [Value Added Services](#)

Search internet.com

**Columnists**

- [Kevin Beauchamp](#)  
on Marketing
- [Gery Blackwell](#)  
on VoIP & Wireless
- [Patricia Fusco](#)  
on ISP Politics
- [Nelson King](#)  
The Subscriber Side
- [Christopher Knight](#)  
on ISP Business
- [Doug McDonald](#)  
on Marketing
- [Lisa Phifer](#)  
on VPNs, Caching
- [Jim Thompson](#)  
on DSL
- [Jason Zigmont](#)  
on Marketing

- [ISP-Lists](#)
- [ISP Glossary](#)
- [ISP News](#)
- [Boardwatch](#)
- [The List](#)
- [ISPCON](#)
- [HowToSell.net](#)
- [Free Newsletter](#)

- [Internet News](#)
- [Internet Stocks](#)
- [Internet Technology](#)
- [Windows Internet Tech.](#)
- [Linux/Open Source](#)
- [Web Developer](#)
- [E-Commerce/Marketing](#)
- [ISP Resources](#)
- [Downloads](#)
- [Internet Resources](#)

JAN ✓ FEB ✓ MAR APR MAY JUN JUL

**The Most Comprehensive List of Internet Events on the Web!**

ISP Business

**Time Warner Denies Advertising To Regional ISPs**

If you were in any doubt as to the effect of huge cable monopolies on Internet service competition, the experience of one Time Warner 'competitor' should help clarify the picture.

by **Beth Conlon**

Director of Marketing and Communications, [GiSCO](#)  
courtesy of [HowToSell.net](#)

The Time Warner merger is not yet complete, yet regional ISPs are already being affected by the media giant's unfair advertising policies. GiSCO, an ISP based in Northern New York, which serves 22 states across the U.S. has been denied the opportunity to advertise on Time Warner cable. An established T-W advertising client, GiSCO was told in November that its ads would no longer be welcome on cable networks carried by Time Warner.

**What's going on?**

Road Runner, Time Warner's cable Internet product, is just being rolled out in Northern New York, and according to Time Warner: ISPs will be permitted to run ads promoting their Internet service only until Road Runner becomes available. Time Warner has told GiSCO that its ads will be barred from Time Warner Cable's networks as of April 1, 2000. Once Road Runner is available Time Warner will not allow GiSCO or any other ISP run ads on cable in the areas served by Road Runner.

Actually, GiSCO has already been denied ad spots in the Syracuse Market. "We first learned of the policy against ISP advertising when we attempted to purchase ad spots in the Syracuse, NY Market in the fall on 1999. Time Warner refused to run our ads in that market because Road Runner is being offered there," said Paul Barton, President and CEO of GiSCO.

**Customer one day; competitor the next**

GiSCO contacted the regional Time Warner office in November 2000 to contest this policy. Time Warner representative Steve Myron confirmed and upheld the policy, stating that GiSCO would be unable to advertise in areas where Road Runner was available because "GiSCO is a competitor of Road Runner, and consequently a competitor of Time Warner." Myron said ISPs like GiSCO would be able to run ads only until the territories they are advertising in are equipped with Road Runner. Once Road Runner becomes available GiSCO's and all other ISPs' ads would have to be discontinued.

National ISPs such as AOL, MSN, EarthLink, are able to circumvent this policy by placing their ads through national advertising agencies. According to Myron, Time Warner can't stop ISPs represented by ad agencies—but would if it could. He added that it was "perfectly legal for Time Warner to refuse GiSCO's advertising."

**Different strokes . . .**

GiSCO is currently running advertisements with two other cable companies, [Falcon Cable](#) and [Adelphia Cable](#). GiSCO runs the ads in the northern regions of New York and Vermont. Neither Adelphia nor Falcon has policies against ISPs advertising on their networks. Time Warner is the only company GiSCO has encountered which currently has a policy in place that will end advertising rights for ISPs.

Adelphia currently offers a cable Internet product in some areas of the market where GiSCO's ads for Internet Service run, and GiSCO is running ads at this time. According to GiSCO's Paul Barton, "Our representative at Adelphia has not indicated that we will be denied advertising with them at any time. The same is true for Falcon Cable." Although cable Internet products are not yet available in all the regions in which GiSCO advertises, "we are not aware of any policy that will prohibit us from advertising once cable Internet service is available," Barton said.

GiSCO finds Time Warner's policy unfair and believes that discriminatory

**ISP-Lists**

E-mail Discussion Lists

- [PSINet Nabs E-Commerce Firm for \\$1.9 Billion](#)
- [Georgia City Offers Free Cable Internet Access](#)
- [Compaq Eyes ISP Market](#)

[more...](#)

Find an ISP Term

**Tired of chasing information about new Internet Technology products & services?**

ISPs	\$2,417
Cable ISPs	\$64,007
Recent Sales	\$1,405

[full listing](#)

Cisco CX-FIP-SM	\$4,500
Cisco NP-1HSSI	\$4,000
Cisco NP-6E	\$2,700

[full price list](#)

**ISP Newsletter**

HTML (daily)  
Text (weekly)

Visit our Newest Orbit Resources

- Cache Review Series  
In-depth coverage of 6 products
- [Quantex WebXL](#)

[Internet Lists International](#)  
[Search internet.com](#)  
[Advertising Info](#)  
[Corporate Info](#)  
[Internet Trade Shows](#)

policies such as these will become more prevalent once the Time Warner/AOL merger is complete. Policies of this kind inhibit competition in the ISP market, and it seems likely to us that other industries will face similar policies as the media giant continues to merge with other corporations.

Beth Conlon  
GiSCO  
1-888-GO-GiSCO

—End

- [InfoLibria DynaCache](#)
- [Compaq TaskSmart](#)
- [CacheFlow 545](#)
- [NetCache C720s](#)
- [Squid 2.3](#)
- [Final Wrap-Up](#)

---

ISP-Planet's Exclusive  
Election 2K Coverage  
Profiles of the major presidential  
candidates' Internet IQs and  
Attitudes.

[Al Gore](#)  
[Steve Forbes](#)  
[John McCain](#)  
[Orrin Hatch](#)  
[George W. Bush](#)  
[Bill Bradley](#)

---

Editor's Choice  
FCC Chariman  
William E. Kennard's  
historic Dec. 16 address  
to the California Cable  
Television Assoc.  
[Broadband Cable:](#)  
[Next Steps](#)

---

[Be a Commerce Partner](#)  
[Software Store](#)  
[Computer Help](#)  
[Register Domains](#)  
[Internet Jobs](#)  
[Map Your Website](#)  
[Rent E-mail Lists](#)  
[Bookstore](#)  
[Press Release dist.](#)  
[Internet Research](#)  
[Venture Capital](#)  
[Web Publishing](#)  
[Build Your Intranet](#)  
[Ask an Expert](#)  
[Get e-Biz Intell.](#)  
[Content for Websites](#)  
[Income for Small Biz](#)  
[Address Verification](#)  
[Build Sticky eStores](#)  
[Advertise a Coupon](#)  
[Promotional Products](#)  
[Accept Credit Cards](#)  
[Download Solutions](#)  
[Create a Web Store](#)  
[fax & vmail for free](#)  
[Hardware Store](#)  
[Track Time & Expenses](#)  
[News to Your Desktop](#)  
[Small Biz Purchasing](#)  
[B2B Directory/Search](#)  
[Freelancers](#)



internet  
advertising  
report

Click here to contact the [Editors of ISP-Planet](#)

Copyright 1999-2000 internet.com Corporation  
All Rights Reserved. [Legal Notices.](#)

<http://www.internet.com>

# Telecommunications



*The task of easing competition into the telecommunications market is extremely difficult, requiring the PUC to predict both technological and economic futures and to constantly assess the results of its decisions to remedy unwanted consequences.*



*The PUC's "road map" for how it will define the telecommunications marketplace has provided needed certainty to market players, but competitors and consumer interests need a detailed plan for how state regulation will be reduced as competition takes hold.*



*The emergence of new technologies and the maturation of competition will require an evolution of policy choices that should be collaboratively derived between the PUC and the Legislature.*

## Keeping the Market's Pace

**Finding 5: The fast-paced dynamics of the telecommunications industry, with its importance to the California economy and the complexity of new public policy issues, is not being adequately overseen by a commission that regulates numerous other essential business sectors.**

**T**he telecommunications revolution is changing the way Californians live, work and play. New services, new technologies and competition for the traditional basic services are progressing at a stunning pace.

These trends create complex policy choices about evolving and dueling public interests. Once made, implementing policy choices can be just as challenging -- given the need to infuse competition into monopolies in ways that are economically sound, legally correct and that satisfy a demanding public.

Because these changes are fast-paced, timeliness is a critical concern. Because PUC's decisions will influence the economic health of the market, the quality of its decision-making is paramount.

And because of the uncertainties of a nascent market, the stability that can be provided by a sound deregulation strategy is important to potential investors. A fundamental prerequisite to achieving this criteria is the time and focus that the Public Utilities Commission can apply to these issues.

## ***Restructuring as Norm***

**F**or more than a decade, the PUC has been in the process of infusing competition into some aspect of the traditional telephone monopoly. Simultaneously, it has seen the birth of new telecommunications services that were never monopolies, and the PUC instituted economic regulation as a means of encouraging competition. The PUC, in its Vision 2000 process described these evolutionary trends:

*The traditional monopoly of telephone companies has now been breached by competing firms in virtually all aspects of that industry. Through a combination of rapid decline in the cost of providing basic telecommunications services and the emergence of markets for high-value new services, virtually all of the natural monopoly aspects of telephony are evaporating.<sup>(64)</sup>*

These trends are challenging the PUC's traditional regulatory framework in three ways:

**1. Expanding Markets.** Traditional and technological distinctions between services are rapidly eroding. As a result of digital and fiber optic technologies, the commonalities between telephone, cable and home PC/Internet services are increasingly strong. The PUC has traditionally not had jurisdiction over all of these market players and its role in regulating new industries spawned under the color of competition is unclear. The number of market players is rapidly increasing, as well. In the last 15 years the telecommunications companies within the PUC's jurisdiction have increased from 75 to more than 400, competition has not even begun for local telephone service and cable companies are still gearing up for entry into the telecommunications market.

**2. Mixed Markets.** The PUC has struggled to fairly regulate traditional monopoly providers, while gradually opening markets to competition and providing some oversight of new entrants. Pacific Bell, like regional bell companies across the country, has complained that state regulators have not even-handedly accomplished this task. The result is essentially a dual regulatory scheme that is vulnerable to criticism that competitors are treated unevenly.

**3. Regulatory Manipulation.** The PUC's rules and the timing of market changes can significantly influence which companies will succeed and which will fail. As a result, the PUC's proceedings have become the venue for fierce competition among market players, each seeking to use the process to advance its strategy or hinder the competition. In a recent cost study analysis, the new competitors alleged that Pacific Bell was gaming the analysis in order to give itself advantage. After laborious review, the PUC decided that for the most part Pacific Bell had assigned costs correctly -- but that the incumbent did make errors in its favor equal to several hundred million dollars in potential revenue.

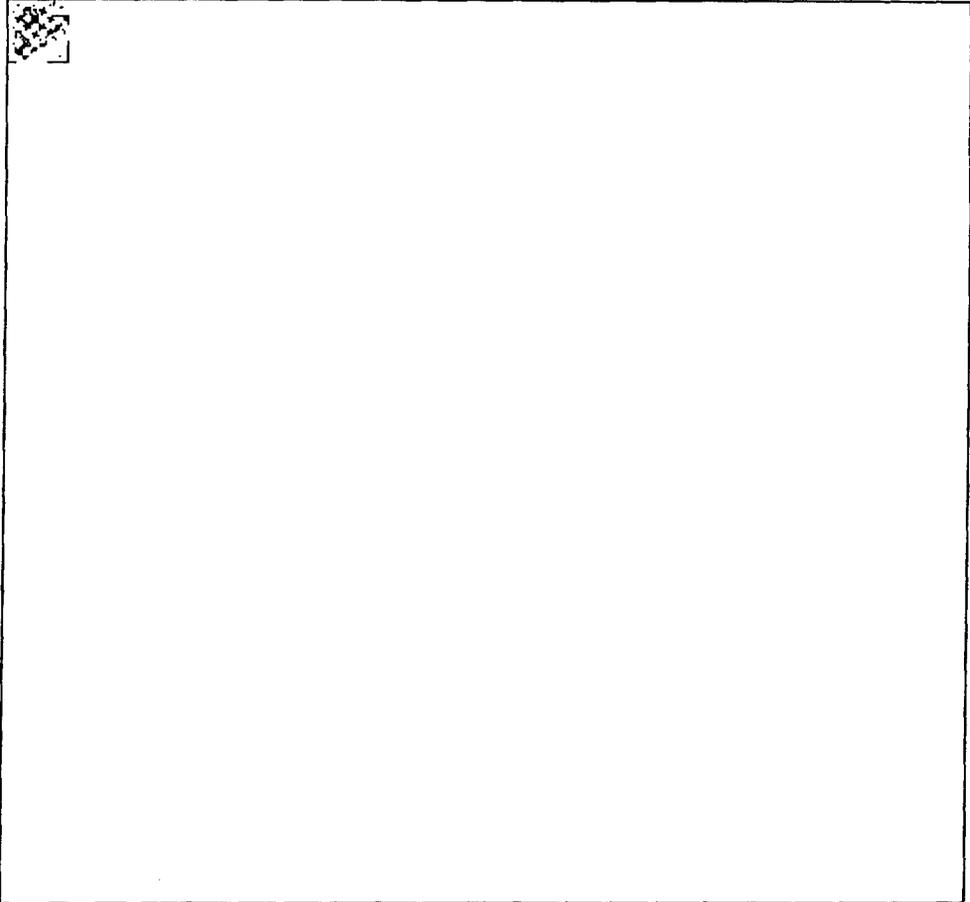
Congress formally acknowledged the evolution of technologies and the need for regulatory change with the passage of the Telecommunications Act of 1996. The act, asserting that more competition was the solution to existing market power, allows for cable television, long distance, cellular and local telephone companies to enter all other aspects of the market. AT&T, in its testimony to the Little Hoover Commission, said the law requires the PUC to take a leadership role to encourage a well-functioning market:

*Rather than waiting for technological change to eliminate observed market power, the Commission, in concert with the Federal Communications Commission and the U.S. Department of Justice, must design and implement new regulatory structures intended to introduce competition to the last market still oppressed by market power, the local exchange market... These are critical responsibilities. Get it wrong and the existing benefits of competition in the long distance market will be lost if the local companies enter the long*

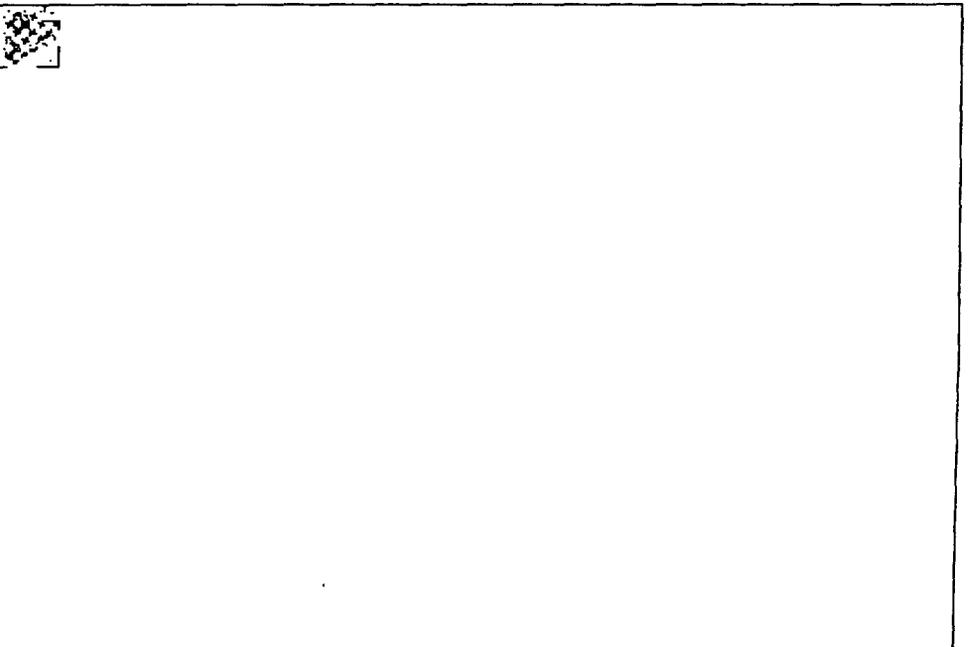
*distance market before competition controls their market power. The commission must be active in its new roles and it must rely on its institutional expertise. The Commission cannot accept a reduced role, not sit on the sidelines.*<sup>(65)</sup>

The Federal Communications Commission (FCC) in the summer of 1996 released a 700-page ruling to guide the state utility commissions through this transition to competition.

But even before the federal act was passed, the PUC was responding to these trends with complicated proceedings intended to create an economic and regulatory foundation for competition whenever technology allowed more than one provider and consumer choice. At the same time, it established regulations intended to control the potential market power abuses of incumbent players and prevent portions of the network from returning to monopoly status. Beyond the restructuring of monopolies,



the overall market trends have impacted virtually all of the PUC's telecommunications work -- complicating even routine issues, such as creating new area codes. In its recent designations of new area codes in the Bay Area, Southern California and Sacramento Valley -- largely in response to demand created for new numbers by fax machines, cellular telephones and modems -- the PUC traded convenience to existing phone companies for a level playing field for future competitors.<sup>(66)</sup>



In the new regulatory world, old issues have to be revisited. The State has a long-standing policy to subsidize rural areas and the most basic telephone services so all residents can have access to telephones. But maintaining that policy in competitive markets -- and expanding access to high technology uses, as required by the 1996 federal law -- will require periodically recrafting the

mechanisms for achieving those policies and rebalancing competing public interests. Similarly, the State has a long-held policy to protect the privacy of telephone users, but the development of Caller ID and other services requires reconsidering those policies.

PUC managers in a variety of roles -- advisory and compliance, ratepayer advocacy, safety and enforcement and administrative law judges -- all said that their workload has increased significantly during this protracted transition, as they attempted to design and implement new rules, deal with more participants, and respond to new consumer complaints. As technically complicated

or politically difficult as some of these decisions can be, the long-term economic importance of timely, correct and consistent decisions are obvious to all of the participants -- and concern that the PUC cannot satisfy those needs without some changes is growing among many of them. GTE, a local phone monopoly aggressively pursuing those other services, characterized the concern:

*The timely availability of state-of-the-art telecommunications services is a key element in the attractiveness of the State as a place to retain existing jobs as well as locate new jobs. Absent dramatic change in the current regulatory process, defined when markets were not competitive, can slow delivery of new services negatively impact the competitiveness of business in the State, especially as the utility markets become competitive. (67)*

## ***The Need for Dramatic Change***

**T**he regulatory issues before the PUC are complex and there is often more than one right answer.

However, testimony to the Little Hoover Commission and analysis conducted in academic and other research forums indicate that the PUC needs to improve the timeliness with which it makes decisions and more fully assess the consequences of decisions once it makes them.

Timeliness. The single greatest complaint made against the PUC by telecommunications interests is that it takes too long to gather information, deliberate on the options and make a decision.

This is not surprising, given the complexities involved and put in the context of the PUC's traditional workload. Telecommunications comprises only about one quarter of the proceedings before the PUC. And as complicated as the telecommunications issues can be, the PUC has dedicated much of the last three years to pioneering electricity restructuring and remaking its own internal organization. Testimony from Pacific Bell described the consequence this workload has on other industries regulated by the PUC:

*Commissioners must divide their focus among a daunting range of oversight responsibilities and workload for five disparate industries. Some of the industries are further along the progression toward open markets and ultimately deregulation than others. The divided attention may inadvertently slow progress.* (68)

The Public Utilities Commission takes so long to decide these cases that one telephone provider proposed that the PUC be held to a two-year statutory deadline for making decisions. Two years, in the eyes of this long-time PUC regulatee, would be considered major progress.

One cellular telephone provider complained it took the Public Utilities Commission 16 months to review the construction standards that were designed to effectively get the PUC out of the business of reviewing and approving every cellular tower site. The Open Network Architecture Proceeding was opened in 1993 and is not expected to be completed for the large companies until 1997.

Roseville Telephone, a small company that serves a Sacramento suburb and is fearful of losing customers to AT&T, GTE, Pacific Bell and other giants, said it took the Public Utilities Commission more than a year to review its request to establish a holding company that the company needed to prepare for competition.

Pacific Bell testified that the Public Utilities Commission takes months to make decisions that market players need answers to quickly: "New product introductions and changes to our tariffs take months of regulatory approval with processes that also allow competitors to needlessly delay approvals."

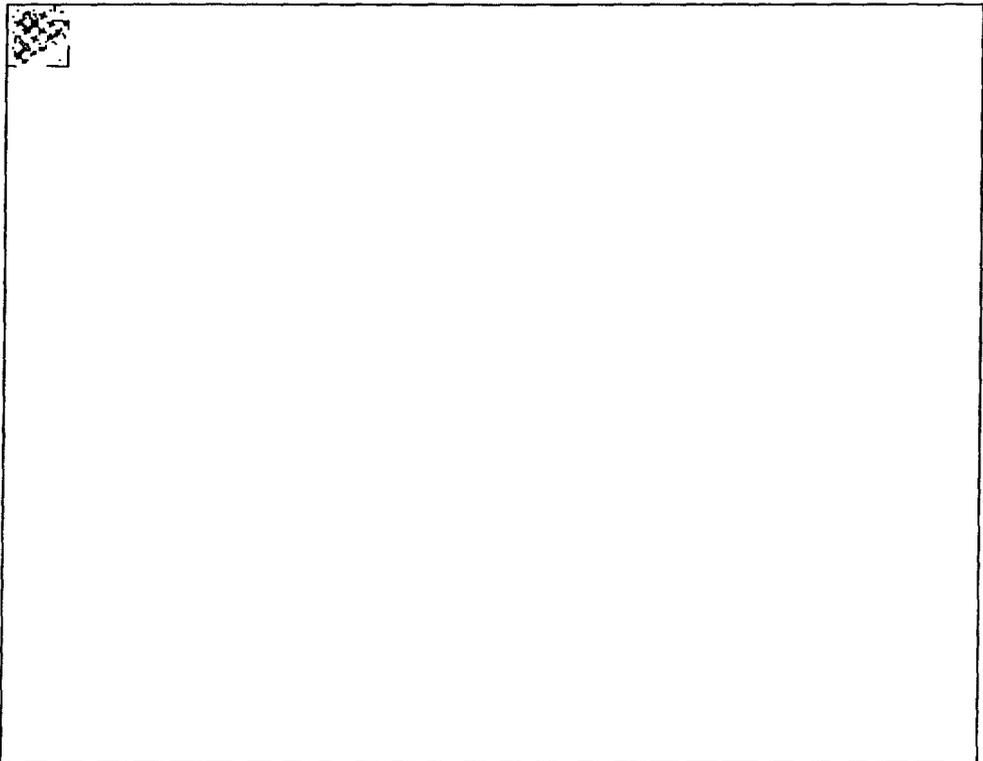
The Legislature, in the PUC reform bill enacted in 1996, responded to these complaints by declaring its intent that the PUC decide cases within 18 months of being opened. It placed a statutory deadline of 12 months for the resolution of adjudicatory cases. The law also requires that the PUC to make a final decision within 60 days of a proposed decision being released -- allowing for the Commission to extend that deadline in "extraordinary circumstances."

During the legislative debate, PUC officials argued that a deadline of any sort would tie their hands in making the best decision possible. And in other cases

where the Legislature has imposed decision-making deadlines, such as the Permit Streamlining Act, the restrictions have not proven to result in high-quality and timely decisions. Still, the deadline provides a constant reminder of the importance of making timely decisions.

Quality of decision making. There is also evidence that in the PUC's sincere efforts to make timely decisions, it often either makes fundamental errors or lacks the focus or resources to assess its decisions and modify its regulatory strategy when it is not having desirable effects.

One of the best examples of this problem is the controversy that erupted over the Implementation Rate



Design proceeding. In that case, the Public Utilities Commission was setting rules for competition for toll calls within local calling areas. After months of hearings and the development of an exhaustive factual record, overburdened Commissioners turned to one of the market players to draft an alternative order. This breach of procedures and public faith created an enormous outcry among consumer and industry groups, fueled criticism that the Public Utilities Commission is too close to the incumbent utilities and delayed for more than a year a critical decision in the path to competition.<sup>(69)</sup>

The procedural failings in other decisions are not as blatant. And to be fair to the Public Utilities Commission, decisions of such contentious issues will always have their critics. Still, there is a pattern of evidence that indicates that more attention could yield decisions that more accurately reflected or surgically accomplished what the Public Utilities Commission has set out to do.

For example, the PUC's New Regulatory Framework calls for keeping separate expenses associated with monopolistic services and those for competitive services. But critics are concerned that the PUC has been too willing to let ratepayers pay for investments that will enable the incumbents to get an even larger head start on potential competitors -- expenses that should be paid for by shareholders, who will benefit from the profits earned in a contested market.

In addition to the effect on rates, the critics argue, the PUC is undermining its own goals by allowing the monopolies to enhance their incumbent position to preserve their market share. The Center for Public Interest Law testified:

*The PUC has exacerbated these problems by moving from traditional "fair rate of return" maximum rate regulation to an allegedly "incentive" based system. Translated, it allows the monopoly power sector to earn above fair market rates of return based on formulae which may, or may not, have anything to do with enhanced efficiency. The failure to police excessive profits from the monopoly side only exacerbates inevitable abuses flowing from the cross subsidies, subtle tie-ins, and other traditional anti-trust violative practices.<sup>(70)</sup>*

Some market players believe the PUC has done a good job of making consistent decisions in an uncertain market -- making California a good place for expanding companies and investors to put their talents and treasures. At the same time, they are concerned about the PUC's ability to sustain that record as competition in all utilities accelerates.

## ***Finding the Time and Focus***

**O**ver the last two decades, the Public Utilities Commission has been faced with increasingly complex policy issues that have made it virtually impossible for the five appointed commissioners to be integrally involved in all of the important decisions before the Commission. The energy, economic and environmental crises of the 1970s and early 1980s greatly complicated the task of regulating utilities. The gradual push toward deregulation of the transportation industry and competition among the utility providers has further burdened the PUC.

The accumulated consequence of these trends has been an enormous workload that has required an increasing delegation of duties and increasing reliance on staff to make policy-level decisions. In cases where the staff has worked effectively, the Public Utilities Commission has been vulnerable to criticism that unaccountable civil servants have been making decisions that should be



made by politically appointed commissioners. In cases where the decision-making process has not worked smoothly, the Commissioners have been criticized for not following the record, or not providing equal access to all parties or not acting swiftly enough.

In reviewing PUC procedures for the Legislature, an advisory group in 1994 recommended ways the Commission could better manage its caseload.<sup>(71)</sup> But one former PUC Commissioner on the Advisory Group concluded "the problem confronting the Commission is jurisdictional overload ... too much to do, too little time to do it." The former Commissioner said the dilemma will worsen as long as the PUC tries to arbitrate competition -- a function it was not designed to perform:

*Regulating during a time of transitional competition is tough under any circumstances, but may become almost impossible to do "right" without rethinking the extent of the PUC's agenda.... In my opinion, reform without jurisdictional modification will not be enough in the long run.<sup>(72)</sup>*

During the PUC's Vision 2000 process, Commissioners and their staff struggled with how to perform all of the functions the PUC wants to perform and at the same time comply with pleas from participants for greater commissioner involvement in proceedings. One Commissioner, during public deliberations of the dilemma, described the pressures:

*I am frightened beyond belief that someone thinks that I'm going to sit through every evidentiary hearing, sit through every workshop, sit through every prehearing conference, that me or my adviser is going to sit down and draft a report or proposed decision or what. I simply don't understand the process, but I have tried to participate in prehearing conferences and every commissioner here can double in spades my experience that it's impossible when three are scheduled at the same time in different hearing rooms. You just can't do it. ... I measured today my written materials that I owe the parties an obligation to read. The folder for the last three days was somewhere between six inches and a foot thick. I'm not telling anybody news when I tell them that I don't read every word. No one reads every word.<sup>(73)</sup>*

The Legislature addressed this problem in 1996 by enacting SB 960. Lawmakers said their intent was "to ensure that members of the Public Utilities Commission shall be integrally and directly involved in and accountable for the Commission's decisions," and as a result improve "the quality and timeliness of Commission decisions."

In the case of legislative-like decisions -- the ones in which competition-related issues are addressed -- the law requires that assigned Commissioners be present in every formal hearing and prepare the proposed decision. But the present workload will make that requirement difficult if not impossible to meet.

The incumbent telecommunication providers and some of their potential competitors testified that a paramount concern was keeping the PUC focused on regulatory decisions needed to allow for vigorous and fair competition -- and not distracted by major organizational changes. They were also concerned that unless some significant changes were made, the PUC could not make hard



decisions in a timely manner, let alone assess decisions after implementation has began and make any needed modifications.

Pacific Bell, for instance testified that there may be some saving in having one commission oversee multiple industries: primarily the efficiency and flexibility that comes with a consolidation of resources. The telephone utility also cited disadvantages to keeping multi-industry oversight intact -- including the possibility that the PUC's workload may slow the restructuring process in energy and telecommunications.

That does not leave the State or the PUC many options. No other state agency has the expertise to effect the regulatory changes required, and the only way to allow the Public Utilities Commission to concentrate on telecommunications is to focus its attention on those issues.

### ***Recommendations***

***Recommendation 5: The Governor and the Legislature should enact Legislation directing the PUC -- after the development of competitive energy markets -- to focus its attention solely on the development of competitive telecommunications markets by monitoring for possible market power abuses, overseeing telecommunications public policy programs such as universal service and identifying unfair business practices.***

A number of policy reviews in recent years have found that the PUC has too many responsibilities to adequately fulfill them all. Changes in technologies and emerging competitive utility markets have increased the workload. Successful oversight of the telecommunications revolution will rest in large part on the time and focus the PUC can bring to the job.



WEBCONFERENCING.  
WEBCASTING.  
TALKING EMAIL.



o Ac info

# LAW NEWS NETWORK.com

- o Home
- o Practice Central
- o Open Court
- o Discussion
- o Legal NewsWire
- o Attorney Jobs
- o Law Firm Central
- o Archives
- o About This Site
- o Letters
- o Contact Us

law news network is now part of law.com

## Keep the Net Wide Open

### AOL-Time Warner merger shows need for access requirements

Harold Feld  
Legal Times  
January 18, 2000

law news network is now part of law.com

After announcing their merger last week, America Online Inc. and Time Warner Inc. initially acknowledged the importance of keeping the Internet open and diverse.

The companies' public vow to open their network to competing Internet service providers was a marked shift for Time Warner, which previously had resisted any such move. If any corporate chief executive officer understands the importance of openness to the continued health of the Internet, it is AOL's Steve Case, who has advocated open access consistently since the issue first appeared.

But with the stakes this high, voluntary commitments -- unenforceable and subject to change without notice -- are not enough. Without federal rules requiring nondiscrimination of content and service provider, the merger will leave just a few companies as "media gatekeepers," able to control what the public sees, hears, and says in the emerging high-speed Internet world.

Indeed, as the past few days have shown, it is unclear whether the AOL-Time Warner behemoth will successfully resist the urge to exploit Time Warner's monopoly power in its cable franchise areas. The fact that, within less than 24 hours after the companies' initial commitment to ISP choice, speculation had run through the media about whether AOL will back off its commitment to open access shows the dangers of relying on "voluntary commitments."

The Federal Communications Commission should immediately begin a proceeding to mandate that cable television operators share access to their systems with competing ISPs and not discriminate against Internet offerings based on provider.

### LAW NEWS NETWORK HIGHLIGHTS

#### Penalty Phase

January 21, 2000  
Trying to speed up Death Row appeals, Florida lawmakers may have made matters worse.

[Full Story](#)

#### the Supreme Court Report

#### High Court Might Burst Colorado's Bubble

January 20, 2000  
The Supreme Court appeared ready to strike a "bubble zone" law around abortion clinics.

[Full Story](#)

#### Practice Central

#### Beyond the Valley

January 21, 2000  
Who's challenging Silicon Valley for Tech-Law Biz? Check where the technology lawyers are flocking.

[Visit the Tech Law Center](#)

#### Union's Suit Opposing Workfare OK'd

January 21, 2000  
A union's lawsuit to stop NY City from placing workfare recipients in union jobs won't be dismissed.

[Visit the Employment Law Center](#)

content, or affiliation.

FCC rules now prevent those who control the underlying networks of the first generation Internet -- i.e., the phone companies -- from discriminating against other carriers or interfering with the transmission of content. This mandatory open access policy has circumscribed the monopoly power of the telcos, ensuring that no entity or corporate alliance could control the distribution of content or veto the introduction of new services.

As a result, anyone with a telephone can take part in any online discussion or visit any Web site. Any entrepreneur can lease lines and provide Internet service without securing approval from the phone company -- even where the phone company runs a rival business. This has spawned fierce competition not merely within the market for goods and services, but within the marketplace of ideas.

This competition helps drive growth and innovation. Because the Internet provides a forum for expression and interactivity not found elsewhere, it draws more people online. This, in turn, increases the exchange of ideas and demand for online goods and services. Citizens may speak, debate, and find news and viewpoints that they otherwise would not receive. At the same time, this primordial soup of low barriers to entry, open access to potential markets, and dynamic consumer demand continues to spawn new businesses.

Yet the AOL-Time Warner merger -- coupled with the growing popularity of broadband Internet service over cable lines (many times faster than the dial-up "narrowband" service provided by conventional phone wires) -- threatens this unrestrained expression and innovation. Absent open access, this new giant will face little genuine high-speed Internet competition among the 13 million cable subscribers served by Time Warner franchises.

**TANGLED WEB**

The AOL-Time Warner deal combines control of the distribution (Internet access points and the future broadband network structure) and highly desirable Internet content offerings. AOL's 22 million subscribers worldwide make it the most popular entry point for the Internet in the world. No other ISP even comes close. AOL has already forged relationships with the major noncable broadband providers, and the Time Warner deal provides AOL with access to a cable network for broadband distribution second only to AT&T's. Together, AOL and Time Warner will control the most popular news, entertainment, and overall content online and offline - ranging from the television teen hit "Buffy the Vampire Slayer," to news services like CNN, to e-commerce services like MapQuest and Travelocity. This threat to competition is compounded by the overlapping webs of joint ventures and partnerships that AOL and Time Warner already have with almost every

**Microsoft Cannot Compel Joinder in Infringement Suit**

January 21, 2000

The patent licensee satisfied standing requirement.

Visit the Corporate Law Center

**Florida Fights to Collect Cybertaxes**

January 21, 2000

State faces the loss of \$1 billion a year in revenue as Web shopping explodes.

Visit the IP Law Center



**Lawyer Faces 31 Counts as 'Runner' Case Probe Expands**

January 20, 2000

Testimony by a chiropractor-turned-government-witness results in a second Atlanta lawyer's indictment.

Full Story



major provider of communications, e-commerce, news, and entertainment.

Only mandatory open access, which has proved so successful in fostering the Internet in its first stage of mass development, can preserve its diversity and prosperity in the next stage of high-speed broadband service. While the concentration of content generation and distribution by AOL and Time Warner should make anyone pause, open access at least provides some chance of continued competition and diversity in the marketplace of ideas.

#### **CACHE BAR**

Under the current regulatory regime, nothing prevents the new AOL Time Warner from discriminating against content generated by unaffiliated parties or that represents a view disfavored by the company. Using "caching" and "quality of service" (QoS) techniques, standard tools for alleviating Internet congestion, AOL Time Warner can cause favored content to reach subscribers more quickly or interfere with the transmission of a rival's content.

For example, AOL could cache (i.e., store) CNN locally, so that a broadband subscriber receives it at speeds that allow for video quality indistinguishable from cable reception. By contrast, AOL could use QoS controls to slow the reception of content from an unaffiliated news source, so that it appears to the subscriber as jerky stop-and-go motion and may crash altogether. Such discrimination is invisible to the average subscriber, who will see only that CNN works better than rival sites, and thus will prefer CNN.

The American people should not have to trust that AOL Time Warner will remain sufficiently visionary to resist the temptation for short-term gain. Only an FCC rule requiring open access can adequately protect consumers from this concentration of content combined with control of distribution.

Just as the synergies of openness drive diversity and growth, the synergies of corporate control drive censorship and stifle innovation. Content providers will self-censor rather than offend those with the keys to the Internet kingdom. Companies like AOL Time Warner and AT&T could extort equity shares or fees from potential content providers. Rather than offering new services to the public, the media gatekeepers will most likely prevent the development of rival technologies and services that threaten their core markets. The history of the cable industry from its deregulation in 1984 to the passage of the Cable Act of 1992 demonstrates precisely how free expression and diversity can be undermined.

In the absence of open access, a subscriber cannot switch to another ISP. Without such a requirement, neither the frustrated speaker nor the frustrated listener has any legal recourse;

both are at the mercy of their cable ISP.

Given the enormous temptation to discriminate in favor of proprietary content, we cannot rely on the unenforceable assurance of AOL and Time Warner that they will never engage in such behavior -- particularly when the cable companies in question have a track record of abusing their monopoly power over the wire to the home.

The First Amendment and the Internet need more than just hopeful rhetoric. They need better protection than corporate promises, subject to change without notice based on quarterly earnings reports. Only mandatory open access can dampen the dangers posed by the AOL-Time Warner merger and ensure the free flow of information and innovation that have made the Internet the driving engine of democracy and commerce it is today.

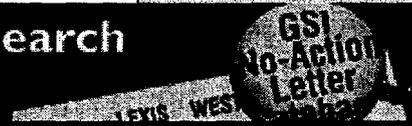
*Harold Feld is associate director of the Media Access Project, a nonprofit public interest firm that represents the public's First Amendment rights.*



Copyright ©2000 NLP IP Company -- American Lawyer Media.  
All rights reserved.

how to  
advertise on  
Law News  
Network

## No-Action Letter Research Made Easy.



## recently on LAW NEWS NETWORK.com

- ▣ Ban on Cameras in Court Ruled Unconstitutional in Diallo Case *Jan 26*
- ▣ Judges 2000: Many Chosen, Few Named *Jan 25*
- ▣ Attorney Retained in Seton Hall Fire; Obstacles to Suits Are Weighed *Jan 24*
- ▣ Florida Fights to Collect Cyber Taxes *Jan 21*
- ▣ Microsoft's 'Other' Case Settles Fast *Jan 20*
- ▣ Justices Visit 'Wal-Mart' *Jan 19*
- ▣ Dueling For the Top Legal Job *Jan 18*

(more items listed in our **Archive**)

Subject: RoadRunner latency problems  
Date: 05/29/2000  
Author: J. Smith <jmsith@nospam.com>

Well its been almost 2 weeks now and the problem still hasnt been resolved yet. I dont know why its taking so long to fix this problem. These type of problems can be corrected within a day or two. 2 weeks is too long. What the hell is up with this bullshit!

Dammit WE WANT SOME ANSWERS!!!

Subject: Re: RoadRunner latency problems  
Date: 05/29/2000  
Author: Konaguy <nuiNOnuSPAM@kona.net.invalid>

Well I know for a fact that the AT&T connection issues apparantly according the person I spoke to about Road Runner being available in Kona shortly won't be resolved until August AT&T told Oceanic apparantly from what I understand.

Because heck I have seen the posts on here and its totally unacceptable. On top of it all the new Kona RR customers will be sharing the same outbound upstream connection as the Oahu RR customers. So Oceanic better fix these connection issues....As a safety net I'm keeping my dial-up account.

Subject: Re: RoadRunner latency problems  
Date: 05/29/2000  
Author: inconnu <dorteeNOdoSPAM@yahoo.com.invalid>

Thats just plain unacceptable.

I've heard some bad things about the Oceanic Road Runner management, and this just serves to continue that sentiment.

So let me get this straight: Performance and latency has been really bad for a couple weeks, nothing is being done to improve the situation, they are blaming the upstream provider, who says nothing can be done for months?

Sounds like poor capacity planning. And I know they have more uplinks than just AT&T, so some smart BGP tweaking could help load balance their traffic a little better. But that's besides the point. With so many customers being affected, I'm surprised this hasn't escalated to upper management. There's always something that can be done. Telecom is rigid and with slow provisioning times, but if there is an emergency at the executive level, then funny how things just happen.

I guess it must not be that bad now with the RR service since I don't hear a lot about it here in this newsgroup, save for a few. Must not be bad enough to escalate internally and start working towards a resolution. (I'm being sarcastic of course)

I understand that the service may be eagerly awaited in Kona and the other neighbor islands, but to launch more areas when the network is in this state is unethical.

Time for some complaints to government officials? Maybe at least if there were open access, then we could choose between different ISPs and backbone providers, if the incumbent cable company ISP doesn't put a priority on service.

On Sat, 20 May 2000 23:46:02 GMT, Dave Christian  
<dchristian@nc.rr.com>

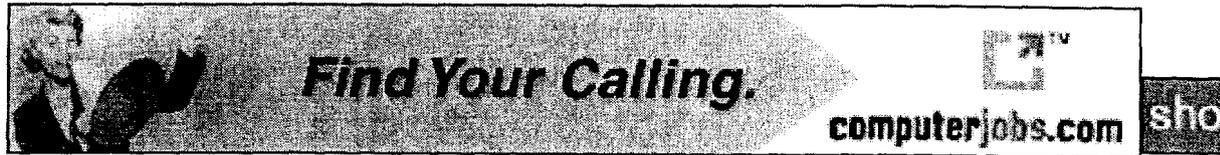
wrote:

>mickeymouse@disney.com says...

>> RR Sucks!!!!

>> What the hell?!!! I can NOT believe how bad RR sucks,  
but then

>> again.... this is the south!!!



Before You Buy

Home >> Discussions >> alt . internet . providers . usa . dsl

>> alt.internet.providers.usa.dsl

DISCUSSIONS SEARCH Power Search

Search input fields

>> Forum: alt.internet.providers.usa.dsl

>> Thread: DSL vs. Cable

>> Message 18 of 1842

MY Save this thread

back to search results

Subject: Re: DSL vs. Cable

Date: 05/23/2000

Author: Aguy <aguytono@mediaone.net>



POST REPLY

<< previous in search · next in search >>

"K.D. Lawrence" <slowhand@tampabay.rr.com> wrote in message

news:z4jW4.300\$m91.1591@typhoon.tampabay.rr.com...

> I wasn't sure what newsgroup to post this to. I'm currently using a cable modem(Road Runner) and the service is awful! I found out that we now have > access to DSL in my area and I'm considering switching over to it. My > problem is that I know nothing about it.LOL

> Is DSL faster or as fast as cable modems? Any problems with DSL that I > should be aware of? Are there any programs I won't be able to use/download > with DSL? I would really appreciate any information about DSL... good or > bad!

DSL is usually more expensive, but many DSL companies guarantee bandwidth, whereas Mediaone tells you a great speed but neglects to mention that you are sharing that speed with all the people in your town. Basically, if you have the money, switch to DSL.

Explore More:

Click here for jobs

POST REPLY

<< previous in search · next in search >>

Subscribe to alt.internet.providers.usa.dsl

Mail this message to a friend

View original Usenet format

Create a custom link to this message from your own Web site

Search Discussions For a more detailed search in Discussions go to Power Search

Search only in: alt.internet.providers.usa.dsl All Deja.com

Search for: Road Runner Cable Access Search discussions