

Before the
Federal Communications Commission
Washington, D.C. 20554

2000 DEC 22 P 1:50

In the Matter of)
)
Applications of America Online, Inc.) CS Docket No. 00-30
and Time Warner, Inc. for Transfers of Control)

AMENDED PROTECTIVE ORDER

Adopted: December 7, 2000

Released: December 7, 2000

By the Deputy Chief, Cable Services Bureau:

1. On April 7, 2000, the Bureau entered a Protective Order regarding confidential or proprietary documents submitted by America Online, Inc. (AOL) and Time Warner Inc. (Time Warner).¹ The Protective Order was modified on October 27, 2000.² For the reasons set forth below, we are further modifying the Protective Order to provide that parties other than AOL and Time Warner may submit confidential or proprietary documents in the above-captioned proceeding, and to provide those documents with the same protections as those afforded documents submitted by AOL and Time Warner.

2. In adopting the Protective Order, we stated that the Commission, AOL and Time Warner anticipated that AOL and Time Warner would submit information to the Commission that might contain proprietary or confidential information.³ We adopted the Protective Order to ensure that any such information was afforded adequate protection.⁴ We noted that the Protective Order was identical in all material respects to protective orders adopted in other merger proceedings subject to Commission review.⁵ The Protective Order, as amended, generally permits outside counsel of record who are actively engaged in the conduct of this proceeding to review Stamped Confidential Documents.⁶

3. We recognize that other parties interested in this proceeding ("Other Submitting Parties") may also desire to submit information to the Commission that might contain proprietary or confidential information. In particular, Microsoft Corporation ("Microsoft") has asked to submit certain information which may include highly sensitive material such as future business plans, customer names, usage

¹ Applications of America Online, Inc. and Time Warner, Inc. for Transfers of Control, *Order Adopting Protective Order*, 15 FCC Rcd 6117 (2000).

² Applications of America Online, Inc. and Time Warner, Inc. for Transfers of Control, *Order Amending Protective Order* (Oct. 27, 2000).

³ *Order Adopting Protective Order* at 6117 ¶ 1.

⁴ *Id.* at 6117 ¶ 2.

⁵ *Id.*

⁶ *Order Amending Protective Order* ¶ 5.

patterns, locations, and traffic volumes, to the Commission for its consideration.⁷ Microsoft contends that some of this information is proprietary, confidential, and competition-sensitive and would be harmful to the interested parties if publicly disclosed.⁸ It therefore seeks to amend the Protective Order to allow it to submit Stamped Confidential Documents subject to the same protections as those afforded Stamped Confidential Documents submitted by AOL or Time Warner. We find that without these protections, commenting parties might be unwilling to provide us with relevant information. We find that allowing commenting parties to submit Confidential Documents and Confidential Information subject to the same protections as those afforded AOL and Time Warner would therefore provide a fuller record on which to base our decision in this case, and would thereby serve the public interest. We are therefore further amending the Protective Order to ensure that any such information filed by Other Submitting Parties is afforded adequate protection.

4. Accordingly, IT IS ORDERED that Paragraph 1 of the Protective Order is amended to read as follows:

On February 11, 2000, Time Warner Inc. ("Time Warner") and America Online, Inc. ("AOL") filed joint applications with the Federal Communications Commission (the "Commission") pursuant to Sections 214 and 310(d) of the Communications Act to transfer control of FCC licenses and authorizations held directly or indirectly by Time Warner and AOL to AOL Time Warner Inc. The Commission anticipates that it may seek documents in this proceeding from Time Warner and AOL (individually or collectively, the "Submitting Party") that contain proprietary or confidential information and, therefore, should be subject to a protective order. The Commission also anticipates that other parties interested in this proceeding (individually or collectively, the "Other Submitting Party") may wish to file documents containing proprietary or confidential information that should also be subject to a protective order. Consequently, the Bureau enters this Protective Order to ensure that the documents produced to the Commission and considered by the Submitting Party or Other Submitting Party to be confidential and proprietary are afforded protection. . . .

5. IT IS FURTHER ORDERED that each subsequent paragraph in the Protective Order be amended so that the words "or Other Submitting Party" are added after each reference to a "Submitting Party."

6. IT IS FURTHER ORDERED that the following sentence be added to the end of Paragraph 3 of the Protective Order, *Permissible Disclosure*, as follows:

Each Other Submitting Party shall make available for review its Stamped Confidential Documents at the offices of its outside counsel.

⁷ Microsoft Corporation's Request to Further Amend Protective Order at 1 (filed Dec. 7, 2000).

⁸ *Id.*

7. IT IS FURTHER ORDERED that each person seeking access to any Stamped Confidential Documents filed by an Other Submitting Party on or after December 7, 2000, shall execute the attached Acknowledgment of Confidentiality and follow the procedures outlined in Paragraph 5 of the Protective Order before reviewing or having access to such documents, and shall file the attached Acknowledgment of Confidentiality with the Commission and serve it upon the relevant Other Submitting Party.

8. This Order is issued pursuant to sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), and authority delegated under section 0.321 of the Commission's rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Sherille Ismail
Deputy Chief
Cable Services Bureau

APPENDIX A

ACKNOWLEDGMENT OF CONFIDENTIALITY

I hereby acknowledge that I have received and read a copy of the amended Protective Order in the above-captioned proceeding and that I understand it. I agree that I am bound by this Order and that I shall not disclose or use any Stamped Confidential Documents or any information gained therefrom except as allowed by the Order. By signing this Acknowledgement, I certify that my firm or company has in place procedures to protect against the improper disclosure of Stamped Confidential Documents or any information gained therefrom. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as counsel to a party or other person described in paragraph 3 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the order.

I hereby certify that I am not involved in competitive decision-making as that term is used in paragraph 3 of the Protective Order.

Executed at _____ this ____ day of _____, 2000.

Signature

Title