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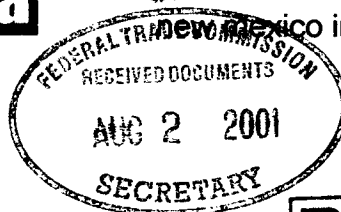
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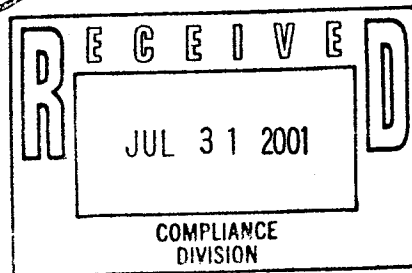
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July 27, 2001

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave., N.W.,
Washington, D.C. 20580
Attention: Daniel Ducore
Bureau of Competition
202-326-2526



Re: Docket C-3989

To Whom It May Concern:

This letter is written in response to the Request for Comments in the above Docket regarding the Motion for Approval of Non-Affiliated ISPs and Alternative Cable Broadband ISP Service Agreements. The New Mexico Internet Professionals Association (NMIPA) has severe reservations regarding the Motion for Approval listed above.

In New Mexico, there are approximately 80 independent ISPs serving one or more communities throughout the state. These ISPs provide the majority of Internet access to residential customers in the state, and have done so for the last 6 years. Local ISPs do not generally lose customers to national ISPs. Local ISPs compete very effectively against AOL, Earthlink, Juno, and others because they offer exceptional service to their communities, as long as all companies have the same access and ability to purchase network services. Approval of this Motion, in its current form, will seriously restrict the ability of local ISPs to have access to the same network services to which national ISPs have access.

Residential DSL broadband services are not widely available in New Mexico today except in the 3 largest cities, Albuquerque, Santa Fe, and Las Cruces. Cable modem services are available only in Albuquerque today. All cable operators in the state are, however, planning on rolling out cable modem service over the next 12 months in almost every community.

Local cable companies in Santa Fe and Albuquerque have recently begun refusing to carry local ISP advertisements for DSL services, as these cable monopolies roll out cable modem services under their

own Internet brand. Local ISPs have not been invited or allowed to participate in any discussions with these MSOs regard their cable networks for the purpose of providing Internet access to residential customers. Many local ISPs have approached these cable providers and requested such access. Local ISPs, who have the majority of the residential Internet market today, will be eliminated as competitors if the FTC approves this Motion.

None of the companies named in the Motion as "non-affiliated" providers has a major presence in New Mexico today. By approving this Motion, the FTC in effect, empowers these non-affiliated companies to have a distinct and substantial advantage over local New Mexico ISPs who have provided Internet services in their local communities for many years. The FTC is not protecting local businesses by approving this Motion. It is empowering a new cartel of companies who do not provide much Internet service in New Mexico today to effectively take control of the lucrative cable broadband market in our state.

NMIPA strongly urges the FTC to consider that AOLTW should not be in the position of *choosing* who it gets to compete with, but should have to make agreements in good faith with **any** Internet company who wishes access to its network, on a first come first served basis. Consideration should be given to the local Internet companies who have the largest customer base in the communities where the cable Internet services are to be provided.

NMIPA feels strongly that approval of this Motion would mean that customers in rural states like New Mexico would soon lose the ability to have a choice in their Internet Service Provider. The companies named as "non-affiliated" providers in the Motion do not have any motivation to provide exceptional service and support to New Mexico's rural, minority populations. They do not have any ties to our communities. They do not have local employees. Our local ISPs do have all these things.

No one expects that AOLTW should have to experience any financial risk in dealing with local ISPs. No one expects that AOLTW should not have the right to make money on the investment that it has made in upgrading its network. NMIPA feels that local ISPs can demonstrate that they have the ability to pay for the services that they purchase from MSOs and that they have good credit histories in general.

The non-affiliated companies are touted by AOLTW in the Motion as being "strong and effective broadband competitors, with the economic viability to continue to compete effectively in the immediate as well as foreseeable future".¹ Earthlink's earnings per share is $-\$2.86^2$; Juno's earnings per share is $-\$2.34^3$; High Speed Access Corporation's earnings per share is $-\$2.73.^4$ These are all *negative numbers*. Given the continuing trend of high technology companies who do not show profits to fail, this statement by AOLTW in the Motion seems incredible.

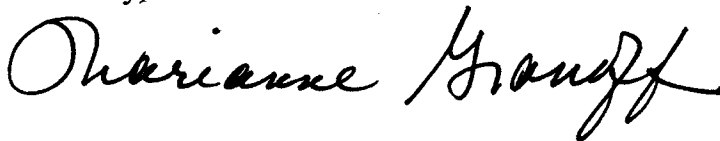
None of these three companies is profitable and all continually increase their indebtedness. In comparison, local ISPs have to continually make a profit in order to stay in business. AOLTW goes on to say in the Motion, "Accordingly, their approval by the Commission is warranted and in the public interest."¹ If AOLTW is incorrect, and there appears to be a high likelihood that they are, then AOLTW will not have **any** competition in the provision of cable modem services or any other services, since many local ISPs will be out of business due to not having equal access to the AOLTW network.

In summary, NMIPA requests that the FTC not approve the Motion for the following reasons:

- Large Cable MSOs are already acting in an anti-competitive manner in refusing to accept advertising from local ISPs for DSL services.
- Approval of the Motion will empower large companies who do not have a large market presence today in many areas to the detriment of those companies who do have such market presence, i.e., the local ISPs.
- The statements made by AOLTW in the Motion in support of the non-affiliated companies with which they have chosen to make agreements are not supported. Failure of these non-affiliated companies is likely to lead to further monopolization of the cable broadband market.

Thank you for allowing NMIPA to file comments regarding this matter.

Sincerely,



Marianne Granoff
Chairman of the Board of Directors
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CC: Scott Binder
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4611 Montbel Loop NE
Albuquerque, NM 87109

¹ <http://www.FTC.gov/os/applications/010629aolmotionforapproval.pdf>, page 2.

² <http://qs.cnnfn.cnn.com/tq/stockquote?symbols=ELNK> on 7/23/2001

³ <http://qs.cnnfn.cnn.com/tq/stockquote?symbols=JWEB> on 7/23/2001

⁴ <http://qs.cnnfn.cnn.com/tq/stockquote?symbols=HSAC> on 7/23/2001