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

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FCC Mail Room

In the Matter of	)	
	)	
Applications for Consent to the	)	
Transfer of Control of Licenses and	)	
Section 214 Authorizations by Time Warner Inc.	)	CS Docket No. 00-30
and America Online, Inc., Transferors, to AOL	)	
Time Warner Inc., Transferee	)	

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ORDER

Adopted: January 6, 2012 **Released: January 9, 2012**

By the Commission:

1. By this Order, we terminate several conditions attached to the Commission's approval of the transfer of control of certain licenses and authorizations that resulted in the merger of Time Warner Inc. ("Time Warner") and America Online, Inc. ("AOL").[1] We take this action in furtherance of our broader efforts to remove unnecessary regulations, based on information Time Warner submitted and information established by Commission staff demonstrating that the rationales underlying the conditions at issue have been eliminated by changed circumstances.[2]

2. At the time of the merger, AOL was the world's largest Internet Service Provider ("ISP").[3] Time Warner was the second largest cable provider in the United States, held one of the world's largest content libraries, and controlled the nation's second largest broadband ISP, Road Runner.[4] In reviewing the proposed merger of AOL and Time Warner, the Commission raised concerns about potential harm to the high-speed Internet access market, including the possibility that AOL Time Warner could use its market power to block access by other ISPs to AOL Time Warner's cable facilities or otherwise

[1] *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, Memorandum Opinion and Order, 16 FCC Rcd 6547 (2001) ("*AOL-Time Warner Merger Order*").

[2] Letter from Paul T. Cappuccio, Executive Vice President and General Counsel, Time Warner Inc., to Marlene H. Dortch, Secretary, FCC, at 2 (Jan. 6, 2010) ("Time Warner Letter"). Throughout this Order, we refer to the merged firm as AOL Time Warner. However, the company has since changed its name to Time Warner. *See id.*

[3] *AOL-Time Warner Merger Order*, 16 FCC Rcd at 6551-52, ¶¶ 8-10. AOL provided "narrowband" Internet access service over traditional telephone lines, and it served more than 26 million subscribers. *Id.* at 6551, 6557-58, ¶¶ 8, 28. AOL also had the largest share of subscribers to instant messaging ("IM") services. *Id.* at 6552, ¶ 10. The Commission imposed a condition intended to mitigate potential harms regarding IM service but later terminated the condition after determining that it was no longer necessary in the public interest. *See Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner, Inc., Transferee, Petition of AOL Time Warner Inc. for Relief from the Condition Restricting Streaming Video AIHS*, Memorandum Opinion and Order, 18 FCC Rcd 16835, 16841, ¶¶ 14-15 (2003) ("*AOL-Time Warner Relief Order*"). By its terms, this condition would have expired in 2006 had the Commission not terminated it earlier. *See AOL-Time Warner Merger Order*, 16 FCC Rcd at 6629, ¶ 198; *id.* at 6680, ¶ 329.

[4] *AOL-Time Warner Merger Order*, 16 FCC Rcd at 6552, ¶ 11 and 6561, ¶ 37.

discriminate against these ISPs.[5] In addition, the Commission concluded that, as a result of the merger, AOL Time Warner could use its market power to obtain preferential carriage rights for its ISPs on the facilities of other cable operators, in particular cable systems owned by AT&T, then the nation's largest cable operator and a part-owner of Time Warner's cable systems.[6] The Commission also expressed concern that, by expanding its existing investment in General Motors Corporation ("GM"), AOL Time Warner could gain influence over DIRECTV, a wholly-owned subsidiary of GM and the nation's largest direct broadcast satellite ("DBS") provider, which could harm competition between DBS and cable multichannel video programming distributors ("MVPDs").[7]

3. To address these concerns, the Commission adopted conditions on its approval of the merger, including conditions that: (1) prohibited AOL Time Warner from entering into any agreement with AT&T that gave AOL or any other AOL Time Warner ISP exclusive carriage rights on AT&T's cable systems and further prohibited AOL Time Warner from entering into any agreement with AT&T for the purpose of limiting in any way AT&T's ability to enter into agreements with non-AOL Time Warner ISPs;[8] (2) required AOL Time Warner to certify annually its compliance with the foregoing condition;[9] and (3) required AOL Time Warner to annually certify compliance with section 631 of the Communications Act, which requires cable operators to inform subscribers of, among other things, the nature of personally identifiable information the cable operator will collect and how the information will be used.[10] The Commission also required AOL Time Warner to notify the Commission of any transactions that increased its ownership interest in GM and/or its subsidiary, Hughes Electronics Corporation ("Hughes"), which would potentially allow AOL Time Warner to gain control over DIRECTV.[11]

4. Due to corporate restructuring, the corporate ties between AOL, Time Warner, and TWC now have been severed. Time Warner has spun off AOL and TWC into separate independent companies.[12]

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[5] *Id.* at 6554, ¶ 18. The Commission also expressed concerns regarding the merger's potential effects on Internet service subscribers' privacy. *See id.* at 6665, ¶ 279.

[6] *Id.* at 6554, ¶ 18. At that time, Time Warner Entertainment ("TWE"), a partnership in which Time Warner had a 75 percent stake and AT&T Corp. owned the remaining 25 percent, owned and operated most of Time Warner's cable systems. *Id.* at 6552, ¶ 11. AT&T later sold its cable systems, including its interest in TWE, to Comcast Corp. *See Applications for Consent to the Transfer of Control of Licenses from Comcast Corp. and AT&T Corp., Transferors, to AT&T Comcast Corp., Transferee,* 17 FCC Rcd 23246 (2002) ("*AT&T-Comcast*"), *aff'd, Consumer Fed'n of Am., v. FCC,* 348 F.3d 1009 (D.C. Cir. 2003), *recon. denied, AT&T-Comcast,* 25 FCC Rcd 3492 (2010).

[7] *Id.* at 6648-49, ¶¶ 247, 250.

[8] *See id.* at 6662, ¶ 272.

[9] *See id.* at 6662, 6680, ¶¶ 272, 333. The Commission stated that this certification should be submitted by AOL Time Warner's General Counsel. *Id.*

[10] 47 U.S.C. § 551; *AOL-Time Warner Merger Order* at 6664-65, ¶¶ 278-79. The Commission stated that this certification should be submitted by AOL Time Warner's General Counsel. *AOL-Time Warner Merger Order,* 16 FCC Rcd at 6665, ¶ 279.

[11] *Id.* at 6649, ¶ 251. In addition, the Commission prohibited Time Warner Cable ("TWC"), Time Warner's cable system subsidiary, from discriminating on the basis of affiliation against any third-party ISPs permitted to use its cable system facilities to provide Internet service to subscribers. This condition prohibits discrimination with respect to the method by which customers select an ISP, ISPs' choice of content displayed on subscribers' Internet start-up screen, ISPs' billing relationship with subscribers, and technical performance, and it includes terms governing the disclosure of AOL Time Warner's contracts with third-party ISPs and enforcement provisions. *See id.* at 6600-02, 6678-79, ¶¶ 126, 318-24 & n. 822.

[12] *See* Time Warner Letter at 1-2; *Time Warner, Inc. SEC Form 8-K* (December 11, 2009) (describing the spin off of AOL effective December 9, 2009); *Applications for Consent to the Assignment and/or Transfer of Control of*

(continued....)

Time Warner no longer holds any ownership in AOL, its subsidiaries, or any other ISPs, and has no overlapping officers or directors with AOL or its subsidiaries.[13] Similarly, neither AOL nor TWC has any ownership interests in each other or any overlapping officers or directors.[14] AT&T's successor-in-interest, Comcast, no longer has any interest in TWC's cable systems.[15] In addition, GM has divested its ownership interest, through Hughes, in DIRECTV.[16]

5. The merger conditions considered herein relate to certification requirements Time Warner identified as no longer necessary, the underlying conditions subject to such certifications, and a related notification condition. Time Warner has not identified and we therefore do not evaluate the necessity of any other conditions imposed in the merger order. If Time Warner Cable would like the Commission to consider elimination of the remaining condition, it can file such a request with the Commission.[17]

6. When determining whether to terminate a merger condition, the Commission considers whether post-merger circumstances have changed in a material way that undermines the purpose of the condition.[18] The Commission evaluates whether the condition remains necessary in the public interest based on that analysis.[19] Because corporate restructuring has severed the ties between AOL, Time Warner, and Time Warner's cable systems, the rationale supporting adoption of the conditions no longer

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Licenses, Time Warner Inc., and its Subsidiaries, Assignor/Transferor, to Time Warner Cable Inc., and its Subsidiaries, Assignee/Transferee, 24 FCC Rcd 879 (MB 2009).

[13] Time Warner Letter at 2 n.3.

[14] *Compare* AOL, *Corporate Governance, available at* http://corp.aol.com/about-aol/leadership *with* Time Warner Cable *Meet our Leaders, available at* http://www.timewarnercable.com/Corporate/about/management (listing companies' boards of directors and executive management teams) (visited Jan. 4, 2012).

[15] *See Adelphia Communications Corporation (and Subsidiaries, Debtors-In-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees, Adelphia Communications Corporation, (and Subsidiaries, Debtors-In-Possession), Assignors and Transferors, to Comcast Corporation (Subsidiaries), Assignees and Transferees*, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8331-32, ¶¶ 309-310 (2006). *See also* Comcast Corporation, *2006 Annual Report* at 25 (stating that Comcast "completed . . . disposition of our ownership interest in Time Warner Cable Inc. ('TWC') and Time Warner Entertainment Company ('TWE'), the assets of two cable system partnerships . . .") *available at* http://cmcsk.com/annuals.cfm (visited Jan. 4, 2012).

[16] In December 2003, News Corporation acquired an interest in Hughes and its DIRECTV subsidiary. Hughes, previously a part of GM, became a separate and independent company. *See General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473, 481-82, ¶¶ 9-13 (2004); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, Supplemental Order, 19 FCC Rcd 6309 (2004). Subsequently, control of DIRECTV was transferred to Liberty Media Corporation. *See News Corporation and the DIRECTV Group, Inc., Transferors and Liberty Media Corporation, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 3265 (2008).

[17] *See* note 11, *supra*.

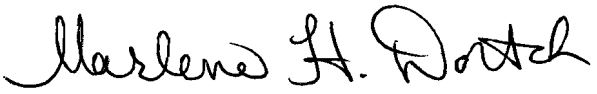
[18] *See General Motors Corporation, Hughes Electronics Corp., Transferors and The News Corporation, Limited, Transferee*, Memorandum Opinion and Order, 24 FCC Rcd 8674, 8678, ¶ 8 (2009); *see also AOL-Time Warner Relief Order*, 18 FCC Rcd at 16837-38, ¶¶ 6-7 and 16841, ¶ 14; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, Order, 17 FCC Rcd 8985, 8985-86, ¶¶ 2-3 (2002).

[19] *See AOL-Time Warner Relief Order*, 18 FCC Rcd at 16841, ¶ 14; *cf. AT&T-TCI Modification Order*, 17 FCC Rcd at 8985-86, ¶¶ 2-3 (noting that the Commission had adopted a condition to alleviate regulatory and competition concerns and that a subsequent divestiture meant that there was no longer a "regulatory reason" to maintain the condition).

exists. Thus, we conclude that the *AOL-Time Warner* conditions set forth in paragraph 3 above are no longer necessary in the public interest and should be terminated.[20] For the same reason, we conclude that it is no longer necessary in the public interest for Time Warner to comply with the condition requiring it to notify the Commission of any transactions that increase its ownership interest in GM or Hughes.[21]

7. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and (j), 214(a), 214(c), 309 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, 310(d), that the conditions contained in paragraphs 251, 272, and 279, and 330-333 of the *AOL-Time Warner Merger Order*[22] ARE TERMINATED effective immediately.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

[20] *AOL-Time Warner Merger Order*, 16 FCC Rcd at 6662, 6665, 6680, ¶¶ 272, 279, 330-33. *See AOL-Time Warner Relief Order*, 18 FCC Rcd at 16841, ¶ 14; *cf. AT&T-TCI Modification Order*, 17 FCC Rcd at 8985-86, ¶¶ 2-3 (noting that the Commission had adopted a condition to alleviate regulatory and competition concerns and that a subsequent divestiture meant that there was no longer a "regulatory reason" to maintain the condition). This conclusion does not affect TWC's obligation to comply with Section 631 but simply removes the condition requiring TWC to certify annually its compliance with that provision.

[21] *AOL-Time Warner Merger Order*, 16 FCC Rcd at 6649, ¶ 251. The Time Warner Letter does not address the nondiscrimination condition, and we do not address it here. *See id.* at 6600-02, 6678-79, ¶¶ 126, 318-24.

[22] *Id.* at 6649, 6662, 6665, 6680, ¶¶ 251, 272, 279, 330-33.