

Small and Medium ISPs Ask: What About Us?

January 3, 2001. Oshkosh, WI. With the announcement of the FTC's conditional approval of the AOL/Time-Warner merger, many state ISP associations and individual ISPs are asking themselves the following question: While the largest ISPs like AOL, Earthlink, MSN, and Juno are dividing up the United States, what about all other the ISPs throughout the country?

Accordingly, the Federation of Internet Solutions Providers of the Americas (FISPA), the Texas ISP Association, Wisconsin ISPs like NorthNet, Athenet, CyberZone, and Green Bay Net remain wary about their rights of "non-discriminatory open access" to Time-Warner's cable lines. Additionally, the long delay mentioned in the Earthlink access announcement, i.e. High Speed Internet access starting in the second half of 2001, does not address the "first to market" advantage still maintained by Road Runner. This is important because the merged AOL/Time-Warner company is going to inherit Road Runner with all of their current captive customer base. Even worse, small and medium ISPs will not have access until late in the third quarter or the beginning of the fourth quarter of 2001.

According to Stephen Heins, Director of Marketing for NorthNet, "We have not seen the actual Earthlink/Time-Warner agreement, so I can safely say the devil is in the lack of details. This is the same problem we have had with the original Memorandum of Understanding issued on February 29, 2000." By the time Earthlink is finally granted access, 18 months will have elapsed since AOL/Time-Warner promised Open Access and several million Internet users will have switched from ISPs to Time-Warner's High Speed Internet connections.

The small and medium ISPs will request from the FCC the right to review the Earthlink contract in order to answer the following important questions:

- How long will the Earthlink access agreement remain secret?
- Does the new Term Sheet resemble the old one?
- Is there a \$50,000 deposit for each ISP?
- Will ISPs be able to provide broadband cable to the business community?
- Will ISPs have to share revenues with Time-Warner?
- Can multiple small ISPs form partnerships for Time-Warner access?
- Does the Earthlink/Time-Warner agreement become the definitive business model for "non-discriminatory open access"?
- Do small and medium sized ISPs have the opportunity to provide input into final shape of the FCC's Approval of the AOL/Time-Warner merger?

FISPA Executive Director, Joe Marion, said, "Our members have always been deeply concerned about the issue of open access. Increasingly, however, we have felt that the AOL/Time Warner merger, absent meaningful non-discriminatory open access for both residential and business-class services for ISPs is bad not only for FISPA, but also for consumers and competition. Without knowing the specifics of the deal between Earthlink and AOL/Time Warner for meaningful competition to occur amongst ISPs we MUST have non-discriminatory open access to the *entire* AOL/Time Warner platform."

Given the fact that there is enormous potential for anti-competitive and anti-consumer mischief in the AOL/Time-Warner merger, many of the 7700 ISPs in the U.S. are anxiously awaiting some sign that their customers' and their interests' are being protected. As Gene Crick, executive director of the Texas ISP Association, states, "Local and regional ISPs have done a damn good job of serving their communities and regions and we don't want them to be left out of the mix."

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