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**RECEIVED**

August 1, 2003

AUG - 1 2003

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
455 12th Street, S.W.  
Washington, D C. 20554

Federal Communications Commission  
Office of Secretary

Re: Notice of Ex Parte Presentation  
CS Docket No. 00-30

Dear Ms. Dortch:

Enclosed please find two copies of a letter from Steven N. Teplitz of AOL Time Warner to Paul Gallant of the Office of Chairman Michael K. Powell, following up on their meeting of July 22, 2003.<sup>1</sup> Pursuant to section 1.1206(b) of the Commission's rules, an original and one copy of this letter, with the enclosed written presentation, are being filed with the Office of the Secretary.

Any questions concerning this submission should be addressed to the undersigned.

Sincerely,



Fernando R. Laguarda

Enclosure

- cc: Chairman Michael K. Powell
- Commissioner Kathleen Q. Abernathy
- Commissioner Jonathan S. Adelstein
- Commissioner Michael J. Copps
- Commissioner Kevin J. Martin
- Paul Gallant
- Stacy Robinson
- Jordan Goldstein
- Sam Feder
- W. Kenneth Ferree
- Qualex International

~~WDC 8/1/03~~ Notice of Ex Parte Presentation, CS Docket No 00-30, July 22, 2003

*at*  
12:50:00

AOL Time Warner

Steven Teplitz  
 Vice President and  
 Associate General Counsel

August 1, 2003

**RECEIVED**Via Hand Delivery

AUG - 1 2003

Paul Gallant, Legal Advisor  
 Office of Chairman Michael K. Powell  
 Federal Communications Commission  
 445 12th Street, SW  
 Washington, DC 20554

Federal Communications Commission  
 Office of Secretary

Re: CS Docket No. 00-30

Dear Mr. Gallant

I am writing today to follow-up on our recent meeting by further describing the public interest benefits that would be achieved should the Commission permit America Online, Inc. ("AOL") to offer Internet users streaming video advanced Instant Messaging high speed services via AOL Time Warner broadband facilities.<sup>1</sup> As we discussed, AOL Time Warner firmly believes that the public interest – and more specifically consumers themselves – would be best served by the Commission expeditiously granting the pending petition, thereby enabling AOL to compete with the streaming video instant messaging ("IM") services already offered today by Microsoft and Yahoo!

The Commission has long recognized that competition stimulates investment and innovation, bringing such pro-consumer benefits as increased choice, lower prices, improved service, and new product offerings.<sup>2</sup> Competition has the power to give choices to consumers, and "with more choices, consumers reap the benefits—better services, greater innovation, and higher technology."<sup>3</sup> In the context of IM, Microsoft and Yahoo! offer today streaming video IM-based services, which consist primarily of

<sup>1</sup> See Notice of Ex Parte Presentation, CS Docket No. 00-30, July 22, 2003. In previous submissions, AOL Time Warner has provided clear and convincing evidence of materially changed circumstances supporting the removal of the Condition. See Petition, CS Docket No. 00-30, filed April 2, 2003.

<sup>2</sup> See, e.g., *Annual Report and Analysis of Competitive Market Conditions With Respect To Commercial Mobile Services, Eighth Report*, WT 02-379, FCC 03-150, at ¶ 13 (rel. July 14, 2003) (enhanced competition benefits consumers directly with increased choice, innovative service, and new technologies); *National Systems & Research Co.*, 17 FCC Rcd 12011, ¶ 1 (2002) (benefits of competition for consumers include lower prices, innovation, and additional service options).

<sup>3</sup> *Statement of Michael J. Copps, Commissioner, Federal Communications Commission, Before The Subcommittee On Telecommunications and The Internet of the House Committee On Energy And Commerce*, February 26, 2003. See also *Written Statement of The Honorable Jonathan S. Adelstein, Commissioner, Federal Communications Commission, Before The Subcommittee On Telecommunications and The Internet of the House Committee On Energy And Commerce*, February 26, 2003 ("Competition can provide strong competitive pressures that will drive down prices, improve services, and offer consumers more choices.")

video conferencing functionality. If the Commission empowers AOL to offer these services as well, the Commission will set in motion a “virtuous cycle” of investment and innovation – with consumers ultimately reaping the benefits.<sup>4</sup> At a minimum, entry by AOL will give consumers more choice with respect to the type of streaming video IM-based video conferencing services available today.<sup>5</sup> More importantly, in order to attract users, AOL will have every incentive to develop innovative new streaming video IM offerings that differentiate its products and services from those of its chief rivals. While it would be premature to predict what form such services might ultimately take (such as further enhancements to video conferencing, integration of video content, or other yet to be developed applications), this activity will create incentives for both Microsoft and Yahoo! (and other IM providers) to redouble their efforts to offer consumers a unique IM experience. As this virtuous cycle – born of technology, fueled by competition, and limited only by each company’s imagination – repeats itself, consumers will be the direct beneficiaries of the resulting innovations and advances.

In addressing the public interest benefits of granting the pending petition, we also take note of the Commission’s recognition that “[t]he widespread deployment of broadband infrastructure has become the central communications policy objective of the day.”<sup>6</sup> While a great deal of progress has been made toward the ubiquitous availability of broadband to all Americans,<sup>7</sup> there is still much to be done. Moreover, only 13% of Americans actually subscribe to a broadband service where it is available.<sup>8</sup> Many believe that the development and introduction of new and innovative consumer oriented services and applications that rely on broadband capability will help drive broadband adoption rates. And as broadband adoption rates rise, this will create additional incentives for further broadband infrastructure deployment.

Because video streaming IM services are most effectively provided via a broadband connection, they could – together with other broadband dependent

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<sup>4</sup> The introduction of a third competitor to a market with two existing competitors can have significant benefits for consumers. See, e.g., *Amendment of the Commission’s Space Station Licensing Rules and Policies*, First Report and Order and FNPRM, 18 FCC Rcd 10760, ¶ 64 (discussing benefits of a 3-firm market and presumption against 3-2 mergers and citing *FTC v H J Heinz Co*, 246 F 3d 708 (D C Cir 2001)), *Annual Report and Analysis of Competitive Market Conditions With Respect To Commercial Mobile Services, Eighth Report*, WT 02-379, FCC 03-150 (rel July 14, 2003) (separate statement of Chairman Michael K. Powell) (with “three or more choices” in wireless providers, consumers benefit from “lower prices and more innovative services”).

<sup>5</sup> As mentioned above, choice for consumers is the ultimate benefit of competition. “Our job at the FCC is to break down barriers to choice.” Remarks by William Kennard, Chairman, Federal Communications Commission, to the Practising Law Institute, December 11, 1997.

<sup>6</sup> See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Notice of Proposed Rulemaking*, 17 FCC Rcd 3019, ¶ 1 (2002).

<sup>7</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 03-170, at n.20 (rel July 14, 2003) (noting that broadband service is available to 80% of Americans).

<sup>8</sup> See Donald Abelson, Chief, International Bureau, Federal Communications Commission, *Facilitating the Digital Migration: The Future of U.S. Telecommunications Regulation*, May 13, 2003.

applications – help stimulate the level of broadband adoption and deployment. Thus, to the extent that the Commission creates a fully competitive environment for streaming video IM services by enabling AOL to participate in such offerings, and this enhanced level of competition helps drive consumer enthusiasm for broadband, the Commission's actions will have furthered its stated broadband objectives, enhanced consumer welfare, and served the public interest.

Please do not hesitate to contact me if you have any questions regarding the foregoing.

Respectfully submitted,



Steven N. Teplitz

cc: Chairman Michael K. Powell  
Commissioner Kathleen Q. Abernathy  
Commissioner Jonathan S. Adelstein  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin  
Stacy Robinson  
Jordan Goldstein  
Johanna Mikes  
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