FACT SHEET:
FCC'S CONDITIONED APPROVAL OF AOL-TIME WARNER MERGER

America Online, Inc. (AOL)

- AOL is the nation's largest Internet Service Provider (ISP), with approximately 26 million paying subscribers to whom it provides Internet access, online content (including e-commerce services), e-mail and Instant Messaging (IM).
- AOL owns the two largest IM services, AIM and ICQ, which are free and available to non-AOL subscribers. By all market measures, AOL is by far the largest IM service.
- AOL has recently begun to provide interactive television services (ITV) that combine traditional video programming features with web-based and other interactive features, viewed and used by consumers through their TV sets.

Time Warner Inc. (Time Warner)

- Time Warner is the nation's second largest cable operator, with approximately 12.6 million cable customers, and its cable systems pass approximately 20 million households.
- Time Warner offers residential high-speed Internet access over upgraded cable facilities to its customers through Road Runner, which it owns. Currently, no other ISPs are available to Time Warner cable subscribers over the cable platform.
- Time Warner owns and operates some of the most popular video programming networks, multiple sports franchises, magazines, music recording labels, a broadcast TV network, and companies that produce and distribute films and TV programming.
- As a result of the merger between AT&T and MediaOne, AT&T owns a 25 percent stake in Time Warner Entertainment (TWE), a Time Warner Inc. subsidiary. Time Warner owns the remaining 75 percent of TWE. TWE operates Time Warner's cable systems as well as much of Time Warner's content library.

PUBLIC INTEREST ANALYSIS OF THE AOL-TIME WARNER MERGER

- The FCC examined the merger's potential effects on (1) high speed Internet services, (2) services based on instant messaging, (3) interactive television services, (4) electronic programming guides, (5) carriage of television broadcast signals, (6) increased concentration among MVPDs, and (7) competition among MVPDs.
- In analyzing the potential public interest benefits, the FCC determined that the applicants have demonstrated that the merger will result in benefits, but the nature and degree of these benefits are not sufficient to outweigh the potential harms that would result from the merger absent conditions.
- The FCC found that consumers are likely to benefit from: the deployment of a wide range of broadband technologies to all consumers; direct stimulation of the cable broadband market and the probable indirect stimulation of alternative broadband technologies; acceleration of the transformation of traditional media products to digital platforms, aiding the development of advanced services.

TIMELINE OF FCC REVIEW OF AOL-TWX MERGER

March 27, 2000: FCC review begins. FCC issues Public Notice seeking comment on AOL and Time Warner, Inc. merger application.

April 26, 2000: Public comments due to FCC.

May 11, 2000: Reply comments due to FCC.

June 9, 2000: FCC sends letter to AOL and Time Warner attorneys requesting further information. 180-day clock stops on Day 75.

June 23, 2000: FCC sends second letter to AOL and Time Warner attorneys requesting further information.

June 26, 2000: AOL and Time Warner attorneys respond to FCC's June 9 request for further information. Clock is restarted.

July 17, 2000: AOL and Time Warner attorneys respond to FCC's June 23 request for further information.

July 27, 2000: FCC convenes an En Banc Hearing on the proposed AT&T-MediaOne merger with panelists expressing a variety of views on the issues involved.

August 14, 2000: FCC sends third letter to AOL and Time Warner attorneys requesting further information.

August 30, 2000: AOL and Time Warner attorneys respond to FCC's August 14 request for further information.

Sept. 9, 2000: Time Warner attorneys responds to FCC's request for further information concerning technical questions about the Memorandum of Understanding dated February 29, 2000.

Oct. 11, 2000: FCC General Counsel Christopher Wright stops the self-imposed 180-day merger review clock pending FTC action "because the factual basis for the FCC's review of whether a license transfer is in the public interest may be affected by the [FTC's] determination."

Dec. 14, 2000: FTC completes its review of the merger.

Dec. 19, 2000: FCC's Wright sends letter to AOL and Time Warner stating, "The Commission will endeavor to take action as soon as possible."

Jan. x, 2001: FCC adopts conditioned approval of AOL-Time Warner merger.

*For more information on the FCC's review, see **www.fcc.gov/transactions** or **fcc.gov/csb***

INTERNET SERVICES

In examining Internet services, the FCC concluded:

- Residential high-speed Internet service constitutes a discrete market that must be considered separate from the residential narrowband market.
- High-speed service includes features unavailable over narrowband and consumers face costs in switching to the high-speed platform.
- The merger would give AOL Time Warner the ability and incentive to harm consumers in the residential high-speed Internet access services market by blocking unaffiliated ISPs' access to Time Warner cable facilities and by otherwise discriminating against unaffiliated ISPs in the rates, terms and conditions of access.
- The applicants' nonbinding proposed Memorandum of Understanding (MOU) regarding access for unaffiliated ISPs to Time Warner's cable systems is not sufficient to avert these harms.
- If left unremedied, the harms would frustrate or impair objectives of the Communications Act, including "the continued development of the Internet" and the deployment of advanced services to all Americans.
- The FCC noted that the FTC consent decree requires AOL Time Warner to negotiate in good faith with any unaffiliated ISP seeking access to its cable systems and, thus, the FCC reiterated that AOL Time Warner must engage with local and regional ISPs in a good faith, nondiscriminatory manner.

Conditions:

The FCC imposed the following conditions relating to the provision of residential high-speed Internet access over Time Warner's cable systems:

Choice of ISPs:

- AOL Time Warner must open its cable systems to competitor Internet Service Providers (ISPs), per the Federal Trade Commission's consent agreement.
- AOL Time Warner must allow customers to select a Participating ISP by a method that does not discriminate in favor of AOL affiliates on the basis of affiliation.

First Screen:

- AOL Time Warner must allow all unaffiliated ISPs to control the content of their customers' first screen. AOL Time Warner may not require an unaffiliated ISP's customer to go through an affiliated ISP to reach the unaffiliated ISP.

Billing:

- Participating ISPs must be allowed to directly bill the subscribers to whom they have sold their high-speed Internet access services, if they choose to do so.

Technical Performance:

- AOL Time Warner must offer the technical performance standards that it provides to its affiliated ISPs in a non-discriminatory manner to unaffiliated ISPs.

Rights to Disclose Contracts to the FCC:

- AOL Time Warner may not enter into any contract with any ISP for connection with AOL Time Warner's cable systems that prevents that ISP from disclosing the terms of the contract to the FCC under the FCC's confidentiality procedures.

Enforcement Procedures:

- With respect to any dispute concerning AOL Time Warner's compliance with these conditions, the FCC outlined a number of procedures. These procedures are designed to resolve any disputes within sixty (60) days of the filing of a complaint and to have them resolved by the Chief of the Cable Services Bureau by either sustaining or dismissing the complaint.

INSTANT MESSAGING (IM)

In its analysis of Instant Messaging, the FCC concluded:

- The merger would combine an essential input of AOL's dominant IM service (and of future IM-based services), the names and presence directory ("NPD"), with assets of Time Warner, including its cable facilities and Road Runner ISP.
- An IM provider's NPD consists of a database of its users' unique IM names, their Internet addresses, as well as a "presence detection" function, which indicates to the provider that a certain user is online, and allows the provider to alert others to this information.
- The FCC notes that these features create a market with strong network effects.
- AOL, with by far the largest NPD, has resisted making its IM services interoperable with other providers' services.
- The merger, by bringing Time Warner's cable Internet platform and content library under AOL's control, will give AOL Time Warner a significant and anticompetitive first-mover advantage in the market for advanced, IM-based high-speed services ("AIHS"). Potential AIHS applications include those using streaming video (lengthy, high-quality one or two-way video).
- The merger would frustrate the objectives of the Communications Act by preventing the emergence of a competitive and innovative market for advanced, IM-based services. This would violate key Communications Act principles including the further development of and healthy competition in the Internet and interactive services.
- The FCC did not establish an interoperability protocol. Rather, the FCC's remedy requires AOL Time Warner to follow a protocol developed by the industry or to create a protocol with other IM providers pursuant to contracts. Thus, the FCC did not create and will not review an Internet protocol.

IM Condition

The FCC imposed the IM condition to avert market harm now so that it would not be required to regulate in the future.

- Given AOL Time Warner's likely domination of the potentially competitive business of new, IM-based services, especially advanced, IM-based high-speed services ("AIHS") applications, the FCC ruled that AOL Time Warner may not offer any AIHS steaming video applications that uses a Names and Presence Directory ("NPD") over the Internet via AOL Time Warner broadband facilities until the company demonstrates that it has satisfied one of three pro-competitive options outlined by the FCC.
- AOL Time Warner must file a progress report with the FCC, 180 days from the release date of the order and every 180 days thereafter, describing in technical depth the actions it has taken to achieve interoperability of its IM offerings and other offerings. These reports will be placed on public notice for comment.
- The IM condition will sunset five years after the release of the Order.

  Showings:

  1. AOL Time Warner may show that it has implemented an industry-wide standard for server-to-server interoperability.
  2. AOL Time Warner may show that it has entered into a contract for server-to-server interoperability with at least one significant, unaffiliated provider of NPD-based services. Within 180 days of executing the first contract, AOL Time Warner must demonstrate that it has entered into two additional contracts with significant, unaffiliated, actual or potential competing providers.
  3. AOL Time Warner may seek relief by showing by clear and convincing evidence this condition no longer serves the public interest, convenience or necessity because there has been a material change in circumstances.

CONTRACTUAL RELATIONSHIPS WITH AT&T

- AOL Time Warner may not enter an agreement with AT&T that gives any AOL Time Warner ISP exclusive access to any AT&T cable system.
- AOL Time Warner may not enter an agreement with AT&T that affects AT&T's ability to offer any rates, terms or conditions of access to ISPs that are not affiliated with AOL Time Warner.

OWNERSHIP INTEREST IN GENERAL MOTORS AND HUGHES ELECTRONICS

- To address concerns over AOL Time Warner's indirect ownership interest in DirecTV and potential harms from cable/DBS (direct broadcast satellite) cross-ownership, the FCC ordered AOL Time Warner to notify the Chiefs of the Cable Services Bureau and International Bureau, in writing, of any transactions that increase the merged company's ownership interest in General Motors Corporation and/or Hughes Electronics Corporation, no later than 30 days after the transaction.

MISCELLANEOUS PROVISIONS

- Compliance with all conditions imposed in the order is a non-severable condition of the grant of the Application.
- The FCC denied the Petition to Deny filed by the Consumers Union, Consumer Federation of America, and Media Access Project, the Petition to Deny of Thomas Lewis Bonge, the Petitions to Condition filed by RCN Telecom Services and Gemstar, and all similar petitions except as otherwise discussed in this public notice.
- The FCC denied the motion to consolidate filed by the Consumers Union, Consumer Federation of America, and Media Access Project.

News Media Contacts: Linda Paris (202) 418-7121
Michelle Russo (202) 418-2358
David Fiske (202) 418-0513

-FCC-