Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
EN BANC HEARING
Application of America OnLine, Inc. and Time Warner, Inc.
for Transfer of Control, CS Docket No. 00-30

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Honorable Commissioners, thank for the opportunity to address you today on the impact of the proposed AOL/Time Warner merger.

My name is Manuel Mirabal. I am Chairman of the Board of the Hispanic Association on Corporate Responsibility, better known as HACR.

HACR is a coalition of the ten largest and most influential national Hispanic public policy organizations in the United States, representing the interests of 36 million Hispanic Americans. Founded in 1986 as a non-profit coalition, HACR's mission is to ensure the inclusion of Hispanics in Corporate America in the areas of employment, procurement, philanthropy, governance and service.

HACR has a vital interest in the proposed merger of America Online and Time Warner. We believe it is essential that the potential economic and social benefits of the Internet and telecommunications revolution must be available to all segments of the population. One of the objectives of the 1996 Telecommunications Act was to ensure equitable participation and benefit for all Americans through a more robust and competitive environment.
We further believe that the purpose of the regulatory process, including these hearings, is to afford all citizens the right to be heard, and through this process ensure that the interest of the public is protected.

The Hispanic Association on Corporate Responsibility has serious concerns about the claims by AOL and Time Warner that this merger will foster a more competitive environment offering more choices, while creating social benefits. We believe the merger will create a dominant entity which has the potential to limit competition, restrict content, and monopolize services in an industry that continues to evolve rapidly and will penetrate more and more into everyday life. The combined record of both applicants in responding to the needs of the Hispanic community consists of minimal efforts to address programming, cable service and Internet access. Furthermore, neither company has responded to our requests for information concerning the impact of the merger on the Hispanic community.

Consequently we are deeply concerned that this merger will make matters worse than they are now for the Hispanic community because of the limited ability of this community to afford costly internet services, the existing disparity in access to internet and telecommunications services, and the limited geographic cable services areas which exclude large segments of the community. Therefore, we are urging the Commission to deny the application for transfer of control by AOL and Time Warner.

Combined, the new company would become a cable/internet/media conglomerate, dominating three important and distinct elements within the industry – cable and television content, Internet content, and cable assets. The potency of this vertical integration in one company we believe could serve to dampen competition and harm all consumers. Diminished competition would disproportionately affect the Hispanic community due to socio-economic factors.

Hispanics are among the youngest and fastest growing communities and are expected to become the largest minority group by 2002. By 2050, one in four Americans will be of Hispanic descent. In the nation's largest Hispanic markets, Hispanic population growth is even more dramatic. In Los Angels and New York, Hispanics make up 30.9 percent and 14.4 percent of the total population, respectively. Moreover, nearly 75 percent of the Hispanic population resides in five states, including California, Texas, New York, Florida and Illinois.

With regard to programming, the proposed merger would yield control to the new company an extraordinary marquee of programming content as Time Warner owns CNN, TNT, Turner Broadcasting, HBO, Cinemax, and the entirety of Warner Bros. assets from movies to TV production to broadcasting. These also include publishing assets such as *Entertainment Weekly, FORTUNE, In Style, LIFE, Money, Southern Living, Sports Illustrated, Time, People and Latina.*

AOL, Inc. brings to the new company it's 23 million narrow band customers who, following the merger, can be converted to broadband services, and Time Warner, Inc. brings a dominant position in delivery of entertainment, news, and educational programming in the geographic markets it serves. Time Warner provides cable services to approximately 13 million subscribers, and passes some 21 million homes.

With this impressive collection of assets and dominance in the related markets, the combined AOL/Time Warner will be able to behave in ways that could limit consumer choice and harm competition. The companies would have us believe that the new AOL will change the model that cable companies have used in the past – leverage market power in distribution to control content – into the Internet model which has been characterized by explosive creativity and growth. Our concern is that the new AOL will apply the cable model to the Internet and thus diminish its potential to enrich the lives of all Americans.

Combined Company will discriminate against Outside Content Providers
Internet and Television Programming Content

This merger, which brings these three elements together under the control of one company, may prove a threat to competition in conduits and content, if left unchecked. There are two areas in particular where the risk of discrimination as to content by the new company is possible and probable. The first has to do with Internet content.

AOL Time Warner will have complete control of content and distribution in markets served by Time Warner cable, and may engage in controlling content by denying or complicating access to their cable delivery system.

It is not enough that Gerald Levin and Steve Case have signed a non-binding, "memorandum of understanding" pledging to open their cable lines to multiple Internet service providers. These companies have already proven they are willing to prevent competition. For instance, AOL has refused to open its networks to people who do not use AOL's software to send instant messages, effectively capturing for itself some 90% of instant messaging users. Imagine how different the communication experience of Americans would be today if the customers of one Telephone Company were not allowed to contact the customers of another Telephone Company. Time Warner has moved aggressively to cutoff network programs from their distribution channels. In the instance of cutting off ABC programming, Time Warner shut millions of viewers out of ABC shows by dropping ABC from its cable system during a pricing dispute.

Interactive Television Content

The new company will also have great incentives to control or discriminate with regard to content as we move into the uncharted territories of interactive television. Cable has a virtual monopoly in the delivery of interactive television today, and that doesn't appear likely to change in the near future. That monopoly may lead to discriminatory practices with regard to its content competitors. Absent conditions prohibiting AOL Time Warner from discriminating against content it does not own or control, it is conceivable that the new company could dampen competition and unduly affect the ability of it's competitors to attract advertisers. For example, an interactive television program is offered on Time Warner's CNN Sports Illustrated Channel, in direct competition with an interactive television program on Walt Disney's ESPN. AOL Time Warner is able, through its network architecture and capabilities, to deliver the CNN show at a higher quality and reliability than it does the ESPN show. Viewers, and consequently advertisers, will logically prefer the CNN show.

The resulting discrimination as to content would largely impact consumers, a substantial portion of whom are Hispanic Americans. Latinos are best served by having unimpeded access and flow to all content. Granting a monopoly that decides what viewers can see and not see does not serve the public interest.

Combined Company will undermine Competition

Preferring Cable over DSL and other conduits

Of equal concern to the potential risk of content discrimination, should the merger be approved without safeguards to protect the consumer, is the threat to competition in the market for delivery of broadband content and services.

Competition may be undermined by two means. To begin, AOL Time Warner, a result of its ownership of cable, may prefer cable over DSL and other broadband conduits within it's own franchise areas. If it fails to support, through its operations, other conduits, the incentives for investing in and developing alternative broadband conduits diminish.

Where a company owns both content and distribution, its incentives to distribute content it owns via a conduit it does not own are diminished. In the case of AOL Time Warner, there are obvious financial incentives associated with distributing its content over cable. As result, following the merger, it could institute policies that would give cable and advantage over other conduits; thereby reducing incentives for continued and increased support of DSL and other competitive conduits, like wireless and satellite. Diminished competition in broadband could result in a reduction in broadband alternatives in the market. This reduction in competition, again, would negatively impact the Hispanic community and other low-income communities that depend on competition to provide greater pricing options and increased access.

Precluding Future Preferential Deals with other Cable Providers

And finally, we ask that the Commission consider the potential harm that a post merger deal with other cable companies might pose to competition, if left unchecked beforehand. The potential for consumers to be harmed by diminished competition in content and its delivery is far greater if AOL/Time Warner is allowed to engage in preferential dealings with other cable providers. Together, AOL/Time Warner will reach 80% of American households. And together, their content ownership will cover the majority of the most appealing content in cable and on the Internet. If allowed to engage in business dealings which favor each other, undoubtedly competition and consumers will be harmed.

The record of AOL and Time Warner in addressing the concerns of the Hispanic community is poor. Although Time Warner has done more than AOL to respond to issues which we have raised in the past, we cannot state today that they have acted responsibly to address our concerns about programming, diversity, and community investment. We are reminded how little commitment there is to address these issues when we continue to see movies like Fort Apache regularly shown on their stations, and production companies like CastleRock produce shows that use the burning of Hispanic Flags as jokes, and type-cast Hispanics like gang members from West Side Story. Time Warner has done little to rectify this situation to date.

AOL CEO Steven Case has stated to investors that the proposed merger would create something new and powerful, and would become even more central to people's lives. With a record as bare as AOL's in addressing Hispanic American concerns, and with no apparent interest in learning about our needs, this merger is a recipe for disaster for the Hispanic Community. Current efforts by AOL to serve Hispanics are limited to contributions by their Foundation that recently found that there was one organization which they could make donations to. They have always dealt with issues from the pint of view that they are the behemoth and could resolve any problem. This is the thinking behind the AOL/Time Warner merger. What concerns us most is that this self-serving mentality will effect Hispanic Americans even more if the merger is approved.

These two companies have, independently, operated without regard for the Hispanic community in all areas of their businesses. From employees to customers to businesses to the very top of both organizations, the Hispanic community has been systematically ignored or denied equitable service and opportunity.

Although HACR has had a relationship with Time Warner since 1997, we have never been able to forge a relationship with America Online. While our relationship with Time Warner exists to help them increase Hispanic representation in the four areas HACR monitors, we have seen little, if any progress in terms of increased Hispanic inclusion.

Upon the public announcement of the pending merger of AOL and Time Warner, Inc., HACR contacted the Chief Executives Officers of each of the companies to learn their views on HACR's goals for Corporate America for the 21st Century. HACR is focused on four goals: (1) Inclusion of Hispanics in employment in equal measure to our market contribution; (2) Inclusion in merger-related economic opportunities including executive promotions, procurements, spin-offs and divestitures; (3) Philanthropic support to under-served communities for education, employment training and technology, and interconnectivity; and (4) Inclusion of Hispanics among the governing board of the new company. As of this date, we have not received a response from either Mr. Levin of Time Warner or Mr. Case of America Online. It is clear neither company is willing to discuss the impact this merger may have on the Hispanic community.

Consequently, there is significant concern among our coalition that this merger will cause even more harm to the Hispanic community than the two companies have, separately. Among our greatest concerns are limited competition depriving Hispanics choice and fair pricing, the loss of jobs for Hispanics at a new AOL/Time Warner, the reduction of total contracts for Hispanic-owned business, systematic exclusion of Hispanics from leadership roles at both companies, and insensitivity in the area of programming.

Philanthropy

An independent evaluation of the philanthropic patterns of both companies through 1999, based on public records including press releases and their own web sites, indicates that both AOL and Time Warner contribute very little to the Hispanic community. Over the past two years, Time Warner has contributed approximately $30,000 to HACR and its coalition of the largest, most influential Hispanic organizations in the United States. During the same period, America Online has not contributed to HACR or its coalition members.

Governance

A review of the members of their boards of directors reveals the following:

Time Warner, Inc.'s 13-member board of directors has one African-American board member, Richard Parsons, the President of the Company. There are no Hispanics on the board.

AOL's 10 member board of directors has two African-American board members, General Colin Powell, and Franklin D. Raines, former Director of the Office of Management and Budget and a member of President Clinton's cabinet, and current Chairman and CEO of Fannie Mae. There are no Hispanics on the AOL board.

A review of the executive ranks reveals the following:

Time Warner has no Hispanic officers and the highest-ranking Hispanic in Time Warner corporate is the Manager of Diversity. Of Time Warner's 65,000 employees, eight executives are Hispanics. They are:

Blanca Fernandez, VP, Tax, HBO Latin America
Daniel Garcia, Sr. VP, Real Estate Planning, Warner Bros.
Henry Gomez, VP, Corporate Communications, HBO
Valerie Hummel, Asst. Gen. Counsel
Ramon Lopez, President, Warner Music Intl.
Carmen Ojala, VP, Corporate Communications, HBO Latin America
Lisa Quiroz, Publisher, People en Español
Rolando Santos, President, CNN en Español

Of AOL's 12,000 employees, there are no Hispanic officers or executives.

Employment

Time Warner, Inc. has participated as a member of the corporate advisory board of one of our members, for the last year, and as such, agreed to conduct a self assessment of their diversity efforts with regard to Latino employment. They have, however, failed to comply with their own deadlines and objectives, and thus far, have not provided any details concerning Latino employment. They have had difficulty retaining Latino staff employed to enhance and develop stronger ties with the Latino community. Although Time Warner has not shared their employment statistics with HACR or its coalition, they do publicize their total minority work-force information. Women constitute 47% of Time Warner's professional and managerial staff, and minorities make up a total of 19%.

AOL does not publicly provide any details of its work-force make-up.

Procurement

Time Warner spent $200 million with minority and/or women suppliers in 1998, and has targeted an increase of 35% per year in the future. Time Warner does not publicly provide details of the make up of this supplier base.

AOL does not publicly provide any details of its procurement policies.

HACR strongly urges the Commission to deny the merger of AOL and Time Warner based upon the above presented evidence that the merger will hinder competition and cause undo harm to the Hispanic community. HACR would also recommend that the Commission strongly encourage both companies, and the emergent company to commit to abide by EEO principles whether required by law to do so or not.

Past telecommunications mergers and our collective experience have taught us that when state and regional companies converge to transform themselves into national and global companies they may be willing, through the regulatory process and by empowered consumers, to also transform their collective corporate culture to better reflect the prevailing make-up of our national market place and the make-up of our national character and its emerging demographics.

Minority, particularly Hispanic, participation and inclusion in Corporate America in the areas of employment, procurement, philanthropy, executive management and board membership are of great concern to HACR. These two companies, in particular, have all but ignored the pleas of HACR, other prominent national and local Hispanic organizations, and the Hispanic community in general in regards to adequate inclusion the areas described above (earlier).

Service to new immigrant populations, including Hispanic communities from Los Angeles to New York, in their own language, to ethnic markets sensitive to their own cultural values, and to the disabled and to other previously ignored and overlooked markets, has not been adequately addressed by either AOL or Time Warner or any of their subsidiaries.

Worthy of note, is each company's disregard for low-income Hispanic communities and the enormous need for interconnectivity of our public educational institutions serving Hispanic communities. Interestingly, while telecommunications companies have actively supported low-income and Hispanic communities, these two companies have yet to step up to the plate. For instance, through an agreement approved by the California Public Utility Commission, SBC pledged $50 million to a newly established Community Technology Foundation to assist under-served communities during its merger approval process with Pacific Bell. Likewise, Bell Atlantic has continued the NYNEX technology fund of $50 million for a similar community use and the new Verizon Communications is considering a similar effort.

These changes, however, would not have come about as rapidly without the impetus of the FCC requirements for competition and for the public interest.

Thank you for your consideration of our concerns and recommendations.