

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,<sup>1</sup> AOL Time Warner Inc. ("AOLTW") moves the Commission for approval of (1) LocalNet Corp. ("LocalNet"), and (2) the Amended Alternative Cable Broadband ISP Service Agreement entered into between Time Warner Cable ("TWC") and LocalNet to expand LocalNet's already Commission approved coverage to provide Cable Broadband ISP service in TWC's Portland division.<sup>2</sup>

The Commission previously approved LocalNet as a provider of cable broadband ISP service in TWC's Albany,

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Binghamton, Liberty, Rochester and Syracuse cable divisions. This Motion is an application for the Commission to approve the extension of LocalNet's service into TWC's Portland division.

I. LocalNet.

As noted above, AOLTW seeks approval of LocalNet and the Alternative Cable Broadband ISP Service Agreement between TWC and LocalNet to provide cable broadband ISP service in TWC's Portland division. The agreement for the Portland division amends the Alternative Cable Broadband ISP Service Agreement dated November 2, 2001 (the "November 2 Agreement") that was approved by the Commission on February 26, 2002. The amendment was signed on July 1, 2002.

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Since TWC submitted its Motion seeking approval of LocalNet on November 8, 2001, there have been a number of significant developments that increase LocalNet's ability to compete effectively as an ISP provider of cable broadband services.

First, LocalNet has continued to increase its subscriber base at a steady pace. In 2001, LocalNet's subscriber base grew by approximately 19,000, an increase of more than 90%.<sup>3</sup> In January 2002, LocalNet announced that it had amassed a subscriber base of 40,000 customers.<sup>4</sup>

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Additionally, in 2002, LocalNet added several service areas to its footprint.

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LocalNet already has commenced promotion of its Cable Broadband ISP Service on its website.<sup>5</sup>

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<sup>3</sup> LocalNet News Releases. Available at <<[http://www.localnet.com/releases\\_new1.phtml](http://www.localnet.com/releases_new1.phtml)>>.

<sup>4</sup> See id.

<sup>5</sup> See <<<http://www.localnet.com>>>.

Since its establishment in 1994, LocalNet has distinguished itself as a low-cost provider of high-quality Internet service. In a March 2002 press release, Marc Silvestri, President of LocalNet, stated that "[w]e offer a great value in dial-up Internet access, and I expect us to be competitive with our cable Internet offer".<sup>6</sup>

The rapid growth of LocalNet's subscriber base and the expansion of its geographic service area in 2002 are indicative of the increasing competitiveness of LocalNet. Given LocalNet's successful record as a dial-up ISP, TWC believes that LocalNet will be a vigorous competitor as a provider of Cable Broadband ISP Service in the Portland division.

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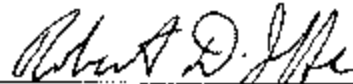
<sup>6</sup> LocalNet News Releases.

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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.

July 15, 2002.

Respectfully submitted,  
CRAVATH, SWAINE & MOORE,



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