

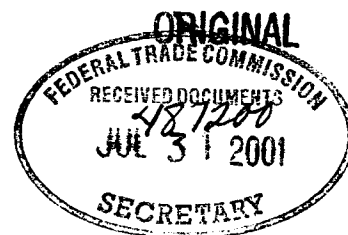


**Consumers
Union**

Nonprofit Publisher of Consumer Reports

31 July 2001

**MEDIA
ACCESS
PROJECT**



Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Docket No. C-3989

On behalf of the Center for Digital Democracy, Consumers Union, and the Media Access Project, we ask that the Commission withhold approval of AOL Time Warner's selection of High Speed Access Corp (HSA) as a "non-affiliated" ISP as required by the Consent Decree until further investigation of overlapping business arrangements is completed. We respectfully urge the Commission to have both HSA and AOL-TW provide evidence that the numerous business relationships between HSA's owner and AOL-TW will not interfere with HSA's independence and ability to compete with AOL-TW's own high-speed access service.

As the Commission knows, HSA is financially linked to another major cable holding company, Charter Communications, which has significant business relationships with AOL-TW. Both HSA and Charter are both part of Paul Allen's "Wired World" investment portfolio (<http://www.paulallen.com/>). HSA's board of directors includes representatives from both Wired World and Charter Communications (<http://www.hsacorp.net/pages/pnr1/cnr7.html>). Indeed, both HSA and Charter Communications have directors in common. HSA has been working closely with Charter, providing it with cable ISP access for its cable systems (see, for example, <http://vocuspr.vocus.com/PralityPro/xsl/chrtr/Profile.asp?Entity=PRAsset&EntityID=5190&XSL=PressRelease>).

Mr. Allen has, through his control of Charter, a number of joint ventures and shared investments with AOL-TW. These include, for example, the Los Angeles-based cable TV advertising interconnect service, Adlink (<http://www.adlink.com/aboutadlink/partners.shtml>). Both Charter and AOL-TW are investors in such programming ventures as the "Oxygen" cable channel. HSA also has an existing relationship with AOL-TW's "Roadrunner" service, through an agreement with

ServiceCO, LLC (see SEC filing, S-3, May 7, 2001). Charter, moreover, is a significant purchaser of television programming from AOL-TW for its cable systems.

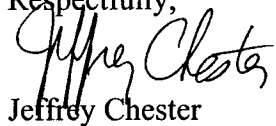
We are particularly concerned about the control that Mr. Allen's Vulcan Ventures has over HSA, a relationship that underscores our concern that HSA may not be able to act as an independent ISP in its dealings with AOL-TW. In its 5/7/2001 S-3 filing to the SEC, for example, HSA makes the following statement:

"Under our programming content agreement with Vulcan, Vulcan has the right to require us to carry, on an exclusive basis in all cable systems we serve, content it designates. Vulcan content may include start-up and related web pages, electronic programming guides, other multimedia information and telephony services. We will not share in any revenues Vulcan may earn through the content or telephony services it provides. We must provide all equipment necessary for the delivery of Vulcan content, although Vulcan will reimburse us for any costs we incur in excess of \$3,000 per cable headend. Vulcan cannot charge us for any Vulcan content through November 2008; after that date we will be obligated to pay Vulcan for this content at the lowest fee charged to any Internet service provider who subscribes to Vulcan content.

Vulcan has the right to prohibit us from providing content or telephony services that compete with Vulcan content at Vulcan's discretion and can require us to remove competing content. Many industry analysts believe that Internet access will become increasingly reliant upon revenues from content due to competitive pressures to provide low cost or even free Internet access. If Vulcan were to require us to remove our content or substitute its telephony services for any we might provide, we could lose a source of additional revenues and might not recover all related costs of providing our content or telephony services. Vulcan's ability to prohibit us from providing content and telephony services means that Vulcan's interests are not necessarily aligned with those of our other stockholders."

In light of these business ties and unique relationships, we believe that the Commission should withhold approval until it can evaluate evidence that HSA will be able to compete effectively with AOL-TW as a non-affiliated ISP.

Respectfully,



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