

**Application For Transfer of Control  
WTBS(TV), Atlanta, GA  
Transferee's Exhibit 2  
Section IV, Item 11**

**ALIEN OWNERSHIP**

Based upon the general shareholder records available to Time Warner Inc. and America Online, Inc., the parties to the Agreement and Plan of Merger believe that the newly-formed AOL Time Warner Inc. will be in compliance with Section 310(b) of the Communications Act. However, to ensure that this is the case, both parties have commissioned a sample survey of their shareholders using recognized statistical methods to confirm the new entity's compliance with the statutory benchmark.

**Application For Transfer of Control  
WTBS(TV), Atlanta, GA**

**AGREEMENT AND PLAN  
OF MERGER**

AGREEMENT AND PLAN OF MERGER

DATED AS OF JANUARY 10, 2000

BETWEEN

AMERICA ONLINE, INC.

AND

TIME WARNER INC.

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## LIST OF EXHIBITS

<u>Exhibit</u>	<u>Title</u>
Exhibit A	Stock Option Agreement for Time Warner
Exhibit B	Stock Option Agreement for America Online
Exhibit C	Voting Agreement
Exhibit D-1	Form of Restated Certificate of Incorporation of Holdco
Exhibit D-2	Form of Bylaws of Holdco
Exhibit 6.11	Form of Affiliate Agreement
Exhibit 7.2(c)(1)	Form of Holdco Representations Letters
Exhibit 7.2(c)(2)	Form of America Online Representations Letter
Exhibit 7.2(c)(3)	Form of Time Warner Representations Letter

AGREEMENT AND PLAN OF MERGER, dated as of January 10, 2000 (this "Agreement"), between AMERICA ONLINE, INC., a Delaware corporation ("America Online"), and TIME WARNER INC., a Delaware corporation ("Time Warner").

WITNESSETH:

WHEREAS, the Boards of Directors of Time Warner and America Online deem it advisable and in the best interests of each corporation and its respective stockholders that Time Warner and America Online engage in a business combination in a merger of equals in order to advance the long-term strategic business interests of Time Warner and America Online;

WHEREAS, the combination of Time Warner and America Online shall be effected by the terms of this Agreement through the Mergers (as defined in Section 2.1(b));

WHEREAS, in furtherance thereof, the Board of Directors of each of Time Warner and America Online have approved the applicable Merger, upon the terms and subject to the conditions set forth in this Agreement, pursuant to which each share of capital stock of Time Warner and each share of capital stock of America Online issued and outstanding immediately prior to the Effective Time (as defined in Section 2.3) will be converted into the right to receive shares of capital stock of Holdco (as defined in Section 1.1) as set forth herein;

WHEREAS, (i) as a condition and inducement to America Online's willingness to enter into this Agreement and the America Online Stock Option Agreement referred to below, America Online and Time Warner are entering into a Stock Option Agreement dated as of the date hereof in the form of Exhibit A (the "Time Warner Stock Option Agreement") pursuant to which Time Warner is granting to America Online an option to purchase shares of the common stock, par value \$0.01 per share, of Time Warner ("Time Warner Common Stock") and (ii) as a condition and inducement to Time Warner's willingness to enter into this Agreement and the Time Warner Stock Option Agreement, Time Warner and America Online are entering into a Stock Option Agreement dated as of the date hereof in the form of Exhibit B (the "America Online Stock Option Agreement") and, together with the Time Warner Stock Option Agreement, the "Stock Option Agreements"), pursuant to which America Online is granting to Time Warner an option to purchase shares of the common stock, par value \$0.01 per share, of America Online ("America Online Common Stock");

WHEREAS, as a condition and inducement to America Online's willingness to enter into this Agreement and the America Online Stock Option Agreement, America Online and certain stockholders of Time Warner (the "Designated Stockholders") are entering into an agreement dated as of the date hereof in the form of Exhibit C (the "Voting Agreement") pursuant to which the

Designated Stockholders have agreed, among other things, to vote their shares of Time Warner Common Stock in favor of the adoption of this Agreement; and

WHEREAS, for Federal income tax purposes, it is intended that the Mergers shall qualify as exchanges within the meaning of Section 351 of the Internal Revenue Code of 1986, as amended (the "Code"), and as reorganizations within the meaning of Section 368(a) of the Code and the regulations promulgated thereunder.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement and in the Stock Option Agreements, and intending to be legally bound hereby and thereby, the parties hereto agree as follows:

## ARTICLE I

### FORMATION OF HOLDING COMPANY AND SUBSIDIARIES

1.1 Organization of Holdco. As promptly as practicable following the execution of this agreement and receipt of any required approvals, Time Warner and America Online shall cause a new corporation ("Holdco") to be organized under the laws of the State of Delaware. The certificate of incorporation and bylaws of Holdco shall initially be as agreed upon by Time Warner and America Online. The authorized capital stock of Holdco shall initially consist of 100 shares of common stock, par value \$0.01 per share (the "Holdco Common Stock"), of which one share shall be issued to Time Warner and one share shall be issued to America Online. Time Warner and America Online shall take, and shall cause Holdco to take, all requisite action to cause the certificate of incorporation of Holdco to be in the form of Exhibit D-1 (the "Holdco Charter") and the bylaws of Holdco to be in the form of Exhibit D-2 (the "Holdco Bylaws"), in each case, at the Effective Time.

1.2 Directors and Officers of Holdco. Prior to the Effective Time, the directors and officers of Holdco shall consist of equal numbers of representatives of America Online and Time Warner and shall initially be as designated and elected by Time Warner and America Online. Time Warner and America Online shall take all requisite action to cause the directors and officers of Holdco as of the Effective Time to be as provided in Section 6.2. Each such director and officer shall remain in office until his or her successors are elected in accordance with Schedule 6.2(a) and the Holdco Bylaws.

1.3 Organization of Merger Subsidiaries. As promptly as practicable following the execution of this Agreement, Holdco shall cause to be organized for the sole purpose of effectuating the Mergers contemplated herein:

(a) a corporation organized under the laws of the State of Delaware ("Time Warner Merger Sub"); the certificate of incorporation and bylaws of Time Warner Merger Sub shall be in such forms as shall be determined by Holdco as soon as practicable following the execution of this Agreement and the authorized capital stock of Time Warner Merger Sub shall initially consist of 100 shares of common stock, par value \$0.01 per share, all of which shares shall be issued to Holdco at a price of \$1.00 per share; and

(b) a corporation organized under the laws of the State of Delaware ("America Online Merger Sub" and, together with Time Warner Merger Sub, the "Merger Subsidiaries"); the certificate of incorporation and bylaws of America Online Merger Sub shall be in such forms as shall be determined by Holdco as soon as practicable following the execution of this Agreement; and the authorized capital stock of America Online Merger Sub shall initially consist of 100 shares of common stock, par value \$0.01 per share, all of which shares shall be issued to Holdco at a price of \$1.00 per share.

1.4 Actions of Directors and Officers. As promptly as practicable following the execution of this Agreement, Time Warner and America Online shall take all requisite action to designate the directors and officers of Holdco and each of the Merger Subsidiaries and to take such steps as may be necessary or appropriate to complete the organization of Holdco and the Merger Subsidiaries. Time Warner and America Online shall cause the directors of Holdco to ratify and approve this Agreement, and the directors of the Merger Subsidiaries to ratify and approve this Agreement.

1.5 Actions of Time Warner and America Online. As promptly as practicable following the execution of this Agreement, Time Warner and America Online, as the holders of all the outstanding shares of Holdco Common Stock, shall adopt this Agreement and shall cause Holdco, as the sole stockholder of each of the Merger Subsidiaries, to adopt this Agreement. Each of Time Warner and America Online shall cause Holdco, and Holdco shall cause the Merger Subsidiaries, to perform their respective obligations under this Agreement. As promptly as practicable after the date hereof the parties shall cause this Agreement to be amended to add Holdco and the Merger Subsidiaries as parties hereto and each Merger Subsidiary shall become a constituent corporation in its respective Merger.

## ARTICLE II

### THE MERGERS; CERTAIN RELATED MATTERS

2.1 The Mergers. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Delaware General Corporation Law (the "DGCL"), except as set forth on Schedule 2.1:

(a) Time Warner Merger Sub shall be merged with and into Time Warner (the "Time Warner Merger"). Time Warner shall be the surviving corporation in the Time Warner Merger and shall continue its corporate existence under the laws of the State of Delaware. As a result of the Time Warner Merger, Time Warner shall become a wholly owned subsidiary of Holdco.

(b) America Online Merger Sub shall be merged with and into America Online (the "America Online Merger"). America Online shall be the surviving corporation in the America Online Merger and shall continue its corporate existence under the laws of the State of Delaware. As a result of the America Online Merger, America Online shall become a wholly owned subsidiary of Holdco. The Time Warner Merger and the America Online Merger are together referred to herein as the "Mergers".

2.2 Closing. Upon the terms and subject to the conditions set forth in Article VII and the termination rights set forth in Article VIII, the closing of the Mergers (the "Closing") will take place on the first Business Day after the satisfaction or waiver (subject to applicable law) of the conditions (excluding conditions that, by their nature, cannot be satisfied until the Closing Date (as defined below)) set forth in Article VII, unless this Agreement has been theretofore terminated pursuant to its terms or unless another time or date is agreed to in writing by the parties hereto (the actual time and date of the Closing being referred to herein as the "Closing Date"). The Closing shall be held at the offices of Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, New York, 10017, unless another place is agreed to in writing by the parties hereto.

2.3 Effective Time. As soon as practicable following the satisfaction or waiver (subject to applicable law) of the conditions set forth in Article VII, at the Closing the parties shall file the Certificates of Merger (as defined below) with the Secretary of State of the State of Delaware in such form as is required by and executed and acknowledged in accordance with the relevant provisions of the DGCL and make all other filings or recordings required under the DGCL. The Mergers shall become effective at (i) the date and time both of the certificate of merger relating to the Time Warner Merger (the "Time Warner Certificate of Merger") and the certificate of merger relating to the America Online Merger (the "America Online Certificate of Merger") and, together with the Time Warner Certificate of Merger, the "Certificates of Merger") are duly filed with the Secretary of State of the State of Delaware or (ii) such subsequent time as America Online and Time Warner shall agree and as shall be specified in the Certificates of Merger; provided that both Mergers shall become effective at the same time (such time as the Mergers become effective being the "Effective Time").

2.4 Effects of the Mergers. At and after the Effective Time, the Mergers will have the effects set forth in the DGCL.



2.5 Charters and Bylaws.

(a) Certificates of Incorporation. The Restated Certificate of Incorporation of Time Warner, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the surviving corporation in the Time Warner Merger. The Restated Certificate of Incorporation of America Online, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the surviving corporation in the America Online Merger.

(b) Bylaws. The bylaws of Time Warner, as in effect immediately prior to the Effective Time, shall be the bylaws of the surviving corporation in the Time Warner Merger. The bylaws of America Online, as in effect immediately prior to the Effective Time, shall be the bylaws of the surviving corporation in the America Online Merger.

2.6 Officers and Directors. The officers and directors of Time Warner Merger Sub immediately prior to the Effective Time shall be the officers and directors of the surviving corporation in the Time Warner Merger. The officers and directors of America Online Merger Sub immediately prior to the Effective Time shall be the officers and directors of the surviving corporation in the America Online Merger.

2.7 Effect on Time Warner Capital Stock. As of the Effective Time, by virtue of the Time Warner Merger and without any action on the part of the holder of any shares of Time Warner Capital Stock (as defined in Section 2.7(c)) or any shares of capital stock of Time Warner Merger Sub:

(a) Capital Stock of Time Warner Merger Sub. Each issued and outstanding share of common stock, par value \$0.01 per share, of Time Warner Merger Sub shall be converted into the right to receive one fully paid and nonassessable share of common stock, par value \$.01 per share, of the surviving corporation in the Time Warner Merger.

(b) Cancellation of Treasury Stock. Subject to Section 3.5, each share of Time Warner Capital Stock issued and owned or held by Time Warner at the Effective Time shall, by virtue of the Time Warner Merger, cease to be outstanding and shall be canceled and retired, and no consideration shall be delivered in exchange therefor.

(c) Conversion of Time Warner Capital Stock. Subject to Section 3.5, each issued and outstanding share of Time Warner Capital Stock (other than shares to be canceled in accordance with Section 2.7(b) and other than shares subject to Section 2.10) shall be converted into the right to receive fully paid and nonassessable shares of Holdco Capital Stock (as defined below) in accordance with the following table:

<u>Each Share of the Specified Class or Series of Time Warner Capital Stock</u>	<u>Number and Class or Series of Shares of Holdco Capital Stock Into Which Converted</u>
Time Warner Common Stock .....	1.5 shares (as the same may be adjusted according to Section 2.9, the " <u>Exchange Ratio</u> ") of Holdco Common Stock
Time Warner Series LMCN-V Common Stock, par value \$0.01 per share (" <u>Time Warner Series LMCN-V Common Stock</u> ")	1.5 shares of Series LMCN-V Common Stock, par value \$0.01 per share, of Holdco (" <u>Holdco Series LMCN-V Common Stock</u> "); <u>provided</u> that the "Formula Number" (as defined in the Certificate of Designations for the Time Warner Series LMCN-V Common Stock (the " <u>Series LMCN-V Certificate</u> ")) in effect immediately prior to the Effective Time shall be the Formula Number for the Holdco Series LMCN-V Common Stock issued pursuant to the Mergers and no adjustment to the Formula Number or conversion rights of such stock shall be made pursuant to the terms of the Series LMCN-V Certificate, including Section 3.6 thereof
Time Warner Series LMC Common Stock, par value \$0.01 per share (" <u>Time Warner Series LMC Common Stock</u> ")	1.5 shares of Series LMC Common Stock, par value \$0.01 per share, of Holdco (" <u>Holdco Series LMC Common Stock</u> "); <u>provided</u> that the "Formula Number" (as defined in the Certificate of Designations for the Time Warner Series LMC Common Stock (the " <u>Series LMC Certificate</u> ")) in effect immediately prior to the Effective Time shall be the Formula Number for the Holdco Series LMC Common Stock issued pursuant to the Mergers and no adjustment to the Formula Number or conversion rights of such stock shall be made pursuant to the terms of the Series LMC Certificate, including Section 3.6 thereof
Time Warner Series E Convertible Preferred Stock, par value \$0.10 per share (" <u>Time Warner Series E Preferred Stock</u> ")	One share of Series E Convertible Preferred Stock, par value \$0.10 per share, of Holdco (" <u>Holdco Series E Preferred Stock</u> ")

<u>Each Share of the Specified Class or Series of Time Warner Capital Stock</u>	<u>Number and Class or Series of Shares of Holdco Capital Stock Into Which Converted</u>
Time Warner Series F Convertible Preferred Stock, par value \$0.10 per share (“ <u>Time Warner Series F Preferred Stock</u> ”)	One share of Series F Convertible Preferred Stock, par value \$0.10 per share, of Holdco (“ <u>Holdco Series F Preferred Stock</u> ”)
Time Warner Series I Convertible Preferred Stock, par value \$0.10 per share (“ <u>Time Warner Series F Preferred Stock</u> ”)	One share of Series I Convertible Preferred Stock, par value \$0.10 per share, of Holdco (“ <u>Holdco Series I Preferred Stock</u> ”)
Time Warner Series J Convertible Preferred Stock, par value \$0.10 per share (“ <u>Time Warner Series J Preferred Stock</u> ” and together, with Time Warner Series E Preferred Stock, Time Warner Series F Preferred Stock and Time Warner Series I Preferred Stock, the “ <u>Time Warner Preferred Stock</u> ”)	One share of Series J Convertible Preferred Stock, par value \$0.10 per share, of Holdco (“ <u>Holdco Series J Preferred Stock</u> ” and, together with Holdco Common Stock, Holdco Series LMCN-V Common Stock, Holdco Series LMC Common Stock, Holdco Series E Preferred Stock, Holdco Series F Preferred Stock and Holdco Series I Preferred Stock, the “Holdco Capital Stock”)

The Time Warner Series LMCN-V Common Stock and the Time Warner Series LMC Common Stock are referred to herein collectively as the “Time Warner Series Common Stock.” The Time Warner Common Stock, the Time Warner Series Common Stock and the Time Warner Preferred Stock are referred to herein collectively as the “Time Warner Capital Stock.” The shares of Holdco Capital Stock into which shares of Time Warner Capital Stock are converted pursuant to the foregoing are referred to herein collectively as the “Time Warner Merger Consideration.”

As a result of the Time Warner Merger and without any action on the part of the holders thereof, at the Effective Time, all shares of Time Warner Capital Stock shall cease to be outstanding and shall be canceled and retired and shall cease to exist, and each holder of a certificate which immediately prior to the Effective Time represented any such shares of Time Warner Capital Stock (such certificate or other evidence of ownership, a “Time Warner Certificate”) shall thereafter cease to have any rights with respect to such shares of Time Warner Capital Stock, except the right (subject to Section 2.10) to receive the applicable Time Warner Merger Consideration with respect thereto and any cash in lieu of fractional shares of applicable Holdco Capital Stock with respect thereto to be issued in consideration therefor and any

dividends or other distributions to which holders of Time Warner Capital Stock become entitled all in accordance with Article III upon the surrender of such Time Warner Certificate.

2.8 Time Warner Stock Options and Other Equity-Based Awards.

(a) Each Time Warner Stock Option (as defined in Section 4.2(b)) granted prior to the Effective Time and which remains outstanding immediately prior to the Effective Time shall cease to represent a right to acquire shares of Time Warner Common Stock and shall be converted (each, as so converted, a "Time Warner Converted Option"), at the Effective Time, into an option to acquire, on the same terms and conditions as were applicable under the Time Warner Stock Option (but taking into account any changes thereto, including the acceleration thereof, provided for in the Time Warner Stock Option Plans (as defined in Section 4.2(b)), in any award agreement or in such option by reason of this Agreement or the transactions contemplated hereby), that number of shares of Holdco Common Stock determined by multiplying the number of shares of Time Warner Common Stock subject to such Time Warner Stock Option by the Exchange Ratio, rounded, if necessary, to the nearest whole share of Holdco Common Stock, at a price per share (rounded to the nearest one-hundredth of a cent) equal to the per share exercise price specified in such Time Warner Stock Option divided by the Exchange Ratio; provided, however, that in the case of any Time Warner Stock Option to which Section 421 of the Code applies by reason of its qualification under Section 422 of the Code, the option price, the number of shares subject to such option and the terms and conditions of exercise of such option shall be determined in a manner consistent with the requirements of Section 424(a) of the Code.

(b) Each restricted share of Time Warner Common Stock granted pursuant to the Time Warner Stock Option Plans (each such share, a "Time Warner Restricted Share" and, together with each other Time Warner Restricted Share outstanding as of the date hereof and all other restricted shares granted by Time Warner after the date hereof in accordance with the Time Warner Stock Option Plans and Section 5.2, the "Time Warner Restricted Shares") which is outstanding immediately prior to the Effective Time shall vest and become free of restrictions to the extent provided by the terms thereof. Each award of Time Warner Restricted Shares shall be converted, as of the Effective Time, into that number of shares of Holdco Common Stock determined by multiplying the number of shares subject to the award by the Exchange Ratio; and the aggregate number of shares of Holdco Common Stock as so determined shall be delivered to the respective holders of Time Warner Restricted Shares as soon as practicable following the Effective Time. America Online acknowledges that the acceleration of vesting as a result of the Time Warner Merger of all Time Warner Stock Options outstanding as of January 9, 2000 in accordance with their terms shall not constitute a Material Adverse Effect on Time Warner.

(c) As soon as practicable after the Effective Time, Holdco shall deliver to the holders of Time Warner Stock Options appropriate notices setting forth such holders' rights pursuant to the respective Time Warner Stock Option Plans and agreements evidencing the grants of such Time Warner Stock Options (including that, in connection with the Time Warner

Merger and to the extent provided by the terms of the Time Warner Stock Option Plans, the Time Warner Stock Options have become fully vested and exercisable) and stating that such Time Warner Stock Options and agreements shall be assumed by Holdco and shall continue in effect on the same terms and conditions (subject to the adjustments required by this Section 2.8 after giving effect to the Time Warner Merger and the terms of the Time Warner Stock Option Plans). To the extent permitted by law, Holdco shall comply with the terms of the Time Warner Stock Option Plans and shall take such reasonable steps as are necessary or required by, and subject to the provisions of, such Time Warner Stock Option Plans, to have the Time Warner Stock Options which qualified as incentive stock options prior to the Effective Time continue to qualify as incentive stock options of Holdco after the Effective Time.

(d) Prior to the Effective Time, Holdco shall take all necessary action to assume as of the Effective Time all obligations undertaken by, or on behalf of Holdco under this Section 2.8 and to adopt at the Effective Time the Time Warner Stock Option Plans and each Time Warner Converted Option, and to take all other actions called for by this Section 2.8, including the reservation, issuance and listing of a number of shares of Holdco Common Stock at least equal to the number of shares of Holdco Common Stock that will be subject to Time Warner Converted Options. No later than the Effective Time, Holdco shall file a registration statement on Form S-8 (or any successor or, including if Form S-8 is not available, other appropriate forms) with respect to the shares of Holdco Common Stock subject to such options or restricted shares and shall maintain the effectiveness of such registration statement or registration statements (and maintain the current status of the prospectus or prospectuses contained therein) for so long as such options or restricted shares remain outstanding.

2.9 Certain Adjustments. If, between the date of this Agreement and the Effective Time (and as permitted by Sections 5.1 and 5.2), the outstanding shares of America Online Common Stock or the outstanding shares of Time Warner Common Stock or Time Warner Series Common Stock shall have been increased, decreased, changed into or exchanged for a different number of shares or different class, in each case, by reason of any reclassification, recapitalization, stock split, split-up, combination or exchange of shares or a stock dividend or dividend payable in any other securities shall be declared with a record date within such period, or any similar event shall have occurred, the applicable Merger Consideration (as defined in Section 2.11(c)) shall be appropriately adjusted to provide to the holders of Time Warner Common Stock, Time Warner Series Common Stock and America Online Common Stock the same economic effect as contemplated by this Agreement prior to such event.

2.10 Time Warner Appraisal Rights. (a) Notwithstanding anything in this Agreement to the contrary and unless provided for by applicable law, shares of Time Warner Series Common Stock and Time Warner Preferred Stock that are issued and outstanding immediately prior to the Effective Time and that are owned by stockholders who have properly perfected their rights of appraisal within the meaning of Section 262 of the DGCL (the "Time Warner Dissenting Shares") shall not be converted into the right to receive the applicable Time Warner Merger Consideration with respect thereto, unless and until such stockholders shall have

failed to perfect their right of appraisal under applicable law, but, instead, the holders thereof shall be entitled to payment of the appraised value of such Time Warner Dissenting Shares in accordance with Section 262 of the DGCL. If any such holder shall have failed to perfect or shall have effectively withdrawn or lost such right of appraisal, each share of Time Warner Series Common Stock and Time Warner Preferred Stock held by such stockholder shall thereupon be deemed to have been converted into the right to receive and become exchangeable for, at the Effective Time, the applicable Time Warner Merger Consideration with respect thereto, in the manner provided for in Section 2.7.

(b) Time Warner shall give America Online (i) prompt notice of any demands for appraisal filed pursuant to Section 262 of the DGCL received by Time Warner, withdrawals of such objections and any other instruments served or delivered in connection with such demands pursuant to the DGCL and received by Time Warner and (B) the opportunity to participate in all negotiations and proceedings with respect to demands under the DGCL consistent with the obligations of Time Warner thereunder. Time Warner shall not, except with the prior written consent of America Online, (x) make any payment with respect to any such demand, (y) offer to settle or settle any such demand or (z) waive any failure to timely deliver a written demand for appraisal or timely take any other action to perfect appraisal rights in accordance with the DGCL.

2.11 Effect on America Online Common Stock. As of the Effective Time, by virtue of the America Online Merger and without any action on the part of the holder of any shares of America Online Common Stock or any shares of capital stock of America Online Merger Sub:

(a) Capital Stock of America Online Merger Sub. Each issued and outstanding share of common stock, par value \$0.01 per share, of America Online Merger Sub shall be converted into the right to receive one fully paid and nonassessable share of common stock, par value \$0.01 per share, of the surviving corporation in the America Online Merger.

(b) Cancellation of Treasury Stock. Subject to Section 3.5, each share of America Online Common Stock issued and owned or held by America Online at the Effective Time shall, by virtue of the America Online Merger, cease to be outstanding and shall be canceled and retired, and no consideration shall be delivered in exchange therefor.

(c) Conversion of America Online Common Stock. Subject to Section 3.5, each issued and outstanding share of America Online Common Stock (other than shares to be canceled in accordance with Section 2.11(b)) shall be converted into the right to receive one fully paid and nonassessable share of Holdco Common Stock (the "America Online Merger Consideration") and, together with the Time Warner Merger Consideration, the "Merger Consideration").

As a result of the America Online Merger and without any action on the part of the holders thereof, at the Effective Time, all shares of America Online Common Stock shall cease to be outstanding and shall be canceled and retired and shall cease to exist, and each holder of a certificate which immediately prior to the Effective Time represented any such shares of America Online Common Stock (an "America Online Certificate" and, together with the Time Warner Certificates, the "Certificates") shall thereafter cease to have any rights with respect to such shares of America Online Common Stock, except the right to receive the America Online Merger Consideration to be issued in consideration therefor and any dividends or other distributions to which holders of America Online Common Stock become entitled all in accordance with Article III upon the surrender of such America Online Certificate.

## 2.12 America Online Stock Options and Other Equity-Based Awards.

(a) Each America Online Stock Option (as defined in Section 4.1(b)) granted prior to the Effective Time and which remains outstanding immediately prior to the Effective Time shall cease to represent a right to acquire shares of America Online Common Stock and shall be converted (each, as so converted, an "America Online Converted Option"), at the Effective Time, into an option to acquire, on the same terms and conditions as were applicable under the America Online Stock Option (but taking into account any changes thereto, including the acceleration thereof, provided for in the America Online Stock Option Plans (as defined in Section 4.1(b)), in any award agreement or in such option by reason of this Agreement or the transactions contemplated hereby), that number of shares of Holdco Common Stock equal to the number of shares of America Online Common Stock subject to such America Online Stock Option, at a price per share equal to the per share exercise price specified in such America Online Stock Option; provided, however, that in the case of any America Online Stock Option to which Section 421 of the Code applies by reason of its qualification under Section 422 of the Code, the option price, the number of shares subject to such option and the terms and conditions of exercise of such option shall be determined in a manner consistent with the requirements of Section 424(a) of the Code.

(b) Each restricted share of America Online Common Stock granted pursuant to the America Online Stock Option Plans (each such share, an "America Online Restricted Share" and, together with each other America Online Restricted Share outstanding as of the date hereof and all other restricted shares granted by America Online after the date hereof in accordance with the America Online Stock Option Plans and Section 5.1, the "America Online Restricted Shares") which is outstanding immediately prior to the Effective Time shall vest and become free of restrictions to the extent provided by the terms thereof. Each America Online Restricted Share shall be converted, as of the Effective Time, into a share of Holdco Common Stock; and such shares of Holdco Common Stock shall be delivered to the respective holders of the America Online Restricted Shares as soon as practicable following the Effective Time. Time Warner acknowledges that the acceleration of vesting as a result of the America Online Merger of all America Online Stock Options outstanding as of the date hereof in accordance with their terms shall not constitute a Material Adverse Effect on America Online.

(c) As soon as practicable after the Effective Time, Holdco shall deliver to the holders of America Online Stock Options appropriate notices setting forth such holders' rights pursuant to the respective America Online Stock Option Plans and agreements evidencing the grants of such America Online Stock Options (including that, in connection with the America Online Merger and to the extent provided by the terms of the America Online Stock Option Plans, the America Online Stock Options have become fully vested) and stating that such America Online Stock Options and agreements shall be assumed by Holdco and shall continue in effect on the same terms and conditions (subject to the adjustments required by this Section 2.12 after giving effect to the America Online Merger and the terms of the America Online Stock Option Plans). To the extent permitted by law, Holdco shall comply with the terms of the America Online Stock Option Plans and shall take such reasonable steps as are necessary or required by, and subject to the provisions of, such America Online Stock Option Plans, to have the America Online Stock Options which qualified as incentive stock options prior to the Effective Time continue to qualify as incentive stock options of Holdco after the Effective Time.

(d) Prior to the Effective Time, Holdco shall take all necessary action to assume as of the Effective Time all obligations undertaken by, or on behalf of Holdco under this Section 2.12 and to adopt at the Effective Time the America Online Stock Option Plans and each America Online Converted Option, and to take all other actions called for by this Section 2.12, including the reservation, issuance and listing of a number of shares of Holdco Common Stock at least equal to the number of shares of Holdco Common Stock that will be subject to America Online Converted Options. No later than the Effective Time, Holdco shall file a registration statement on Form S-8 (or any successor or, including if Form S-8 is not available, other appropriate forms) with respect to the shares of Holdco Common Stock subject to such options or restricted shares and shall maintain the effectiveness of such registration statement or registration statements (and maintain the current status of the prospectus or prospectuses contained therein) for so long as such options or restricted shares remain outstanding.

### ARTICLE III

#### EXCHANGE OF CERTIFICATES

3.1 Exchange Fund. Prior to the Effective Time, America Online shall appoint a commercial bank or trust company reasonably acceptable to Time Warner, or a subsidiary thereof, to act as exchange agent hereunder for the purpose of exchanging Certificates for the applicable Merger Consideration (the "Exchange Agent"). At or prior to the Effective Time, Holdco shall deposit with the Exchange Agent, in trust for the benefit of holders of shares of Time Warner Capital Stock and America Online Common Stock, certificates representing the shares of the Holdco Capital Stock issuable pursuant to Sections 2.7 and 2.11 in exchange for outstanding shares of Time Warner Capital Stock and America Online Common Stock. Holdco agrees to make available to the Exchange Agent from time to time as needed, cash sufficient to pay cash in lieu of fractional shares pursuant to Section 3.5 and any dividends and other



distributions pursuant to Section 3.3. Any cash and certificates representing Holdco Capital Stock deposited with the Exchange Agent shall hereinafter be referred to as the “Exchange Fund”.

3.2 Exchange Procedures. Promptly after the Effective Time, Holdco shall cause the Exchange Agent to mail to each holder of a Certificate (i) a letter of transmittal which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Exchange Agent, and which letter shall be in customary form and have such other provisions as America Online or Time Warner may reasonably specify (such letter to be reasonably acceptable to Time Warner and America Online prior to the Effective Time) and (ii) instructions for effecting the surrender of such Certificates in exchange for the applicable Merger Consideration, together with any dividends and other distributions with respect thereto and any cash in lieu of fractional shares. Upon surrender of a Certificate to the Exchange Agent together with such letter of transmittal, duly executed and completed in accordance with the instructions thereto, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificate shall be entitled to receive in exchange therefor (A) one or more shares of Holdco Capital Stock (which shall be in uncertificated book-entry form unless a physical certificate is requested or is otherwise required by applicable law or regulation) representing, in the aggregate, the whole number of shares that such holder has the right to receive pursuant to Sections 2.7 or 2.11 (after taking into account all shares of Time Warner Capital Stock and America Online Common Stock then held by such holder) and (B) a check in the amount equal to the cash that such holder has the right to receive pursuant to the provisions of this Article III, including cash in lieu of any fractional shares of Holdco Capital Stock pursuant to Section 3.5 and dividends and other distributions pursuant to Section 3.3. No interest will be paid or will accrue on any cash payable pursuant to Section 3.3 or Section 3.5. In the event of a transfer of ownership of Time Warner Capital Stock which is not registered in the transfer records of Time Warner or a transfer of ownership of America Online Common Stock which is not registered in the transfer records of America Online, one or more shares of Holdco Capital Stock evidencing, in the aggregate, the proper number of shares of Holdco Capital Stock, a check in the proper amount of cash in lieu of any fractional shares of Holdco Capital Stock pursuant to Section 3.5 and any dividends or other distributions to which such holder is entitled pursuant to Section 3.3, may be issued with respect to such Time Warner Capital Stock or America Online Common Stock to such a transferee if the Certificate representing such shares of Time Warner Capital Stock or America Online Common Stock is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer and to evidence that any applicable stock transfer taxes have been paid.

3.3 Distributions with Respect to Unexchanged Shares. No dividends or other distributions with a record date after the Effective Time shall be paid to the holder of any unsurrendered Certificate with respect to the shares of Holdco Capital Stock that such holder would be entitled to receive upon surrender of such Certificate and no cash payment in lieu of fractional shares of Holdco Capital Stock shall be paid to any such holder pursuant to Section 3.5 until such holder shall surrender such Certificate in accordance with Section 3.2. Subject to the

effect of applicable laws, following surrender of any such Certificate, there shall be paid to the record holder thereof without interest, (a) promptly after the time of such surrender, the amount of any cash payable in lieu of fractional shares of Holdco Capital Stock to which such holder is entitled pursuant to Section 3.5 and the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of Holdco Capital Stock, and (b) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time and a payment date subsequent to such surrender payable with respect to such shares of Holdco Capital Stock.

3.4 No Further Ownership Rights in Time Warner Capital Stock or America Online Common Stock. All shares of Holdco Capital Stock issued and cash paid upon conversion of shares of Time Warner Capital Stock or America Online Common Stock in accordance with the terms of Article II and this Article III (including any cash paid pursuant to Sections 3.3 or 3.5) shall be deemed to have been issued or paid in full satisfaction of all rights pertaining to the shares of Time Warner Capital Stock or America Online Common Stock.

3.5 No Fractional Shares of Holdco Capital Stock.

(a) No certificates or scrip or shares of Holdco Capital Stock representing fractional shares of Holdco Capital Stock or book-entry credit of the same shall be issued upon the surrender for exchange of Certificates and such fractional share interests will not entitle the owner thereof to vote or to have any rights of a stockholder of Holdco or a holder of shares of Holdco Capital Stock.

(b) Notwithstanding any other provision of this Agreement, each holder of shares of Time Warner Common Stock exchanged pursuant to the Time Warner Merger who would otherwise have been entitled to receive a fraction of a share of Holdco Common Stock or Holdco Series Common Stock (determined after taking into account all Certificates delivered by such holder) shall receive, in lieu thereof, cash (without interest) in an amount equal to the product of (i) such fractional part of a share of Holdco Common Stock multiplied by (ii) the closing price for a share of Holdco Common Stock as reported on the New York Stock Exchange, Inc. ("NYSE") Composite Transactions Tape on the first trading day following the date on which the Effective Time occurs. As promptly as practicable after the determination of the amount of cash, if any, to be paid to holders of fractional interests, the Exchange Agent shall so notify Holdco, and Holdco shall deposit such amount with the Exchange Agent and shall cause the Exchange Agent to forward payments to such holders of fractional interests subject to and in accordance with the terms hereof.

3.6 Termination of Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the holders of Certificates for six months after the Effective Time shall, at Holdco's request, be delivered to Holdco or otherwise on the instruction of Holdco, and any holders of the Certificates who have not theretofore complied with this Article III shall after such delivery look only to Holdco for the Merger Consideration with respect to the shares of

Time Warner Capital Stock or America Online Common Stock formerly represented thereby to which such holders are entitled pursuant to Sections 2.7, 2.11 and 3.2, any cash in lieu of fractional shares of Holdco Capital Stock to which such holders are entitled pursuant to Section 3.5 and any dividends or distributions with respect to shares of Holdco Capital Stock to which such holders are entitled pursuant to Section 3.3. Any such portion of the Exchange Fund remaining unclaimed by holders of shares of Time Warner Capital Stock or America Online Common Stock immediately prior to such time as such amounts would otherwise escheat to or become property of any Governmental Entity (as defined in Section 4.1(c)(iii)) shall, to the extent permitted by law, become the property of Holdco free and clear of any claims or interest of any Person previously entitled thereto.

3.7 No Liability. None of Holdco, America Online, America Online Merger Sub, Time Warner, Time Warner Merger Sub or the Exchange Agent shall be liable to any Person in respect of any Merger Consideration from the Exchange Fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

3.8 Investment of the Exchange Fund. The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Holdco on a daily basis; provided that no such investment or loss thereon shall affect the amounts payable to Time Warner or America Online stockholders pursuant to Article II and the other provisions of this Article III. Any interest and other income resulting from such investments shall promptly be paid to Holdco.

3.9 Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Holdco, the posting by such Person of a bond in such reasonable amount as Holdco may direct as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent will deliver in exchange for such lost, stolen or destroyed Certificate the applicable Merger Consideration with respect to the shares of Time Warner Capital Stock or America Online Common Stock formerly represented thereby, any cash in lieu of fractional shares of Holdco Capital Stock, and unpaid dividends and distributions on shares of Holdco Capital Stock deliverable in respect thereof, pursuant to this Agreement.

3.10 Withholding Rights. Holdco shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of shares of Time Warner Capital Stock or America Online Common Stock such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code and the rules and regulations promulgated thereunder, or any provision of state, local or foreign tax law. To the extent that amounts are so withheld by Holdco, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of Time Warner Capital Stock or America Online Common Stock in respect of which such deduction and withholding was made by Holdco.

3.11 Further Assurances. At and after the Effective Time, the officers and directors of Holdco will be authorized to execute and deliver, in the name and on behalf of America Online, America Online Merger Sub, Time Warner or Time Warner Merger Sub, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of America Online, America Online Merger Sub, Time Warner or Time Warner Merger Sub, any other actions and things to vest, perfect or confirm of record or otherwise in Holdco any and all right, title and interest in, to and under any of the rights, properties or assets acquired or to be acquired by Holdco as a result of, or in connection with, the Mergers.

3.12 Stock Transfer Books. The stock transfer books of Time Warner and America Online shall be closed immediately upon the Effective Time and there shall be no further registration of transfers of shares of Time Warner Capital Stock or America Online Common Stock thereafter on the records of Time Warner or America Online. On or after the Effective Time, any Certificates presented to the Exchange Agent or Holdco for any reason shall be converted into the right to receive the applicable Merger Consideration with respect to the shares of Time Warner Capital Stock or America Online Common Stock formerly represented thereby (including any cash in lieu of fractional shares of Holdco Capital Stock to which the holders thereof are entitled pursuant to Section 3.5 and any dividends or other distributions to which the holders thereof are entitled pursuant to Section 3.3).

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of America Online. Except as disclosed in the America Online Filed SEC Reports (as defined in Section 4.1(d)(ii)) or as set forth in the America Online Disclosure Schedule delivered by America Online to Time Warner prior to the execution of this Agreement (the "America Online Disclosure Schedule"), America Online represents and warrants to Time Warner as follows:

(a) Organization, Standing and Power; Subsidiaries.

(i) Each of America Online and each of its Subsidiaries (as defined in Section 9.11) is a corporation or other organization duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, has the requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect (as defined in Section 9.11) on America Online, and is duly qualified and in good standing to do business in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification necessary other than in such jurisdictions where the failure so to qualify or to be in good standing, individually or

in the aggregate, would not reasonably be expected to have a Material Adverse Effect on America Online. The copies of the certificate of incorporation and bylaws of America Online which were previously furnished or made available to Time Warner are true, complete and correct copies of such documents as in effect on the date of this Agreement.

(ii) Exhibit 21 to America Online's Annual Report on Form 10-K for the fiscal year ended June 30, 1999 includes all the Subsidiaries of America Online which as of the date of this Agreement are Significant Subsidiaries (as defined in Rule 1-02 of Regulation S-X of the Securities and Exchange Commission (the "SEC")). All the outstanding shares of capital stock of, or other equity interests in, each such Significant Subsidiary have been validly issued and are fully paid and nonassessable and are, except as set forth in such Exhibit 21, owned directly or indirectly by America Online, free and clear of all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever (collectively "Liens") and free of any other restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other ownership interests), except for restrictions imposed by applicable securities laws. Except as disclosed in Section 4.1(a) of the America Online Disclosure Schedule, as of the date of this Agreement, neither America Online nor any of its Subsidiaries directly or indirectly owns any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for, any corporation, partnership, joint venture or other business association or entity (other than Subsidiaries), that is or would reasonably be expected to be material to America Online and its Subsidiaries taken as a whole.

(b) Capital Structure.

(i) As of January 5, 2000, the authorized capital stock of America Online consists of (A) 6,000,000,000 shares of America Online Common Stock, of which 2,274,045,973 shares were outstanding and (B) 5,000,000 shares of Preferred Stock, par value \$0.01 per share, none of which were outstanding and 500,000 of which have been designated Series A-1 Junior Participating Preferred Stock and reserved for issuance upon exercise of the rights (the "America Online Rights") distributed to the holders of America Online Common Stock pursuant to the Rights Agreement, dated as of May 12, 1998 between America Online and BankBoston, N.A., as Rights Agent (the "America Online Rights Agreement"). Except as disclosed in Section 4.1(b) of the America Online Disclosure Schedule, since January 5, 2000 to the date of this Agreement, there have been no issuances of shares of the capital stock of America Online or any other securities of America Online other than pursuant to options or rights outstanding as of January 5, 2000 under the Benefit Plans (as defined in Section 9.11(b)) of America Online or conversion of convertible debt securities of America Online. All issued and outstanding shares of the capital stock of America Online are duly authorized, validly issued, fully paid and nonassessable and free of any preemptive rights. There were outstanding as of January 5, 2000 no options, warrants or other rights to acquire capital stock from America Online other than (x) the America Online Rights, (y) options and other rights to acquire America Online Common Stock from America Online representing in the aggregate the right to purchase approximately 376,107,825 shares of America Online Common Stock (such options, together with the other employee stock options

issued by America Online after the date hereof in accordance with the America Online Stock Option Plans and Section 5.1, collectively, the "America Online Stock Options") under America Online's Employee Stock Purchase Plan, 1992 Employee, Director and Consultant Stock Option Plan, Quantum Computer Services, Inc. 1987 Stock Incentive Plan and Quantum Computer Services, Inc. Incentive Stock Option Plan (1985) and other option plans assumed by America Online (collectively, the "America Online Stock Option Plans") and (z) the 4% Convertible Subordinated Notes due November 15, 2002 of America Online and the Convertible Subordinated Notes due 2019 of America Online. Except in connection with new hire grants of America Online Stock Options made in a manner consistent with past practice to purchase, in the aggregate, not more than 100,000 shares of America Online Common Stock, Section 4.1(b) of the America Online Disclosure Schedule sets forth a complete and correct list, as of January 5, 2000, of the number of shares of America Online Common Stock subject to America Online Stock Options or other rights to purchase or receive America Online Common Stock granted under the America Online Benefit Plans or otherwise and the weighted average exercise price of the outstanding America Online Stock Options referenced therein. Except in connection with new hire grants of America Online Stock Options made in a manner consistent with past practice to purchase, in the aggregate, not more than 100,000 shares of America Online Common Stock, no options or warrants or other rights to acquire capital stock from America Online have been issued or granted since January 5, 2000 to the date of this Agreement.

(ii) No bonds, debentures, notes or other indebtedness of America Online having the right to vote on any matters on which holders of capital stock of America Online may vote ("America Online Voting Debt") are issued or outstanding.

(iii) Except as otherwise set forth in this Section 4.1(b) or in Section 4.1(b) of America Online Disclosure Schedule, as of the date of this Agreement, there are no securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings of any kind to which America Online or any of its Subsidiaries is a party or by which any of them is bound obligating America Online or any of its Subsidiaries to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of capital stock or other voting securities of America Online or any of its Subsidiaries or obligating America Online or any of its Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking. Except as disclosed in Section 4.1(b) of the America Online Disclosure Statement, as of the date of this Agreement, there are no outstanding obligations of America Online or any of its Subsidiaries to repurchase, redeem or otherwise acquire any shares of capital stock of America Online or any of its Subsidiaries.

(c) Authority: No Conflicts.

(i) America Online has all requisite corporate power and authority to enter into this Agreement and the Stock Option Agreements and to consummate the transactions contemplated hereby and thereby, subject in the case of the consummation of the America Online Merger to the adoption of this Agreement by the Required America Online Vote (as defined in

Section 4.1(g)). The execution and delivery of this Agreement and the Stock Option Agreements and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of America Online and no other corporate proceedings on the part of America Online are necessary to authorize the execution and delivery of this Agreement or to consummate the America Online Merger and the other transactions contemplated hereby, subject in the case of the consummation of the America Online Merger to the adoption of this Agreement by the Required America Online Vote. This Agreement and the Stock Option Agreements have been duly executed and delivered by America Online and constitute valid and binding agreements of America Online, enforceable against America Online in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(ii) The execution and delivery of this Agreement and the Stock Option Agreements by America Online do not, and the consummation by America Online of the America Online Merger and the other transactions contemplated hereby and thereby will not, conflict with, or result in any violation of, or constitute a default (with or without notice or lapse of time, or both) under, or give rise to a right of, or result by its terms in the, termination, amendment, cancellation or acceleration of any obligation or the loss of a material benefit under, or the creation of a Lien, charge, "put" or "call" right or other encumbrance on, or the loss of, any assets, including Intellectual Property (any such conflict, violation, default, right of termination, amendment, cancellation or acceleration, loss or creation, a "Violation") pursuant to: (A) any provision of the certificate of incorporation or bylaws or similar organizational document of America Online or any Significant Subsidiary of America Online, or (B) except (1) as, individually or in the aggregate, (2) would not reasonably be expected to have a Material Adverse Effect on America Online or would not prevent or materially delay the consummation of the Mergers, subject to obtaining or making the consents, approvals, orders, authorizations, registrations, declarations and filings referred to in paragraph (iii) below and except with respect to employee stock options and other awards or (3) set forth in Section 4.1(c)(ii) of the America Online Disclosure Schedule, any loan or credit agreement, note, mortgage, bond, indenture, lease, benefit plan or other agreement, obligation, instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to America Online or any Subsidiary of America Online or their respective properties or assets.

(iii) No consent, approval, order or authorization of, or registration, declaration or filing with, any supranational, national, state, municipal, local or foreign government, any instrumentality, subdivision, court, administrative agency or commission or other authority thereof, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority (a "Governmental Entity") or any other Person, is required by or with respect to America Online or any Subsidiary of America Online in connection with the execution and delivery of this Agreement and the Stock Option Agreements by America Online or the consummation of the America Online

Merger and the other transactions contemplated hereby and thereby, except for those required under or in relation to (A) the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), Council Regulation No. 4064/89 of the European Community, as amended (the "EC Merger Regulation"), the Competition Act (Canada) and the Investment Canada Act of 1985 (Canada) ("Canadian Investment Regulations"), (B) state securities or "blue sky" laws (the "Blue Sky Laws"), (C) the Securities Act of 1933, as amended (the "Securities Act"), (D) the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (E) the DGCL with respect to the filing of the Certificates of Merger, (F) the rules and regulations of the NYSE, (G) antitrust or other competition laws of other jurisdictions, (H) the Communications Act of 1934, as amended, and the rules and regulations of the Federal Communications Commission or any successor entity (the "FCC") thereunder (the "Communications Act"), (I) rules and regulations of (x) the cable franchising authorities having jurisdiction over the cable systems of Time Warner and its Subsidiaries and Affiliates (the "Franchising Authorities") and (y) the state public service commissions having jurisdiction over the assets of Time Warner and its Subsidiaries and Affiliates ("PUCs") and (J) such consents, approvals, orders, authorizations, registrations, declarations and filings the failure of which to make or obtain, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on America Online. Consents, approvals, orders, authorizations, registrations, declarations and filings required under or in relation to any of the foregoing clauses (A) through (I) are hereinafter referred to as "Necessary Consents".

(d) Reports and Financial Statements.

(i) America Online has filed all required registration statements, prospectuses, reports, schedules, forms, statements and other documents required to be filed by it with the SEC since July 1, 1997 (collectively, including all exhibits thereto, the "America Online SEC Reports"). Except as set forth in Section 4.1(d) of the America Online Disclosure Schedule, no Subsidiary of America Online is required to file any form, report, registration statement, prospectus or other document with the SEC. None of the America Online SEC Reports, as of their respective dates (and, if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing), contained or will contain any untrue statement of a material fact or omitted or will omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of the financial statements (including the related notes) included in the America Online SEC Reports presents fairly, in all material respects, the consolidated financial position and consolidated results of operations and cash flows of America Online and its consolidated Subsidiaries as of the respective dates or for the respective periods set forth therein, all in conformity with United States generally accepted accounting principles ("GAAP") consistently applied during the periods involved except as otherwise noted therein, and subject, in the case of the unaudited interim financial statements, to the absence of notes and normal year-end adjustments that have not been and are not expected to be material in amount. All of such America Online SEC Reports, as of their respective dates (and as of the date of any amendment to the respective America Online SEC Report), complied as to form in all material respects with



the applicable requirements of the Securities Act and the Exchange Act and the rules and regulations promulgated thereunder.

(ii) Except as disclosed in the America Online SEC Reports filed and publicly available prior to the date hereof (the "America Online Filed SEC Reports"), America Online and its Subsidiaries have not incurred any liabilities that are of a nature that would be required to be disclosed on a balance sheet of America Online and its Subsidiaries or the footnotes thereto prepared in conformity with GAAP, other than (A) liabilities incurred in the ordinary course of business, (B) liabilities incurred in accordance with Section 5.1, (C) liabilities for Taxes (as defined in Section 4.1(m)) or (D) liabilities that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on America Online.

(e) Information Supplied.

(i) None of the information supplied or to be supplied by America Online for inclusion or incorporation by reference in (A) the Form S-4 (as defined in Section 6.1) will, at the time the Form S-4 is filed with the SEC, at any time it is amended or supplemented or at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and (B) the Joint Proxy Statement/Prospectus (as defined in Section 6.1) will, on the date it is first mailed to Time Warner stockholders or America Online stockholders or at the time of the Time Warner Stockholders Meeting or the America Online Stockholders Meeting (each as defined in Section 6.1), contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Form S-4 and the Joint Proxy Statement/Prospectus will comply as to form in all material respects with the requirements of the Exchange Act and the Securities Act and the rules and regulations of the SEC thereunder.

(ii) Notwithstanding the foregoing provisions of this Section 4.1(e), no representation or warranty is made by America Online with respect to statements made or incorporated by reference in the Form S-4 or the Joint Proxy Statement/Prospectus based on information supplied by Time Warner for inclusion or incorporation by reference therein.

(f) Board Approval. The Board of Directors of America Online, by resolutions duly adopted by unanimous vote of those voting at a meeting duly called and held and not subsequently rescinded or modified in any way (the "America Online Board Approval"), has duly (i) determined that this Agreement and the America Online Merger and the America Online Stock Option Agreement are fair to and in the best interests of America Online and its stockholders and declared the America Online Merger to be advisable, (ii) approved this Agreement, the America Online Stock Option Agreement, the Voting Agreement, the America Online Merger, and (iii) recommended that the stockholders of America Online adopt this Agreement and directed that such matter be submitted for consideration by America Online's

stockholders at the America Online Stockholders Meeting. The America Online Board Approval constitutes approval of this Agreement, the America Online Stock Option Agreement and the America Online Merger for purposes of Section 203 of the DGCL and Article EIGHTH of the Restated Certificate of Incorporation of America Online. To the knowledge of America Online, except for Section 203 of the DGCL (which has been rendered inapplicable), no state takeover statute is applicable to this Agreement, the America Online Stock Option Agreement or the America Online Merger or the other transactions contemplated hereby or thereby.

(g) Vote Required. The affirmative vote of the holders of a majority of the outstanding shares of America Online Common Stock to adopt this Agreement (the "Required America Online Vote") is the only vote of the holders of any class or series of America Online capital stock necessary to approve or adopt this Agreement, the America Online Stock Option Agreement and the America Online Merger and to consummate the America Online Merger and the other transactions contemplated hereby and thereby.

(h) Litigation: Compliance with Laws.

(i) There are no suits, actions, judgments or proceedings (collectively, "Actions") pending or, to the knowledge of America Online, threatened, against or affecting America Online or any Subsidiary of America Online or any property or asset of America Online or any Subsidiary of America Online which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on America Online, nor are there any judgments, decrees, injunctions, rules or orders of any Governmental Entity or arbitrator outstanding against America Online or any Subsidiary of America Online which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on America Online.

(ii) Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on America Online, America Online and its Subsidiaries hold all permits, licenses, franchises, variances, exemptions, orders and approvals of all Governmental Entities which are necessary for the operation of the businesses as now being conducted of America Online and its Subsidiaries, taken as a whole (the "America Online Permits"), and no suspension or cancellation of any of the America Online Permits is pending or, to the knowledge of America Online, threatened. America Online and its Subsidiaries are in compliance with the terms of the America Online Permits, except where the failure to so comply, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on America Online. Neither America Online nor its Subsidiaries is in violation of, and America Online and its Subsidiaries have not received any notices of violations with respect to, any laws, statutes, ordinances, rules or regulations of any Governmental Entity, except for violations which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on America Online.

(i) Absence of Certain Changes or Events. Except as disclosed in Section 4.1(i) of the America Online Disclosure Schedule and for liabilities permitted to be incurred in