



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON, D.C. 20554

DA 03-1092

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov> <ftp.fcc.gov>

MEDIA BUREAU ACTION

April 4, 2003

AOL TIME WARNER INC. SUBMITS PETITION FOR RELIEF FROM INSTANT MESSAGING INTEROPERABILITY REQUIREMENTS

CS DOCKET NO. 00-30

Comments due: May 5, 2003

Reply Comments due: May 20, 2003

In a *Memorandum Opinion and Order* released January 22, 2001,¹ the Commission approved the merger of America Online, Inc. and Time Warner, Inc., subject to certain conditions. The Commission's merger conditions included requirements regarding the merged company's instant messaging ("IM") product. Specifically, the Commission found that AOL Time Warner Inc. ("AOL Time Warner") would likely dominate the potentially competitive business of new, IM-based services, especially advanced IM-based high speed services ("AIHS") such as videoconferencing.² As a result, the Commission imposed the following requirement:

AOL Time Warner may not offer an AIHS application that includes the transmission and reception, utilizing an NPD over the Internet Protocol path of AOL Time Warner broadband facilities, of one- or two-way streaming video communication using NPD ("Names and Presence Database") protocols – including live images or tape – that are new features, functions, and enhancements beyond those offered in current offerings such as AIM 4.3 or ICQ 2000b, unless and until AOL Time Warner has successfully demonstrated it has complied with one of the following grounds for relief.³

The Commission provided three possible grounds for relief from this requirement on AOL Time Warner's AIHS services: (1) AOL Time Warner may file a petition demonstrating that it has implemented a standard for server-to-server interoperability of NPD-based services; (2) AOL Time Warner may file a petition demonstrating that it has entered into written contracts providing for server-to-server interoperability with significant, unaffiliated, actual or potential competing providers of NPD-based

¹ *In the Matter of 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 See *AOL-Time Warner Merger Order*, 16 FCC Rcd at 6627 ¶ 191.

³ See *id.*

services offered to the public; (3) AOL Time Warner may file a petition demonstrating that imposition of this requirement no longer serves the public interest, convenience, and necessity because there has been a material change in circumstance, including new evidence that renders the condition on offering AIHS video services no longer necessary in the public interest, convenience and necessity.⁴ Under Option Three, AOL Time Warner must demonstrate that it has not been a dominant provider of NPD services for at least four consecutive months, if it proffers market share information as evidence.⁵ In the *Memorandum Opinion and Order*, the Commission stated that any such petitions for relief would be put on public notice for comment with a maximum of 30 days for receipt of such comments and 15 days after closure of the comment period for receipt of reply from AOL Time Warner Inc.

On April 2, 2003, AOL Time Warner submitted a petition for relief from the AIHS requirement under Option Three of the Memorandum Opinion and Order.⁶ Based on materially changed circumstances, AOL Time Warner seeks removal of the condition restricting AOL Time Warner's provision of streaming video AIHS via AOL Time Warner broadband facilities. Accordingly, we seek comment on AOL Time Warner's Petition.

Interested parties may file comments regarding AOL Time Warner's Petition **no later than May 5, 2003**. AOL Time Warner may file a reply **no later than May 20, 2003**. Comments and reply comments may be filed using the Commission's Electronic Filing System (ECFS), at <http://www.fcc.gov/e-file/ecfs.html>, or by filing paper copies. All pleadings are to reference **CS Docket No. 00-30**.

Interested parties filing paper copies must send an original and four copies of each filing and reference the above designated docket. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary, Marlene H. Dortch, at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. Interested parties also must send either one electronic copy via e-mail or a paper copy of each filing to Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or email at qualexint@aol.com; three (3) paper copies of their filing to Linda Senecal, Industry Analysis Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-C438, Washington, DC 20554; and one electronic copy via e-mail to linda.senecal@fcc.gov.

In lieu of filing paper pleadings, parties may also file pleadings using ECFS.⁷ Pleadings filed

⁴ See *AOL-Time Warner Merger Order*, 16 FCC Rcd at 6627-28 ¶¶ 192-95.

⁵ See *id.*

⁶ AOL Time Warner Inc., Petition for Relief, CS Docket No. 00-30, filed April 2, 2003.

⁷ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

This proceeding has been designated as "permit but disclose" for purposes of the Commission's *ex parte* rules.⁸ *Ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission's rules applicable to non-restricted proceedings.⁹ Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.¹⁰ Interested parties shall file an original and one copy of each summary of an oral *ex parte* presentation and any written *ex parte* presentation with the Commission Secretary, Marlene H. Dortch, and should follow the procedures set forth in the paragraph above for sending their submissions by mail, commercial overnight courier, or hand delivery.

Copies of AOL Time Warner's petition and other documents filed in this matter may be obtained from Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, DC 20554, and will also be available through ECFS. These documents are also available for public inspection and copying during normal reference room hours at the Commission's Reference Information Center, 445 12th Street, S.W., CY-A257, Washington, DC 20554. In addition, AOL Time Warner's petition is available electronically through the Media Bureau's Internet home page at <<http://www.fcc.gov/mb>>.

Alternate formats of this public notice (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or e-mail at bmillin@fcc.gov.

The media contact for this proceeding is Michelle Russo, (202) 418-2358. The Media Bureau Contacts are Linda Senecal (202) 418-7044, and William Cox (202) 418-2173.

- FCC -

⁸ *America Online, Inc. and Time Warner, Inc. Seek FCC Consent for a Proposed Transfer of Control*, 15 FCC Red 5699 (2000). See generally 47 C.F.R. §§ 1.1200-1.1216.

⁹ An *ex parte* presentation is any communication (spoken or written) directed to the merits or outcome of a proceeding made to a Commissioner, a Commissioner's assistant, or other decision-making staff member, that, if written, is not served on other parties to the proceeding or, if oral, is made without an opportunity for all parties to be present. 47 C.F.R. § 1.1201.

¹⁰ See 47 C.F.R. § 1.1206(b)(2). Other rules pertaining to oral and written presentations are set forth in 47 C.F.R. § 1.1206(b).