

NorthNet Your Best Direction

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Thursday, January 17th, 2002

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave, NW
Washington, D.C. 20580

FTC File No. 001-0105
Docket No. C-3989
Daniel P. Ducore, Bureau of Competition

Mr. Ducore:

This letter is being sent as public comment on FTC file no. 001-0105, docket no. C-3989, the application of America Online/Time Warner (AOLTW) requesting approval of Athena Services, Inc. (Athena) as a non-affiliated Internet Service Provider (ISP), part of the alternative cable broadband service agreement.

As you may be aware, NorthNet and GreenBayNet (GBN) were extensively involved in providing the FTC with information throughout the AOLTW merger process. NorthNet and other providers feared AOLTW would not negotiate in good faith with providers who were vocal about and strongly believed in open access to AOLTW's cable network. These fears were well founded, specifically in the case of the approval of the Milwaukee and Green Bay, Wisconsin AOLTW divisions.

In our case and the case of GBN, a provider in Green Bay, it appears that AOLTW and their designated representative responsible for decisions as to providers selected for the Multiple Internet Service Provider (MISP) program, Ed Schor, were evasive and deceptive with regard to NorthNet's and GBN's entrance into the program.

The attached two timelines (marked A and B) show the interaction NorthNet and GBN had with Mr. Schor throughout last year and the first part of this year. Placing the timelines in context with the filing of docket C-3989, it is clear that Mr. Schor knew of both NorthNet's and GBN's desire to be involved in the negotiation process and provided false and misleading information as to how the process was to be conducted, such that both NorthNet and GBN were treated unfairly and anti-competitively in the negotiation process. The negotiations for the Milwaukee and Green Bay AOLTW divisions were taking place at the same time NorthNet and GBN were being told that the negotiations would not take place until the second quarter of 2002. Also attached (marked C through F) are dated copies of the electronic mail correspondence between myself, Frank Tower of NorthNet, and Mr. Schor of AOLTW.

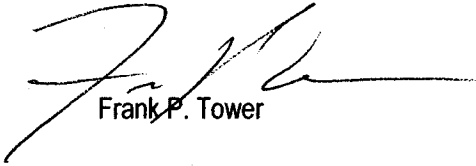
It is our feeling that AOLTW has claimed to be acting "in good faith" while at the same time acting like a monopolist in an unregulated environment, not unlike when they sent the highly anti-competitive terms sheet to all ISP's in August of 2000 while maintaining they would grant access to providers. Once again AOLTW have proven to be a detriment to service providers, the competitive marketplace, and consumers, at a time when providers and network operators should be working in cooperation to enable broadband Internet services for everyone.

If there are any questions with regard to these comments, please contact:

Frank Tower
NorthNet
311 City Center
Oshkosh, WI 54901
920.233.5641

Elliot Christensen
GreenBayNet
PO Box 2366
Green Bay, WI 54306
920.437.4638

Thank you for your time.



Frank P. Tower

(A)

Correspondence between AOLTW and NorthNet (NN)

- Beginning 2001** Electronic mail message sent from Frank Tower of NN to Barb Pandolfo at the local AOLTW office requesting to be included in the MISP program.
- 01/30/01** Email received from Ms. Pandolfo stating that Mr. Tower should contact Bonnie Blecha at AOLTW corporate offices.
- 07/30/01** AOL/TW packet received by NN with information that E. Schor was taking over the MISP program. MISP program questionnaire faxed to Mr. Schor by Mr. Tower and confirming email send to Mr. Schor. by Mr. Tower
- Email received from Mr. Schor by Mr. Tower acknowledging that the questionnaire was sent and that it was to be treated as confidential.
- 10/05/01** Email sent by Mr. Tower to Mr. Schor inquiring as to the status of MISP program in Wisconsin.
- 10/17/01** Email received by Mr. Tower from E. Schor stating that the Green Bay division would not be ready until sometime in 2002 and that NN should contact Mr. Schor late in the first quarter of 2002 for further details.
- 01/11/02** Mr. Tower informed via telephone conversation with Elliot Christenson that AOLTW had chosen their MISP program partners for the Green Bay and Milwaukee divisions of which Athena Group, Inc. was one of those selected.

Correspondence between AOLTW and GreenBayNet (GBN)

- Mid 2001** Eric Christenson of GBN contacted the local office of AOLTW to inquire about participation in the MISP program. Told to contact Bonnie Blecha at AOLTW at the corporate offices. Contact made and questionnaire received from Ms. Blecha. Questionnaire sent and received by Ms. Blecha.
- 11/04/01** Edward Schor called and spoke with Eric Christenson of GBN as to GBN's interest level in the AOLTW MISP program. Mr. Schor noted that AOLTW had not received GBN's questionnaire. A questionnaire identical to the previously sent questionnaire would be sent to GBN. Eric from GBN questioned the need to provide additional proprietary information to AOL/TW. Mr. Schor commented that it was necessary to provide this information to continue with AOL/TW MISP program. Eric commented that the decision was not his to provide the information required on the questionnaire and would find out if this was acceptable and then would contact Mr. Schor.
- Eric concern's were relayed to Elliot Christenson. Elliot contacted Mr. Schor and stated the need For confidentiality as well as questioned the need to submit a second questionnaire. Mr. Schor was unable to indicate the level of confidentiality that would be able to be kept.
- December** Eric and Elliot contated E. Schor's office multiple times throughout the month, leaving messages with Mr. Schor's secretary and on Mr. Schor's voicemail system.
- 01/11/02** Eric contacted Mr. Schor via telephone to inquire on an update as to the status of the MISP program for Wisconsin. Mr. Schor was unavailable and a message was left with Mr. Schor on his voicemail after Eric spoke with Mr. Schor's secretary.
- Mr. Schor, responding to Eric's message, called back and spoke with Elliot. Mr. Shore stated that he had received multiple calls and messages from GBN (both Eric and Elliot) and stated that he did not return these calls. Mr. Schor informed Elliot that the selection of those providers to participate in the MISP program in Wisconsin had been chosen on the 21st of December, 2001. Elliot questioned Mr. Schor as to why those providers chosen were chosen, specifically the Athena Group, Inc., a provider with no presence in the Milwaukee market. Mr. Schor stated that those selected were selected per Mr. Schor serving the best interest of his company. Elliot inquired as to the criteria for selecting companies for the MISP program, specifically GBN, to which Mr. Schor commented that he had not received correspondence from GBN indicating that GBN was interested in the MISP program. Elliot asked as to who was ultimately responsible for selecting the providers allowed to participate in the MISP program. Mr. Schor responded that he was the party responsible. Elliot informed Mr. Schore that he (Elliot) was taking notes of the conversation and would be filing a complaint with the FTC. Mr. Schor then became evasive and the call was ended.

(C)

From frankt Mon Jul 30 17:19:27 -0500 2001
X-VM-v5-Data: ([nil nil nil nil nil nil nil nil nil]
["537" "Monday" "30" "July" "2001" "17:19:26" "-0500" "Frank P. Tower" "frankt@northnet.net"
nil "18" "MISP Questionnaire" "^From:" "edward.schor@twcable.com" "edward.schor@twcable.com" "7" nil
nil (number " " mark " To: edward.schor@ Jul 30 18/537 " thread-indent "\"MISP
Questionnaire\\\"\\n") nil nil]
nil)
Bcc:
X-Mailer: emacs 20.5.1 (via feedmail 8 I);
VM 6.94 under Emacs 20.5.1
MIME-Version: 1.0
Content-Type: text/plain; charset=us-ascii
Content-Transfer-Encoding: 7bit
Message-ID: <15205.56686.911366.477165@serv1.northnet.net>
Reply-To: frankt@northnet.net
From: "Frank P. Tower" <frankt@northnet.net>
To: edward.schor@twcable.com
Subject: MISP Questionnaire
Date: Mon, 30 Jul 2001 17:19:26 -0500

Mr. Schor:

I received your MISP questionnaire today in the mail and will be sending it back to you tomorrow. Please realize that all of the information provided is to be considered confidential.

I look forward to working with AOL-Time Warner in the future.

Please contact me at your earliest convenience to discuss how we can work together.

--
Frank P. Tower
Managing Director
email: frankt@northnet.net

NorthNet, LLC.
phone: 920.233.5641
web: www.northnet.net

D

From VM Mon Jul 30 17:48:00 2001
X-VM-v5-Data: ([nil nil nil nil t nil nil nil nil]
["633" "Monday" "30" "July" "2001" "18:56:24" "-0400" "Ed Schor" "edward.schor@twcable.com"
"<3B65E618.8CF7B5CB@twcable.com>" "20" "Re: MISP Questionnaire" "^From:" nil nil "7" nil nil nil nil
nil])
nil)
X-VM-VHeader: ("Resent-" "From:" "Sender:" "To:" "Apparently-To:" "Cc:" "Subject:" "Date:" "X-
Spammer") nil
X-VM-Bookmark: 1
X-VM-Labels: nil
X-VM-Summary-Format: "%n %*%a %-17.17F %-3.3m %2d %4l/%-5c %I\"%s\"%\n"
X-VM-IMAP-Retrieved: nil
X-VM-POP-Retrieved: nil
X-VM-Last-Modified: (15293 48308 854383)
Return-Path: edward.schor@twcable.com
Received: from dencbdsal.twcable.com (unknown.twcable.com [205.138.118.2] (may be forged)) by
serv1.northnet.net (8.11.2/8.8.5) with ESMTP id f6UmlxI32059 for <frankt@northnet.net>; Mon, 30 Jul
2001 17:47:59 -0500
Received: from twcable.com (165.237.87.21) by dencbdsal.twcable.com (NPlex 5.0.048)
id 3B5C66D90003F07A for frankt@northnet.net; Mon, 30 Jul 2001 16:47:58 -0600
Message-ID: <3B65E618.8CF7B5CB@twcable.com>
Organization: Time Warner Cable
X-Mailer: Mozilla 4.76 [en]C-(C-UDP; EBM-SONY1) (Windows NT 5.0; U)
X-Accept-Language: en
MIME-Version: 1.0
References: <15205.56686.911366.477165@serv1.northnet.net>
Content-Type: text/plain; charset=us-ascii
Content-Transfer-Encoding: 7bit
X-UIDL: WUG!!I, !!gh;!"!6Ve"
From: Ed Schor <edward.schor@twcable.com>
To: frankt@northnet.net
Subject: Re: MISP Questionnaire
Date: Mon, 30 Jul 2001 18:56:24 -0400

Thank you. It will be treated confidentially.

"Frank P. Tower" wrote:

> Mr. Schor:
>
> I received your MISP questionnaire today in the mail and will be
> sending it back to you tomorrow. Please realize that all of the
> information provided is to be considered confidential.
>
> I look forward to working with AOL-Time Warner in the future.
>
> Please contact me at your earliest convenience to discuss how we can
> work together.
>
> --
> Frank P. Tower NorthNet, LLC.
> Managing Director phone: 920.233.5641
> email: frankt@northnet.net web: www.northnet.net

E

From frankt Fri Oct 5 08:59:16 -0500 2001
X-VM-v5-Data: ([nil t nil nil nil nil nil nil nil]
["760" "Friday" "5" "October" "2001" "08:59:15" "-0500" "Frank P. Tower"
"frankt@northnet.net" nil "25" "Re: MISP Questionnaire" nil "edward.schor@twcable.com" "Ed Schor"
"10" nil " MISP Questionnaire" (number " " mark "U To: Ed Schor Oct 5 25/760 " thread-
indent "\"Re: MISP Questionnaire\""\n") nil nil]
nil)
Bcc:
X-Mailer: emacs 20.5.1 (via feedmail 8 I);
VM 6.94 under Emacs 20.5.1
MIME-Version: 1.0
Content-Type: text/plain; charset=us-ascii
Content-Transfer-Encoding: 7bit
Message-ID: <15293.48307.879283.473213@serv1.northnet.net>
Date: Fri, 5 Oct 2001 08:59:15 -0500
From: "Frank P. Tower" <frankt@northnet.net>
To: Ed Schor <edward.schor@twcable.com>
Subject: Re: MISP Questionnaire
In-Reply-To: <3B65E618.8CF7B5CB@twcable.com>
References: <15205.56686.911366.477165@serv1.northnet.net>
<3B65E618.8CF7B5CB@twcable.com>
Reply-To: frankt@northnet.net

Wondering how you are progressing on our information and if there is a timetable for the Fox Valley area in Wisconsin?

>Thank you. It will be treated confidentially.
>
>"Frank P. Tower" wrote:
>
>> Mr. Schor:
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>> sending it back to you tomorrow. Please realize that all of the
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Frank P. Tower
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F

From VM Wed Oct 17 16:35:00 2001
X-VM-v5-Data: ([nil nil nil nil t nil nil nil nil]
["1019" "Wednesday" "17" "October" "2001" "17:32:05" "-0700" "Ed Schor"
"edward.schor@twcable.com" "<3BCE2305.2F62C055@twcable.com>" "30" "Re: MISP Questionnaire" "^From:"
nil nil "10" nil nil (number " " mark " R Ed Schor Oct 17 30/1019 " thread-indent
"\"Re: MISP Questionnaire\"\\n") nil nil]

Return-Path: edward.schor@twcable.com
Received: from dencbdsal.twcable.com ([205.138.118.2]) by serv1.northnet.net (8.11.2/8.8.5) with
ESMTP id f9HLYQB00874 for <frankt@northnet.net>; Wed, 17 Oct 2001 16:34:26 -0500
Received: from twcable.com (165.237.87.21) by dencbdsal.twcable.com (NPlex 5.0.048)
id 3B9CC8F0000AAC4A for frankt@northnet.net; Wed, 17 Oct 2001 15:34:26 -0600
Message-ID: <3BCE2305.2F62C055@twcable.com>
Organization: Time Warner Cable
X-Mailer: Mozilla 4.77 [en]C-{C-UDP; EBM-SONY1} (Win95; U)
X-Accept-Language: en
MIME-Version: 1.0
References: <15205.56686.911366.477165@serv1.northnet.net>
<3B65E618.8CF7B5CB@twcable.com> <15293.48307.879283.473213@serv1.northnet.net>

Content-Type: text/plain; charset=us-ascii
Content-Transfer-Encoding: 7bit
X-UIDL: /`)"!)6"!>Im!!L^)"!
Status: U
From: Ed Schor <edward.schor@twcable.com>
To: frankt@northnet.net
Subject: Re: MISP Questionnaire
Date: Wed, 17 Oct 2001 17:32:05 -0700

Frank-
Our Green Bay division is not scheduled to launch the multiple ISP program
until some time next year. I'd suggest you contact us again toward the end of
the first quarter, 2002. Thanks.

"Frank P. Tower" wrote:

> Wondering how you are progressing on our information and if there is a
> timetable for the Fox Valley area in Wisconsin?
>
> >Thank you. It will be treated confidentially.
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