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January 3, 2001

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: America Online, Inc. 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 America Online, Inc. ("AOL"), submitted herewith pursuant to Section 1.1206(b)(2) of the Commission's rules are an original and one copy of this notice regarding a permitted oral ex parte presentation in the above-referenced proceeding. On January 2, 2001, Geroge Vradenburg III, Senior Vice President, Global and Strategic Policy and Steven N. Teplitz, Vice President, Telecommunications Policy of AOL, along with Richard E. Wiley and the undersigned of Wiley, Rein and Fielding, met with Commissioner Gloria Tristani and William J. Freidman from her office to discuss issues regarding the above-referenced proceeding.

The parties addressed the public benefits resulting from the merger of AOL and Time Warner. Specifically, the parties discussed how a merged AOL Time Warner would deliver improved and expanded content and service; bring entirely new content, services and platforms to the marketplace; lead the way for market-driven implementation of cable open access; and, in turn, spur demand for – and competitive supply of – rival broadband platforms.

The parties also discussed issues regarding instant messaging ("IM"). AOL addressed record evidence clearly demonstrating that: AOL has pioneered the free and widespread availability of IM; IM has not "tipped" (and is not on the verge of "tipping") to AOL; Microsoft, having now bundled its MSN Messenger IM service with its next-generation operating system, is uniquely positioned to boost its already unprecedented growth in this arena; the fact that Time Warner is an owner of cable systems and video content does not render the issue of IM interoperability specific to this merger; and concerns about a possible future marketplace for "advanced IM" services – including

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presumptions about any potentially "essential" inputs for such services, the potential providers of such inputs, and the potential substitutes for such advanced services – remain matters of unsupported, and at best premature, speculation.

AOL noted, in any event, that – to the extent the Commission might deem it appropriate to monitor future developments in IM – the FCC could rely on any number of potential marketplace developments that will serve to confirm that a merged AOL Time Warner will hold no irreversible position in any “market” that encompasses "advanced IM" services, as described in AOL’s December 19, 2000 *ex parte*.

AOL also discussed the Commission’s authority under Section 310(d) of the Communications Act, under which the Commission “weigh[s] the potential public interest *harms of the merger* against the potential public interest benefits to ensure that, on balance, the transfer ...serves the public interest, convenience and necessity.”¹ As the Commission has made clear, where “the merger is not the cause of [an] alleged competitive threat, [] the merger license transfer proceeding [] is not the appropriate forum to address [the] issue.”² Thus, when “issues would remain equally meritorious (or non-meritorious) if the merger were not to occur,... [they] do not provide a basis for conditioning, denying, or designating for hearing any of the requested transfers of licenses and authorizations.”³

¹ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc. to AT&T Corp.*, 15 FCC Rcd 12870, ¶ 8 (2000). (emphasis added)

² *Id.* at ¶ 143

³ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc. to AT&T Corp.*, 14 FCC Rcd 3160, ¶ 96 (1999).

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Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Peter D. Ross

cc: Commissioner Gloria Tristani
William J. Friedman of Commissioner Tristani's Office
Sherille Ismail, Deputy Chief, Cable Services Bureau
James Bird, Assistant General Counsel, Office of General Counsel
Royce Dickens, Deputy Chief, Policy and Rules Division, Cable Services Bureau
Linda Senecal, Cable Services Bureau
International Transcription Services, Inc.