

# COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20004-2401  
TEL 202.662.6000  
FAX 202.662.6291  
WWW.COV.COM

WASHINGTON  
NEW YORK  
LONDON  
BRUSSELS  
SAN FRANCISCO

December 19, 2000

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: ***CS Docket No. 00-30; In the Matter of Applications of America Online, Inc. and Time Warner, Inc. for Transfers of Control Notice of Ex Parte Communication***

Dear Ms. Salas:

This letter provides notice that on December 18, 2000, Marc Berejka and the undersigned, on behalf of Microsoft, and Rick Beckner of Sidley & Austin, on behalf of AT&T, met with Dr. Robert Pepper of the Office of Plans & Policy.

We discussed the importance of interoperability to the future of IM and the need to impose a targeted IM interoperability condition on a combined AOL/Time Warner. We specifically discussed the framework for analysis of IM in the context of the AOL/Time Warner merger, including the nature of the name and presence detection database and how the vertical integration of AOL's IM platform with Time Warner's cable infrastructure and content will enable the combined company to continue to dominate IM. We also discussed the concept of "advanced IM" and explained that this concept has serious conceptual flaws but, at bottom, must include any IM services that AOL offers over the advanced broadband infrastructure of Time Warner's cable systems.

We discussed the merger specific impact of the combination in the context of both narrowband and broadband. We also emphasized that any remedy to the problem of AOL leveraging its dominance of IM to broadband facilities must require AOL to publish (and keep current) its proprietary standard for IM interoperability immediately such that other IM providers can interoperate with no blocking from AOL. Finally, we emphasized how the merger of AOL with Time Warner, unless conditioned by this Commission, will strengthen AOL's dominant position in the IM market and its incentive not to work toward interoperability with other IM providers.

Sincerely,

Gerard J. Waldron

cc: Dr. Robert Pepper, Office of Plans & Policy