Statement

of

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before the

Federal Communications Commission

AOL-TW En Banc Hearing

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- Good afternoon Mr. Chairman, commissioners and staff. Let me start by thanking you for this opportunity to share with you BellSouth's concerns surrounding the merger of these two great companies.
- Before I get into the specific issues, I would like to make a couple of brief up front comments.
  - Today's industry convergence is a very natural outcome of both broadband and internet technology and this trend will likely result in a limited number of vertically integrated mega players like this combination and AT&T.
  - Given this consolidation, we at BellSouth do not object to this merger per se. However, we do believe, that this merger must be conditioned to ensure that the consumer value created by it is not

outweighed by the potential anti-competitive impacts of it.

- Finally, these issues are purely about conditions on a voluntary merger; they have nothing to do with "regulating the Internet".

- Given the consolidated market power and concentration of key resources created by this merger, there are three deal specific areas with which this Commission , the FTC and the Justice Department must be concerned:
  - First, if a limited number of mega players is the natural industry progression, then real competition will result only if these new mega players are required to compete rather than allowed to cooperate and share markets.
  - Secondly, the scarce and required resources, controlled by these two mega players, each with

their own substantive market power, must be made available on market based terms and conditions or competition will be reduced.

  - Third, all of these players, including AOL, are in the "network" business. This Commission has understood for decades that independent or unconnected networks restrict competition.

- Given these points, we believe this merger must be conditioned in three ways;
  - First, a very bright line must be drawn between the new AOL/Time Warner and the merged AT&T/TCI/Media One.
    - The DOJ has already identified this concern but clearly did not have this additional merger in its scope.

- These two gigantic companies must be required to compete and not be allowed to share markets in any way.
- All current joint ownership between AOL and AT&T should be eliminated and prohibited going forward.
- The "simple test" which must be applied to all future AOL-AT&T relationships is to require that they be based solely on "generally available market terms and conditions."

– Second, as both AOL and Time Warner stated in their May 11th filing, open access to content is their policy. The public interest will be best served if this voluntary policy is clearly codified.

- The dominance of AOL's distribution control is unrivaled by any other network today; broadcast, cable or satellite.

- This Commission clearly knows that withholding content will have a serious impact on competition. You lived it with satellite and cable overbuilders and we will re-live it in the broadband Internet world if we are not vigilant.
- The relationship between Time Warner content and AOL packaged distribution must be based on "generally available market terms and conditions." Again, a simple principle simply applied to this merger.

- Finally, AOL is a network in and of itself. In fact, it is one of the highest volume communications networks in the world. It is the largest by an order of magnitude of any other consumer Internet network. Combined with Time Warner Cable, it will grow even larger in its market power. The issue here is simple. Like any other network, AOL must be required to openly interconnect with other networks.

- This issue is seen best in the instant messaging debate.
- If I reduce this complex debate to a simple telephone analogy, what it would mean is that customers on a competing CLEC's network would not be allowed to talk to customers on BellSouth's network equally. Without such standards-based interconnection, no long distance or local telephone competition could ever or would ever develop. Certainly such a standard should be applied in this deal as well.

In closing let me summarize quickly:

- First, AOL/Time Warner and AT&T/TCI/Media One must be fully separate and must compete with each other and not allowed to join together.

- Second, Time Warner content that is packaged and distributed through AOL's dominant internet environment must be made available on "market terms and conditions".
- Finally; AOL's network must openly interconnect to others.

It is no accident that these merging parties clearly recognized these three critical issues going into this merger. That is why they voluntarily offered up their M.O.U. and their May 11th letter to this body. Now all that remains is for these stated promises and policies to be refined and codified as conditions to deal approval.

Thank you, I would be happy to answer any questions you have.