

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.B.1. 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) DURO Communications Corp. ("DURO"), and (2) the Alternative Cable Broadband ISP Service Agreement entered into between Time Warner Cable ("TWC") and DURO (the "Agreement") to provide cable broadband ISP service in TWC's Birmingham, Charlotte, Greensboro, Jackson/Monroe, Memphis, Raleigh, South Carolina and Wilmington divisions.² DURO provides Internet service under the name Volaris Online

("Volaris") and will itself be referred to hereinafter as "Volaris".

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I. Volaris.

AOLTW seeks approval of Volaris and the Alternative Cable Broadband Agreement between TWC and Volaris dated February 20, 2002, and amended on April 23, 2002 and July 8, 2002.

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The 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.

Volaris is an ISP based in Orlando, Florida. Volaris was incorporated in Delaware as DURO in December 1999. DURO changed its brand name to Volaris in November

2001. Prior to the name change, Internet services were offered through eleven regional ISPs.³

Volaris has **CONFIDENTIAL** subscribers in **REDACTED** Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Ohio, South Carolina and Tennessee.

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TWC expects that Volaris will be a competitive ISP. At the time the adoption of the name "Volaris" was announced, Ozzie de Faria, Chief Executive Officer of Volaris, announced that Volaris has "focused [its] efforts on becoming the Southeast's alternative provider to AOL".⁴ Volaris has placed an emphasis on providing subscribers with a high level of service. Volaris maintains two regional

³ The eleven regional ISPs were Apex Internet (Kentucky), CoastalNet (North Carolina), CrossRoads Access (Mississippi), Edge.net (Tennessee), Gulf Coast Internet (Florida), ICX Online (Tennessee), KIH Online (Kentucky), MPInet (Florida), Surf South (Georgia), VOL.com (Tennessee), and WAVE Communications (North Carolina).

⁴ Press Release, Volaris Online, Durocom and its subsidiaries become Volaris Online (November 1, 2001) (available at <<[http://about.volaris.com/Company Info/releases.asp?article=55](http://about.volaris.com/Company%20Info/releases.asp?article=55)>>).

call centers and a number of regional offices to ensure a high level of responsiveness to customer questions and concerns. In addition, Volaris has made an effort to raise its profile through a host of promotional activities. Volaris promotes its ISP service using radio, billboard and newspaper advertisements. Other examples of promotional activities include its sponsorship of a NASCAR team for part of the 2002 season, a "Refer a Friend" program in which subscribers receive a payment for referrals of new subscribers

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TWC believes that Volaris' positive financial position, established reputation in the region, and existing infrastructure to market and support ISP services will enable it to compete effectively as a cable broadband ISP.

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III. Conclusion.

The Agreement that is being submitted for Commission approval reflects the effort that TWC is making to negotiate and enter Alternative Cable Broadband ISP Service Agreements with regional ISPs that operate in areas outside of the Identified Cable Divisions. Prompt approval of the Volaris Agreement and other Alternative Cable Broadband ISP Service Agreements submitted pursuant to Paragraph II.B.1. of the Decision and Order will hasten the process of providing consumers with the benefits of cable broadband multiple ISP service.

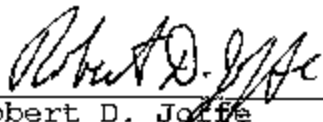
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TWC believes that the addition of Volaris to the list of ISPs that will be launched in the Birmingham, Charlotte, Greensboro, Jackson/Monroe, Memphis, Raleigh, South Carolina and Wilmington divisions will benefit consumers. Expeditious approval by the Commission of Volaris will permit Volaris to move quickly to prepare for the launch of cable broadband ISP service in these divisions.

For the foregoing reasons, the approval of Volaris by the Commission is warranted and in the public interest. We and AOMTW'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.

July 16, 2002.

Respectfully submitted,
CRAVATH, SWAIN & MOORE,



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