

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of
AMERICA ONLINE, INC., and
TIME WARNER INC.

Docket No. C-3989

Motion for Approval of Non-Affiliated ISP and Alternative
Cable Broadband ISP Service Agreement

Pursuant to Paragraph II.A.2. of the Decision and Order ("the Consent Decree") finalized by the Federal Trade Commission (the "Commission") on April 17, 2001,¹ AOL Time Warner Inc. ("AOLTW") moves the Commission for approval of (1) New York Connect.Net, Ltd. ("NYCT"), and (2) the Alternative Cable Broadband ISP Service Agreement entered into between Time Warner Cable ("TWC") and NYCT to provide ISP service in TWC's New York City division.²

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I. NYCT.

AOLTW seeks approval of NYCT and the Alternative Cable Broadband Agreement between TWC and NYCT, dated September 15, 2001. That Agreement is based on the same economic model as the Agreement between TWC and EarthLink, Inc. ("EarthLink") that already has been approved by the Commission.

NYCT is a regional ISP based in New York, New York. NYCT's principal focus is the provision of ISP service to consumers in the New York City area including the five boroughs, Suffolk County and parts of Westchester County.

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Founded in 1995, NYCT has had considerable opportunity to develop a business plan to provide services that appeal to the needs of consumers in the New York City area. Additionally, NYCT has committed itself to providing subscribers with a high level of service at a competitive price. Although it is small, TWC believes that NYCT is economically viable.

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and that
NYCT can be expected to be a vigorous broadband competitor

when multiple ISP service is launched by TWC in the New York City area.

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III. Conclusion.

NYCT's service, together with AOL, Road Runner, and EarthLink, will provide consumers in the New York City area with the benefits of vigorous competition among ISP service providers.

AOLTW is actively seeking to conclude Cable Broadband ISP Service Agreements with a number of other small and regional ISPs across TWC's cable divisions. Commission approval of a small ISP will send a strong signal to other small and regional ISPs that they can have a meaningful role in AOLTW's multiple ISP plans.

Additionally, by approving NYCT now, and other regional ISPs in the coming months, the Commission will facilitate the achievement of the principal objective of the

Consent Decree the Commission obtained in this matter -- ensuring that consumers are presented with a choice among an array of Cable Broadband ISPs.

For the foregoing reasons, the approval of NYCT by the Commission is warranted and in the public interest. We and AOLTW's representatives are available to meet with the Staff of the Commission to answer questions and provide further information in connection with any of the foregoing matters.

September 21, 2001.

Respectfully submitted,
CRAVATH, SWAINE & MOORE,



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