



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) LocalNet Corp. ("LocalNet"), and (2) the Alternative Cable Broadband ISP Service Agreement entered into between Time Warner Cable ("TWC") and LocalNet to provide cable broadband ISP service in TWC's Albany, Binghamton, Liberty, Rochester and Syracuse, New York divisions.²

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I. LocalNet.

AOLTW seeks approval of LocalNet and the Alternative Cable Broadband Agreement between TWC and LocalNet dated November 2, 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.

LocalNet is a regional ISP based in Williamsville, New York. LocalNet currently provides dial-up service to subscribers in Connecticut, Indiana, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania and Rhode Island.

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Founded in 1994 in Buffalo, New York, LocalNet has grown dramatically in the seven years it has been operating. In 2000, Inc. magazine identified LocalNet as one of the five hundred fastest growing private companies in the United States with revenue growth of 1,013% between 1995 and 1999 and an "A" rating for profitability in 1999 (equal to 16% or higher).³

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³ See 2000 Inc. 500, Inc., at 142 (Oct. 17, 2000)

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LocalNet has indicated that it is viable from a financial standpoint.

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LocalNet distinguishes itself from other ISPs by providing "easy-to-use, robust, reliable Internet access delivered with professional Technical Support and Customer Service at the lowest sustainable rate per month".⁴ As a part of this business strategy, LocalNet offers unlimited dial-up access for \$9.95 with no installation fee. In addition, LocalNet is committed to "invest[ing] in the best equipment and personnel available in order to provide satisfying Internet access" for its subscribers.⁵ The rapid expansion of LocalNet's subscriber base is indicative of the effectiveness of this strategy.

Given its successful record as a dial-up ISP, there is ample reason to believe that LocalNet will provide

⁴ See <<<http://www.localnet.com/info/about.phtml>>>

⁵ Id.

vigorous competition as a provider of cable broadband ISP service over TWC's cable systems.

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III. Conclusion.

TWC launched multiple ISP service in Syracuse, Albany and Rochester on September 24, October 15, and October 22, 2001, respectively.

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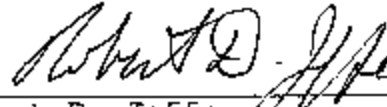
TWC believes that the addition of LocalNet's service to the list of ISPs that provide Cable Broadband ISP Service in the Albany, Binghamton, Liberty, Rochester and Syracuse divisions will benefit consumers by enhancing the range of service and pricing alternatives.

The Cable Broadband ISP Service Agreement between TWC and LocalNet is further proof of AOLTW's ongoing efforts to enter Cable Broadband ISP Service Agreements with small and regional ISPs across TWC's cable divisions. By promptly approving LocalNet and other regional ISPs in the coming months, the Commission will send a strong signal to consumers and ISPs alike that small and regional ISPs will play an important role in AOLTW's multiple ISP plans.

For the foregoing reasons, the approval of LocalNet 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.

November 8, 2001.

Respectfully submitted,
CRAVATH, SWAINE & MOORE,



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