



# PUBLIC NOTICE

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

DA 03-344

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## MEDIA BUREAU ACTION

February 3, 2003

### AOL TIME WARNER INC. SUBMITS FOURTH PROGRESS REPORT ON INSTANT MESSAGING INTEROPERABILITY

#### CS DOCKET NO. 00-30

In a *Memorandum Opinion and Order* released January 22, 2001,<sup>1</sup> 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. In conjunction with these requirements, the Commission found that AOL Time Warner Inc. ("AOL Time Warner") must file a progress report with the Commission 180 days after the release of the *Memorandum Opinion and Order* and every 180 days thereafter, describing the actions it has taken to achieve interoperability between its IM offerings<sup>2</sup> and others' IM offerings.<sup>3</sup> On January 13, 2003, AOL Time Warner filed its fourth IM progress report with the Commission. In the *Memorandum Opinion and Order*, the Commission stated that this report would be placed on public notice for comment. Accordingly, we are releasing this public notice.

Interested parties may file comments regarding AOL Time Warner's third IM progress report no later than **February 24, 2003**. 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,

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<sup>1</sup> *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").

<sup>2</sup> Within "its IM offerings," we include the IM offered as part of AOL's basic proprietary Internet access service, AIM, ICQ, any IM that is sponsored by AOL Time Warner and is included in Road Runner, and any new IM-based service that uses the NPD that AOL uses for its IM (See *AOL Time Warner Merger Order*, 16 FCC Rcd at 6629, n.498).

<sup>3</sup> See *AOL Time Warner Merger Order*, 16 FCC Rcd at 6629, 6680.

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 12<sup>th</sup> 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 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or email at [qualexint@aol.com](mailto:qualexint@aol.com); three (3) paper copies of their filing to Linda Senecal, Industry Analysis Division, Media Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 2-C438, Washington, DC 20554; and one electronic copy via e-mail to [lsenecal@fcc.gov](mailto:lsenecal@fcc.gov).

In lieu of filing paper pleadings, parties may also file pleadings using ECFS.<sup>4</sup> Pleadings filed 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](mailto: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.<sup>5</sup> *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.<sup>6</sup> 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.<sup>7</sup> 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 fourth IM progress report 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

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<sup>4</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

<sup>5</sup> *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.

<sup>6</sup> 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.

<sup>7</sup> 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).

12th Street, S.W., CY-A257, Washington, DC 20554. In addition, AOL Time Warner's report 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](mailto: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.

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