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Good afternoon. My name is Christopher Melcher, and I am Vice Pesident and General Counsel for RMI.NET, Inc. RMI.NET is a national Internet commerce solutions provider, focused on providing the broadest possible range of Internet access services to business and residential customers, as well as being the premier "one-stop provider" of Internet access and web commerce services to small and medium sized business customers. I would like to thank the Federal Communications Commission and the Cable Services Bureau for providing me with the opportunity to join this discussion today on the proposed merger of the AOL and Time Warner, and its impact on the issue of open access for residential and business consumers to the Internet access service provider of their choice over the coaxial cable technology offered by AOL/Time Warner.

I would like to first tell you a little bit about RMI.NET. RMI.NET provides Internet access to more than 100,000 customers nationwide. Our Internet access services cover the full spectrum, from standard 56k dial-up Internet service to digital subscriber line service (or DSL) residential service, to high volume dedicated Internet access in the form of T-1's and DS3's for the business customers, all the way up to wholesale Internet access through our nationwide backbone for other smaller Internet service providers. RMI.NET is the primary Internet access provider for thousands and thousands of residential Internet access customers, especially those located in rural America, in farms, small towns and isolated communities throughout the Midwest and Western United States. AOL, Time Warner, and the RBOC's do not and will not serve these communities, whether through broadband or other forms of Internet access.

We currently provide Internet access in 90 of the nation's top 100 market areas via a combination of points of presence that we own ourselves or lease from others. Through prior acquisitions and facilities expansion, RMI.NET has the capability to provide Internet access at speeds up to DS-3, otherwise measured as up to 45 Mb a second, to customers in New York, Chicago, Atlanta, Washington, Dallas, San Francisco and Los Angeles. RMI.NET currently has a 5,000 s.f. state-of-the-art Network Operations Center located at our corporate headquarters in Denver, Colorado, as well as several fully-functional data centers in strategic locations across the country.

In addition to Internet access services, RMI.NET provides sophisticated custom website development and web hosting, collocation services, our own proprietary e-commerce applications, and competitive local exchange, long distance, and Internet protocol voice service. RMI.NET has also developed, and offers to customers, a vertical portal, called WebZone, which offers a robust search engine, a platform for hosting content-driven web sites, and targeted web marketing and advertising.

Our dual focus is serving both our large residential and commercial Internet access customer base, and commerce-enabling small and medium-sized businesses. Both of these groups will be directly impacted by the merger and the ultimate decision on open access. Those who know us know that we have been a strong and vocal supporter of open access for over a year now, particularly in the western United States.

RMI.NET strongly supports opening up the nation's cable systems to competition at the wholesale level. We believe this should be a major component and condition of any approval of the merger between AOL and Time Warner. The real issue here is not how high-speed cable compares to DSL or other forms of high-speed Internet access; the issue is really about how closing one form of high-speed access to competition affects the entire Internet community.

With the withdrawal by AOL of its previous support for open access as a result of its proposed merger with Time Warner, it becomes imperative that the FCC take up the cause of open access for the nation's 6,000-plus smaller Internet service providers and make open access a clear and enforceable condition of its approval of the AOL-Time Warner merger.

Let me explain why we support the open access, and why the four most common myths perpetuated by opponents of open access are false.

First, the cable industry will tell you open access is not fair. They will tell you that they have built or purchased their systems and have the right to control access. In fact, those cable systems were built with the support ad participation of the public, not only through franchise awards but through guaranteed consumer revenue for the cable companies in the form of predictable cable rates. The so-called "risk" of building the cable systems really was not much of a risk at all given the guaranteed rate of return to the cable companies through rate regulation. The public therefore has some portion of "equity", or "ownership", in these cable systems which gives them a right to having competitive open access on that system and enjoy the benefits of choice. In reality, AOL and the cable companies are trying to create a tilted and skewed playing field by creating a closed system for Internet access and telecommunications services that forces consumers into making difficult, non-competitive choices. This effort is "close off" the cable system from competition is identical to the past efforts of the RBOC's to close the local voice telecommunications system from competition. It is only due to the hard work of this Commission and Congress that the incumbent local exchange carriers must now provide access to their systems under the Telecommunications Act of 1996. As you know this legislation was very strongly supported by AOL, Time Warner, and many of the cable companies represented in this room here today. At the end of the day, we believe all companies that provide Internet and telecommunications services should play by the same rules, on a level playing field.

Myth number two is that open access cannot technically or feasibly be accomplished. I have sat in hearing rooms and public forums, along with AOL, listening to AT&T and cable industry representatives many times over the past year listening to this argument. These, of course, were the same individuals who said that competition in long distance and local voice telecommunications would never work. Nothing seems to work until competition, sometimes with the necessary but limited help of the government, makes it work. I assume AOL and Time Warner would agree that today there are no technological barriers to open Internet access over cable. As we all know, that argument in fact is now irrelevant according even to AT&T itself. When AT&T announced submission of a joint letter to this Commission with Earthlink in December, AT&T admitted to the world that the question of open access to all Internet service providers on the cable system was no longer a question of if there should be access, but rather the question now was only when and under what terms. AOL and AT&T have now publicly admitted that the critical issue will be how Open Access will be implemented, and both have started to develop and implement open access cable trials to explore how multiple Internet access providers would operate over the cable system (AT&T in Boulder, Colorado and AOL in Columbus, Ohio).

We are pleased to be a participant in the AT&T open access cable trial, and hope to be a participant in the AOL open access cable trial, but those trials are proceeding very slowly and we have seen absolutely nothing yet that would support any decision by the FCC to delay or eliminate immediate FCC intervention and regulation to ensure true open access over the cable system. With the recent ruling by the U.S. Court of Appeals for the 9th Circuit that Internet access over cable is a telecommunications service, the FCC has a clear obligation to regulate and oversee mandated open access. We are pleased that Chairman Kennard and the FCC are beginning that effort, but I think it is clear that the FCC must immediately begin a speedy and meaningful proceeding to affirmatively regulate open access. If not, the odds increase every day that others will step in to either regulate or legislate mandatory open Internet access over cable in their stead.

We agree with the FCC and the courts that history has taught us you cannot allow the owner of a monopoly technology to control the terms of the access to that technology — this is why we saw the breakup of Ma Bell in the 1980's, and later the Telecommunications Act of 1996. This is why open access must be mandated now, both as a condition of FCC approval for the AOL-time Warner merger, as well as through a speedy regulatory proceeding. Time is running out quickly.

A third myth espoused by the opposition is that requiring open access would hurt competition and the marketplace. What will hurt competition and the marketplace is to allow AOL, in concert with AT&T, to control nearly 75 percent of the Broadband Access Market. If AOL/Time Warner are allowed to control and close off a significant percentage the Broadband Access Market, the remaining participants, smaller Internet access providers like RMI.NET, will quickly be extinguished. Competition is not allowing two companies to control a technologically superior product or service, it's allowing for 6,000 companies to compete – that's the model that has resulted in the phenomenal growth and success of the Internet.

What is most strange to RMI.NET in this whole equation is why AOL and the other cable companies would not want, or embrace, or even demand that ISPs sell their cable Internet access product. We are not asking for a free ride; we are asking for the right to purchase high-speed cable access at the wholesale level, and resell it at the retail level under competitive market conditions.

While DSL and other high-speed Internet access services pass roughly 30% of the homes in America, cable and cable Broadband Internet access currently pass roughly 90% of the homes in America. Why would any company not want 6,000 agents out there selling its product? It has worked extremely well for a number of successful industries, including the wholesale voice carrier industry and the satellite television industry. The only answer has to that AOL and AT&T believe they will garner greater control of the market, and a greater share of the dollars spent, if they don't have to allow others to compete with them.

The final myth in this debate is that open access will hurt the consumer. This again is dead wrong. Right now, consumers are accessing the Internet through thousands of companies they've come to trust and rely on for quality service. If they want to stay with these smaller ISPs but move to cable access, they will suffer from having to pay twice to do so. Not opening up the nation's cable system to competition will force the consumer to make choices they don't want to make: it either will cost more and it will leave them with fewer options for providers. Open access will not hurt the consumer nearly as much as if we continue with a closed system.

We need open access to keep a level playing field, to continue the robust growth and development of the Internet, and to allow more than 6,000 smaller ISPs to stay competitive in the market. The cable industry has more than 60 million viewers nationwide, reaching 58.5 percent of the nation's households. We cannot afford to allow any activity that excludes ISPs from this marketplace. That is why we urge you to make open access a condition of this merger.

As a member of the open net coalition and as a smaller ISP, we recognize that we are now at a crucial time for the open access debate. We urge the FCC to make open access a condition not only for approval of the AOL/Time Warner merger, but in the future a requirement for the entire cable industry regarding Broadband Internet Access.

My message to you is simple: the only way to have a competitive market for the Internet is to allow competitors equal access to all the technologies and wires leading to customers' homes. Open Access would only require minimal governmental oversight, and is the only sure way that competitive Internet Access will flourish. The opposite course will almost certainly lead to Broadband Internet Access monopoly in the cable technology arena, and threaten the health and growth of the Internet itself. It took us some 36 years to break up the telephone monopoly; in this day and age of a rapidly expanding, competitive and changing telecommunications and Internet marketplace, we cannot afford the luxury of that much time.

Thank you.