



# PUBLIC NOTICE

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## COMMISSION SEEKS COMMENT ON TIME WARNER CABLE'S REQUEST TO TERMINATE REMAINING AOL TIME WARNER MERGER CONDITION

CS Docket No. 00-30

**Comments Due: July 12, 2012**

**Reply Comments Due: July 27, 2012**

This Public Notice seeks comment on Time Warner Cable, Inc.'s ("TWC's") request for termination of the remaining condition the Commission imposed when it approved the transfer of control of certain licenses and authorizations that resulted in the merger of America Online, Inc. ("AOL") and Time Warner, Inc. ("Time Warner") in 2001.<sup>1</sup> The condition relates to the carriage of unaffiliated Internet Service Providers ("ISPs") on TWC's cable systems.

At the time the Commission approved the merger of AOL and Time Warner, subject to several conditions,<sup>2</sup> AOL was the largest ISP in the world. Similarly, Time Warner was the second largest cable provider in the United States, maintained one of the world's largest content libraries, and controlled the nation's second largest broadband ISP, Road Runner.<sup>3</sup> In its review of the merger, the Commission raised concerns about the merger's potential harm to the high-speed Internet access market.<sup>4</sup> Therefore, among other things, the Commission conditioned the creation of the combined company, AOL Time Warner, on a requirement prohibiting TWC, a subsidiary of Time Warner at the time, from discriminating on the basis of affiliation against any third-party ISPs permitted to use TWC's facilities to provide Internet service to subscribers. Specifically, the condition prohibits discrimination against customers based on (1) the method the customer uses to select an ISP; (2) the content an ISP displays on the subscribers' Internet start-up screen; (3) the billing relationship between the ISP and the subscriber; or (4) the technical performance of the ISP.<sup>5</sup> The condition also includes terms governing the disclosure of AOL Time Warner's contracts with third-party ISPs and enforcement provisions.<sup>6</sup> This condition remains in place.

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<sup>1</sup> Letter from Matthew A. Brill, Counsel for Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, CS Docket No. 00-30 (Mar. 7, 2012) ("Time Warner Cable Letter").

<sup>2</sup> *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*, CS Docket No. 00-30, Memorandum Opinion and Order, 16 FCC Rcd 6547 (2001) ("AOL-Time Warner Merger Order").

<sup>3</sup> *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*, CS Docket No. 00-30, Order, 27 FCC Rcd 638, 638-39, ¶ 2 (2012) ("AOL Time Warner Termination Order").

<sup>4</sup> *Id.*

<sup>5</sup> *AOL-Time Warner Merger Order*, 16 FCC Rcd at 6600-02, ¶ 126.

<sup>6</sup> *Id.*

The Commission also imposed a condition concerning contracts with AT&T, then the nation's largest cable system owner, a related certification requirement, and other certification and notification requirements.<sup>7</sup> In January 2012, in response to a request from Time Warner,<sup>8</sup> the Commission terminated those conditions.<sup>9</sup> The order recognized, as Time Warner asserted, that AOL, Time Warner, and TWC severed their corporate ties in 2009.<sup>10</sup> The Commission also concluded that Time Warner no longer holds any ownership interest in AOL, its subsidiaries, or any other ISP and that Time Warner does not have overlapping officers or directors with AOL or its subsidiaries.<sup>11</sup> Likewise, the Commission determined that neither AOL nor TWC have any ownership interest in each other or any overlapping officers and directors.<sup>12</sup> The Commission therefore indicated that "the rationale supporting adoption of the conditions [at issue in the *AOL Time Warner Termination Order*] no longer exists. Thus, we conclude that . . . [those conditions] are no longer necessary in the public interest and should be terminated."<sup>13</sup>

TWC now requests relief from the remaining AOL Time Warner merger condition.<sup>14</sup> It states that such relief is appropriate for the same reasons discussed in the *AOL Time Warner Termination Order*, because: (1) Time Warner, AOL, and TWC are three separate, independent companies given the corporate restructuring; (2) TWC has no ability to favor AOL over unaffiliated broadband ISPs since AOL does not operate as a broadband ISP; and (3) the termination of the remaining merger condition will advance the Commission's interest in eliminating unnecessary regulations.<sup>15</sup> Accordingly, we seek comment on whether we should grant TWC's request to terminate the remaining condition.

### **Procedural Matters**

This proceeding will be treated as "permit but disclose" for purposes of the Commission's *ex parte* rules.<sup>16</sup> As a result of the permit-but-disclose status of this proceeding, *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>17</sup> Persons making *ex parte* presentations must file a copy of any written

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<sup>7</sup> See *AOL Time Warner Termination Order*, 27 FCC Rcd at 639, ¶ 3.

<sup>8</sup> See Letter from Paul T. Cappuccio, Executive Vice President and General Counsel, Time Warner Inc., to Marlene H. Dortch, Secretary, FCC, CS Docket No. 00-30 (Jan. 6, 2010).

<sup>9</sup> See generally *AOL Time Warner Termination Order*. The order terminated 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; (2) required AOL Time Warner to certify annually its compliance with the foregoing condition; (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; and (4) required AOL Time Warner to notify the Commission of any transaction that increased its ownership in General Motors and/or its subsidiary, Hughes Electronics Corporation. *Id.* at 639, ¶ 3. The Commission had previously terminated a condition relating to AOL Time Warner's instant messaging service. *Id.* at 638, ¶ 2 n.3.

<sup>10</sup> *Id.* at 639-40, ¶ 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 640-41, ¶ 6.

<sup>14</sup> Time Warner Cable Letter.

<sup>15</sup> *Id.* at 3-4.

<sup>16</sup> 47 C.F.R. §§ 1.1200, 1.1206.

<sup>17</sup> 47 C.F.R. § 1.1206.

presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).

Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). Written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>18</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

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<sup>18</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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