

July 17, 2000

Ms. Royce Dickens
Deputy Chief, Policy and Rules Division
Cable Services Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Applications of America Online, Inc., and Time Warner Inc.
for Transfers of Control (CS Docket No. 00-30)
Response to Document and Information Request of June 23, 2000

Dear Ms. Dickens:

This letter sets forth the narrative responses of America Online, Inc. (“AOL”) and Time Warner Inc. (“Time Warner”) to your letter of June 23, 2000, requesting certain documents and information. In accordance with the instructions set forth in the letter to us from To-Quyen Troung, Associate Chief, Cable Services Bureau, dated June 9, 2000, and the Protective Order adopted by the Cable Services Bureau on April 6, 2000, the parties are filing the documents which accompany these narrative responses under separate cover letter.

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AOL-TV

2.1 Please explain AOL-TV’s business plan for offering its services to multichannel video programming distributor (“MVPD”) subscribers.

On June 19, 2000, AOL announced the launch of AOLTV, a new interactive service designed to enhance the television viewing experience and make the TV more entertaining and useful for consumers. It should be understood that AOLTV is not a programming service that is “carried” by an MVPD in the way that HBO or ESPN are carried. Instead, AOLTV operates independently of the user’s existing video programming source. The elements of the service consist of:

- **Navigation**—AOLTV features a state-of-the-art program guide and navigation features designed to help viewers quickly and easily navigate to any channel carried by their cable operator.
- **AOL Features Designed For TV**—AOLTV brings some of the most popular AOL features and services to the TV, enabling users to read and send e-mail, exchange

instant messages, and chat online. In addition, AOLTV allows users to browse the Internet and provides access to all content available on the World Wide Web.

- **Enhanced TV**—For video programmers, AOLTV provides an opportunity to offer viewers enhanced, complementary interactive content optimized for display on the television screen.

AOLTV is initially being launched in select geographic locations, including Phoenix, Sacramento, and Baltimore, but will eventually be available nationwide.

In order to access the AOLTV service, consumers need only acquire an AOLTV set-top box and sign up for the service directly with AOL. Existing members of the AOL online service can add the AOLTV service for an additional \$14.95 per month, but consumers do not need to be AOL subscribers to become AOLTV subscribers: AOLTV-only subscriptions are available for \$24.95 per month.

- a. **Describe the general rights, obligations, terms, conditions and prices of the agreements that AOL-TV has negotiated and/or will negotiate with video programming networks for carriage on AOL-TV and its interactive services. In particular, describe what, if any, limitations these agreements may place on the right of a video programming network to obtain carriage of a particular interactive service, particular content, or advertising on the interactive services screen that AOL-TV will provide the video programming network.**

As a threshold matter, a video programmer does not need any agreement with AOL for its video programming to be viewed by an AOLTV subscriber. AOLTV, which currently uses a dial-up modem connection to enable interactive functionality, operates independently of the user's existing video programming source by simply passing through the subscriber's video signal. In addition, because AOLTV supports the Advanced Television Enhancement Forum ("ATVEF") Enhanced Content Specification, video programmers can make available to AOLTV subscribers interactive content using ATVEF "streams" even without an agreement with AOL.

AOL is just beginning to enter into agreements with video programming networks for the creation of interactive content for the AOLTV service, and the specific economic relationships between AOL and video programmers will undoubtedly evolve over time. Agreements with video programmers do not, however, place limitations on the right of a video programmer to obtain carriage of a particular interactive service, particular content, or advertising, except as to provisions by which partners agree: (1) to comply with AOL's design guideline templates and co-branding requirements; (2) to not provide advertisements, promotions, or links from competitors to AOL on AOLTV itself; and (3) to not carry interactive content as to which AOL is bound by the pre-existing exclusive rights of a third party. Because AOLTV is built around open Internet standards, video programmers will be able to use content developed for the AOLTV service on other interactive television services.

- b. Please produce all agreements between AOL-TV and all video programming networks (e.g., Starz Encore Group) relating to AOL-TV's interactive service.**

The parties are producing documents in response to this request under separate cover letter.

- c. Must AOL-TV have an agreement with a cable operator in order to offer AOL-TV to that cable operator's subscribers? Describe the general rights, obligations, terms, prices and conditions of such an agreement. Must AOL-TV have an agreement with Hughes in order to provide AOL-TV to DirecTV's subscribers?**

AOL does not need an agreement with a cable operator to offer AOLTV to that cable operator's subscribers. As described above, the recently launched AOLTV service simply passes through the video programming provided by the cable operator and relies upon a dial-up modem connection to enable interactive functionality.

As for DirecTV, AOL has an agreement with Hughes Network Systems to develop a combination AOLTV/DirecTV set-top box; AOL does not anticipate developing an AOLTV set-top box outside the context of that agreement.

- d. Please produce all agreements between AOL and Hughes, including but not limited to agreements relating to AOL-TV.**

The parties are producing documents in response to this request under separate cover letter.

- e. Does AOL-TV have an exclusive contract to provide interactive services to DirecTV subscribers?**

AOL does not have an exclusive contract to provide interactive services to DirecTV subscribers. In fact, on June 12, 2000, Microsoft Corp., DIRECTV Inc., and THOMSON multimedia announced that they are teaming to launch a competitive, all-in-one interactive TV set-top box and service.¹ In addition, Hughes Network Systems recently announced an agreement with Juno Online Services, Inc. to offer high-speed Internet access via satellite.²

¹ See Microsoft Press Release, June 12, 2000, "Microsoft, DIRECTV and THOMSON multimedia Join Forces To Make Television More Personal and Interactive," available at <<http://www.microsoft.com/PressPass/press/2000/Jun00/DirecTVpr.asp>>.

² See Hughes Network Systems Press Release, July 10, 2000, "Juno and Hughes Network Systems Form High-Speed Satellite Access Relationship," available at <http://www.hns.com/news/pressrel/csp_pres/p071000.htm>.

f. Please produce all agreements between AOL and all cable operators relating to AOL-TV.

AOL has not entered into any such agreements, and thus the company has no documents responsive to this request.

g. Does AOL have any exclusive contracts with a cable operator to offer AOL-TV to the cable operators' subscribers? If so, please produce these contracts.

No. AOL does not have exclusive contracts with any cable operator to offer AOLTV to the cable operator's subscribers; moreover, as explained above, AOL does not require agreements with any cable operator in order to offer AOLTV services to that cable operator's subscribers.

h. Will AOL-TV revenues derived from viewer subscription fees be shared with video programming networks, cable operators and/or Hughes?

AOLTV does not intend to share revenues derived from viewer subscription fees with video programming networks, cable operators, or Hughes.

2.2 Please describe the services that AOL-TV currently provides and the services that it intends to provide within the next two years. Please produce documents to support your response.

AOLTV currently provides a number of features designed to enhance the television viewing experience. These include:

- **AOLTV Program Guide**—AOLTV features an innovative interactive program guide which organizes and simplifies TV navigation, and provides more control for viewers so they can quickly find what they want on TV.
- **Picture-in-Picture Viewing**—AOLTV allows users to watch TV and access AOLTV features at the same time.
- **AOL Features and Services**—AOLTV provides access to a number of popular features of the flagship AOL online service, including e-mail, Buddy List, instant messaging, chat, You've Got Pictures, Favorites, and Keywords.
- **AOLTV Content Channels**—AOLTV content channels provide online content and interactivity relevant and complementary to television viewing. AOLTV's content channels are organized into the same eleven channels—Networks/Local, News, Money, Sports, Kids & Family, Movies, Interests, Music, Shopping, Pay-Per-View, and Local Access—used to categorize the available video programming in the AOLTV program guide.
- **Support For ATVEF Interactive Streams**—AOLTV supports the Advanced Television Enhancement Forum ("ATVEF") Enhanced Content Specification, a public

standard for delivering interactive television services. ATVEF support guarantees that video programmers can offer interactive services to AOLTV subscribers, regardless of any agreement with AOL.

- **Web Browsing**—AOLTV provides users with direct access to the Internet.

With regard to future AOLTV features and services, AOL is considering a broad range of options. For example, AOL intends to make available an integrated AOLTV/DirecTV set-top box, personal video recording capability (*see* response to Question 2.27(g)), and the addition of high-speed capability via DSL and cable. AOL also expects to incorporate additional features into the AOLTV service that would allow video programmers to create more advanced interactive programming, and to create services that would make it possible for video programmers to use and customize AOLTV features, such as chat, for special TV events.

The parties are producing documents in response to this request under separate cover letter.

2.3 Will AOL-TV subscribers be able to browse the World Wide Web using AOL-TV?

Yes. With AOLTV, members can directly access any web site from their TV. AOLTV includes an HTML-compliant web browser developed by Liberate Technologies that allows users to view and interact with web content on their television screen. The Liberate Technologies browser supports Java Script; it does not, however, currently support full Java.

2.4 Please describe how the AOL-TV set-top box and service operates.

The AOLTV service requires the use of an AOLTV set-top box. Users connect their existing cable television service to the AOLTV set-top box, which they then connect to their television set. If users have a cable set-top box, they will continue to use that as well. In addition, because the AOLTV features are accessed via a 56 kbps dial-up modem that is built into the AOLTV set-top box, users today must also connect the AOLTV set-top box to a phone line. Two different input devices—a universal remote control and a wireless keyboard—are included with the AOLTV set-top box. Though designed as a companion to cable television service, the currently available AOLTV set-top box will work with over-the-air broadcast signals as well.

The set-top box automatically organizes the available television channels into the eleven categories listed in response to Question 2.2 above. Program listing information is currently obtained through the vertical blanking interval (“VBI”) of the signal of a local broadcast station.

The user need not be connected to the AOLTV service when simply watching television or using the AOLTV program guide. Indeed, that experience is no different from watching television generally: the remote control is used to change channels, either directly or by selecting a specific program through the interactive program guide. In order to access the interactive features of the AOLTV service—such as e-mail, chat, instant messaging, and web browsing—or to access interactive content developed by video programmers, the user must connect to the AOLTV service via modem. With respect to those features, then, the AOLTV service operates

much like the online AOL service. Of course, the picture-in-picture feature allows users to both view their chosen video programming and access the interactive AOLTV features simultaneously.

a. What types of software does it use?

The AOLTV service uses three different types of software: an operating system, VxWorks, developed by Wind River Systems, Inc.; middleware and a browser developed by Liberate Technologies; and application software developed by AOL.

The AOLTV/DirecTV combination set-top box will also include system-level software written by Hughes Network Systems.

b. What companies write the interactive software used on the AOL-TV set-top box?

As noted above, the AOLTV browser was developed by Liberate Technologies. The remaining applications, such as chat, e-mail, instant messaging, and e-commerce software, were developed by AOL.

c. Will the API's for the set-top box operating software be published?

Both VxWorks and Liberate Technologies license their APIs. In addition, Liberate Technologies' software is built on open Internet standards—*i.e.*, HTML—which allows anyone to design content that will be compatible with multiple interactive TV services in addition to AOLTV.

The proposed AOLTV/TiVo combination box, described in the response to Question 2.27(g), will use the Linux operating system. Pursuant to the GNU General Public License under which it was developed, the Linux source code—including the APIs—is freely available to the public.

d. How will interactive content be selected?

Ultimately it is the AOLTV subscriber who selects the interactive content he or she wants to experience. First, AOLTV allows users to visit any Website. Second, AOLTV subscribers can choose from a variety of popular AOL features, such as e-mail and instant messaging, no matter what video programming they are viewing. Third, AOLTV's support of the ATVEF interactive television standard allows video programmers to provide their own interactive services to AOLTV subscribers. Finally, AOL is willing and eager to enter agreements with all video programmers to customize interactive content for the AOLTV service.

Within the AOLTV content channels, AOL selects content in much the same way that it does for the flagship AOL online service. However, AOL will not allow anyone—including AOL itself—to counter-program interactive content alongside any video programming service, except for that programmer itself. The only other "content" or interactive features carried alongside

every TV show will be member-driven (*e.g.*, a chat room in which viewers can discuss what they are watching).

e. Will interactive content be portable to non-AOL devices or systems, such as set-top boxes of competitors?

Yes. Programmers will use HTML, an open Internet standard, to create interactive content for the AOLTV service. AOL will publish a “style guide” which will enable content developers to produce content that is designed to work well with the AOLTV service, given the technical limitations of the television as a display for web-based content.

f. Who has the right to select the interactive content related to the video programming network’s programming?

Only the video programming network whose content is being displayed will have the opportunity to program the accompanying interactive content. AOL will not select content to counter-program the content of video programmers.

g. Who manufactures the hardware?

Philips Electronics manufactures the AOLTV set-top box. Although it is not yet available, the AOLTV/DirecTV combination box will be manufactured by Hughes Network Systems.

h. Please produce all agreements between AOL and all software manufacturers and hardware manufacturers relating to the AOL-TV set-top box.

The parties are producing documents in response to this request under separate cover letter.

i. Please explain the services that the AOL-TV channel navigation software provides.

The AOLTV program guide organizes up to three days of TV program listings, and simplifies navigation by organizing channels and programming into the eleven broad categories noted earlier—Networks/Local, News, Money, Sports, Kids & Family, Movies, Interests, Music, Shopping, Pay-Per-View, and Local Access. The AOLTV program guide and its schedule of current and upcoming shows is interactive, so users can click on any listing to view a show summary and, if it is currently being broadcast, to view the actual program itself.

The AOLTV program guide includes a Remind feature, which allows users to set a reminder for any show. Shortly before the show airs, AOLTV will remind the user to watch by sending a message on the notification bar which appears at the top of the TV when he or she is signed on to the AOLTV service.

The AOLTV program guide also provides a one-touch record feature, which works with VCRs to automatically record any show the user selects, or to record a particular show every week.

2.5 Do AOL and/or Time Warner have plans and/or agreements to integrate the AOL-TV set-top box with DirecTV's set-top box and/or any cable set-top boxes? Please describe these plans and/or agreements. Please produce all plans and/or agreements described in your response to this request.

AOL, DirecTV, and Hughes Network Systems ("HNS") are parties to a three-way agreement pursuant to which HNS will manufacture a set-top box that is capable of receiving both the AOLTV service and the DirecTV service. Under this agreement, AOL and DirecTV are together underwriting the production of a combination AOLTV/DirecTV set-top box offering consumers a competitive interactive television service offering. AOL is responsible for online marketing and promotion of the box, and DirecTV is responsible for retail marketing and distribution of the box.

AOL does not currently have any agreements to integrate the AOLTV set-top box with any cable set-top boxes, but it is planning to pursue with various cable operators a combined set-top box akin to that already planned for DirecTV. AOL and Time Warner have held very preliminary discussions regarding integration of AOLTV functionality in cable set-top boxes used by Time Warner Cable.

The parties are producing documents in response to this request under separate cover letter.

Internet Service

2.6 Does AOL have an exclusive agreement with Hughes by which DirecPC/DirectDuo will offer only AOL ISP services? If so, please produce the agreement.

AOL does not have an exclusive agreement with Hughes by which DirecPC/DirectDuo will offer only AOL ISP services. In fact, Hughes recently announced an agreement with Juno Online Services, Inc. to offer the "Juno Express Powered by DirecPC" high-speed Internet service nationwide.³

The parties are producing documents in response to this request under separate cover letter.

2.7 Please produce all marketing agreements between AOL and Hughes to market AOL's ISP service over DirecPC/DirectDuo.

³ See Hughes Networks Systems Press Release, July 10, 2000, "Juno and Hughes Network Systems Form High-Speed Satellite Access Relationship," available at <http://www.hns.com/news/pressrel/csp_pres/p071000.htm>.

The parties are producing documents in response to this request under separate cover letter.

2.8 If the proposed merger were to be consummated, would DSL, DirectPC/DirectDuo, and wireless subscribers who reside in homes passed by Time Warner cable systems have the opportunity to subscribe to AOL ISP service via DSL, DirectPC/DirectDuo or wireless?

Yes, these subscribers could have such opportunities wherever AOL has gained or is able to gain access to these alternative platforms. AOL's business plan has long called for making its service available on all platforms, including cable, DSL, satellite, and wireless, in order to offer consumers access to its service over whichever platform they would like. The AOL Time Warner merger will not change these plans, but instead will facilitate affiliation with Time Warner's cable systems. In short, the mere fact that a subscriber lives in a home passed by Time Warner cable systems will have no bearing on the person's ability to subscribe to the AOL ISP service over non-cable platforms. In fact, given the national footprint of DBS service and ongoing implementation of AOL arrangements with DSL and wireless providers, residents of any area served by Time Warner cable systems will have the AOL service available to them over multiple and competing broadband platforms.

- a. Please produce all documents that reflect any discussions, plans or proposals regarding how AOL ISP service will be offered to viewers who reside in homes passed by Time Warner cable systems if the proposed merger were to be consummated.**

The parties are producing documents in response to this request under separate cover letter.

- b. Please produce all documents that reflect any discussions, plans or proposals regarding how and whether AOL ISP service will be offered to DSL, DirectPC/DirectDuo, and/or wireless subscribers who reside in homes passed by Time Warner cable systems if the proposed merger were to be consummated.**

The parties are producing documents in response to this request under separate cover letter.

- c. Please produce all documents that reflect any discussions, plans and/or proposals for the provision of AOL ISP service over Time Warner cable systems if the proposed merger were to be consummated.**

The principle document establishing the framework for the provision of AOL ISP service over Time Warner cable systems is the Memorandum of Understanding (“MOU”) which was submitted to the Commission on March 1, 2000. Subsequently, AOL and Time Warner have been negotiating an agreement to offer high-speed Internet service in conjunction with Time Warner Cable, consistent with the principles of the MOU.

- d. How does the proposed merger affect AOL’s business plans with respect to DSL, DirectPC/DirectDuo and wireless carriage of its ISP service? Please produce documents that support your response.**

By facilitating choice among multiple ISPs on Time Warner cable systems—and, the parties hope, thereby paving the way for such choice on other cable systems—the merger should result in accelerated implementation of AOL’s business plans with respect to DSL, satellite, and wireless platforms. As the Commission itself has repeatedly recognized, the brisk roll-out of broadband cable modems has spurred providers of rival platforms such as DSL to step up their own deployment plans.⁴ The end result, therefore, will be that consumers will more quickly enjoy greater freedom of choice among competing broadband platforms.

Consequently, in keeping with AOL’s long-standing business plans, a merged AOL Time Warner will continue to seek to provide the AOL service over as many distribution platforms as possible in order to reach the widest number of consumers over the platform of their choosing. As the accompanying documents demonstrate, AOL has signed deals with several DSL, wireless, and satellite providers (which AOL Time Warner fully intends to carry out) and is actively exploring new opportunities to provide its services as broadly as possible. The parties reiterate here what AOL Chairman and CEO Steve Case stated to financial analysts on January 19, 2000:

⁴ See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, at n. 624 (*Third Report and Order and Fourth Further Notice of Proposed Rulemaking*) (rel. Nov. 5, 1999) (“it is widely believed that incumbent LECs’ recent moves to offer broadband to residential customers are primarily a reaction to other companies’ entry into broadband”); Chairman William E. Kennard, “Consumer Choice Through Competition,” Remarks before the National Association of Telecommunications Officers and Advisors, Atlanta, GA, September 17, 1999, available at <<http://www.fcc.gov/commissioners/kennard/speeches.html>> (“this pickup in growth [of DSL deployment] is a function of one thing: competition. The regional Bell companies know that for the first time in the history of this country they are facing a serious, facilities-based competitor in their backyard: the residential marketplace. And that is the cable television industry. And it is the prospect of that competition that is going to really jumpstart broadband deployment in this country.”)

“Even in markets where we have cable distribution, we’ll continue to work with other companies of other technologies and give consumers as many choices as possible.... [W]e believe that is going to be important as we really reach out to the mass market. We need to give them multiple broadband options wherever possible.” Moreover, the prospect of an AOL offering on cable should spur deployment of cable’s competitors—DSL, satellite, and fixed wireless—which, in turn, will facilitate AOL’s increased penetration over these alternative platforms.

The parties are producing documents in response to this request under separate cover letter.

- e. **If the proposed merger were to be consummated, would not AOL have the economic incentive to withdraw its support from DSL, satellite and wireless broadband technologies? Please describe in detail why AOL would or would not have an economic incentive to do so. Please produce any economic analyses that you have prepared that would support your response. Please produce all documents that reflect discussions, plans and/or proposals regarding AOL’s and/or Time Warner’s intentions for DSL, satellite and wireless broadband technologies if the proposed merger were to close.**

As explained below, the parties firmly believe that a merged AOL Time Warner’s economic interests will be best served by continuing to offer the AOL ISP service over as many platforms as possible across the entire country. Consumers increasingly have a choice of, and are utilizing, a variety of broadband platforms. By year-end 2003, forecasts indicate that the household penetration rate of DSL and wireless will be virtually identical to that of cable modems (20% and 21%, respectively). In subsequent years, according to some analysts, DSL and wireless will begin outpacing cable modem subscriber penetration. These various broadband platforms have inherent distinctions, varying in their transport features, coverage areas, and costs. As a result, many consumers inevitably will prefer a certain platform—or perhaps a variety of platforms, depending on the consumer’s location—and these preferences may not be for the cable platform. If AOL refuses to offer its service over these non-cable platforms (which is decidedly *not* its business plan), the consumer is likely to stay with their desired platform and simply subscribe to another ISP. As a result, AOL would lose potential subscription revenues as well as ancillary advertising and e-commerce revenues. Thus, the parties strongly believe it is in the merged AOL Time Warner’s best interest to offer AOL to consumers over all possible broadband platforms.

Moreover, Time Warner’s cable systems reach less than 20 percent of all U.S. households. In order to offer its Internet access service throughout the country, therefore, AOL Time Warner clearly will need to reach agreements with other broadband providers. As a result, AOL inevitably will foster broadband technologies that compete with cable. Moreover, many agreements with other providers necessarily will cover areas that overlap with Time Warner cable service areas. Thus, even if AOL Time Warner desired to avoid alternative platforms in its own area—which it does not—it would be unable to do so and still maintain national reach for its Internet access offering.

In any event, for the reasons explained above, fears that the merger would threaten the viability of alternative broadband technologies as competitors to cable are obviously unwarranted. Leading industry participants have committed significant sums of money to the development and deployment of alternative broadband infrastructure and services, and thus have every incentive to attract the same broadband customers to their respective platforms whom cable operators target with their Internet access offerings. Indeed, our prior submissions detail the rapidly growing number of prominent providers of broadband services—over DSL (*e.g.*, noting SBC's and GTE's ambitious broadband ramp-ups), over satellite (*e.g.*, iSky's planned launch, and now Microsoft and Juno's announced satellite offerings by 2001), and over wireless (including Teligent, NextLink, MCI WorldCom and AT&T's plans for wide-scale deployment of fixed broadband Internet service).

The parties are producing documents in response to this request under separate cover letter.

2.9 Please describe AOL's business and marketing plans for the delivery of AOL ISP service over DSL, satellite and wireless for the following periods:

a. pre-merger (from January 1, 1998 to the date of the Merger Agreement);

AOL has long sought to reach agreements with DSL, satellite, and wireless providers across the country in order to maximize availability of the AOL ISP service and provide consumers as much choice as possible. As a result, AOL entered into non-exclusive agreements with SBC Communications Inc. (including a deal with Ameritech), Bell Atlantic, and GTE to provide consumers broadband Internet service via DSL. AOL also entered into an agreement, as described above, with Hughes to provide AOL Plus over Hughes' existing DirecPC satellite system and to provide a framework under which AOL will offer a similar service via Spaceway, a new (two-way) satellite system that will launch sometime in the near future.

b. the present (from the date of the Merger Agreement to the present); and

AOL's plans remain to maximize availability of the AOL ISP service over as many platforms, including cable, as possible. Toward that end, AOL has announced non-exclusive agreements with Sprint PCS, Nokia, Motorola, Research in Motion, BellSouth, and Arch Communications to offer AOL among the choices of service that will be accessible via wireless devices, including wireless phones. And AOL remains committed to expanding the deployment of its service using DSL in Bell Atlantic and SBC regions, and to launch such service in Ameritech (now a subsidiary of SBC) and GTE regions. Further, AOL intends to complete development of a common broadband network architecture that will allow any broadband client (DSL, cable, or satellite) to connect AOL service with minimal impact to the existing production server architecture, all while taking advantage of higher broadband speeds.

The Merger Agreement has not changed AOL's strategy; rather, the agreement has helped to promote it. The AOL Time Warner MOU establishes a framework that will spur competition among the multiple ISPs offered over Time Warner's cable systems, which in turn will pressure

other platform providers both to accelerate development and to offer consumers a choice of ISPs in order to remain competitive. Prices are apt to fall as competition for consumers increases, with the expected result of increased broadband penetration.

c. post-merger (after consummation of the merger, assuming it is approved).

A merged AOL Time Warner will continue the same strategy of seeking to make the AOL ISP service available over as many platforms as possible. And for all the reasons explained above, the merger will help facilitate and accelerate the implementation of this approach.

Explain whether, why and how the marketing and business plans may have changed and/or evolved over time. Please specifically describe the influence that the proposed merger has had on these plans. Please produce all business and marketing plans described in your response.

Since 1998, the marketing and business plans for the AOL ISP service have become more concrete as technological advancements have been made in various broadband platforms and as more providers have deployed broadband service across the country. The underlying strategy, however, has not changed. The merger has led to the MOU, which advances this strategy by accelerating and facilitating delivery of AOL ISP service over cable broadband, which will lead to greater competition among platforms and, in turn, to increased deployment, lower prices, and increased penetration. Thus, as explained in the response to Question 2.8(e), *supra*, AOL will continue to pursue distribution of its service over non-cable platforms.

2.10 How will the proposed merger advance, as the Supplemental Information statement ("SI") claims (at page 16), AOL's commitment to the development of alternative broadband platform technologies? How will the proposed merger improve upon AOL's prior efforts to advance alternative broadband technologies? Please produce documents that support your claims set forth in the SI and any documents that could be viewed as inconsistent with such claims.

AOL has long believed that it is in its economic interest to maximize the availability of its AOL ISP service by delivering the service using the full range of available platforms. Prior to agreeing to merge with Time Warner, AOL had signed non-exclusive agreements for DSL, wireless, and satellite distribution, as noted above. AOL had been unable, however, to strike such an agreement with any cable operator. As AOL and Time Warner expressed in the subsequent MOU and as explained in their Supplemental Information submission, this merger advances AOL's broadband goals by facilitating AOL's ability to provide its ISP service over cable broadband. The merger, as the MOU makes clear, will further increase consumer choice on cable broadband because the parties have committed to implementing a policy of multiple ISP access on their cable systems as soon as possible.

Industry analysts have observed, moreover, that the merger also is likely to accelerate the pace of deployment of Time Warner's cable broadband by, for example, moving up the time table for Time Warner to provide broadband service to some of its less-populated cable clusters. This

increased deployment in turn will spur local exchange carriers to expedite their own roll-out of DSL in such areas, the clear effect of which will be better services for consumers and increased penetration of broadband products on a pace faster than would occur without the merger. Indeed, the parties have already begun to see such expedited roll-out of services by DSL, satellite, and wireless competitors alike (as described below and detailed in AOL and Time Warner's prior submissions). Increased deployment results in increased consumer choice and awareness of broadband services. Consumer demand is predicted to rise in turn, causing an increase in traffic over broadband platforms. With more broadband subscribers and increased traffic, more entities are encouraged to provide broadband content, services, and access. The end result is a cycle promoting broadband competition and penetration, which will benefit consumers.

Indeed, the ripple effects already appear evident as this merger has borne the MOU, the hope and expectation of an earlier-than-scheduled termination of the multiple ISP restrictions in the Road Runner agreement, and the prospect of the collective resources of AOL and Time Warner jointly committed to driving the advent of next-generation Internet services. In terms of expanding consumer choice over the cable platform, fueling accelerated deployment of alternative broadband platforms, and spurring roll-out of next generation applications and services as well, the mere announcement of this merger has been quickly followed by a series of marketplace advances. For example, we now see AT&T and Charter committing to trials and expedited implementation of multiple ISP choice over their cable systems, Juno Online Services teaming with Hughes to provide competitive broadband satellite access through DirecPC, and Microsoft accelerating its plans to offer interactive television services over the DirecTV platform. Other major cable system operators like Comcast and Cox also have made public announcements in the direction of consumer ISP choice. Without suggesting that the AOL Time Warner merger itself fully explains all these developments, clearly the promise of this merger has already proven a catalyst energizing the marketplace of the future.

The parties are producing documents in response to this request under separate cover letter.

2.11 Please produce all agreements that AOL has reached with DSL (including but not limited to SBC, BA, GTE), wireless (including but not limited to Sprint PCS, Nokia, Motorola, Research in Motion, BellSouth, and Arch Communications) and DBS providers.

The parties are producing documents in response to this request under separate cover letter.

2.12 How will AOL price its ISP service delivered via DSL, DBS and/or wireless providers as compared with its ISP service delivered via cable providers? Will AOL offer its ISP service on similar prices, terms and conditions regardless of (a) the method that the service is delivered, and (b) the location of the subscriber?

Given the nascent state of the industry, as well as the lack of any final agreements to provide AOL over cable, it would be premature to predict now exactly how or whether prices, terms, and conditions will vary.

2.13 Please produce all documents relating to discussions, plans, and/or proposals regarding the future of Road Runner if the proposed merger is consummated.

The parties are producing documents in response to this request under separate cover letter.

2.14 Does AOL or Time Warner have any plans to develop broadband Internet applications or content that would be specific to its cable platform? If so, please describe such applications and/or content in detail.

No. AOL's focus is on developing broadband Internet applications and content that can be delivered effectively across all broadband platforms—DSL, satellite, wireless, and cable. This policy is in keeping with the company's overarching "AOL Anywhere" initiative to make AOL products and services available over the widest possible range of platforms and devices. Similarly, Time Warner has not attempted to create any Internet content that is capable of distribution only by a cable modem service. Neither AOL nor Time Warner know of any reason why content developed for a cable Internet services like Road Runner would not be similarly compelling on any other broadband delivery platform, including DSL, fixed wireless, or satellite. In short, the parties have no plans to develop broadband Internet applications or content that would favor cable modem delivery over other broadband platforms.

2.15 Does AOL or Time Warner have exclusive arrangements (whether by agreement, ownership interest or otherwise) with any developers of broadband Internet applications or software? If so, please produce any such agreements.

AOL does not have any exclusive arrangements that bar developers of broadband Internet applications or software from developing or supplying similar services or products elsewhere. Likewise, although Time Warner has many different and independently managed businesses working on Internet matters, we have been unable to identify any Time Warner divisions with such exclusive arrangements with developers of broadband Internet applications or software.

2.16 Does AOL or Time Warner have exclusive arrangements (whether by agreement, ownership interest or otherwise) with any Internet content providers, e-commerce providers, Internet portals, or any other content providers for placement of their content on the Internet?

AOL has entered into agreements whereby the particular arrangement of content or service providers' elements and features may be unique to the AOL flagship service, but these arrangements generally do not limit such providers from establishing and providing similar content for their own independent web sites reachable through any ISP. While AOL had entered into agreements with Time Warner that included a provision granting its online services temporary exclusive narrowband distribution rights for three Time Warner-affiliated entertainment magazines, People, Teen People, and In Style, both companies have since agreed to terminate the exclusive nature of that agreement, determining that offering such content exclusively on the AOL services was not the best business approach. The parties terminated the exclusivity associated with People magazine on March 13, 2000. In Style, which has not yet launched, will launch on a non-exclusive basis. And Teen People, which has been exclusive on AOL since November 1997, will become non-exclusive in November of this year (as technical issues preclude earlier termination of the exclusivity). Neither AOL nor Time Warner has any other exclusive arrangements with any Internet content providers, e-commerce providers, Internet portals, or any other content providers for the placement of their content on the Internet.

2.17 Does AOL or Time Warner have any plans to develop, whether in-house or in conjunction with another company, broadband Internet software or applications that will incorporate proprietary APIs? If so, describe in detail all such plans.

AOL delivers its services through proprietary software which include proprietary APIs. However, this software either is intended only for use with AOL services or, in the case of the Netscape browser, is available in open source from mozilla.org. AOL has no other plans to offer a software platform with proprietary APIs for use by third-parties.

Review of Time Warner divisions has revealed no plans to develop Internet applications or software that incorporate proprietary APIs. Indeed, Time Warner Cable has been a leading proponent of development of an industry-wide, standard set of APIs through the "Open Cable" program. This process has led to the open standard for high-speed cable modems: DOCSIS.

Benefits

2.18 Please explain how a merged Time Warner and AOL would "spearhead the convergence of traditional media and online technologies," as claimed in the SI at 29. Please produce all documents relating to discussions, plans, and/or proposals that support your response to the request.

By combining AOL's expertise in developing user-friendly Internet services with Time Warner's extensive content resources, the merger will serve the public interest by greatly accelerating the development of interactive products and services beyond what either company

could have achieved alone. The transaction clearly will expand the reach and enrich the nature of traditional media content from all content providers as it is made more widely available to consumers online. But, from the outset, the parties have made plain that this merger is intended and designed to ultimately give consumers more than just greater variety among current online offerings. By joining together, AOL and Time Warner plan to create and deliver to consumers easily accessible interactive services—mixing and fusing content and communication elements—that today are only in their infancy or are not yet on the drawing board.

And the newly merged company will not be alone in this regard. Attractive new broadband services emerging from the combination of AOL online skills and Time Warner media skills will accelerate consumer adoption of broadband and broadband-enabled communications services, such as the next generation of the interactive television service that AOL has begun to launch. The parties expect that these new AOL Time Warner offerings (and even simply the prospect of these offerings) will act as a competitive spur to others offering broadband services, both service providers and facility providers alike. The newly merged company's rivals in the offering of interactive content and communications services likely will move more quickly to bring their own new or improved offerings to the marketplace for fear of otherwise being left behind. Similarly, because AOL Time Warner will offer its services via DSL, wireless, satellite, and cable platforms, the merger should help to propel broadband facilities deployment and drive penetration of broadband services to more consumers, and do so faster, than would occur without the merger; the collective attraction of new interactive products and services offered by AOL Time Warner and its competitors should promote investment in the facilities needed to deliver them.

Consumers will enjoy an increasingly broad and deep array of new AOL Time Warner offerings over the next several years. In the immediate future, the merger presents key opportunities for the companies to improve and expand the Internet content and services that Time Warner currently seeks to offer to consumers, due in part to AOL's Internet experience, technology resources, and focus on developing interactive brands and services that are both user-friendly and responsive to consumer demand in the online arena. Using AOL technology, facilities, and programming knowledge, AOL Time Warner will have the capacity to dramatically improve the consumer experience with existing Time Warner web sites as well as the ability to develop efficiently additional interactive services, thereby increasing the availability and quality of valuable content available online—for all Internet users, not only subscribers to AOL's flagship service. At the same time, the company will continue to respond to consumer demand by offering its customers a broad range of content sources.

For example, AOL and Time Warner are beginning to discuss ways to improve consumer enjoyment of the online versions of CNN, Cartoon Network, Money, Entertainment, and Volume.com. In addition, AOL and Time Warner are working to make Time Warner music, television programs and movies, cable programming, and magazine content more widely available to consumers by distributing it over AOL's broad-based Internet services. These services should make it easier for consumers to find, buy, and share music by expanding their ability to search for music online and to listen to music before purchasing. In the same vein, Time Warner subsidiary Warner Bros. New Media and AOL are discussing how the merged company might make other Time Warner brands more widely available to consumers on the Internet—such as by integrating

some Time Warner entertainment information into AOL.com and adding Warner Bros. content offerings to AOL Plus.

Beyond merely broadening the availability and appeal of Time Warner content online, the parties expect that their combining AOL's online expertise with Time Warner's content will help to jump-start the development of competitive broadband online services still in the nascent stage—and through these to offer new platforms for all providers of online content and services. A united AOL Time Warner will be ideally suited to overcome “the chicken or the egg” problem that still confronts these new ventures: many potential competitors in this arena have been hesitant to invest substantial resources in its growth. Content providers have had concerns about rolling out broadband applications without the assurance that a platform for their services will be available, while facilities providers similarly have been skeptical about the advantages of investing in broadband technology prior to the development of content sources. The development of narrowband Internet services content well illustrates this phenomenon.

AOL Time Warner, with both popular content resources and online expertise, will have strong incentives to invest the resources necessary to deploy an array of innovative broadband content services and features. Furthermore, AOL Time Warner's commitment to use all possible broadband platforms, including but not limited to its own cable systems, means that these new services will draw consumers (and investors) to various high-speed facilities. This prospect, in turn, should prompt the merged company's rival service and content providers to roll-out their own broadband offerings as quickly as possible—both to protect their competitive positions and because the pace of broadband platform availability will no longer be an obstacle.

One illustration of this point is the merged company's plans with respect to further development of AOLTV. The new AOL Time Warner will be well suited to help develop all facets of interactive television—programming, applications, and platforms—that are needed to speed the full emergence of this long-anticipated service. The merged company will look to partner with a wide range of providers in order to offer customers the variety they have come to expect in the online world. As one illustration, the merger presents an expanded opportunity for AOL to work with Time Warner cable systems to create interactive video programming tailored to the local communities served by the individual or regional systems. Time Warner Cable, through locally originated programming or through the creation of “virtual channels,” could provide a model for other cable operators or alternative video distributors to successfully develop and market community-oriented interactive television services. For example, AOLTV could provide the means to enhance national election coverage by partnering with local cable operators or broadcasters to provide interactive features concerning local races. Other content providers have been reluctant to make the commitment to developing such interactive content “on spec”—*i.e.*, until such a platform had a proven audience. AOL Time Warner will be able to seed these and similar services of much desired, but also long awaited, promise.

Also among the goals of the parties is making Internet-delivered music a user-friendly and convenient option for consumers. As explained in the parties' Supplemental Information filing, AOL has been working to resolve the technical and security obstacles to creating a service format protecting intellectual property rights that have thus far slowed the development of online music

services. At the same time, AOL has been working on its own to develop such online music services as digital downloading and the Locker in the Sky concept, which would enable consumers to access stored music in a secure digital form from a variety of Internet-capable devices. Such offerings enhance consumer choice by enabling individuals to create personal digital music libraries and to have access to digital music over a variety of platforms, while protecting the copyrights of content providers. By combining AOL's savvy at making interactive services easily accessible with Time Warner's music resources and expertise in serving consumers' tastes, the merged company will be well positioned to help bring a vast array of choices of online and offline music products and services. This will also spur other providers to develop innovative offerings, further enhancing consumer choice and public benefits. The parties also have discussed digital distribution of other types of entertainment, such as books and video on demand, that would similarly benefit from AOL's interactivity skills and Time Warner's creative resources and content (to bring consumers increasingly customized services). Again, the parties expect that AOL Time Warner's leadership in this area will serve to elicit a competitive response, driving additional benefits for consumers through innovation and choice.

The parties also are contemplating the development of an interactive package of services that could give consumers access to an array of customized and conveniently bundled financial information. Combining AOL's skill at making interactive services easily accessible with Time Warner's financial information resources could make possible such promising new lines of services that will bring value and convenience to consumers. These services might include a generally available portal with online financial services integrated with multi-media sources of news, information, data, and advice. Although such a service remains in the conceptual stages, the package might well include such features as personalized account information, online management tools for small businesses and the capability to trade stocks, gather insurance quotes, allocate assets, and provide mortgage banking services. The portal eventually might be linked to an Internet-TV service providing 24-hour coverage of world financial markets.

Along similar lines, AOL and Time Warner expect to give consumers more purchasing options by creating interactive marketing opportunities for advertisers. A merged AOL Time Warner will have the capacity to offer new advertising packages that include online components, and could offer marketers the opportunity to advertise goods and services in innovative and more personalized ways. Time Warner marketing partners could take advantage of AOL's proven ability to move businesses to interactive distribution models. As a result, consumers should benefit from the convenience of increased opportunities to learn about and purchase products and services online that are specifically catered to their needs and interests.

On a separate but important matter, the merger will enable the parties to work together in providing consumers with enhanced telephony services. Perhaps the most obvious possible avenue for the merged company to explore will be IP telephony, given the combination of Time Warner's broadband facilities and AOL's extensive Internet knowledge and experience. This presents a robust opportunity for competition against the services of the incumbent local exchange carriers.

From a long-term perspective, the parties also are working to ensure that combining their resources and expertise will result in the creation of a multitude of wholly new interactive products and services in the future. Although the companies cannot yet predict exactly what products and services eventually will be developed by the combined company, AOL and Time Warner already have taken steps to facilitate the development of these yet-to-be-imagined innovations by organizing the structure of the new entity in order to ensure that divisions share their creative ideas with one another. Thus, AOL and Time Warner are preparing themselves to make full use of their synergies and opportunities for innovation in order to provide consumers with a deep and rich array of new offerings in the future.

The parties are producing documents in response to this request under separate cover letter.

2.19 The SI (at page 30) claims that the proposed merger will “make possible [the] acceleration of the development and availability of (1) established media offerings made more widely available and accessible online; (2) new, interactive forms of media content more fully tailored to and enriched by the Internet; and (3) wholly new forms of information, entertainment, communications, and commerce.”

a. Please explain what types of services are meant by “(1) established media offerings made more widely available and accessible online; (2) new, interactive forms of media content more fully tailored to and enriched by the Internet; and (3) wholly new forms of information, entertainment, communications, and commerce.” What types of interactive forms of media content will the proposed merger create? What new forms of information, entertainment, communications and commerce will the proposed merger create? What next generation products does the merged entity intend to develop?

AOL Time Warner’s plans for improving the online presence of its current offerings, creating interactive and other new services, and developing next generation products are described in the response to Question 2.18.

b. Explain in detail how the proposed merger will accelerate the development and availability of these services? Why could this same goal not be accomplished through joint ventures between Time Warner and AOL?

As cited in the parties’ previous submissions, many independent analysts have concurred with the parties’ determination that a merger is the most reliable vehicle for these two companies to bring new services and products to consumers quickly in what all agree is a risky, if promising, marketplace. The merger will allow AOL and Time Warner not simply to accelerate migration of Time Warner content onto the Internet or expand AOL’s content offerings but will give personnel at both companies the freedom and flexibility to more thoroughly explore the possibilities for wholly new and, by definition, currently undefinable broadband-enabled services that could

revolutionize people's lives. What's more, the combined company's new offerings will provide an impetus for its competitors to follow suit.

An example of how the proposed merger will accelerate the development and availability of new or improved services is the anticipated jump-start for interactive TV described above in response to Question 2.18. As explained there, the development of such innovative services has lagged in significant part for the very reason that this merger is so promising for consumers: video programmers have been reluctant to devote the substantial time and resources required to develop innovative interactive content absent an audience for such products while, at the same time, would-be interactive television providers have been reluctant to develop a platform lacking ready and attractive content. This merger presents the opportunity for the AOLTV development team to work with Time Warner's array of video programming properties/networks with a breadth of common purpose unlikely to be matched even in the best joint venture. Moreover, these innovative offerings will boost the incentives of AOL Time Warner's competitors to rollout their own interactive television offerings.

As this AOLTV example demonstrates, it would be impractical for the parties to try to negotiate a series of contracts or joint venture arrangements to account for the far-reaching and unprecedented undertaking contemplated by the merger transaction. Because the vision underlying the merger is not to implement a single product or service, but rather to create an entirely new type of company that will be well-positioned to create an array of innovative services, it would be extremely difficult to enter into joint venture relationships that would cover the scope of this transaction. Furthermore, where two parties such as AOL and Time Warner are seeking such broad innovation in an environment defined by ever-evolving technologies and services, individual contractual relationships would be especially difficult to negotiate and much less efficient than the full integration offered by a merger. For example, the negotiation of individual joint venture agreements for each separate endeavor would involve delays and inefficiencies inherent in establishing the formal relationship necessitated by agreements among independent, publicly traded companies.

Because there is no way to predict precisely what technologies and services will develop and be demanded by consumers in the future, it would be difficult, if not impossible, to forecast the appropriate parameters of a limited contractual relationship. As the Commission recently concluded in approving the merger of AT&T and MediaOne, "the services to be covered by [a] joint venture in light of dynamic and rapidly evolving technology and market developments" would make "arms-length negotiations arduous."⁵ Thus, the most efficient option—and the one that holds the most promise for consumers in the shortest period of time—is for AOL and Time Warner to become one company with unified goals for meeting consumer demand and needs across every product and service they do or could potentially offer. And, as noted elsewhere, the parties expect that their merger will, in turn, set off a wave of unprecedented innovation among a wide range of its competitors.

⁵ *AT&T/MediaOne Order*, at ¶ 175.

c. Please produce documents to support your responses to these requests.

The parties are producing documents in response to this request under separate cover letter.

2.20 Please provide a detailed description of the services and products described in the SI that will be developed by the combined firm or that the SI claims will somehow be improved by the merger. Please explain how the proposed merger will develop and/or improve the described services and products. Please describe the extent to which either Time Warner or AOL has independently developed or could independently develop these new services and products.

Details concerning the services and products that AOL and Time Warner expect to develop or enhance by virtue of their merger are provided in the response to Question 2.18. Although AOL and Time Warner were independently exploring some of the new products and services discussed in response to question 2.18 prior to the announcement of the proposed merger, the merger—as explained above—will permit the parties to accelerate the roll-out of these new products and services.

AOL and Time Warner have independently concluded that neither company could, on its own, achieve the scope of attractive consumer offerings that will be obtained through a combination of their complementary strengths. For example, Time Warner's Pathfinder portal, which aggregated the company's many individual content brands, failed to achieve widespread commercial success. Time Warner's attempt to establish interactive television services through a full-service network was similarly unsuccessful. Likewise, AOL could not replicate Time Warner's content expertise in areas such as music, publishing and video programming. The merger will give the companies the chance to combine their respective abilities to transform their offerings into products and services that are appealing, rich in content, and easy for consumers to use.

2.21 At page 31, the SI states that one factor motivating the merger was the existence of "cost efficiencies in launching and operating interactive extensions of Time Warner brands." Please fully describe these cost efficiencies and produce documents that support your response.

As explained in response to Question 2.18, AOL has developed a very centralized and efficient cost structure for operating interactive sites. Time Warner's more limited ventures in this area, on the other hand, have offered a more decentralized and less efficient Internet infrastructure and strategy. Thus, access to AOL's online operations and facilities will directly provide Time Warner with greater efficiency in its current online ventures. Allowing the parties to pursue these substantial cost savings will enable them to bring more effective interactive services to consumers on an accelerated basis.

For example, AOL's web hosting facilities are much larger and more efficient than those used by Time Warner. Time Warner currently uses a combination of internal and external server

companies to host its web sites. Time Warner's internal companies do not operate with the efficiency of AOL in this regard, and Time Warner incurs substantial costs from the web hosting services it outsources. Thus, substantial cost savings will result from integrating all of Time Warner's web hosting needs into AOL's internal web hosting infrastructure.

Time Warner also will realize cost efficiencies by making use of AOL's centralized Internet production and design operations. More generally, AOL will have the capability to support interactive efforts undertaken by Time Warner businesses by providing necessary support, tools, and templates, as well as the resources necessary for developing digital content.

The proposed merger likewise will result in cost efficiencies and synergies across a range of other services and operating facilities. In general, these efficiencies and synergies will reduce the cost and increase the pace of deploying, operating, and improving interactive extensions of Time Warner services—which, in turn, should spur others as well to broaden still further the array of online choices available to consumers.

As noted above in response to Question 2.18, the parties are producing documents in response to this request under separate cover letter.

2.22 Please produce all documents relating to discussions, plans and/or proposals regarding business plans for a merged Time Warner and AOL and business plans regarding the services described in the SI that the merged firm would provide.

As noted above in response to Question 2.18, the parties are producing documents in response to this request under separate cover letter.

Ownership Interests

2.23 Please identify all companies in which AOL or Time Warner holds a 5% or greater equity ownership interest. For these companies, please identify AOL's or Time Warner's percentage ownership and the percentage ownership of all other owners of the company who own 5% or more of the company's equity.⁶

AOL:

The companies in which AOL holds 5% or greater interest are listed in AOL Exhibit 2.23, attached hereto.⁷

Time Warner:

As the Commission is aware, Time Warner is a highly diversified and decentralized company, with numerous divisions operating largely autonomous businesses. Thus, Time Warner's corporate headquarters generally does not contain a central repository for much of the information requested by the Commission. With regard to ownership interests, for example, corporate headquarters does not maintain records of every investment by each Time Warner division, particularly those at the 5% equity threshold contained in the Commission's question. In order to provide a thorough response to the Commission's requests, Time Warner has exercised due diligence in surveying each of its divisions and aggregating those responses herein to the best of its ability.

Attached as Exhibit 2.23 is a list of companies (except for wholly-owned entities and foreign entities not doing business in the U.S.) in which Time Warner or any of its divisions holds a 5% or greater interest. The principal source of such information is a document entitled "Time Warner Inc. and Affiliated Companies - Corporate Structure," dated 12/31/99, attached as Exhibit 2.23(a). This information is prepared by Time Warner annually at year-end. Where known, ownership interests held by third parties are indicated in italics. Also included, as Exhibit 2.23(b) is a supplement dated May 2000 regarding Time Warner's New Media investments. This information is further updated by the document labeled Appendix 6(c) and dated June 30, 2000, attached as Exhibit 2.23(c), as well as by Exhibit 2.23(d), a list of additional Time Inc. ownership interests. Finally, attached as Exhibit 2.23(e) is a schedule prepared by Time Warner Cable of its business entities with outside ownership.

⁶ Consistent with the parties' June 28, 2000 procedural meeting with FCC staff to discuss the parameters of the response to this information request, the parties have relied on publicly available materials in obtaining information regarding other investors in listed companies.

⁷ Also, pursuant to the parties' meeting with FCC staff to discuss the parameters of the response to this information request, the parties' response to this question does not include investments in companies operating overseas. In addition, we have not listed entities which are wholly-owned by AOL or Time Warner.

2.24 Please identify all partnerships in which AOL or Time Warner is a partner. Please identify all partners in each partnership identified and each partner's percentage equity interest.

AOL:

For AOL interests, see AOL Exhibit 2.24, attached hereto.⁸

Time Warner:

For Time Warner interests, see response to Question 2.23.

2.25 Please identify all telecommunications companies, including but not limited to those that offer telephone service; multichannel video programming distributors ("MVPDs"); video programming networks (e.g., Home Box Office); ISPs; Internet content providers; cable and broadcast content providers; telecommunications, cable and Internet equipment manufacturers; and software manufacturers with which AOL or TW has joint ventures, strategic alliances, and/or marketing agreements. Please describe the nature and/or purpose of the ventures, alliances, and/or agreements.

Based upon a meeting with FCC Staff to discuss the parameters of the responses to this information request, the parties' response to Question 2.25 consists of a description of the nature and/or purposes of the various categories of agreements, but does not identify the many specific arrangements that AOL or Time Warner may have with the various types of companies covered by this request.

AOL:

Telecommunications companies: AOL has relationships with myriad telecommunications carriers, including incumbent and competitive local exchange carriers and long distance providers. AOL's role as an information service provider generally means that, with respect to telecommunications carriers, AOL is acting as an end-user (or customer) of telecommunications services. In this capacity, AOL may use the carriers' telecommunications services as an input for services that are then offered to AOL's subscribers (e.g., high speed Internet access services using DSL services) or may simply use the telecommunications services in the ordinary course of its operations, similar to most other businesses. Beyond these arrangements, however, there are several instances where AOL has entered into arrangements with telecommunications carriers pursuant to which it performs marketing functions or otherwise acts outside its usual role as an end-user customer. With respect to some carriers, AOL may act in both capacities.

⁸ As noted above, pursuant to the parties' meeting with FCC staff to discuss the parameters of the response to this information request, the parties' response to this question does not include investments in companies operating overseas. Additionally, information requested by the FCC regarding other partners in these partnerships is not publicly available.

Specific relationships of this type include a marketing agreement with a provider of interstate long distance and other telecommunications services. Pursuant to this arrangement, AOL performs marketing functions, such as promoting and advertising the carrier's telecommunications services through the AOL online service and assisting the telecommunications carrier in obtaining long distance service customers through other marketing efforts, including direct marketing that may or may not be online. Note that under this arrangement, rates, terms, and conditions of the telecommunications carrier's services are determined solely by the carrier, not by AOL; the carrier is also responsible for all telecommunications regulatory obligations consistent with its role as a carrier.

Other similar relationships include arrangements with some, but not all, local exchange carriers that AOL has agreements with concerning the purchase of Digital Subscriber Line services. Note that as a customer of such local exchange carriers' telecommunications services, AOL purchases DSL services pursuant to any required tariffs and the rates, terms, and conditions set forth therein. With respect to AOL's marketing/advertising agreements with certain carriers, AOL has arrangements whereby it may develop, market, promote, and distribute high-speed versions of AOL's Internet access service and may provide some advertising for carrier products and services. Under these arrangements, AOL may also offer some degree of co-branding for a high-speed version of AOL Internet access service, with marketing, promotion, and distribution of the high-speed service through whatever means or media AOL deems suitable. These relationships may be non-exclusive such that either the carrier or AOL may enter into other similar marketing and promotional agreements with third parties, or elective such that AOL may or may not undertake to market and promote a co-branded service.

AOL has also entered marketing relationships that promote other telecommunications and related services, including wireless services. These arrangements encompass agreements for AOL or its affiliates to market and promote voice and related services (*e.g.*, calling card services) for the providers of those services. This promotional activity may include sub-branding (the name of the entity offering the service) in advertising, promotional, public relations, and marketing material, and may also include cross-promotion of the services of both parties. In connection with these arrangements, AOL's affiliates may also promote the services through special offers and other means designed to enhance the attraction of the relevant services. AOL and its affiliates do not establish the rates for any telecommunications service nor are they responsible for the services' technical performance. Similarly, the service providers, rather than AOL or its affiliates, are generally responsible for billing and collection of relevant fees as well as maintenance and customer support related to the services.

Finally, AOL has agreements with several wireless carriers pursuant to which AOL has agreed to assist the carriers in building brand awareness and in promoting their services. These arrangements may include cross-promotion of the services of AOL and the relevant carriers, some co-branding functions, and agreement to develop enhancements that will increase the attractiveness of the services offered. Relevant advertising obligations include off-line advertising and other similar promotions (*e.g.*, broadcast television or radio, direct mail, retail stores, etc.) as well as online promotions (*e.g.*, banner advertisements, links, etc.).

Multichannel Video Programming Distributors (“MVPDs”): Aside from the agreements with DirecTV/Hughes previously discussed (and, of course, agreements with Time Warner relating to the merger), AOL does not have any joint ventures, strategic alliances, or marketing agreements with any MVPD.

Video Programming Networks: As described in conjunction with the discussion of AOLTV above, AOL has entered into agreements with video programming networks to create interactive content to be used with the AOLTV service to enhance the consumer’s television experience. The agreements typically contemplate the integration into the AOLTV service of interactive content that is drawn from the programmer’s content currently available over the Internet, but offered simultaneously with the programmer’s video content. The video programming network’s interactive content is provided via a subscriber’s narrowband or broadband connection to AOL. The agreements additionally allow for video network programmers to use and customize AOLTV features (such as chat) for special television events and also contain certain marketing provisions pursuant to which the parties may provide co-branding and other offline and online promotions.

ISPs: AOL has entered into an agreement with Gateway pursuant to which AOL will use its infrastructure and online expertise to operate Gateway’s ISP—Gateway.net. AOL provides all network operations, registration, billing, and customer service. The relationship is designed to further AOL’s “AOL Anywhere” strategy of providing Internet access to consumers across multiple devices and to further Gateway’s objective of becoming a world-class Internet service provider.

Internet Content Providers: AOL has entered into hundreds, if not thousands, of arrangements with Internet content providers. While each arrangement is (to some degree) different, they are generally designed to give AOL subscribers a user-friendly means of navigating through a wide array of content customized for the AOL service. The exchange of value between AOL and the content provider can take the form of promotional considerations (*e.g.*, through both online and offline advertising, and distribution channels), AOL “Keyword” recognition, co-branding arrangements, or cash. Although AOL’s content providers typically make similar content generally available on the web, there are occasions in which a content provider will create certain content exclusively for AOL or provide AOL exclusive chat or slide show features.

Telecommunications, cable and Internet equipment manufacturers: In addition to the Hughes agreements previously discussed, AOL has entered into certain contractual arrangements designed to develop and market equipment needed to run the various AOL services. In addition, as previously noted, Netscape has entered into a contractual alliance with Sun Microsystems to develop and market business-oriented hardware and software solutions under the name of iPlanet.⁹

⁹ See, *e.g.*, Supplemental Information at 7.

Software manufacturers: Generally, AOL's software agreements are done on a licensor-licensee basis and do not involve joint ventures, strategic alliances, or marketing agreements. AOL's relationship with Sun Microsystems, noted above, includes the development and marketing of software and services to deliver integrated, end-to-end e-commerce solutions (including client and server software). AOL has entered into a marketing and distribution agreement with Microsoft pursuant to which AOL uses the Internet Explorer browser as the integrated browser for the AOL service and Microsoft incorporates the AOL software as part of the software offered in connection with the Windows operating system. AOL also has a joint marketing and distribution agreement with RealNetworks pursuant to which AOL will incorporate the RealPlayer streaming media technology into AOL 6.0 (which is due out later this year) as well as the Netscape browser and make RealPlayer available for download through the Netcenter site; and pursuant to which RealNetworks will distribute Spinner (AOL's web radio player).

Time Warner:

Time Warner has included "joint ventures" in its response to Question 2.24 regarding "partnership" interests. Thus, in addition to the relevant equity ownership interests disclosed above, attached as Exhibit 2.25 is a list of strategic alliances and/or marketing agreements reported by Time Warner's subsidiaries or divisions with telecommunications companies, MVPDs, video programming networks, ISPs, and Internet content providers.

2.26 Please identify all companies for which AOL or TW has the right to appoint members of the board of directors or company officers, including the number and type of appointments and the total number of board members for the company.

AOL:

Except as set forth in AOL Exhibit 2.26 and for any rights with respect to companies set forth in AOL Exhibits 2.23 and 2.24, there are no companies for which AOL has the right to appoint members of the board of directors or company officers.

Time Warner:

Time Warner's investigation of its operating Divisions has revealed no companies for which it has the right to appoint members of the board of directors or company officers, other than as set forth in response to questions 2.23 and 2.24.

2.27 Please give a detailed description of AOL's investment in TiVo and agreements that AOL has with TiVo, including:

- a. What rights the investment grants AOL, including but not limited to appointment of directors and company officers, and discounts on purchases of TiVo equipment.**

AOL and TiVo announced their new three-year strategic agreement and equity investment on June 14, 2000. This agreement expands upon the previous agreement between the companies,

whereby in 1999 AOL acquired slightly over a 1% interest in TiVo. AOL has not yet consummated the recently announced investment, which remains subject to Hart-Scott-Rodino and TiVo shareholder approval.¹⁰

Upon the closing of the investment, AOL will have the option to appoint either a director or an observer to the TiVo Board of Directors. In addition, before entering into any negotiations to be acquired, TiVo must provide AOL with notice and must inform AOL if the potential buyer is one of a number of entities enumerated on a list provided by AOL at that time.¹¹ The investment does not provide AOL with discounts on any equipment.

b. The size of the investment.

The response to Question 2.27(b) is included within the response to Question 2.27(c).

c. The percentage voting stock in TiVo that AOL holds.

Under the Agreement, AOL will make an investment in TiVo of up to \$200 million in return for stock and warrants to purchase additional TiVo shares. While the precise size of the investment is determined in part by the share price of TiVo on the closing date of the deal, AOL will not acquire stock or warrants representing greater than a 30% interest.

Pursuant to the Agreement, AOL will purchase TiVo common stock at a per share price equal to the trading average to TiVo common stock prior to the closing of the transaction, subject to a maximum of \$35 and a minimum of \$23. If the average price is below \$10, AOL has a right to walk away from the transaction. If the average price is below \$30, the number of shares of common stock AOL will purchase will be reduced proportionately and AOL will also obtain convertible preferred stock in return for its investment.¹² TiVo recently has been trading slightly below \$30 per share.

¹⁰ Question 2.27 is being answered under the assumption that the AOL/TiVo investment closes.

¹¹ The rights listed above are in addition to standard rights and obligations, such as registration rights, preemptive rights and standstill obligations. Further, AOL's standstill obligations, board rights and takeover notice rights expire on the earlier to occur of June 9, 2008 or when AOL no longer owns 10% of the outstanding TiVo common stock.

¹² For example, if the share price of TiVo is \$30, AOL will acquire a 16.1% ownership interest in TiVo (including AOL's existing 1.3% ownership interest in TiVo). If the share price of TiVo is \$35, AOL will acquire a 14.2% interest in TiVo. If the share price of TiVo is \$20, AOL will acquire a 11.6% common stock interest in TiVo, with a total 18.7% interest including the preferred stock. Pursuant to the terms of the convertible preferred stock, if the share price of the TiVo common stock is above \$30 for more than 18 trading days in any 20 consecutive trading days, the convertible preferred stock automatically converts to common stock.

In addition, TiVo will issue to AOL warrants to purchase a number of shares of TiVo common stock equaling, together with amounts owned by AOL or purchased from TiVo, 30% of all the outstanding TiVo shares. Approximately two-thirds of these warrants are performance-based and will not vest until certain performance hurdles have been met. The remaining warrants will be immediately exercisable. Half of the performance-based warrants may be exercised upon AOL obtaining a contract for the commercial deployment of the integrated personal video recorder/set top box for the AOLTV service on Time Warner cable systems giving TiVo the potential for 1,500,000 subscribers. The other half of the performance-based warrants may be exercised when there are 1,500,000 users of the integrated AOL/TiVo service. There is no contractual requirement that either of these performance targets be met.

Although AOL has certain rights to purchase additional securities to maintain its percentage ownership, AOL's interest will be diluted if it does not exercise these rights or by issuances to TiVo employees. AOL is subject to restrictions on its ability to transfer TiVo securities and must first offer its securities to TiVo prior to selling them.

AOL has agreed generally to limit its voting rights to 19.9%, even if it acquires more than 19.9% of TiVo's voting stock. Any additional shares, subject to certain exceptions, would be voted as TiVo directs.¹³

In addition, AOL has agreed, subject to certain customary exceptions, not to acquire additional TiVo voting securities, other than those pursuant to the Agreement described above, participate in the solicitation of proxies or make a public proposal to acquire TiVo.

¹³ AOL's transfer restrictions and voting obligations expire on the earlier to occur of June 9, 2008 or when AOL no longer owns 10% of the outstanding TiVo common stock.

c.[sic] The obligations that any agreements impose on AOL, including but not limited to volume of purchases and exclusivity of purchase of TiVo equipment.

AOL's agreements with TiVo contain no purchase obligations on the part of either of the parties.

AOL has committed to integrating TiVo's PVR into AOLTV in circumstances where integration is possible – meaning (i) where the relevant hardware allows TiVo functionality (*i.e.*, where there is sufficient hard drive space and the design of particular hardware otherwise permits) and (ii) where a platform owner permits such integrated functionality. Thus, if an MVPD does not want TiVo's PVR on the set-top boxes, then TiVo's product need not be included with AOLTV for that MVPD.¹⁴ TiVo will be the exclusive provider of PVR on the AOLTV-TiVo dual purpose set-top boxes to be developed pursuant to the agreement.

d. What obligations any agreements impose on TiVo, including exclusivity of selling to AOLTV, or certain features of equipment that can only be offered to AOLTV.

Again, AOL's agreement with TiVo does not preclude TiVo from selling its service (or any feature of its service) to any other party and contains no purchase obligations on the part of either of the parties.

Under the agreement, TiVo is making a commitment to provide a [] subsidy. TiVo is required to spend a pre-determined amount of AOL's investment on subsidies of the integrated set-top box. (For example, assuming a \$200 million investment by AOL, the amount of TiVo's subsidy would be [].) These funds will be ear-marked and put in escrow. If product launch of the integrated set-top box does not occur by December 31, 2001, AOL is entitled to receive the escrowed funds, but would retain its stock and warrants.

e. Identify the other owners of TiVo.

According to information found on TiVo's website, in addition to AOL, other equity investors in TiVo include: Advance/Newhouse, CBS, Comcast Corporation, Cox Communications, DirecTV, Discovery Communications, Encore Media Group, Liberty Media subsidiaries, Liberty Digital, NBC, Philips Electronics, Showtime Networks, Sony, TV Guide Interactive, and The Walt Disney Company.¹⁵

¹⁴ Furthermore, under AOL's agreement with TiVo, Time Warner Cable will be considered a third party for purposes of this agreement (*i.e.*, there is no obligation that TiVo be launched on Time Warner cable systems).

¹⁵ See <http://www.tivo.com/about/partner.html>.

f. Please produce all agreements between AOL and TiVo.

The parties are producing documents in response to this request under separate cover letter.

g. Please describe AOL's plans to use TiVo's personal video recorder on the AOLTV set-top boxes.

Under the agreement, AOL and TiVo will work together to develop a dual-purpose AOLTV-branded set-top box, and TiVo will become the provider of personal TV features on these AOLTV set-top boxes. The agreement with TiVo will allow AOL to offer AOLTV subscribers a robust interactive television experience. Use of the TiVo technology will (i) allow AOLTV subscribers to digitally record television shows directly onto a hard drive without videotape; and (ii) provide users with greater control over their television viewing, making it possible to pause, rewind, slow motion, and instant replay live TV. The AOLTV/TiVo dual purpose set-top box has been targeted for delivery in early 2001.

Memorandum of Understanding ("MOU")

2.28 If and when AOL Time Warner reaches agreements with unaffiliated ISPs pursuant to the MOU, please describe in detail how the ISP customer's Internet "start page" (the first page that the ISP customer sees when the customer accesses the Internet) will be configured.

As the "Memorandum of Understanding" ("MOU") entered into between AOL and Time Warner on February 29, 2000 states, "AOL Time Warner is committed to allow both the cable operator and the ISP to have the opportunity to have a direct relationship with the consumer." Consistent with this commitment, AOL Time Warner will not determine the configuration of the start page of a customer who accesses the Internet through an unaffiliated ISP. In particular, as AOL Chairman and CEO Steve Case testified before the Senate Commerce Committee on March 2, 2000, "broadband consumers will not go through AOL unless they *choose* AOL. If they choose another Internet Service Provider, they will not see AOL or its front screen."

2.29 Assuming that an AOL Time Warner customer chooses an unaffiliated ISP for Internet access, will content affiliated with AOL Time Warner (whether by contract or ownership interest or any other manner) be placed, featured, given priority, or otherwise promoted on the customer's start page?

The content found on an unaffiliated ISP's start page will be determined by that ISP. AOL Time Warner will not require the placement, featuring, prioritization, or promotion of its content, on the customer's start page or otherwise, as a condition of carriage of an unaffiliated ISP. It is possible that content affiliated with Time Warner could be placed or promoted on an unaffiliated ISP's start page as a result of arms-length contractual agreements similar to the arrangements now made by ISPs in the narrowband arena.

2.30 Please describe the manner in which AOL and Time Warner intend "to encourage

actively other cable operators similarly to provide consumers with a choice of broadband ISP offerings.” MOU at ¶ 2.

First and foremost, the very act of entering into the MOU has served as a catalyst to encourage other cable operators to modify their business plans and models to reflect the provision of ISP choice to consumers. By publicly committing to the framework described in the MOU, AOL and Time Warner are leading by example, ameliorating concerns that other operators may have had as to whether a multiple ISP approach was technically and economically feasible. Moreover, AOL and Time Warner have followed-up on the release of the MOU with sustained and outspoken support—in the trade press and at trade shows and other industry forums—for the development of a multiple ISP environment.

Our promotion of the multiple ISP framework already appears to have had results: it has been reported that, in the wake of the publication of the MOU, “at least 7 of the] 11 largest cable operators are looking at offering access to multiple ISPs on their high speed broadband lines.”¹⁶ Furthermore, AOL Time Warner will continue to implement AOL's plan to be available “anywhere” by seeking non-exclusive agreements to provide the AOL access service over as many distribution platforms as possible, including the broadband platforms of other cable operators as well as those of DSL, satellite, and wireless companies. These efforts will provide competitive marketplace incentives for other cable operators to embrace a multiple ISP environment.

2.31 At paragraph 3, the MOU states that AOL Time Warner “will provide consumers with a broad choice among ISPs, consistent with providing a quality consumer experience and any technological limitations in providing multiple ISPs on its broadband cable systems.”

a. Please describe in detail any limitations on consumer choice that are anticipated in order to provide “a quality consumer experience.”

Please see our combined response under subsection (b), immediately following.

b. Please explain in detail what is meant by “any technological limitations in providing multiple ISPs on its broadband cable systems.”

The language quoted in the question above was merely intended to reflect the fact that, when the MOU was agreed to, the extent of any technical, operational, or other issues in offering a multiple ISP environment over cable systems was largely unknown. The reference to possible limitations reflects the parties’ recognition that as the Internet has evolved, promises of boundless capacity and virtually instantaneous response times have sometimes run up against a surfeit of demand that can slow or otherwise impede use of the Internet. Maintaining a high-speed connection, after all, is the principal basis by which cable modem service can provide “a quality

¹⁶ *Leading Cable MSOs Quietly Shifting Toward Open Access*, Communications Daily, Apr. 6, 2000 (citing Cox Communications, Comcast Corporation, Charter Communications, Classic Communications, Insight Communications, Adelphia Communications, and Cablevision Systems).

customer experience.” Indeed, the MOU embodies a pledge to work to overcome any technological barriers so that the goal of consumer choice among multiple ISPs, without sacrificing the quality of service, can be achieved as quickly as possible.

It would be premature, however, to attempt to describe with any particular specificity what, if any, limitations might be necessary on the way that the cable platform is used for high-speed Internet access as demand, capacity, and the number of providers grow. A “white paper” prepared in May 1999 for the White House National Economic Counsel concluded that there could be substantial technical costs associated with the offering of multiple ISP access on cable systems. Some of the issues identified in this white paper included: quality of service (*e.g.*, delay, jitter, error rate, etc.), subscriber and service provider containment (*i.e.*, limiting the extent to which the use of the system by one subscriber/group of subscribers or one service provider interferes with the use of the system by other subscribers/groups of subscribers or other service providers), link privacy, and content preservation.

Neither AOL nor Time Warner necessarily subscribe to the specific assumptions and/or conclusions found in the aforementioned white paper, and the companies intend to conduct their own technical and operational tests in order to identify and resolve any technical impediments to the provision of multiple ISP choice. AT&T has announced that it too will be conducting field tests, and it is expected that other cable operators will follow suit. Indeed, it has just been announced that Charter Communications intends to conduct a test of multiple ISP carriage this Fall.¹⁷ Through these efforts, AOL and Time Warner intend to find and implement solutions to any technical or other issues that may arise. In any event, AOL and Time Warner stand by the commitment made in the MOU not to place arbitrary limits on the number of ISPs which they will offer over their cable facilities and to enable cable modem customers to exercise broad choice in a meaningful way.

- c. **Please identify and provide copies of all studies and other documents that explain and/or evaluate the technological limitations referenced in paragraph 3.**

The parties are identifying and providing documents in response to this request under separate cover letter.

- d. **Describe all efforts undertaken to date by AOL or Time Warner to identify and address these technological limitations. Please provide copies of all documents that support your response.**

Please see our response to subparts b, c, and e of this question. The parties are providing documents in response to this request under separate cover letter.

- e. **Describe any plans for any future projects/efforts by either AOL or Time Warner to address these technological limitations.**

¹⁷ *Communications Daily*, July 14, 2000 at 8.

Time Warner has developed a "Multiple ISP Program" to address the technical and operational issues associated with consumer choice among multiple ISPs. As part of this program, Time Warner and AOL are cooperating in a technical and operational trial being conducted using Time Warner's Columbus, Ohio broadband cable facilities. These efforts will involve the participation not only of Road Runner and AOL, but also of other ISPs, as well. In addition, AOL has been invited and intends to participate in the trial that AT&T has scheduled to take place in Denver. As a result of the ongoing Columbus trial and other similar trials by industry participants, Time Warner is confident that any technological limitations can be overcome in the near future.

2.32 The MOU states (§ 5) that "[t]he terms of the commercial agreements between AOL/Time Warner and ISPs wishing to provide broadband service will not discriminate on the basis of whether the ISP is affiliated with AOL Time Warner." The MOU goes on to state in the same paragraph that "the economic arrangements reached by AOL Time Warner and [unaffiliated ISPs] will vary depending on a number of factors (such as the speed, marketing commitments, and nature and tier of the service desired to be offered). . . ." Please describe in detail (providing examples when appropriate) how each of the factors mentioned in the MOU may cause the economic terms of AOL Time Warner agreements with unaffiliated ISPs to vary.

In general, as is normal business practice, the commercial agreements between AOL Time Warner and ISPs for the provision of high-speed Internet service over the AOL Time Warner platform will address and reflect a variety of factors. The MOU suggests the types of factors that may impact the final terms of any such agreement, including speed, marketing commitments, and the nature and tier of the service desired to be offered. At the same time, the MOU expressly disavows affiliation as a basis for differentiation in terms. However, given that service from broadband ISPs is at the early stages of its evolution, the MOU was designed to reflect that there are a broad range of factors which any individual ISP may find relevant. As an example, some ISPs will likely want Time Warner Cable to handle back office functions such as billing and collection.

It would be unduly speculative to attempt to quantify or otherwise try to describe specifically how, or even whether, any particular factor may affect the economic terms of the agreements that AOL Time Warner hopes to negotiate with unaffiliated ISPs. Just as no single factor determines the economic terms of cable program carriage agreements, it is likely that no single factor will determine the terms of ISP high-speed Internet service agreements. As the MOU makes plain, however, each such agreement will depend upon marketplace negotiations, not the affiliation of the ISP.

2.33 Please describe in detail how AOL Time Warner will establish a price for unaffiliated ISPs to gain access to AOL Time Warner cable systems.

The economic relationship between AOL Time Warner and unaffiliated ISPs will be shaped by marketplace forces. Price will vary based on the factors identified in the previous

response and on other standard business considerations. AOL Time Warner fully intends to fulfill its commitment not to discriminate on the basis of an ISP's affiliation with AOL Time Warner and to base its agreements with unaffiliated ISPs on arms-length negotiations.

2.34 The MOU states (¶ 11) that “[a]ll of the foregoing is subject to all pre-existing obligations of Time Warner, including without limitation Time Warner’s agreements with Serviceco, LLC (d/b/a Road Runner) and its fiduciary and other obligations to its partners.” Please describe in detail all such “pre-existing obligations of Time Warner” and how they may affect the terms and conditions of AOL Time Warner’s anticipated agreements with unaffiliated ISPs.

Time Warner’s agreement with its Road Runner partners (including Microsoft, Compaq, Advance/Newhouse, and MediaOne) currently requires that all its cable modem customers subscribe to Road Runner, thus limiting Time Warner’s ability to offer multiple ISPs. Such limitations generally expire at the end of next year. Consistent with the MOU, Time Warner has committed to working with its partners for an earlier termination of such restrictions, consistent with its fiduciary and other obligations to its partners.

2.35 Has AOL Time Warner generated any economic studies on the profitability of its open access proposal? If so, please produce any such studies.

The parties are producing documents in response to this request under separate cover letter.

2.36 Paragraph 9 of the MOU states, *inter alia*, that “[w]hen AOL Time Warner’s cable systems sell broadband Internet service to a customer, they will be entirely responsible for billing and collection.” Does the phrase “broadband Internet service” refer only to broadband Internet service provided by AOL or Road Runner, or is the phrase intended to encompass broadband Internet service provided by an unaffiliated ISP? When, pursuant to the MOU, AOL Time Warner offers customers a choice among broadband ISPs, and the customer chooses an ISP other than AOL, are there any circumstances under which AOL Time Warner would be considered to have “sold” broadband Internet service to that customer, and therefore, pursuant to the third sentence of paragraph 9 of the MOU, would be entitled to bill and collect from the customer?

Both the cable operator and the ISP will be allowed to market and sell broadband service directly to customers. The above-quoted MOU statement was not intended to suggest anything to the contrary. As set forth in the MOU, unaffiliated ISPs will indeed have the option of directly marketing and billing the customers they sign up. Where an ISP so elects, the ISP would bill the consumer’s Internet service in full, and the consumer would receive no additional Internet-related charges from AOL Time Warner. Of course, the precise marketing arrangements that develop between AOL Time Warner and unaffiliated ISPs—including whether the ISP chooses to market the service (or whether the service is jointly marketed) and whether AOL Time Warner or the ISP is responsible for billing the customers it signs up—will be determined by contractual agreements arrived at through arms-length negotiations.

2.37 Would Time Warner have made commitments similar to the ones made in the MOU absent the proposed merger?

Without question, the announcement of the AOL Time Warner merger helped to facilitate the commitments set forth in the MOU. Prior to the announcement of the merger, the ISP industry and the cable industry were at loggerheads, espousing diametrically opposing positions over whether and how consumers might attain a choice of ISPs over cable. The announcement of the AOL Time Warner merger created an environment whereby Time Warner and AOL could work together towards an understanding of these complicated issues from each other’s perspective. This cooperative approach led to the rational, marketplace driven commitments embodied in the MOU.

Absent the AOL/Time Warner merger, a confluence of events, such as regulatory developments, legislative actions, judicial decisions, and, most importantly, marketplace forces, likely would have eventually driven both the ISP community and cable operators to reach understandings analogous to those set forth in the MOU. But the announcement of the merger had the salutary effect of ensuring and hastening this outcome. Moreover, as AOL and Time Warner have explained previously, the MOU has served as a bellwether, precipitating widespread adoption of the multiple ISP choice approach by other cable companies. Thus, the MOU has resulted in the tangible public interest benefit of establishing a framework to achieve consumer choice among multiple ISPs through marketplace forces rather than regulatory fiat, a result long advocated by the Commission.

Time Warner Cable Systems and Video Programming

2.38 Please provide a map of all Time Warner Cable system clusters in the United States. Please describe how many subscribers you serve in each of these clusters and the names of the franchise areas where the systems are located. In addition, please explain if there are any competitive wireless or wireline MVPDs in those clustered regions.

Attached as Exhibit 2.38(a) is a map showing the general geographic location of each of Time Warner Cable's regional system clusters. Attached as Exhibit 2.38(b) is a listing of the number of subscribers served by each cluster, and the names of the franchise areas served by each cluster. Time Warner's cable systems compete with hundreds of wireless and/or wireline MVPDs across the country. Time Warner does not maintain a comprehensive listing of such MVPD competitors. Time Warner has surveyed each regional cluster to determine if local management is aware of competition in one or more of the communities served by such regional clusters from wireline or wireless MVPDs, including franchised overbuilders, DBS, OVS, wireless cable (MMDS), or SMATV. The results of that survey are indicated on Exhibit 2.3(d). In addition, attached as Exhibit 2.38(e) is a list of effective competition determinations issued by, or pending before, the Commission with respect to communities served by Time Warner Cable.

2.39 Please provide one channel line-up card for a representative system in each of Time Warner cable system clusters (e.g., one channel line-up card for a system in the New York City cluster, one channel line-up card for a system in your Orlando, Florida cluster).

A channel line-up card for a representative community served by each of Time Warner Cable's system clusters is attached as Exhibit 2.39.

2.40 Does Time Warner have any exclusive carriage contracts with video programming networks (including but not limited to local sports networks, regional programming networks, and national programming networks such as Home Box Office)? If so, please produce any such contracts.

Exclusive contracts for carriage by Time Warner Cable of any video programming networks are being produced under separate cover letter. It is important to note, however, that Time Warner Cable has discovered no exclusive contract with any nationally distributed video programming network. Although Time Warner Cable entered into a contract on September 16, 1996 with MSNBC that, on its face, purports to be exclusive through July 4, 2001, the subsequent investment by Microsoft in Comcast appears to have eliminated such exclusivity. Time Warner Cable also has an affiliation agreement with fX that purports to be exclusive, but was entered into prior to the acquisition by Liberty Media of an attributable interest in fX.

Any exclusive programming carried by Time Warner cable systems consists of material of local or regional interest that is either distributed terrestrially or by non-vertically integrated entities or both. Such programming consists primarily of local or regional news channels, local or

regional sports channels (or, in some cases, individual sporting events), and “virtual” local television affiliates that distribute programming from the PBS, UPN, or WB networks in DMAs where such networks have no off-air local affiliate or, in the case of PBS, to distribute additional educational programming not available over the local affiliate.

2.41 Does Time Warner have an attributable interest (as that term is defined in 47 C.F.R. § 76.1000) in any video programming network that is not transmitted via satellite? If so, please identify all such video programming networks.

The only video programming network in which Time Warner holds an attributable interest (as that term is defined in 47 C.F.R. §76.1000) that is not transmitted via satellite is Time Warner’s local New York City cable news channel, NY1. As Time Warner explained in its *ex parte* notice dated July 10, 2000, NY1 is distributed terrestrially to Cablevision Systems Corp. (“Cablevision”), a franchised cable operator serving certain significant portions of New York City not served by Time Warner. Because the Time Warner and Cablevision systems serving New York City are directly adjacent, a fiber interconnection is highly efficient and satellite distribution would be inefficient.¹⁸

2.42 In Time Warner and AOL’s reply comments in this proceeding dated May 11, 2000 at page 45, the Applicants state that it would be counterproductive to condition access to Time Warner’s affiliated video programming upon carriage of AOL’s ISP service. If the merger is consummated, will AOL and Time Warner require an MVPD to carry AOL’s ISP service as a condition of granting the MVPD access to Time Warner’s affiliated video programming?

For the reasons stated in their May 11, 2000 reply comments, AOL and Time Warner have no plans or intentions to require an MVPD to carry AOL ISP service as a condition of granting the MVPD access to Time Warner’s affiliated video programming, just as Time Warner has never attempted to force any third party MVPD to affiliate with Road Runner as a condition to receive any of Time Warner’s video programming networks.

* * *

¹⁸ Of course, virtually every Time Warner cable system distributes locally created programming on, *e.g.*, local origination channels, PEG access channels, and leased access channels, that is not transmitted via satellite. But where such programming is carried solely by a particular Time Warner cable system cluster, and is not offered for sale by any other MVPDs, Time Warner does not consider such programming to be a “video programming network.” *Cf.* 47 C.F.R. § 76.1000(h); 47 U.S.C. § 536(b).

Ms. Royce Dickens
July 17, 2000
Page 40

In conjunction with the documents the parties are providing under separate cover letter, this completes AOL and Time Warner's response to the requests made in your letter of June 23, 2000. Please do not hesitate to contact the undersigned if you have any questions regarding this letter or the documents produced herewith.

Respectfully submitted,

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AOL EXHIBIT 2.23

COMPANIES IN WHICH AOL HOLDS A 5% OR GREATER EQUITY INTEREST

COMPANY	AOL INTEREST	OTHER INVESTORS:
Public corporations		
Private corporations		
LLCs		

AOL EXHIBIT 2.24

PARTNERSHIPS IN WHICH AOL IS A LIMITED PARTNER

PARTNERSHIP	AOL INTEREST¹

JOINT VENTURE	AOL INTEREST	OTHER INTEREST

¹ AOL interest figures are based on the percentage of AOL commitment relative to overall size of the partnership fund.

AOL EXHIBIT 2.26

OTHER COMPANIES IN WHICH AOL HAS THE RIGHT TO APPOINT DIRECTORS

Company	Number Appointed	Position	Total Board

TIME WARNER EXHIBIT 2.23(d)

Additional Time Inc. Ownership Interests

Ownership Interests

1. enews.com, inc.

EN Holdings, Inc., an indirect subsidiary of Time Inc., purchased 1,833,333 shares of Series C convertible Preferred Stock (a 16.2% stake) in this online magazine subscription agent in consideration for \$5 million in cash and \$17 million of print and non-print ad space. Time Inc. also entered into a long-term services agreement under which enews markets and sells magazine subscriptions and renewals on its website and through its relationships with third parties, and Time Inc. receives remits on sales of subscriptions and renewals. enews' other significant shareholders owning over 5% of the company, according to information provided to Time Inc. by the company, are: Madison Dearborn Capital Partners II, L.P. and barnesandnoble.com, LLC.

2. Craftopia.com, Inc.

SPC Ventures, Inc., an indirect subsidiary of Time Inc., purchased 1,699,029 shares of Series B Convertible Preferred Stock (a 17.95% stake) and 582,524 Warrants to purchase the Common Stock (4.75% on a fully diluted basis) in this online craft products site in consideration for \$3 million in cash and \$4 million of print ads and certain non-print items. Time Inc. also entered into a commercial agreement for, among other things, content sharing, cross-promotion and branding activities. Craftopia's other significant shareholders owning over 5% of the company, according to information provided to Time Inc. by the company, are: eCompanies Venture Group L.P. and Harold Poliskin (the founder of the company).

3. Synapse Group, Inc.

NSSI Holdings Inc., an indirect subsidiary of Time Inc., purchased approximately 23% of the outstanding capital stock of Synapse Group, Inc., consisting of 3,125,000 shares of Series C Preferred Stock, 1,511,592.507 shares of Class A Common Stock and 5,363,407.493 shares of Class B Common Stock. Synapse is a major magazine subscription agent, which has some initiatives on the Internet to sell subscriptions. Time Inc. also entered into an agreement with Synapse under which Synapse guaranteed to generate certain magazine subscription sale volumes for certain of Time Inc.'s magazines through sales on inbound telephone calls. To Time Inc.'s knowledge, the other 5% shareholders are Michael Loeb, a founder of the company (42%), William E. Ford (23%), entities affiliated with General Atlantic partners (23%) and Jay Walker, a founder of the company (8.6%).

4. Bookspan

Time Inc. has a 50% interest in Bookspan, a partnership with Bertelsmann which operates a variety of book clubs in the United States. Bookspan maintains websites for many of its book clubs. These websites provide information to existing book club members and attempt to recruit new members. Time Inc. also has an agreement with Bookspan that provides advertising and certain other marketing benefits to the partnership.

TIME WARNER EXHIBIT 2.25

Strategic Alliances and Marketing Agreements

Time Warner Inc.: Agreement with Internet sites to promote and market programming services online, including CNN, CNN International, Entertainmentom and The WB Network.

Warner Bros
Consumer Products: License agreements in which Warner Bros. Consumer Products licenses its intellectual property, such as Looney Tunes, to computer software games manufactures and distributors for use in computer software or video games.

Warner Bros. Online: Agreement with Internet sites to promote and market programming services online, including The Rosie O'Donnell Show, The Jenny Jones Show and Change of Heart.

Time Warner Cable: Joint promotional efforts with virtually all programming services carried on its cable television systems.

AT&T Marketing Agreement -- on March 8, 2000, Time Warner Cable and AT&T announced a joint marketing agreement. Pursuant to this arrangement, incentives are being offered to consumers in Albany and Syracuse, New York who choose both Time Warner Cable service and AT&T communications service.

Currently active equipment contracts with annual dollar volumes exceeding \$10 million, as follows:

- Corning Cable Systems – fiber optic cable and optic accessories.
- CommScope, Inc. – coaxial and fiber optic cable.
- PPC – hard-line and drop connections.
- Scientific-Atlanta, Inc. – analog and digital converters, headend equipment.
- Motorola, Inc. – analog and digital converters, modems.
- Pioneer Corporation – analog and digital converters.
- PACE Electronics Products – digital converters (not yet delivered).
- Matsushita Electronic Corporation (Panasonic) – digital converters (not yet delivered).
- Sea Change International - video on demand headend equipment and software.
- Concurrent Computer Corp. - video on demand headend equipment and software.
- nCube, Inc. - video on demand headend equipment and software.

HBO: Satellite and production services, including network origination, digital compression and/or uplinking, to various programmers, broadcast and cable networks.

Marketing agreements with all of its larger and many of its smaller cable, direct-to-home and multivideo distributors. These agreements provide financial and other support in return for promotion of HBO and Cinemax services. HBO also licenses its programming to cable and broadcast content providers for fees and/or coproduction arrangements.

HBO Direct: Marketing agreements with various programming suppliers to promote such suppliers' services.

Warner Music Group: Blanket license agreements with third-party licensees pursuant to which such parties are granted non-exclusive rights to utilize certain controlled content created by Warner Music Group and its affiliates, such as sound recordings, music videos, and album artwork. Such licenses generally fall into three categories: television programming services (e.g., MTV Networks), record clubs (e.g., BMG Direct, Columbia House) and Internet sites (e.g., ARTISTdirect, Launch, radio.SonicNet).

Turner Broadcasting System: On-line site sponsorship agreements under which a TBS entity is paid by a third party sponsor for any of the following: online branding, promotion, and links.

Internet Agreements -- agreements under which a TBS entity provides a combination of any or all of the following: branding, promotion, content and/or cash to an Internet content provider (ICP) in exchange for any or all of the following from the ICP: advertising purchase commitments, content, branding, promotion, technology and/or equity to the TBS entity.

Joint development agreements under which a technology developer/provider may work jointly with a TBS entity to develop or refine a technology. The consideration exchanged in such joint development transactions can be any combination of cash, technology, and promotion between the parties and may sometimes include granting an equity interest in the technology entity to the TBS entity.

Time Publishing
Ventures, Inc.

Pursuant to a television license agreement with WGBH Television, Time Publishing Ventures, Inc. ("TPV") has entered into a number of sublicense agreements with Scripps Howard Broadcasting Company under which TPV sublicenses This Old House television episodes for airing on Scripps' Home and Garden Television cable network.

Time Inc:

Time Inc. has entered into the following types of agreements in the ordinary course of business:

- Software license, development and consulting agreements with software manufacturers, vendors and consultants.
- Content license agreements with Internet content providers.
- Content distribution agreements with Internet service providers.
- Promotional, marketing and advertising agreements with Internet service providers and Internet content providers.
- Agreements with television networks to air branded television programs and segments (e.g., Teen People Hottest Stars under 21, InStyle Weddings).

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TIME WARNER EXHIBIT 2.38(e)

Effective Competition Proceedings

Decided Cases

<u>Citation</u>	<u>Competitor</u>	<u>Area</u>	<u>Type of MVPD</u>
11 FCC Rcd 17298 (1996)	Ameritech New Media	Columbus, OH	Overbuilder
11 FCC Rcd 20909 (1996)	GTE Media Ventures	Clearwater, FL	Overbuilder
1997 FCC Lexis 1221 (March 5, 1997)	Telesat Cablevision	Inverness, FL	Overbuilder
1997 FCC Lexis 1266 (March 12, 1997)	GTE Media Ventures	Pinellas County, FL (North and South)	Overbuilder
1997 FCC Lexis 1334 (March 13, 1997)	Ameritech New Media	Wayne, MI	Overbuilder
12 FCC Rcd 20964 (1997)	GTE Media Ventures	St. Petersburg, FL	Overbuilder
12 FCC Rcd 13801 (1997)	American Telecasting of Central Florida, Inc. ("WANTV")	Mulberry, FL	MMDS
13 FCC Rcd 5913 (1997)	American Telecasting of Central Florida, Inc.	Auburndale, FL; Eagle Lake, FL; Lakeland, FL; Polk City, FL	MMDS
12 FCC Rcd 17626 (1997)	Ameritech New Media	Glendale Heights, IL	Overbuilder
12 FCC Rcd 19493 (1997)	Quality One Technologies, Inc. ("Q1"); wholly owned by Columbus Grove Telephone, Co.	Columbus Grove, OH	Overbuilder

<u>Citation</u>	<u>Competitor</u>	<u>Area</u>	<u>Type of MVPD</u>
12 FCC Rcd 18166 (1997)	Horry Cablevision; wholly owned by Horry Telephone Cooperative	Horry County, SC (unincorporated areas)	Overbuilder
13 FCC Rcd 12517 (1998)	Wireless Broadcasting Systems of Melbourne ("WBS")	Cape Canaveral, FL; Melbourne, FL; Satellite Beach, FL; Indiatlantic, FL; Malabar, FL; Palm Shores, FL	MMDS
1999 FCC Lexis 477 (February 5, 1999)	RCN-BecoCom, L.L.C.	Somerville, MA	OVS, Overbuilder
14 FCC Rcd 13495 (1999)	BellSouth Wireless Cable, Inc.	Orlando, FL; Orange County, FL	MMDS
14 FCC Rcd 13849 (1999)	Ameritech New Media	Franklin Township, OH; Hilliard, OH; Grandview Heights, OH; Marble Cliff, OH; Grove City, OH; Valley View, OH; Worthington, OH; Riverlea, OH; Dublin, OH; Norwich, OH; Mifflin Township, OH; Jackson Township, OH; Prairie Township, OH; Minerva Park, OH; Clinton Township, OH; Perry Township, OH; Sharon Township, OH	Overbuilder
14 FCC Rcd 13844 (1999)	GTE Media Ventures	Seminole, FL	Overbuilder
CSR-5338-E, DA 00-1072 (released May 15, 2000)	Municipal	Daleville City, AL	Overbuilder
CSR-5461-E, DA 00-1066 (released May 12, 2000)	Adelphia and DBS	Citrus County, FL	Overbuilder and DBS

<u>Citation</u>	<u>Competitor</u>	<u>Area</u>	<u>Type of MVPD</u>
CSR 5331-E, DA 00-1347 (released June 20, 2000)	BellSouth Wireless	Woodstock, GA; Cherokee County, GA	MMDS and Overbuilder
CSR-5425-E DA 99-2760 (released December 10, 1999)	Municipal	Lebanon, OH	Overbuilder
CSR-5405-E DA 00-1065 (released May 12, 2000)	TSC Communications, Inc.	Wapakoneta, OH	Overbuilder
CSR-5541-E DA 00-1241 (released June 6, 2000)	Horry Telephone Cooperative	Conway, SC	Overbuilder

Pending Cases

<u>Docket #</u>	<u>Competitor</u>	<u>Area</u>	<u>Type of MVPD</u>
CSR-5136-E	GTE Wireless	Honolulu, HI	MMDS
CSR-5218-E	Lexington Tel. Co.	Lexington, NC; Davidson County, NC	Overbuilder
CSR-4824-E	Benton Ridge Telephone d/b/a W.A.T.C.H. TV	Lima, OH	MMDS
CSR-5137-E	Pacific Bell Video	Los Angeles, CA; Orange County, CA	MMDS
CSR-5365-E	GTE	Largo, FL	Overbuilder
CSR-5455-E	BellSouth Wireless	Seminole County, FL	MMDS