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THE AOL/TIME WARNER MERGER: COMPETITION AND CONSUMER CHOICE IN BROADBAND INTERNET SERVICES AND TECHNOLOGIES

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THE AOL/TIME WARNER MERGER: COMPETITION AND CONSUMER CHOICE IN BROADBAND INTERNET SERVICES AND TECHNOLOGIES

TUESDAY, FEBRUARY 29, 2000

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 1:06 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Specter, Grassley, DeWine, Abraham, Leahy, Biden, Kohl, Feinstein, Feingold, and Torricelli.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Chairman HATCH. If we could have your attention, we will get this committee hearing started.

Good afternoon, and welcome to this hearing on the proposed AOL/Time Warner merger and its effects on competition and consumer choice in broadband Internet services and technologies.

I first would like to thank sincerely both of our distinguished witnesses today for their time and cooperation. It is my hope that with this hearing we will better understand what this particular merger between one of the premier entertainment conglomerates and the premier Internet service provider means for competition and consumer choice for Internet services and content, including interactive television, and telephony.

To get a full understanding of the array of issues implicated by this merger, I believe it will be important to have the benefit of the views of those affected by this merger, in addition to the two merging companies. To that end, I intend to hold at least one additional hearing in the coming weeks to hear from consumer groups, technology and antitrust experts, and others with an interest in broadband and the potential consequences of this particular merger.

As I have said before, competition is essential to both the future of the Internet and continued innovation in the high-technology world. It is competition that has created a robust Internet economy and its constituent enhanced services that we are enjoying today. Companies and venture capitalists alike have made unprecedented investments in new Internet products, services, and technologies.

Continued growth in this area is vital not only to our economy but to our global leadership in the information technology sector.

Today's hearing is really about the next chapter in the development of technologies that will liberate individual consumers to seek and obtain content. High-capacity Internet promises to allow anyone, regardless of wealth or market power or viewpoint, to deliver his or her perspective for the world to see and hear. In short, the Internet's paradigm-shifting characteristics make it the ultimate First Amendment-enabling technology. And I will repeat that. The Internet's paradigm-shifting characteristics make it the ultimate First Amendment-enabling technology.

Now, two of the readily apparent policy questions we will explore today are, one, given that AOL will also become the second largest holder of the cable pipelines in the United States, is the company in a position to leverage this powerful infrastructure asset to unfairly compete against competitor Internet service providers by, "directing," its cable customers to take AOL service; that is, will consumers have unfettered freedom to choose who provides their Internet services?

And number two, given the new company's ownership of the cable pipelines and status as the dominant Internet service provider, will consumers be free to choose their content without preselection over the Internet, or will the merged company's significant Time Warner content holdings be favored and, "ushered," to the consumer through technical price discrimination or by requiring users to pass through a proprietary first screen? In other words, will Internet consumers be led into content cul-de-sacs owned and operated by Time Warner? That is a question that has arisen.

These are important and serious questions. They have implications not only for the technologies we are witnessing today, but for the environment necessary to the inexorable development of the next new thing. As I have said before, the most significant danger to the promise of the Internet is the possibility that a single company or a handful of companies control who can access or deliver applications and content for the Internet or over the Internet.

I believe that this danger exists whether the ownership is concentrated in the architecture, the hardware, the content, or operating systems needed to navigate broadband architecture. As such, I invite both of you to continue your cooperation with the committee to try and address any market distortions that would prevent entertainment, software, telephone, or cable companies from entering the race to bring cheaper, better technologies to the consumer. In the end, we need to determine what is best for the American public.

Before I turn to our ranking member for his opening remarks, I want to comment on the Memorandum of Understanding between Messrs. Case and Levin, which I learned of last night and read about in this morning's newspapers. Some of what I have heard sounds good, but I believe a degree of healthy skepticism is in order, given what is at stake here.

A cynic could question whether, not unlike vapor-ware, the promises presented in this document will ever materialize in the marketplace. Indeed, the first paragraph of this promotional document makes it clear that it is neither binding on the parties nor is it definitive.

The committee was informed that this document was developed and drafted without any input from the competitor ISP's or consumers the parties profess to be championing. Given that this document lacks both enforceability and specificity, this committee remains to be convinced of its value beyond the board room and public relations offices of AOL/Time Warner.

Doubts concerning the resoluteness to, and vagueness of, this memo could be overcome should our witnesses agree to condition the approval of this merger or the transfer of any licenses by the FCC on AOL/Time Warner's compliance with the promises made therein and its yet to be articulated terms.

I look forward to today's testimony, and I am particularly anxious to listen to two of the great leaders in this world in these areas and people I have tremendous respect for and naturally would like to help in the process.

So we will turn to our ranking member, Senator Leahy.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Thank you, Mr. Chairman. The proposed merger reminds me of *A Tale of Two Cities*, with the portents of either the best of times or the worst of times, as you recall the opening sentence in Charles Dickens' great classic. So we get to ask questions today to shed light on this proposal and the future.

I ask whether this merger of the largest online service provider with a global information and entertainment giant will give consumers exciting new choices of multi-media content and e-commerce applications over their combination TV and computer screen?

To put this in concrete terms, I was trying to think of some of the things it might mean to me. In fact, right now I am getting some comments from my office over my wireless laptop about the hearing and what you have been saying, Mr. Chairman, and they are very good comments. I will let you read them after; that is the only kind of comments we would allow.

Chairman HATCH. I often wondered how he stays up on things.

Senator LEAHY. Well, as you know, I have always said that we Senators are merely constitutional impediments to the staffs and they are the ones who actually run things. You will notice that the staffs behind us are trying to keep a straight face after that.

But I am thinking of this. I am at home and I am using a single screen and I am sitting there with my remote and I might be watching the latest Batman movie. I pause the movie to check my e-mails. I might want to coordinate online a family reunion with my children in Vermont and my son and daughter-in-law in California. I might simultaneously use instant messaging technology to find and purchase the cheapest airplane tickets for everybody to get together for the reunion. Then I can return to the movie without having lost any spot in it, and then finish up with a cut from my favorite Grateful Dead album or Carlos Santana's "Supernatural."

Now, all of these things are all very possible, and that could be the good part, being able to do all these things. The thing we do worry about is whether the consequences of this merger will be that consumers will see their choices of Internet service providers dwindle and their viewing and listening choices over high-speed cable lines limited or directed just toward AOL or Time Warner's favorite content.

Will customers of the conglomerate company get a single bill that will bundle the cost of high-speed Internet access to AOL, AOL Instant Messenger technology, access to Time Warner's music and video programming catalogues, but then penalize purchases from other sources?

If customers want to use an alternative Internet service provider or listen to a Grammy Award winner who is not a Time Warner artist, will they have to pay more or wait longer, or find it more difficult to get them?

As somebody said, together, AOL and Time Warner have the potential to cross-exploit and cross-promote their assets to create a media monster. Push the Time Warner content through the AOL gateway and the AOL content through the TV screen. Senator Hatch referred to this too—is this the potential?

I cautioned when this merger was announced several weeks ago that we would all want to see whether this expands the promise of the Internet age or does it constrain it. That is why we have to look into the future. And I do want to thank both Jerry Levin and Steve Case for coming here today to talk about what they envision for the future, and I appreciate all the time you have spent with me in preparing for this and trying to answer the questions that I have raised. So we are going to ask about what this means to other Internet service providers. We can find out how it could translate into non-discriminatory arrangements for Internet service providers, content providers, and others.

And then lastly, Mr. Chairman, I want to explore the issue of privacy. As we move ever closer to the time when our TV watching, our Internet surfing, our electronic messaging and shopping take place over the same device, kind of like the scenario I discussed earlier, it is going to be much easier to track what our personal tastes are and what our activities are like.

Every time we hit a button, somebody could well know what kind of films we like, what music we like, what sort of things we want to buy, what our financial status is, and what we purchase and don't purchase, and even who we communicate with regularly. Advertisers would think this is a gold mine. Many individuals might think it is nobody else's business, and that is what we have to look at.

So I do want to hear how technology is going to be our servant and not our master, and how you are going to protect privacy. Technological progress is good. Conglomeration and globalization can often be very good, but it should not make us sacrifice the privacy we all hold dear.

So, Mr. Chairman, I thank you for doing this, and I also thank our two witnesses for being here.

Chairman HATCH. Well, thank you, Senator.

We will turn to the chairman of the Antitrust Subcommittee, Senator DeWine, for a short statement, and then we will finish with Senator Kohl, the ranking member.

STATEMENT OF HON. MIKE DeWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. Thank you, Mr. Chairman, for holding this very important hearing.

This merger is valued at approximately $185 billion, the largest in history, and for that reason alone I believe that it deserves very careful scrutiny from this committee and from the antitrust agencies. But it is not the size, Mr. Chairman, of this deal alone that makes it important. It is the fact that the deal will bring together two giants from two very different industries and two very important industries, merging the dominant Internet provider and the largest media company in the world.

The conventional wisdom is that this merger also raises no antitrust problems because AOL is for the most part a company that provides Internet access and Time Warner is a provider of information and entertainment. As chairman of the Antitrust Subcommittee, I agree that the deal at first glance does not appear to pose the traditional antitrust concerns raised by a merger between two directly competing companies. But the more I examine the deal, the more I am convinced that it does raise very significant competition and public policy issues that must be thoroughly explored.

The merged AOL/Time Warner, if it lives up to the expectations of Mr. Case and Mr. Levin, will set the tone for the Internet of the future. It will help determine which new applications, products and services will be available online. It will help determine how the architecture of the Internet develops, and in some instances it will help determine which companies are allowed to compete with it.

Competitors will be forced to react to the vast reach and power of AOL/Time Warner either by working with the merged company or by finding merger partners of their own. In fact, it is believed that this deal is merely the opening round in a series of mergers and acquisitions that will reshape the competitive landscape of the Internet and of traditional media, increasing the size and decreasing the number of competitors in each market.

Another important issue raised by this deal is whether it will limit the give-and-take of the Internet, whether it will impede the free flow of ideas and expression that has helped make the Internet a strong counter-weight to the traditional media outlets. There are some who have expressed concern that companies such as AOL will steer consumers to their preferred media outlets, with the effect of slowly squeezing out the many smaller voices that the Internet has until now allowed to flourish. We must be careful, Mr. Chairman, to avoid this result, and work to maintain diversity in the so-called marketplace of ideas.

The proposed merger also generates some concerns in the more traditional old media market. As conglomerate media providers such as Time Warner become larger and larger, it raises questions about exactly how they will be able to continue their journalistic tradition of unbiased reporting and whether the public can safely continue to rely upon the objectivity of news organizations that have such wide-ranging business interests. I have discussed this important issue with both members of the panel in the past and I look forward to continuing that dialogue today.

Mr. Chairman, as is clear from my statement, I believe that there are many competition and public policy issues raised by this deal, and we must carefully examine all of them. But more than any specific concern, I believe we must work to preserve the fundamentally open nature of the Internet. The power and the value of the Internet is that it offers almost unending choice to those who use it. The Internet is thousands of different things to thousands of different people, and that is why it has become such a strong engine for innovation and for economic development.

Mr. Case and Mr. Levin are here today to sketch for us their vision of the Internet of the future. As policymakers, our job is to make sure that they have a fair opportunity to pursue that vision. But we must be equally careful to make sure that others have a fair opportunity to pursue their vision as well. I look forward to hearing the testimony of the witnesses.

Mr. Chairman, that is my opening statement, but I would like to take just a moment to show how I think Main Street views this merger and all of the other mega-mergers that have occurred lately. I think the best illustration of some of the issues we will face today is by one of my favorite illustrators, and that is Jim Borgman, of the Cincinnati Inquirer. I guess some in the audience can read that from a distance.

The first cartoon shows a toaster saying, instead of you have got mail, "you have got toast." And the second cartoon shows a man trying to buy a hamburger at a fast-food drive-thru, and when he places his order he is asked, "Do you want cable with that?" I think these two cartoons show that many Americans are a little bit uncomfortable, Mr. Chairman, with the size and the reach of this deal, and I am sure we are going to explore many of these issues in a moment.

Thank you very much.

Chairman HATCH. Thank you.

Senator LEAHY. I hope you noticed, Mike, than when you put up the first one, one of the witnesses shook his head "yes." [Laughter.]

Chairman HATCH. Senator Kohl, the ranking member on the subcommittee.

STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KOHL. Thank you, Mr. Chairman. Our hearing today will be important for Mr. Case and Mr. Levin, but it will be even more important for the American people. On their behalf, we will be talking with you about what the merger between AOL and Time Warner is likely to mean to the development of the Internet, the telecommunications industry, the media, and most importantly the American consumer.

Indeed, this may be the only such conversation we will ever have with regarding the consequences of your merger. So we must make an extra effort to ensure that we understand this deal, and you must make an extra effort to help us do that.

Mr. Case and Mr. Levin, less than 2 months ago your two companies, the dominant Internet service provider with more than 20 million subscribers and the Nation's leading vertically integrated media company, stunned the world with your announcement of the largest merger in American history, a deal valued at over $160 billion.

To many, this marriage between the old and the new media signifies a fundamental restructuring of our Information Age economy. From an antitrust perspective, my sense is that your merger is likely to pass, in whole or part, at both the FTC and FCC. After all, your two companies are mainly engaged in complementary rather than competing businesses, and combining them has the potential to provide some tangible benefits to consumers.

Nonetheless, the AOL/Time Warner deal does raise a whole host of important public policy and competition questions, ones that need to be addressed before your deal is consummated. These questions include, number one, how will AOL/Time Warner maintain its commitment to give other Internet service providers open access to broadband cable pipe? Is there a capacity limit, and how many competitors constitutes openness?

Two, will AOL/Time Warner's combined clout create an incentive to give itself preferential treatment as a provider of content and programming?

Number three, will television networks, music companies, publishers, other media companies and Web portals, especially the smaller and start-up ventures that aren't vertically integrated, be able to survive without further consolidation?

Four, will placing the Time Warner news outlets under the AOL corporate umbrella enhance the distribution of news or could it erode a proud tradition of independent journalism?

And, five, whatever happened to the notion of the Internet as a competitor to existing media? Will the thousands of flowers of Internet voices continue to bloom in a consolidated marketplace?

Finally, this deal appears to continue a troubling trend, the emerging American keiretsu of interlocking relationships among the major media, Internet and telecom entities. This complex web of cross-ownership includes AT&T's significant and growing stake in Time Warner, its largest cable competitor; AT&T's one-third interest in Cable Vision, another large cable company; and AOL's interest in satellite television provider DirecTV, a service which competes head-to-head with cable systems.

In my opinion, you will have to sell DirecTV. A cable company shouldn't have a stake in a direct competitor. And the FTC and the FCC need to take a long, hard look at what this high degree of overlapping ownership does for and to consumers. I recognize that these concerns must be balanced with the benefits promised by this merger, including improved distribution of all forms of media and a quicker deployment of broadband technologies.

But in considering an acquisition like this, we need to pay attention to its effects on the marketplace of ideas and not merely the marketplace of money. No less an authority than you, Mr. Case, has recognized that, "If we want to continue the Internet's exciting and explosive growth, the best interests of consumers must remain our focus." Of course, I agree. Our fundamental concern should always be preserving competition and the widest array of consumer choices possible, and that is our focus today, Mr. Case and Mr. Levin. We look forward to hearing from you.

Thank you, Mr. Chairman.

Chairman HATCH. Well, thank you, Senator.

Today, we have only one distinguished panel of two before us. These two gentlemen, I am sure, need no introduction, but let me introduce them anyway.

Our first witness is Mr. Steve Case, Chairman and CEO of America Online. Since Mr. Case cofounded AOL in 1985, the company has experienced monumental growth. AOL operates two worldwide Internet services, with over 21 million members, and numerous other Internet brands. Under Mr. Case's leadership, AOL has become the world's leading Internet services company, and we commend you for that.

Our second witness is Mr. Gerald Levin, Chairman and CEO of Time Warner. Mr. Levin joined Time, Inc., in 1972 and was the leading architect of the Time Warner merger. He is recognized as one of the pioneers of the cable industry. He became CEO of Time Warner in 1992 and chairman in 1993. Under Mr. Levin's leadership, Time Warner has become the world's leading media conglomerate.

I would like to thank each of our distinguished witnesses for taking time out of their busy schedules to be with us today because this is an important hearing and I am looking forward to this hearing, and I am certainly looking forward to what you both have to say about this. Naturally, I have very high respect for both of you and for the business acumen and leadership that you have, and I think everybody on this committee does. We are concerned about this, but we sure want to hear what you have to say about it.

Mr. Case, we will turn to you first.

PANEL CONSISTING OF STEPHEN M. CASE, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, AMERICA ONLINE, INC.; AND GERALD M. LEVIN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, TIME WARNER, INC.

STATEMENT OF STEPHEN M. CASE

Mr. CASE. Good afternoon, Chairman Hatch and Senator Leahy and all the members of the committee. Thank you for the opportunity to appear before you today to talk about why this merger will continue to be in the interest of consumers and why, Senator Leahy, this will be the best of times.

As you know, on January 10, AOL and Time Warner announced our plan to join our two companies together, creating the world's first truly global media and communications company for what we think will be known as the Internet Century.

I want to start by saying that we see this as more than a merger of two companies. We really see it as a merger of ideas, a shared commitment to empower consumers, communities, families and citizens, expanding their choices, bringing more value into their lives and building a global medium that benefits society.

I believe that the excitement generated by our announcement is due to the growing evidence that we really are on the verge of a second Internet revolution, a transformation of the way we live our lives. This transformation has already begun in ways large and small.

The Internet has changed the way we communicate with friends and family, the way we learn more about the world around us, even the way we connect to our political leaders. It has impacted the way companies ship and consumers shop. It is changing the way we strengthen our communities at home, and also how we build a world community. And the terrain is changing before our eyes, from increasingly affordable Internet services to better, faster connections that make possible a far wider array of content on line, to wireless and hand-held devices that make the Internet available anywhere at any time.

This is also a time of incredible innovation and of intense competition. We welcome that and believe that our new company will be stronger because of it. The Internet never could have become a driving force of the new economy, and neither AOL nor Time Warner could have gotten where we are today without competition. And going forward, we are committed to ensuring that our merger creates new choices for consumers and promotes a diversity of voices in our culture.

We know that change this dramatic and rapid creates new opportunities, but we also believe that it creates new responsibilities. So while we work hard at AOL/Time Warner to make the most of this changing world, there are a few things that won't change: first, our commitment to provide consumers with an empowering range of choices; second, our commitment to earn their trust and their confidence; third, our commitment to foster the openness, competition and innovation that are the Internet's driving force; and, finally, our commitment to leave no one behind in the Internet Century, fostering the diversity of voices that is the Internet's greatest strength.

Let me start with our first and most important commitment at AOL/Time Warner, which is to serve consumers. In our business, consumers are the ultimate venture capitalists. They guide our business models and drive our ideas. This will only increase in the years ahead.

Let's step back for just a moment. Five years ago, the World Wide Web barely existed. But as people began to see the Internet as a tool to improve their lives, not some obscure realm for high-tech enthusiasts, they started using it. It happened slowly at first, starting with e-mail and chat groups, but then rapidly expanded to a range of experiences that are increasingly indispensable to millions of people's everyday lives.

To give you just a few compelling examples, AOL provides 200 million stock quotes everyday to help people invest their money. We handle nearly 900 million messages a day, 50 percent more than the 600 million pieces of mail handled daily by the U.S. Postal Service, and that is just AOL.

It certainly doesn't stop there. The e-commerce phenomenon continues to develop as more and more people go online to buy an increasingly large number of products and services. Last year, the numbers spoke for themselves: around $100 billion in global e-commerce revenues, a figure that is expected to break $1 trillion by 2003.

And what about education and the world of ideas? Today, a student in Alaska or Alabama can visit the Library of Congress online, and so can a young person in Ankara. Anyone with access to a computer and a modem can visit any one of our 800 million Web sites, in just about every language, covering every topic you could imagine.

As consumers have embraced the interactive medium, they have begun to demand that it meet their needs in new ways. Technological advances, from cable broadband to satellite and DSL connections, to a new generation of wireless and hand-held devices are already increasing the range of online content people can enjoy and use in their everyday lives. And both new ideas and new competitors are surfacing everyday, further driving the medium in a vital process of continuous improvement.

Consumers drove this quantum leap into the Internet revolution and they will most certainly drive it into this Internet Century. Consumers have been empowered and they are exercising their power everyday, seeking out the Internet service that meets their needs and the content that matches their interests, whether it be books, movies, stock quotes, even polling data. I believe that AOL/Time Warner will only accelerate this trend.

History tells us that the most profound, life-changing ideas come to life when people find valuable new ways to join emerging technology with existing content. Consider this: nearly 25 years ago, Jerry Levin had an idea that the combination of satellite and cable technology with movies and other media could change the way people are entertained. That idea became HBO, and HBO not only accelerated development of a new cable medium, it really did change the way we think about entertainment.

Twenty years ago, Ted Turner wondered what would happen if he combined the new capacity of cable television to reach households with a 24-hour news network. That idea became CNN, and it has transformed the way we think about news and raised the bar for every news station around the world. In the same way, VCR's transformed the movie industry and CD technology transformed the music industry. And these are the kinds of remarkable combinations and experiences we think AOL/Time Warner will be able to provide consumers across industries, across platforms, across media, from music to movies to publishing to communications to financial services.

We certainly hope to lead a whole new era of innovation in our industry, but we won't be the only company out there, especially not in the new converged environment that is joining the forces of many historically distinct industries and creating so many new and compelling consumer products and services.

We have come a long way from the time when all you could get was three broadcast networks, PBS, scratchy vinyl records, maybe a department store down the block. Again, consumers have been empowered and they will shape the market. One thing the last few years have made crystal clear is that in the rapidly changing, Internet-supercharged economy, companies must constantly innovate and continuously remake themselves if they expect to attract customers.

And let me be clear. We do not intend to limit content diversity on any of our systems. If we limit content, if we do not promote a diversity of voices, if we do not maintain scrupulous journalistic standards, then consumers will waste no time migrating to other Internet and media services.

The second commitment is that AOL/Time Warner will build on the consumer trust and confidence that have made our brands among the most trusted in the world. As I just mentioned, the media and communications landscape is changing rapidly as all the new media come together in powerful new combinations that are increasingly central to people's lives.

If the Internet really is going to empower people in this new environment, then it is more important than ever for them to be able to trust that the information they share online is private and secure. At AOL, we have worked hard to educate consumers about the special nature of online transactions because we know it is the best way to build trust and to build our business. We have also put in place strict privacy and security standards, and we are working with our industry to make those standards universal. The same is true for Time Warner, a company that is committed to journalistic integrity and consumer trust both on and offline.

AOL/Time Warner will continue to build consumer confidence and trust by maintaining our efforts to ensure that families and teachers have the tools they need to guide our children's experiences in cyberspace. The Internet can open a door into another world for our kids, a world of imagination and learning, but it is up to us to determine which doors they open and to keep them safe.

As separate companies, we have made a commitment to consumers and we have kept it. As one company, we will continue to make that commitment and we will continue to keep it. We will take building consumer confidence and trust to the next level, working within our industry and with all of you to craft responsive and responsible policies that address these concerns. This is something consumers care about and something we have to work together to ensure. One thing is certain. We share the same goal, protecting consumers and their families, and establishing a new standard of privacy and security for the digital age, while permitting the Internet to flourish in these changing times.

Third, AOL/Time Warner will build on our commitment to open access. We have made real progress on this issue over the past year-and-a-half, and I am proud of the role AOL has played in getting us to where we are today. AT&T and Time Warner, the two largest cable companies in the country, have committed to the principle of providing consumer choice on their systems. And with other cable companies considering following our lead, I believe implementation of open access nationwide is no longer a question of whether, but of when.

We believe that consumer choice is not only the smartest business practice for both the cable industry and for the growth of the Internet, it is the right policy, grounded in the right values, for consumers and for the growth of the Internet. This committee recognized this early on, and I want to thank you all for your support of our efforts to push this industry to act.

Today, we took another step forward, jointly releasing a Memorandum of Understanding that will form the framework for delivering AOL and other ISP's over Time Warner cable and to give consumers greater choice. We look forward to putting that open access framework into practice as soon as possible.

Meeting the challenge of consumer choice won't happen overnight, but it is part of our ongoing commitment to consumers. In fact, we believe that the merger of AOL and Time Warner puts us in a position to initiate real dialogue about the best way to offer multiple Internet services over multiple broadband platforms, from cable and DSL lines to satellite connections, turning our commitment into real choices for consumers in the marketplace. And we believe that working together with our industry and with all of you, we will ensure that open access is a common practice and that consumers are the real beneficiaries.

Finally, AOL/Time Warner will be committed to using our combined resources, assets and experience to build a medium we can be proud of. Building a medium we can be proud of has always been core to the vision at AOL, and it will continue to drive us at AOL/Time Warner. That means empowering people by giving them a voice and greater choice. It means connecting people in meaningful ways to their government and helping them to give back to their communities. It means enhancing educational opportunities for children. And building a medium we can be proud of means expanding its reach and its benefits to every corner of the world, leaving no community and no country behind.

We all have a responsibility to meet these challenges. At AOL/ Time Warner, we will take this responsibility very seriously not only as a company but also as individuals with a shared personal conviction that we must use our leadership to build a better world. Nowhere is this leadership more important than driving the crusade to close the digital divide.

You have all heard the statistics. Our public schools are overcrowded, understaffed, and unprepared to teach the skills of the future. Seventy-five percent of households with incomes over $75,000 own computers; 10 percent of our poorest families do. Yet, more than 60 percent of all new jobs will require high-tech skills by 2002.

Both AOL and Time Warner have already taken significant steps to meet this challenge. I am especially proud of the role we are playing at AOL to help launch PowerUp, a unique public-private partnership to create a network of community technology centers that teach young people the skills they need and give them the guidance they need to make the most of their potential. One of the things I am looking forward to doing at AOL/Time Warner is joining our resources and sharing our ideas to close this digital divide.

Just as important, we intend to devote our personal energy to finding new ways to help the benefits and opportunities of this Internet Century to reach developing countries and all countries in the world. We have to make sure that the World Wide Web is not worldwide in name only. All of these measures will bring us closer than ever to fulfilling AOL/Time Warner's shared mission of building a truly global medium as central to people's lives as the telephone or the television, and even more valuable.

Let me close with a comparison. 120 years ago almost to the day, Thomas Alva Edison patented the light bulb, but it took nearly 60 years for the power of electricity to reach every corner of America, bringing light to the farmhouses, connecting people in remote communities to the radio and to one another, and transforming life as we knew it.

By comparison, the Internet was invented around 30 years ago and it has taken us most of the last 15 years to reach just 40 percent of American households. Imagine what we will achieve when we reach every country, every community, every business, every family, because in truth we really are just scratching the surface of a broad and powerful vision that will forever alter our lives.

It is no surprise really that both the electric light and the Internet were born in America. Our spirit of innovation and creativity, our tradition of competition and cooperation, and our ideal of inclusion and equal opportunity are the driving force of the Internet and they will be the guiding principles of AOL/Time Warner.

I appreciate the time and effort the committee is taking to hear about this important merger, and I thank you all for your leadership on many important Internet policy issues. I look forward to working with you in the months and years ahead.

Thank you.

Chairman HATCH. Thank you, Mr. Case.

[The prepared statement of Mr. Case follows:]

PREPARED STATEMENT OF STEVE CASE

Good morning, Chairman Hatch, Senator Leahy, and all the members of the Committee. Thank you for the opportunity to appear before you today.

As you know, on January 10, AOL and Time Warner announced our plan to join our two companies—creating the world's first truly global media and communications company for the Internet Century

I want to start by saying that we see this as more than a merger of companies. We see it as a merger of ideas: a sacred commitment to empower consumers, communities, families and citizens—expanding their choices, bringing more value into their lives, and building a global medium that benefits society.

I believe that the excitement generated by our announcement is due to the growing evidence that we really are on the verge of a Second Internet Revolution—a transformation of the way we live our lives.

This transformation has already begun in ways large and small. The Internet has changed the way we communicate with friends and family, the way we learn more about the world around us, even the way we connect to our political leaders. It has impacted the way companies ship and consumers shop. It is changing the way we strengthen our communities at home—and build the world community.

And the terrain is changing before our eyes—from increasingly affordable Internet services, to better, faster connections that make possible a far wider range of content online, to wireless and handheld devices that make the Internet available anywhere, at any time.

This is also a time of incredible innovation and intense competition. We welcome that and believe that our new Company will be stronger because of it. The Internet never could have become a driving force of the new economy—and neither AOL nor Time Warner could have gotten where we are today—without competition. And going forward, we are committed to ensuring that our merger creates new choices for consumers and promotes a diversity of voices in the culture.

We know that change this dramatic and rapid creates new oportunities—but we also believe that it creates new responsibilities. So, while we will work hard at AOL Time Warner to make the most of the changing world, there are a few things we won't change:

- Our commitment to provide consumers with an empowering range of choices.
- Our commitment to earn their trust and confidence.

• Our commitment to foster the openness, competition and innovation that are the Internet's driving force.

• And our commitment to leave no one behind in the Internet Century, fostering the diversity of voices that is the Internet's greatest strength.

Let me start with our first and most important commitment at AOL Time Warner: to serve consumers. In our business, consumers are the ultimate venture capitalists—they guide our business models and drive our ideas. This will only increase in the years ahead. Let's step back for a moment. Five years ago, the World Wide Web barely existed. But as people began to see the Internet as a tool to improve their lives—not some obscure realm for high tech enthusiasts—they started using it.

It happened slowly at first—starting with e-mail and chat groups, mainly, but rapidly expanding to a range of experiences that are increasingly indispensable to millions of people's every day lives. To give you just a few compelling examples, AOL provides 200 million stock quotes every day to help people manage their finances. We handle nearly 900 million messages a day—50% more than the 600 million pieces of mail handled daily by the United States Postal Service. And that's just AOL.

It certainly doesn't stop there. The e-commerce phenomenon continues to develop as more and more people go online to buy an increasing number of products and services. Last year, the numbers spoke for themselves: around $100 billion in global e-commerce revenues—a figure that is expected to break a trillion dollars by 2003.

And what about education and the world of ideas? Today, a student in Alaska or Alabama can visit the Library of Congress online—and so can a young person in Ankara. Anyone with access to a computer and a modem can visit any one of around 800 million websites, in just about every language, covering every topic you can imagine.

As consumers have embraced the interactive medium, they have begun to demand that it meet their needs in new ways. Technology advances—from cable broadband, satellite, and DSL connections, to a new generation of wireless and handheld devices—are already increasing the range of online content people can enjoy and use in their every day lives. And both new ideas and new competitors are surfacing every day—further driving the medium in a vital process of improvement.

Consumers drove this quantum leap into the Internet Revolution, and they will most certainly drive it in the Internet Century. Consumers have been empowered, and they are exercising their power every day—seeking out the Internet service that meets their needs and the content that matches their interests: movies, books, stock quotes . . . even polling data.

I believe that AOL Time Warner will only accelerate this trend.

History tells us that the most profound, life-changing ideas come to life when people find valuable new ways to join emerging technology with existing content. Consider this: nearly 25 years ago, Jerry Levin had an idea that the combination of satellite and cable technology with movies and other media could change the way people are entertained. That idea became HBO—and HBO not only accelerated the development of the new cable medium to new heights—it really did change the way we think about entertainment.

Twenty years ago, Ted Turner wondered what would happen if he combined the new capacity of cable television to reach households with a 24-hour news network. That idea became CNN—a killer app if ever there was one—and it has transformed the way we think about the news . . . and raised the bar for every news station around the world.

In the same way, VCRs transformed the movie industry, and CD technology transformed the music industry. And these are the kind of remarkable combinations and experiences we think AOL Time Warner will be able to provide consumers—across industries, across media—from music to movies to publishing to communications to financial services.

We certainly hope to lead a whole new era of innovation in our industry. But we won't be the only company out there, especially not in the new "converged" environment that is joining the forces of many historically distinct industries and creating so many new and compelling consumer products and services.

We've come a long way from the time when all you could get was three broadcast networks, PBS, scratchy vinyl records, a department store down the block and your local bank.

Again, consumers have been empowered—and they will shape the market. One thing the last few years have made crystal clear is that in a rapidly changing, Internet-supercharged economy, companies must constantly innovate and continuously remake themselves if they expect to attract customers. If we limit content, if we do not promote a diversity of voices, if we do not maintain scrupulous journalistic standards, then consumers will waste no time migrating to other Internet and media services.

Second AOL Time Warner will build on the consumer trust and confidence that have made our brands among the most trusted in the business.

As I just mentioned, the media and communications landscape is changing rapidly as old and new media come together in powerful new combinations that are increasingly central to people's lives. If the Internet is really going to empower people in this new environment, then it is more important than ever for them to be able to trust that the information they share online is private and secure.

At AOL, we have worked hard to educate consumers about the special nature of online transactions, because we know it's the best way to build trust and to build our business. We have also put in place strict privacy and security standards—and we are working with our industry to make those standards universal. The same is true for Time Warner—a company that is committed to journalistic integrity and consumer trust, both on and offline.

And AOL Time Warner will continue to build consumer confidence and trust by maintaining our efforts to ensure that families and teachers have the tools they need to guide our children's experience in cyberspace. The Internet can open a door into another world for kids—a world of imagination and learning. But it's up to us to determine which doors they open—and to keep them safe.

As separate companies, we have made a commitment to consumers—and kept it. As one company, we will keep it. We will take building consumer confidence and trust to the next level—working within our industry and with all of you to craft responsive and responsible policies that address these concerns. This is something consumers care about—and something we have to work together to ensure.

One thing is certain—we share the same goal: protecting consumers and their families and establishing a new standard of privacy and security for the digital age, while permitting the Internet to flourish in these changing times.

Third, AOL Time Warner will build on our commitment to open access.

We have made real progress on this issue over the past year and a half, and I am proud of the role AOL has played in getting us to where we are today. AT&T and Time Warner, the two largest cable companies in the country, have committed to the principle of providing consumer choice on their systems. And with other cable companies considering following our lead, I believe implementation of open access nationwide is no longer a question of whether, but of when.

We believe that consumer choice is not only the smartest business practice for both the cable industry and for the growth of the Internet—it is the right policy, grounded in the right values, for consumers and the growth of the Internet. This committee recognized this early on, and I want to thank you for your support of our efforts to push the industry to act.

Today, we took another step forward, jointly releasing a Memorandum of Understanding that will form the framework for delivering AOL and other ISPs over Time Warner cable—and to give consumers greater choice. We look forward to putting that open access framework into practice as soon as possible.

Meeting the challenge of consumer choice won't happen overnight, but it is part of our ongoing commitment to consumers. In fact, we believe that the merger of AOL and Time Warner puts us in a position to initiate real dialogue about the best way to offer multiple Internet services over multiple broadband platforms—from cable and DSL lines to satellite connections—turning our commitment into real choices for consumers in the marketplace.

And we believe that working together with our industry and with all of you, we will ensure that open access is common practice—and that consumers are the beneficiaries.

Finally, AOL Time Warner will be committed to using our combined resources, assets, and experience to build a medium we can be proud of.

Building a medium we can be proud of has always been our core vision at AOL, and it will continue to be at AOL Time Warner. What does that mean? It means empowering people by giving them a voice and greater choice. It means connecting people in meaningful ways to their government and helping them to give back to their communities. It means enhancing educational opportunities for children. And building a medium we can be proud of means expanding its reach—and its benefits—to every corner of the world, leaving no community and no country behind.

We all have a responsibility to meet these challenges. At AOL Time Warner, we will take this responsibility seriously, not only as a company, but also as individuals with a shared personal conviction that we must use our leadership to build a better world.

Nowhere is this leadership more important than driving the crusade to close the Digital Divide. You have all heard the statistics: our public schools are overcrowded, understaffed, and unprepared to teach the skills of the future. 75 percent of households with incomes over $75,000 own computers—10% of our poorest families do. More than 60% of all new jobs will require high tech skills by 2002.

Both AOL and Time Warner have already taken significant steps to meet this challenge. I am especially proud of the role we are playing at AOL to help launch PowerUp, a unique public-private partnership to create a network of community technology centers that teach young people the skills they need—and that give them the guidance they need—to make the most of their potential. And one of the things I am most looking forward to at AOL Time Warner is joining our resources and sharing our ideas to close the Digital Divide.

Just as important, we intend to devote our personal energy to finding new ways to help the benefits and opportunities of the Internet Century reach developing countries . . . and all the countries of the world. We have to make sure that the World Wide Web is not worldwide in name only.

All of these measures will bring us closer than ever to fulfilling AOL Time Warner's shared mission of building a truly global medium as central to people's lives as the telephone and the television . . . and even more valuable.

Let me close with a comparison. One hundred and twenty years ago, almost to the day, Thomas Alva Edison patented the light bulb. But it took nearly 60 years for the power of electricity to reach every corner of America—bringing light to the farmhouses, connecting people in remote communities to the radio and to one another, transforming life as we knew it.

By comparison, the Internet was invented around 30 years ago—and it has taken us most of the last 15 years to reach just 40% of American households. Imagine what we will achieve when we reach every country, every community, every business, every family. Because in truth, we are really just scratching the surface of a broad and powerful vision that will forever alter our lives.

It is no surprise, really, that both the electric light and the Internet were born in America. Our spirit of innovation and creativity, our tradition of competition and co-operation, and our ideal of inclusion and equal opportunity are the driving force of the Internet—and they will be the guiding principles of AOL Time Warner.

I appreciate the time and effort the Committee is taking to hear about this important merger—and I thank you for your leadership on many important Internet policy issues. I look forward to working with you in the months and years to come.

Chairman HATCH. We will turn to you, Mr. Levin.

STATEMENT OF GERALD M. LEVIN

Mr. LEVIN. Thank you, Chairman Hatch and Senator Leahy and members of the committee. I too am grateful for this opportunity to speak to you about the planned merger of Time Warner and AOL, and obviously both of us will be happy to answer your questions.

I know our merger announcement came as a surprise to many, and the truth is, for such a large transaction, it was worked out in a remarkably short period of time. Even more remarkable, while I am sure such challenges don't exist here in Washington, we avoided any leaks. And from my perspective, the AOL/Time Warner merger was not a bolt from the blue, but actually the fulfillment of almost three decades spent in the media business, because I began my career with the quixotic hope, or so it seemed at the time, of using cable television to overthrow the stranglehold the broadcast triopoly had on television.

When you had mavericks like Ted Turner, as well as myself, we believed that the real power of television would only be unleashed when it became a medium driven by consumer choice, with programming alternatives that went far beyond what simply three advertising-supported networks could deliver. And the success of that once radical notion, I think, is reflected in today's premier pay television networks, like Home Box Office, and the lineup of services that we have on our cable systems of hugely popular networks such as CNN, Disney—I will repeat that—Disney, Discovery, ESPN, Nickelodeon, CNBC. Obviously, the list is very long.

And although we would never claim that this early experience with cable gave us a clairvoyant glimpse of the Internet, it was, in fact, profoundly formative for us because we were left with the conviction that we had barely touched the potential of technology to empower viewers to become their own programmers with no limits, no limits, on their options.

Possessed as I was of this belief, I committed my company in 1994 to the deployment of the world's first fully interactive digital network in our Orlando, FL, cable system. Short term, that full-service network, which of necessity was a closed system that needed to be invented from scratch, did not lead to any instant rollout of interactive television. But long term, the risk that we took resulted in our engineers creating a breakthrough architecture that melded fiber optic trunk lines with a coaxial connection to subscriber homes to offer a switched broadband avenue for interactivity.

And so in 1995, Time Warner made a $5 billion commitment to rebuild its systems with broadband architecture, a commitment which now stands at more than $6 billion, and we entered into a social contract, a social contract, with the Federal Communications Commission. In fact, my faith at that time in cable's pivotal part in the future of digital interactivity was so strong that at a time when re-regulation put cable out of favor with investors, we undertook major acquisitions to expand our cable footprint.

And at the very moment we were opening the way for broadband delivery, the first great wave of a truly network society arrived in the form of the Internet. And today we are all awash in that wave or, better yet, surfing it, and the sea change has been so sweeping and so profound that it is hard to believe that the word "Internet" itself didn't enter Webster's until 1997.

The growth of the Internet over so short a time reflects the sheer velocity of what is taking place. In 1995, there were 19 million Internet users. Five years later, there are over 200 million, and that number will cross 1 billion by mid-decade. Led by AOL's easy-to-use, consumer-friendly service, a constantly increasing number of people are making e-mail, instant messaging and e-commerce an integral part of how they live, how they work, and how they communicate.

It would be hard for me to exaggerate the implications of the Internet revolution because for the first time in our human history, we have at our disposal a universal, limitless connection that no government, no corporation or centralized agency can control, because every user has the ability to publish and to offer something new. In fact, every Web site contains the possibility of meeting consumer needs in more attractive, efficient ways so that the noise that you are currently hearing across the economic landscape is that of time-honored, in some cases centuries-old business hierarchies as they crash to the ground, because the first lesson of the Internet has already been written.

If you think you can do business in the realm of digital interactivity the way you have always done business, you need to think again because thinking again is precisely what Time Warner has been doing for the last 5 years as we refocused on achieving a company-wide digital transformation.

I have spoken of what that transformation did for our cable customers, providing broadband capacity for high-speed delivery of the Internet, but that was a part of a far larger effort. Impelled by the nature of our content businesses, which are operations intimately involved with artistic and intellectual expression in every form, we were pioneers in adapting our flow of creative offerings to this environment because people throughout Time Warner understood the irrevocable impact of what was occurring. They embraced the almost inconceivably broad canvas the Internet provides for expanding the reach of their minds and imaginations.

The challenge for Time Warner was never facing up to the historic significance of digital interactivity. We jumped that hurdle while other media companies were still debating if there was a race. The challenge was time. The global economy in general, and the global media industry in particular are on fast forward. They have entered a new context, and that is Internet time.

Beginning last September, in Paris, Steve Case and I had the opportunity to work together as Co-chairs of the Global Business Dialogue on E-Commerce to help set international self-regulatory standards for Internet traffic. The next month, at the Fortune magazine forum in Shanghai, we continued our conversation about the relentless unfolding of the digital future.

These locales couldn't help but underline the unique leadership that America enjoys in deploying and using the Internet, and the fierce competitive determination of entrepreneurs across the globe who are trying to catch and surpass us. Steve and I understood that those who wished to stay ahead in the instant-to-instant evolution of this medium did not have the luxury of waiting on events. We saw that the company of the future, a company with the creative infrastructure to provide a constant stream of quality content, plus a genetic appreciation of how to form Web communities and how to serve them easily and conveniently—such a company had not yet come into existence.

The solution to that puzzle became obvious to both of us. By putting together AOL and Time Warner, we could create the first enterprise not only fully prepared to compete on the Internet and really a prototype for the 21st century, but a company that could be a decisive spur to bringing consumers everywhere the speed and immediacy of broadband across all delivery platforms, wired or wireless, thus unlocking the fullest possibilities of interactivity.

For my part, while the economic rationale for this merger was compelling, it was not sufficient. Before I could take the step of joining America Online in a merger of equals, I had to satisfy myself about three basic premises.

First, at the very core, the very heart of Time Warner, the cornerstone of our global reputation and the enduring basis of the bond of trust we have created with audiences in every part of the world is commitment to journalistic independence, journalistic integrity.

Ten years ago, in a landmark decision that allowed the Time Warner merger to go forward, Chancellor William Allen of Delaware's Chancery Court spoke of our journalistic culture as truly unique and deserving of protection and preservation. The addition of CNN in 1996 made that culture even richer and more far-reaching.

I want to assure you that I have always regarded the defense of that heritage as utterly central to my responsibilities as CEO. And in light of the continuing expansion of news and information outlets, many of which we carry on our cable systems, I have had a heightened awareness of Time and CNN's role in upholding the standard for reliable, unbiased journalism. Steve Case has been equally clear about his unwavering commitment to journalistic independence, and I have to say that his unprompted offer to have me serve as the CEO of AOL/Time Warner was a further reaffirmation of that belief.

Second, as a prime mover in the design, development and deployment of broadband networks, Time Warner assumed the financial risk, huge though it was, of that investment in the face of strong competition from DSL, DBS, and other broadband providers. In building that capacity, we recognized not just the possibility of consumers having choice among ISP's, but, in fact, the desirability. This we learned clearly and historically with HBO because the provision of choice is, in fact, a boon to the dynamic growth of cable subscriptions and a prod to the creation of new and better programming.

AOL and Time Warner now have a shared commitment to provide consumers with multiple ISP's in a genuinely competitive broadband marketplace. I would like to elaborate on that commitment because you have before you our announcement of a Memorandum of Understanding between Time Warner and AOL regarding our commitment to open-access business practices.

As you can see from a review of this detailed understanding, we are serious about setting out the framework that will lead to true ISP choice for Time Warner cable subscribers. We will obviously answer your questions, but I just want to outline the key elements of our plan.

First, delivering consumer choice. AOL/Time Warner is committed to offer consumers a choice among multiple ISP's. Consumers will not be required to purchase service from an ISP that is affiliated with AOL/Time Warner in order to enjoy broadband Internet service over AOL/Time Warner cable systems.

Second, diversity of ISP's. AOL/Time Warner will not place any fixed limit on the number of ISP's with which it will enter into commercial arrangements, and it will offer ISP's the choice to partner on a national, regional, or local basis in order to facilitate the ability of consumers to choose among ISP's of different size and different scope.

Three, direct relationship with the customer for ISP's. AOL/Time Warner is also committed to allow both the cable operator and the ISP to have the opportunity to have a direct relationship with the consumer. Accordingly, both the cable operator and the ISP will be allowed to market and sell broadband service directly to customers. When an ISP sells broadband Internet service directly to such a customer, it may, if it so chooses, bill and collect from the customer directly.

Four, video streaming. AOL/Time Warner will allow ISP's to provide video streaming. We recognize that consumers desire video streaming and AOL/Time Warner will not block or limit it.

Now, while today's MOU is subject to existing Time Warner obligations, such as its contracts with Road Runner, Time Warner and I are committed to providing a choice of ISP's as quickly as possible, and we will work with our partners to try to achieve that goal before current obligations expire. And I look forward to the rest of the cable industry following this same path of choice and innovation which I believe will drive consumer adoption of cable broadband services.

Finally, fundamentally, as to how Time Warner defines itself, I have to refer to our sense of community responsibility. This has been basic to who we are from the very beginning and was best summed up in Henry Luce's formulation that we would always operate, "in the public interest, as well as the interest of shareholders."

If you look through the biennial report we issued which details the depth and breadth of community involvement, you will see the seriousness and effectiveness with which we continue to live up to Henry Luce's charge. Time to Read, for example, is the country's largest, most successful corporate-sponsored literacy program.

But we are under no illusions. Like you, we recognize the need for a significant increase in corporate involvement focused on helping equip schools with the resources they need to prepare students to enter the digital economy. Personally, as someone who has witnessed firsthand the struggle of dedicated teachers to overcome the shameful inequalities embedded in our educational system, I regard this need as a moral obligation, and feel it is a personal moral obligation.

As the members of this committee have so frequently articulated, if ever there has been a clear and present danger to the future of American society, it is in the digital divide that threatens to aggravate longstanding patterns of discrimination. From the inception of my discussions with Steve Case, I have been impressed with the passionate sincerity of his desire to ensure that his company plans an important role in bridging that divide, and nothing has been more crucial to the agreement we have reached to merge our companies than our vision of AOL/Time Warner's ability to be a catalyst for meaningful change in the way our country, indeed our world, offers its children the opportunity for creative expression, intellectual enrichment, and material success.

As large as our merger may seem, it pales beside the open-ended expanse of broadband media and the wired and wireless access available through PC's, TV's, and the burgeoning multiplicity of hand-held devices. From the consumer's point of view, the intense competitive struggle to offer everything from telephony to digital downloading of music and entertainment to video on demand embodies the best of all possible worlds—more choice, better value, and lower prices.

I am grateful, obviously, for this chance to express to you my bedrock belief in the positive implications of our merger. Although the age we have entered will be brutally unsparing of companies that can't or won't move fast enough, it will also empower individual citizens as never before. If we do it right—and I am profoundly optimistic that a clear understanding by both the private and public sectors of what is involved will ensure we do—we will add new dimensions to our economy and our democracy.

Under your leadership, Chairman Hatch and Senator Leahy, this committee has demonstrated a bipartisan willingness to strengthen copyright protection and ensure America's artists are encouraged to keep producing works of international appeal and distinction. I applaud passage of the Digital Millennium Copyright Act, and I pledge our full cooperation in addressing the vital public interest issues of Internet privacy and the protection of children.

I think it is obvious that AOL/Time Warner is probably only the first of many competitive realignments intended to form enterprises with the agility and array of resources to thrive on this new terrain. Given the talent, imagination and values that AOL/Time Warner will possess, I am also confident it will be the most socially responsible as well as competitively successful.

Along with my colleagues at AOL and Time Warner, I look forward to working with you to make sure that individuals and communities everywhere can use the most powerfully liberating communications tool in human history to amplify and inspire in Jefferson's wonderful phrase, "the pursuit of happiness."

[The prepared statement of Mr. Levin follows:]

PREPARED STATEMENT OF GERALD M. LEVIN

Chairman Hatch, Senator Leahy and members of the committee, I'm grateful for this opportunity to speak about the planned merger between Time Warner and AOL and will be glad to answer any questions you might have.

I know our merger announcement came as a surprise to many, and the truth is for such a large transaction, it was worked out in a remarkably short period of time.

More remarkable—while I'm sure such challenges don't exist in Washington—we avoided any leaks!

From my perspective, the AOL-Time Warner merger wasn't a bolt from the blue, but the fulfillment of almost three decades spent in the media business. I began my career with the quixotic hope—or so it seemed—of using cable television to overthrow the stranglehold the broadcast triopoly had on television. Mavericks like Ted Turner and myself believed that the real power of television would only be unleashed when it became a medium driven by consumer choice, with programming alternatives far beyond what three advertising-supported networks could deliver.

The success of that once-radical notion is reflected today in premier pay-television networks like Time Warner's Home Box Office, and our cable systems' lineup of hugely popular networks such as CNN, TBS, Disney, Discovery, ESPN, Nickelodeon, CNBC. . . . The list is long.

Although we'd never claim that this early experience with cable gave us a clairvoyant glimpse of the Internet, it was profoundly formative. I for one was left with the conviction that we'd barely touched the potential of technology to empower viewers to become their own programmers, with no real limits on their options.

Possessed of this belief, I committed my company in 1994 to the deployment of the world's first fully interactive digital network in our Orlando, Florida, cable system.

Short term, that full service network—a closed system that needed to be invented from scratch—didn't instantly lead to the rollout of interactive television. Long term, the risk Time Warner took resulted in our cable engineers creating a breakthrough architecture that melded fiber-optic trunk lines with the coaxial connection to subscriber homes to offer a switched broadband avenue for interactivity.

In 1995, Time Warner made a $5 billion commitment to rebuild its systems with this broadband architecture—a commitment which now stands at $6 billion—and entered a social compact with the FCC. In fact, my faith in cable's pivotal part in the future of digital interactivity was so strong that at a time when reregulation put cable out of favor with investors, Time Warner undertook major acquisitions to expand its cable footprint.

At the very moment Time Warner was opening the way for broadband delivery, the first great wave of a truly networked society arrived in the form of the Internet. Today, we're all awash in that wave, or better yet, surfing it, and the sea change has been so sweeping and profound that it's hard to believe the word Internet itself didn't enter Webster's until 1997.

The growth of the Internet over so short a time reflects the sheer velocity of what's taking place: In 1995, there were 19 million Internet users; five years later, over 200 million. That number will cross one billion by mid-decade. Led by America Online's easy-to-use, consumer-friendly service, a constantly increasing number of people are making e-mail, instant massaging and E-commerce an integral part of how they live, work and communicate.

It would be hard to exaggerate the implications of the Internet revolution. For the first time, human beings have at their disposal a universal, limitless connection that no government, corporation or centralized agency can control. Every user has the ability to offer something new. Every web site contains the possibility of meeting consumer needs in more attractive, efficient ways, so that the noise you hear across the economic landscape is that of time-honored—in some cases, centuries-old—business hierarchies as they crash to the ground.

The first lesson of the Internet has already been written: If you think you can do business in the realm of digital interactivity the way you've always done business, think again. . . . Thinking again is precisely what Time Warner has been doing for the last five years, as we refocused on achieving a companywide digital transformation.

I've spoken of what that digital transformation did for our cable customers, providing broadband capacity for high-speed delivery of the Internet. But that was part of a far larger effort. Impelled by the nature of our content businesses—operations intimately involved with artistic and intellectual expression in every form—we were pioneers in adapting our flow of creative offerings to this environment.

People throughout Time Warner understood the irrevocable impact of what was occurring. They embraced the almost inconceivably broad canvas the Internet provides for expanding the reach of their minds and imaginations.

The challenge for Time Warner was never facing up to the historic significance of digital interactivity. We jumped that hurdle while other media companies were still debating if there was a race. The challenge was time. The global economy in general and the global media industry in particular are on fast forward. They have entered a new context: "Internet Time."

Beginning last September, in Paris, Steve Case and I had the opportunity to work together as co-chairs of the Global Business Dialogue on E-commerce to help set international self-regulatory standards for internet traffic. The next month, at the "Fortune" magazine forum in Shanghai, we continued our conversation about the relentless unfolding of the digital future.

Those locales couldn't help but underline the unique leadership America enjoys in deploying and using the Internet and the fierce competitive determination of entrepreneurs across the globe to catch and surpass us.

Steve and I understood that those who wished to stay ahead in the instant-to-instant evolution of this medium didn't have the luxury of waiting on events. We saw that the company of the future—a company with the creative infrastructure to provide a constant stream of quality content plus a genetic appreciation of how to form web communities and how to serve them easily and conveniently—had yet to come into existence.

The solution to that puzzle was quickly obvious to both of us: By putting together AOL and Time Warner, we could create the first enterprise not only fully prepared to compete on the Internet—a prototype for the 21st century—but a company that could be a decisive spur to bringing consumers everywhere the speed and immediacy of broadband across all delivery platforms, wired or wireless, thus unlocking the fullest possibilities of interactivity.

For my part, while the economic rationale for our merger was compelling, it wasn't sufficient. Before I could take the step of joining America Online in a merger of equals, I had to satisfy myself about three basic premises.

First, at the very core of Time Warner—the cornerstone of our global reputation and the enduring basis of the bonds of trust we've created with audiences in every part of the world—is commitment to journalistic independence.

Ten years ago, in the landmark decision that allowed the Time Warner merger to go forward, Chancellor William Allen of Delaware's Chancery Court spoke of our journalistic culture as "unique" and deserving of protection and preservation. The addition of CNN in 1996 made that culture even richer and more far-reaching.

I have always regarded the defense of that heritage as utterly central to my responsibilities as CEO, and in light of the continuing expansion of news and information outlets—many of which we carry on our cable systems—I've had a heightened awareness of *Time* CNN's role in upholding the standard for reliable, unbiased journalism.

Steve Case has been equally clear about his unwavering commitment to journalistic independence, and his unprompted offer to have me serve as CEO of AOL Time Warner was a further reaffirmation of that belief.

Second, as a prime mover in the design, development and deployment of broadband networks, Time Warner assumed the huge financial risk of that investment in the face of strong competition from DSL, DBS and other broadband providers.

In building our broadband capacity, we recognized not just the possibility of consumers having a choice among ISPs but the desirability.

Historically, as we learned so clearly with HBO, the provision of choice is a boon to the dynamic growth of cable subscriptions and a prod to the creation of new and better programming.

AOL and Time Warner now have a shared commitment to provide consumers with multiple ISPs in a genuinely competitive broadband marketplace, and we will be happy to elaborate on that commitment.

Third, fundamental to how Time Warner defines itself is our sense of community responsibility. This has been basic to who we are from the very beginning, and was best summed up in Henry Luce's formulation that we would always operate "in the public interest as well as the interest of shareholders."

If you look through the biennial report we issue which details the deputy and breadth of our community involvements, you'll see the seriousness and effectiveness with which we continue to live up to Luce's charge. Time to read, for example, is the country's largest, most successful corporate-sponsored literacy program.

But we're under no illusions.

Like you, we recognize the need for a significant increase in corporate involvement focused on helping equip schools with the resources they need to prepare students to enter the digital economy. *Personally,* as someone who has witnessed first-hand the struggle of dedicated teachers to overcome the shameful inequalities embedded in our educational systems, I regard this need as a *moral* obligation.

As the members of this committee have so frequently articulated, if ever there's been "a clear and present danger" to the future of American society, it's in the "digital divide" that threatens to aggravate long-standing patterns of discrimination and injustice from the inception of my discussions with Steve Case, I've been impressed with the passionate sincerity of his desire to ensure that his company plays an important role in bridging that divide.

Nothing has been more crucial to the agreement we've reached to merge our companies than *our* vision of AOL Time Warner's ability to be a catalyst for meaningful change in the way out country—indeed, our world—offers its children the opportunity for creative expression, intellectual enrichment and material success.

As large as our merger may seem, it pales the open-ended expanse of broadband media, and the wired and wireless access available through PCs, TVs and the burgeoning multiplicity of hand-held devices. From the consumer's point of view, the intense—and intensifying—competitive struggle to offer everything from telephony to digital downloading of music and entertainment to video on demand embodies the best of all possible worlds: more choice, better value and lower prices.

Members of the committee, I'm grateful for this chance to express to you my bedrock belief in the positive implications of the merger between AOL and Time Warner. Although the age we've entered will be brutally unsparing of companies that can't or won't move fast enough, it will also empower citizens as never before.

If we do it right—and I'm profoundly optimistic that a clear understanding by both the private and public sectors of what's involved will ensure we do—we will add new dimensions to our economy and our democracy.

Under your leadership, Chairman Hatch and Senator Leahy, this committee has demonstrated a bipartisan willingness to strengthen copyright protection and ensure America's artists and encouraged to keep producing works of international appeal and distinction. I applaud passage of the Digital Millennium Copyright Act, and I pledge our full cooperation in addressing the vital public interest issues of Internet privacy and the protection of children.

I think it's obvious that AOL Time Warner is only the first of many competitive realignments intended to form enterprises with the agility and array of resources to thrive on this new terrain. Given the talent, imagination and values that AOL Time Warner will possess, I'm also confident it will be the most socially responsible and competitively successful.

Along with my colleagues at AOL and Time Warner, I look forward to working with you to make sure that individuals and communities everywhere can use the most powerfully liberating communications tool in human history to amplify and inspire, in Jefferson's wonderful phrase, "the pursuit of happiness."

Chairman HATCH. Well, thanks to both of you, and we are very grateful that you are willing to come and explain this to us. I think it is something that has to be done. It is in your best interest to do so, and I think both of your statements were very good statements under the circumstances.

Now, we will begin with the observation that this merger is attractive to both companies, for the following reasons, among others. Time Warner can deliver its vast content holdings to half of the Nation's online users, AOL's 22 million subscribers. I think the next closest provider is 3 million in one company, so you clearly have a dominance in this field. And AOL gets access to high-speed distribution, as well as access to popular content essential to advertising revenue. So there is much to be said of why you two would like to, of course, have this merger be totally completed.

Of course, both of you are interested in maximizing the value of your stock to your stockholders, and that is a legitimate thing. The combination of Time Warner's vast content holdings with AOL's dominance as an access provider gives me some concern regarding the true potential of consumers' access to content from varying sources.

Mr. Case, I know you are aware firsthand of the value of the first screen when a subscriber turns on the computer. In fact, this is so important to you that AOL uses an alternative browser as AOL's default browser even though AOL now owns Netscape.

I think that is right, isn't it?

Mr. CASE. Yes.

Chairman HATCH. OK. Now, as you recently testified in a Federal court proceeding, it was more important for you, AOL, to have your icon on the first screen of the computer than it was for you to try to distribute your own product. Moreover, consider last week's *USA Today* article which reported on AOL's strategy to be the start page for Internet access, and recognizing that as one of the big reasons for the merger.

So I guess having stated all that, please tell the committee whether AOL/Time Warner will require viewers to access competitors' content through a proprietary start-up page.

Mr. CASE. A number of points. First of all, I think, as you know, the Internet is an extremely competitive business. There are many thousand ways, actually, that people can connect to the Internet. We are delighted that lots of people have chosen AOL, but in almost every city there are dozens, if not hundreds, of choices. That will continue. Indeed, we have seen rapid, increasing competition in the past year, even free Internet service providers emerging. So there is more and more choice out there.

Similarly, at every level of the value chain, if you will, there are many new competitors emerging. Five years ago, for example, Yahoo was two students in a dorm at Stanford, and now it is one of the world's largest portals where a lot of people go to get access to information. So there are many, many companies participating in this, and many new companies forming everyday. So I think it is somewhat bizarre to imagine any one company, certainly AOL/

Time Warner, somehow being a controlling influence here that really limits choice in any way.

The main issue specifically on the browser actually had related to our concern to make sure our software was carried on the Windows Operating System. We thought that was very important. We wanted to give consumers an opportunity to use our service and have it there.

On the Internet, everybody has carriage. There is essentially universal carriage. Everybody can create a Web site. You don't have to ask for permission, you don't have to get capacity on a cable system or on a newsstand. Everybody has a shot of making their service available to people, and that is why so many thousands of companies have emerged in the past years, the vast majority having no relationship with AOL.

And many, many very successful companies, including Yahoo, benefit from AOL because we help drive people into the Internet. And companies like Yahoo, even though they have no relationship with us, they are not promoted within our service—the number one source of traffic to Yahoo is AOL customers, and that will continue. We are not going to do anything to limit choice because the bedrock principle of the Internet and the thing that consumers expect is that they have access to everything wherever they want and in whatever form they want.

Chairman HATCH. But then the question was, would you set up a proprietary start-up page, and if so, would the start-up page tend to usher the subscribers or the consumers to AOL/Time Warner-owned content?

Mr. CASE. Well, I would be happy to demonstrate AOL for anybody who is interested. The way it works is that when you first sign on to the service, you have a bar at the top of the screen and you can type in that bar and go anywhere on the Internet, whether it be to Yahoo or Amazon or e-Bay or go.com. Anything is available from that front screen.

We also do try to simplify the process of getting people around the Internet, so we do have, for example, a politics channel or an election channel, really trying to put the best resources in one place. We think that adds a lot of consumer simplicity and we think that is very important. But anybody on AOL can get to any service from that front page.

Chairman HATCH. Well, the questions I have asked really deal with the access to content, not to the Internet itself. I acknowledge that you can get into anywhere you want to with that top bar.

Will your users have to go through a start-up page to access non-Time Warner-affiliated content? I think maybe that puts it a little more clearly.

Mr. CASE. You do not have to go through a start-up page to access non-Time Warner content. Number one, they can, from the first screen that they see when they sign on, go anywhere they would like. All content is available to everyone, so there is this aspect of universal carriage which is very different than the world of traditional media.

We also then promote certain sites, so everybody is there and some sites are promoted. We will not just promote AOL/Time Warner properties. We don't do that today. There are many services that compete with us that we promote because we think that is the best consumer experience and that ultimately is what drives our success.

Similarly, Time Warner has a similar heritage. This isn't something we are talking about conceptually. It is something we have been doing for many years. Home Box Office, as Jerry Levin mentioned, is a leading movie channel. Most of the movies are not coming from Warner Brothers; they are coming from all the studios. The reason for that is if you had a movie service that only had Warner movies, with all due respect to Warner Brothers, not that many people would subscribe. They want all the movies.

Similarly, Time Warner owns the Book of the Month Club. Guess what? Most of the books carried by the Book of the Month Club are not owned by Time Warner. Again, the principle has to be diversity and choice. Otherwise, these services wither and die. So it would be foolish for us to try to limit choice. We don't do that today and we won't do that in the future.

Mr. LEVIN. I should respond, Chairman Hatch, because it is in our historical DNA, both understanding the importance of networks and delivering consumer choice. It operates both ways. There won't be exclusivity; that is, the material coming from Time Warner will not be exclusively available through AOL. And, likewise, the material that we have will be made available on all forms of distribution. Let me give you the analog examples.

Today, CNN or HBO are aggressively pursuing distribution on every form, in addition to cable. That has always been true. And even any of our networks, including our cable networks, take programming from everyone because ultimately it is all about getting the most creative material and delivering consumer choice.

So we should probably stipulate up front that this merger is not about the exclusive coopting of Time Warner's content on AOL. Nor is it simply capturing AOL on one form of distribution, and that is cable; quite the opposite. And I also want to reinforce the commitment that we have expressed today, which is AOL will get no preferential treatment as it relates to Time Warner's cable systems and as it relates to other ISP's. And this has been historically true, including the development of pay television in the cable business or the development of additional 24-hour news services.

Chairman HATCH. Let me ask you, Mr. Levin, many view the Internet as a means of leveling the playing field for artists and as a way to expand consumer choice and competition in the recording industry, for instance. With the proposed union of Time Warner and EMI, AOL/Time Warner is poised to take over the world's largest music label and will own approximately maybe as much as one-half of all music publishing copyrights worldwide.

Now, we understand that AOL recently purchased Win Amp, the most popular MP–3 software player, and spinner.com, the Internet's most influential Web radio property. Moreover, Time Warner has taken a significant equity position in artistsdirect.com and listen.com.

All of this occurs amidst criticisms by some that the major labels are seeking to maintain undue control of the music distribution system by buying out their Web-based competitors at the expense of artists and consumers. At the press conference announcing the proposed merger, you yourself referred to these properties as key parts of AOL's music strategy.

What assurance will there be that independent artists and unaffiliated Internet music companies will have access to these key properties on a level playing field with AOL/Time Warner for the delivery of music to Internet users? And a follow-on question: do any other Internet companies have access to these properties today, and if they do, under what terms?

Mr. LEVIN. Well, first of all, Chairman Hatch, I share with you a great love of music as probably one of the most fundamental art forms. And, in fact, what we are seeing in the music business is what has been referred to as massive disintermediation; that is, the ability for a musician or an artist to deliver her or his work directly to the consumer is quite available.

When you look at the current state of the music industry, the fastest growing part of the music recording industry happens to be the independent labels. I mean, right now they have the second largest market share, and that continues and is assisted by the availability of the Internet now so that an artist can reach a much broader audience.

So I am very comfortable with the fact that the Internet provides for the music business the opportunity to be discovered, unlike the more restrictive period when, in order to promote music, you had to go through either the radio or music videos where there was a selection, there was a gatekeeper. The wonderful thing about the Internet is there is no gatekeeper. I can post any creation of mine, whether that be a song or some textual material.

With respect to musical copyrights, I think this is an area where on a worldwide basis it is highly regulated with performing rights societies. And, in fact, in many countries there is ease of entry in terms of securing those musical copyrights. So we don't see any real difficulty with respect to the combination of EMI and Warner Music. In fact, there is something quite nice about it since it reunites Natalie Cole with her father, Nat King Cole, among others.

Chairman HATCH. Now, that was really hitting below the belt there. [Laughter.]

We will turn to Senator Leahy at this time.

Senator LEAHY. Does his answer mean that each member of this committee, Mr. Chairman, will always be able to get our hourly fix of your music?

Chairman HATCH. I am trying to uplift him, but it is a big job is all I can say.

Senator LEAHY. There is always hope for redemption.

Let me follow up a little bit on the question that the chairman was asking because I think the MOU that you have entered into is a good start in addressing these concerns about open access in cable broadband systems.

I am thinking of a practical question. If I were to become a subscriber of AOL/Time Warner's broadband cable service, but I want to get my Internet connection through an alternative ISP, does that mean AOL and Time Warner still control what my screen looks like? In other words, if I come in, will my other server be shrunk and then have AOL/Time Warner advertising wrapped around it?

Mr. LEVIN. No, no. In fact, let me state it not simply because we are here today——

Senator LEAHY. I mean, you could do that, technically.

Mr. LEVIN. Well, you could do it, but let me tell you precisely why we won't do it and shouldn't do it, and it is not only a matter of good public interest policy. The consumer is really looking for as much choice as possible, and we saw this—let me use an analogy again of the early days of pay television.

You used to only get Home Box Office exclusively in a cable system. You couldn't get another pay service, and then Showtime was only available in its services. It became increasingly clear when the capacity was there and the ability to manage it that it was a consumer benefit to have these multiple services, so today we have a very thriving marketplace.

The same thing should apply with multiple ISP's. They all have a different approach, a different screen, and in this case we are talking about an approach that enlivens broadband capability. And so one of the reasons I am actually quite excited—this is not simply a public relations statement; this is a commitment because it is very healthy for the cable systems which are in a competitive race with DSL by the telephone companies, with DBS, as well as wireless and MMDS, to provide as much choice as possible. So you will be able to get something that doesn't say AOL on it because it will be an alternative ISP.

Mr. CASE. Let me just add that as I think you know, I have been sort of the Paul Revere on open access calling for some time for the principle of openness that is so fundamental to the Internet to be preserved as the market migrates to broadband. In that process, we have been very clear about some of the key principles that need to be in place to make sure there really is consumer choice and there really is ISP competition.

And one of them was exactly this issue, allowing ISP's to maintain a direct relationship, including a billing relationship, with consumers and allowing them to offer a complete service not constrained, for example, by limitations on video streaming and things like that. The Memorandum of Understanding we released today addressed those issues head-on. So we have really been, I think, the prime advocates of why open access is so important, and we have worked hard in the last 6 weeks since we announced this merger to make sure that the approach that was put in place was not just in the interest of AOL and Time Warner, but also the interest of ISP's in general, and most specifically consumers.

Senator LEAHY. Actually, we are very glad you have reached the Memorandum of Understanding, and I am still looking through it. Obviously, some questions have been addressed here, and we will probably even have some questions after this hearing based on answers from different people, which I will submit. And I am sure, Orrin, you probably will, too.

Chairman HATCH. Sure.

Senator LEAHY. But in that MOU you say that the combined company will negotiate arms-length commercial agreements with both affiliated and unaffiliated ISP's, and the terms of those agreements and operations of broadband cable systems won't discriminate between affiliated and unaffiliated ISP's. Will this remain the same no matter if the proposed merger is approved, disapproved, or what might possibly happen, approved with conditions?

Mr. LEVIN. Absolutely.

Senator LEAHY. This is your policy.

Mr. LEVIN. I am expressing commitment and excitement that this is a very good thing to have multiple ISP's with access to our consumers providing broadband services. They will be marketing, they will be very aggressive. That has to be a good policy. So, again, I have to repeat it is not——

Senator LEAHY. I think it would be a good policy, but I just——

Mr. LEVIN. It coincides with good public policy, but it is also a smart thing to do with respect to consumer choice. And, frankly, I would like my colleagues in the cable industry to also respond in a way because this should be helpful in delivering streaming video, a more robust service, to consumers.

Senator LEAHY. Can I take that a step further. In your company, you have an enormous library not only of entertainment products, but also information; I mean, Time and Life, for example, just the archives contains everything from photographs to articles written. In entertainment, you could rattle off the catalog of that far better than I. But will there be the same kind of non-discriminatory practices with respect to that access?

Mr. LEVIN. Well, for example, in addition to our movie library with all the Batman films, with some distinguished Senators who played a role in those films, we have close to 20 million photographs.

Senator LEAHY. In some places, that is more popular than others, let me tell you right now.

Mr. LEVIN. We have 20 million photographs in the Time-Life Building, really a remarkable collection—Alfred Eisenstaedt, Margaret Bourke-White. Indeed, some of the photography in Fortune in the 1930's, Fortune just celebrating its 75th anniversary, is truly stunning in the early days of photo journalism.

We have digitized a portion of that, and I can assure you that that material will be available to anyone on the Internet. It will be available through AOL, but it is available to everybody because in a sense all of that material requires the broadest form of distribution. So a lot of the material, the content, the heritage of Time, Inc., and Time Warner is going to find multiple expression.

Senator LEAHY. Mr. Case, what about AOL? Will the same kind of non-discriminatory practices be providing access to the products and information of others that might not be affiliated with Time Warner and its family?

Mr. CASE. Oh, sure. We do that now and we will do that in the future. We provide access to everything. That is really what people are expecting, and we think it is the right thing to do in terms of building this medium. It is also the right thing to do in terms of building our business. If we were constraining choice, we would wither as a service.

All of these businesses, you really need to look at as separate opportunities. As Jerry Levin just said, if you are in the music business or in the movie business, you are looking for the widest possible audience. If a movie company only distributed its movies through specific channels, it would be making a big business blunder.

Similarly, if you are aggregating content, whether it be Home Box Office or the Book of the Month Club or an AOL kind of service, you need the widest diversity of choices. That is why people will migrate to your service. So that principle has been in place for both companies for a long time and will continue to be in place. It is critical to continue to build these businesses.

Senator LEAHY. Somebody might ask, though, if affiliated and unaffiliated are being treated the same, why bother to merge?

Mr. CASE. Because we do think there is an opportunity to build some new kinds of products and services; that if we have all these different people in the same tent, we can do some very interesting things, such as what we call AOL TV, trying to make TV a little bit more personalized, a little bit more interactive; things like an electronic jukebox trying to not just talk about it, but do it so that consumers really have a more convenient way to get music. So we believe there are some significant business advantages to this merger, but none of them get in the way of continuing to have these bedrock principles of consumer choice and diversity of content.

Mr. LEVIN. You know, you have asked a question that we have certainly received from Wall Street. Why not enter into a certain number of joint ventures? And, frankly, stepping back, there really as an intention to try and create a new kind of company, one that is not only outfitted for this cyber speed of this particular century, but one that recognizes its responsibilities and wants to play a role in the formulation of public policy with a very common social objective.

So we felt that this had nothing to do with size or with conventional business metrics, but really trying to do something quite different. And, frankly, this merger came together because of a shared sense of values. Now, I know it is unusual to state that, but I don't think we would have proceeded otherwise. And it is also a profound statement about the reality of the Internet.

You know, with some amusement, I don't mind the characterization of old media. But, in fact, what this is is a statement that we are living through a revolution and if we can on some kind of cooperative basis play a role not just as a vested interest but also as a company that cares about the formulation of public policy, we would like to do that.

Senator LEAHY. I know my time is up, Mr. Chairman, and I am going to another hearing and I will come back. If not, I will submit questions, if I might. Thank you.

Chairman HATCH. If I could just before I turn to you, Mr. Case, just to clarify a point, if I want to access content on the Web over Time Warner's broadband pipes, will I have to pass through AOL's or Time Warner's start-up page even if I choose to use another ISP? And do unaffiliated ISP's in your plan share the first screen, get their own first screen, or do they even get on the first screen? I know that is a tough question because you can't put 800 million Web pages on the first screen or a huge number of ISP's on the first screen.

Mr. CASE. The way AOL customers today get the service is when they sign on to the service, they will see, "Welcome, you have got mail," things like that. At the top of the screen, you can type in that box to get to any service you want or you can go through our menus and go to the services that we are recommending.

In a broadband world, if the customer of a Time Warner cable system or some other cable system opts to subscribe to AOL, they would see that screen, similar to what they are seeing today. If they subscribe to some other service from EarthLink or a local ISP or Microsoft or whomever, they will see that company's screen, not ours.

Mr. LEVIN. We tried to make that clear, Mr. Chairman, that that is the true meaning of having alternative ISP's. So this isn't a roundabout way of just providing AOL auspices for other ISP's. Non-discriminatory access means that the consumer can have a direct relationship with another ISP, including from the time connectivity is established.

Chairman HATCH. Senator DeWine.

Senator DEWINE. Thank you, Mr. Chairman, very much.

Mr. Levin, some time ago Time Warner and AT&T announced that it was their intention to conclude an arrangement that would allow Time Warner's cable subscribers to receive AT&T branded telephone service over Time Warner's cable facilities. Since so many Ohioans are served by Time Warner, this appeared to me at the time to be an excellent way to offer many Ohioans a choice of local service providers.

Let me ask you a couple of questions. Does this merger impact on your arrangement with AT&T, and what exactly is the status of the arrangement and when do you anticipate that you will conclude an agreement with AT&T or some other provider that will enable cable customers to benefit from a choice of local telephone providers?

Mr. LEVIN. Well, obviously we think this is an important service to be provided. First, with respect to business customers, including in the State of Ohio, we are using the cable platform for CLEC, a competitive local exchange carrier, called Time Warner Telecom, which is serving in a very robust fashion a lot of small businesses in many communities indeed around the country.

Second, with respect to AT&T, while there has been some distraction on their part during the past year as it relates to the MediaOne transaction and a lot of developments have occurred, I am quite optimistic that the relationship remains as true and as strong as it always has been, so that in terms of several different levels of service, be that cooperative marketing, the provision of what is called circuit-switched or facilities-based telephony, and now the opportunity to present IP, or Internet protocol telephony, all of these opportunities are actually broader today than they were at the time we announced our understanding last year.

So I remain optimistic about provision of now even more expansive services that take into account what we have just been discussing, including broadband ISP's, where there is another form of telephony that can accompany e-mail and instant messaging.

Senator DEWINE. Obviously, we have a special concern about residential customers.

Mr. LEVIN. Yes, and that is why I said from a residential customer point of view there are several levels of relationship with respect to AT&T or other telephony providers. One is to do cooperative marketing to provide a bundle of services to residential customers. Two, where necessary, is to use the circuit-switched, facilities-based telephone that can ride on our cable pipes. And three is a new opportunity which we are currently testing, and that is to use the Internet connection as a way of providing residential telephony. So I think, in fact, the passage of time has actually helped us because there is a much wider array of services, and I think our interests are quite aligned with Mr. Armstrong.

Senator DEWINE. Let me ask you another question now. As you know, Time Warner is involved in ongoing retransmission consent negotiations with the Ohio News Network in Ohio over the issue of whether and how Time Warner will carry the Ohio News Network on its cable systems. You and I have discussed this before, and you know that I am very concerned about it and I hope that you can work out some reasonable settlement very soon.

On a general note, though, I would like to state for the record that I am very concerned, Mr. Chairman, about how these retransmission consent negotiations have been deteriorating recently. Several months ago, Fox and Cox had a dispute that resulted in Fox being dropped from several local markets for some time, including some markets in the State of Ohio. Now, Time Warner and ABC are apparently having problems with a negotiation in the Houston market. I understand that one of the issues in that retransmission consent discussion is how the new AOL/Time Warner is going to treat ABC with regard to some Internet issues.

While the details of all these negotiations obviously differ, I am concerned that we are seeing more and more situations where the parties are not coming to terms and the customers are the ones that are being harmed. These retransmission negotiations are going to become more and more important in light of the developments in digital television, satellite service, and broadband Internet service. And if the parties are unable to work constructively together, I think that some of the members of this committee are going to need to seriously reexamine the retransmission consent mechanism to make sure that it is working to protect the consumer. I look forward to working on this issue with Chairman Hatch should that become necessary.

So just a general comment about that, Mr. Chairman.

Mr. LEVIN. Well, if I could say to the distinguished Senator from Ohio, you know, I share your concern. What was intended to provide mandatory carriage, must carry, for our over-the-air, free broadcast system, there was an addition called retransmission consent, and up until recently I think that system was working.

What we are seeing now is, I think, an abuse of that provision in the law designed to provide a lot of leverage for business purposes that really have nothing to do with serving the citizens through this public license. In this case, I have to say I am quite concerned with respect to ABC because here the citizens of Houston have been singled out amongst all of the communities where we have cable systems and ABC has television stations. For what purpose, I am not sure.

There was an agreement in place at the end of last year which, after the announcement of our merger, seemed to disappear. And we have assured Messrs. Eisner and Eiger that nothing has really changed in terms of the ability for Disney material to be captured. So I share your concern about what is really a perversion of this system, and I would hope that our colleagues would recognize their public service obligation with their broadcast license for the citizens of Houston.

Senator DEWINE. Mr. Case, although AOL and Time Warner have agreed to provide the so-called open access to the cable network, you have indicated that there are some technological barriers that might limit the number of ISP's able to use your systems. Some people claim that the cable network could be built so that it is completely open, just like the phone system. And they are concerned that you may intentionally design your system to limit the amount of competition that you will face. These are obviously very complicated technical questions and issues with important implications.

As policymakers, we certainly don't want to discourage investment in broadband by diminishing its effectiveness, and we don't want to regulate the Internet, but there are obvious benefits to having a system that is as open as humanly possible. Under these circumstances, does it make sense to consider using a group of independent private industry technical experts to help create industry protocols for open design of the broadband architecture, for example, something like the IETF, the Internet Engineering Task Force, or maybe some other group?

This way, if an independent industry group were to find that only a certain number of ISP's can effectively share a network, there would be no question as to the validity of that particular assessment. Would you like to comment on that?

Mr. CASE. Well, as you know, we have been an advocate for open access for some time, and in that process we actually have done a lot of work with outside organizations to try to understand some of the engineering issues. And we are very committed to supporting a wide array of ISP's. We think it is in the interest of the cable system.

I have believed this for some time. I guess I was not very effective in communicating it until recently. I have believed for some time that if you run a cable system, the best way to maximize the profit generated from that cable system was to have many companies essentially reselling that capability as opposed to forcing those companies to find some other path, whether it be a phone system or a satellite system or what have you.

So it is in the best interest of the cable industry, as Jerry just said, to encourage as much competition as possible, as many people essentially selling your services as possible, and that is our intent.

Senator DEWINE. Thank you very much. Thank you, Mr. Chairman.

Chairman HATCH. Thank you, Senator DeWine.

Senator Kohl.

Senator KOHL. Thank you very much, Mr. Chairman.

Mr. Levin, Time Warner is one of the biggest media powerhouses existing today, with a large interest in virtually every aspect of media, including movies, cable television, book and magazine publishing, and music. As you know, now you seek to combine with AOL, linking this content to the enormous promise and reach of the Internet. I believe that media mergers such as this one should be looked at differently than more conventional mergers like, say, oil or cereal, because these mergers affect diversity of expression in the marketplace of ideas.

Mr. Levin and Mr. Case, do you agree? Do you believe that mergers involving media companies should receive greater scrutiny?

Mr. LEVIN. Well, I think it is very clear that particularly the dissemination of news is fundamental to our democracy, and therefore I would agree on the one hand that there should be scrutiny. On the other hand, I think it is important to recognize that the pillar of this society happens to be the free exchange of ideas registered in the First Amendment.

When I referred before to the revolution that is taking place in the Internet, I would suggest that this is not like a traditional media merger where you have two players who are currently engaged in traditional media joining together. In fact, this is taking the Internet space and forging a merger with a more traditional media company, and kind of the true recognition of what the Internet can provide.

As I indicated before, from a business point of view, most companies are feeling this disaggregation that is taking place. So while I agree with you that the dissemination of news in the marketplace of ideas is absolutely central to our democracy, I am not sure what we might refer to as antitrust scrutiny would do when you have almost an incalculable easy of entry. Let me give you one example and then I will stop.

Everyone can be a source of news today, sent instantly around the world. What was an interesting example is during the war in Kosovo, when it was very difficult for any journalist to be in Pristina, there was a young teenager operating with a computer who was simply describing what was happening right outside her house. This was going around the world. In effect, this was the most profound source of news, and to me she was a heroine, actually.

This is a symbol that today—actually, you know, when you have the marketplace of ideas, I am not saying every source of information has equal standing. But, in fact, there is no gatekeeper. So, to me, that puts a new perspective on the traditional antitrust scrutiny of this particular merger.

Mr. CASE. Let me just add I think you should take this very seriously because I think what we are talking about here in terms of how people get information and communicate and buy products is a very serious business. And we are talking about an acceleration of the pace and having people living more and more in a connected world, and there are many issues related to that, including privacy and taxation and copyright, and so forth, that merit attention. I think the good news is it is getting attention.

But I think Jerry makes a very important point that from a consumer standpoint, which I think is the best way to look at this, there is an unparalleled level of diversity of voices. When I was growing up, as I was referencing earlier, there really were just three broadcast networks. And the challenge there if you were a program producer was good luck trying to get your program on the network, particularly getting your program on the network in a good slot.

That has given way to now dozens of cable channels, in some cases on satellite systems or digital cable systems hundreds of channels, and there is a diversity of choice that is really quite unparalleled. The Internet, as I think you all know, takes that to a much greater extent because now there are millions of choices and anybody can create a new site, and millions of people have created new sites.

So I think it is very different. We don't feel like we are putting these two companies together just to be kind of bigger, and bigger is better. We think better is better, and we think these companies can do some innovative things for consumers. But we don't for a moment think that we have any lock on any of these services, any of these businesses. We are going to have to come in everyday and compete vigorously.

And some of the things we talked about which we think make sense from a public interest standpoint also make sense from a business standpoint. We have to do everything we can to build confidence and build trust because that is the bedrock of all these different services.

Senator KOHL. I think both of you are arguing the legitimacy of your deal, and I am not disputing whether it is or isn't. I am just suggesting that people like Mr. Pitofsky, for example, who, as you know, is over at the FTC and is going to be looking at your merger, believes that a merger of this sort deserves even closer scrutiny because we are talking about the industry that you are part of which is so basic to our society.

Mr. Levin, your company has an unparalleled history and tradition in journalism going back to the days of Henry Luce and the founding of Time magazine, and it has only been enhanced by CNN, one of today's preeminent cable news organizations. However, some observers are concerned about what this merger will mean for news and public affairs programming, and worry that AOL's business interests might constrain the reporting found on the various Time Warner's news outlets.

For example, I was struck by both of these themes as I watched the CNN-sponsored Democratic presidential debate last week in New York City. I noticed that you were in the audience, Mr. Levin. Now, all members of the panel of journalists asking the candidates questions were part of the Time Warner organization, from either Time or CNN, as was the moderator, as you know, Bernie Shaw, of CNN.

The program was broadcast only on CNN. The debate format allowed questions from the Internet, but only those that came through either AOL or the Time Warner Web site. And the debate took place in the historic Apollo Theater, which has been endowed by Time Warner. In addition to all of that, the *New York Observer* has reported that no journalist not affiliated with Time Warner was even permitted in the Apollo Theater, a venue with a capacity of over 1,400 people.

So, Mr. Levin, the exclusion of outside journalists was a mistake, wasn't it? I assume it wasn't company policy. And, second, in light of all of this, will you pledge to us that the independence of Time Warner's news organizations will be preserved and that Time Warner's corporate owners will in no way interfere with the news coverage found on CNN, Time, Fortune, and its other outlets?

Mr. LEVIN. Senator Kohl, I will refer to my statement. There is nothing more important to my trusteeship at Time Warner, now AOL/Time Warner, than journalistic independence. We have a deep tradition at our company of the separation of church and State, which means there is no business interference at all with the quality of our journalism, and I will make that commitment to you. It is at the core of my being. I was raised in this company and that is what I intend to do in the new AOL/Time Warner. And as I indicated, Steve Case understands that this is a part of our heritage and we would not have moved forward if there were any other understanding.

Let me refer to the Apollo Theater. This was a moment I was extremely proud of. I think it was the first time there has been any kind of political debate in the village of Harlem where the community leaders had a chance to address issues that relate to the African American community that are just not otherwise addressed.

Now, in fact, the Apollo Theater does not have sufficient space for a press room. So, at our expense, we established one across the street above a Krispy Kreme donut shop and enabled 250 journalists to have full access to the feeds that were available. And at the conclusion of the debate, we made sure that everyone who was in attendance, from Phil Jackson to Whoopi Goldberg, could have a chance to address the assembled press.

In fact, I would say that the quality of the questions which came from the community leaders as well as from Bernard Shaw or Jeff Greenfield—that anyone on the Internet could have asked a question by just dialing up any of the chat rooms that we had available. So this, I think, was a proud moment. It also is something that again exemplifies this political season, where I believe we are seeing, because of the more intense coverage, more engagement, more voter turnout, more interest in the issues.

And, in fact, one of my intentions by swearing off of soft money was to provide money available so that our journalists, whether it is CNN or Time or New York One News, could provide more issues coverage of this campaign, and I am very proud of what they are doing.

Mr. CASE. Let me just add that I did see an article this morning in the *Washington Post* talking about this, sort of suggesting that the motive for scheduling a debate like this is sort of to build the brands and things like that, almost being cynical about it.

I actually am very proud of what Time Warner did and I think it is an example of what AOL/Time Warner wants to do, which is not just build our businesses, but also try to serve the public interest. I think CNN and other Time Warner networks have done many debates in the past few months that have given consumers and citizens much more of a sense of the issues in these elections.

AOL has done the same thing, investing a lot of money and time in election coverage. It is not the best thing to do commercially.

Doing a knock-off on "Who Wants to Be a Millionaire" probably would generate more revenue than a debate from the Apollo Theater. But it is the right thing to do and it is the kind of thing these companies are going to continue to do, and I think you should be appreciative of the fact that we are both committed to the public interest and using these different TV networks or Internet services to serve the public interest.

Mr. LEVIN. I guess I should add in the sense of full disclosure, yes, our annual meeting will be at the Apollo Theater. We are going to produce a documentary on the history of the Apollo Theater so that the young people—and this was what was encouraging to me that evening, is to see young citizens in that community who had some measure of pride that we were bringing these issues and this campaign to their community.

Chairman HATCH. Well, I have to say as somebody who has participated, after listening to Senator Kohl's recitation, I didn't realize how much control you had over presidential politics. I should have held this hearing in January. [Laughter.]

We will turn to Senator Abraham now.

Senator ABRAHAM. Well, thank you very much, Mr. Chairman.

Chairman HATCH. By the way, I thought that was an excellent format compared to some of the others that I was in.

Senator Abraham.

Senator ABRAHAM. Thank you, Mr. Chairman. I just want to begin by saying that I very much have appreciated hearing today the commitment that both of you have expressed with respect to the issue of consumer choice and the issues of open access. And I hope that all of our colleagues will take note of that, as will others who have an interest in this merger. To me, those are really the central questions, or at least two of the most central questions that ought to be focused on. And I just want to draw attention to that here today and to applaud the obvious commitment that has been expressed in the Memorandum of Understanding that we heard about earlier today.

I also want to just say, Mr. Chairman, that I do think in the age of the technology revolution that we are currently part of, it is very hard to apply existing regulatory or statutory analysis when we try to assess things such as whether or not antitrust issues are applicable, whether it is this merger or any other. When we are dealing with technology that is changing so fast, I think it changes the way we should look at business mergers.

Mergers in today's 21st century information age Internet economy are, by definition, different than mergers that occurred in the industrial smoke-stack industry age of a century ago. Are there significant barriers to entry in today's information age technology and economy? Well, we can look at dollars and cents exclusively, but there don't certainly seem to be very many barriers to the start-up of new enterprises. Anyone with a PC and a good idea can start an Internet company pretty darn quickly, and nothing about this merger is going to change that.

Are new ideas and new innovations being stifled? Well, pick up the business section in any newspaper in the country and what you will find are stories about new and very exciting innovations every single day. Just last week, in our State, the Big 3 auto makers announced a very innovative and exciting initiative to put all of their auto parts procurement processes online, and I suspect we will see some of the major parts providers joining in in some way in that enterprise.

Are consumer prices rising and consumer choices being limited or reduced? Again, I don't see that happening. Consumer prices generally have remained in check, and prices for software, hardware and Internet services have essentially declined throughout the 1990's.

And on the issue of consumer choice, here is an interesting fact. By the end of this year, 2000, there will be approximately 1 billion Web sites on the Internet offering a mind-boggling array of information products and services. It seems like an ample amount of choices to me, although I have got two 6-year-old daughters who are already finding themselves so literate at using the computer that maybe within a few years that won't be enough for them and their peers.

In my judgment, I think we need to examine mergers against that backdrop and focus not exclusively on the size of the companies or what they do today, but on the broader backdrop of the sector that they are part of and what the slightest development or new innovation can do to change the whole world in which they operate. That is why I think this merger, certainly what I know about it, constitutes an exciting marriage in a sense of both the new as well as traditional media.

By bringing together print, video and online media, I think the merger can open a number of possibilities for applications and cross-applications that we can only begin today to foresee. So I very much appreciate what I have heard.

I also, because I am going to also see you both on Thursday, I guess, in the Commerce Committee, want to ask a question here that is a little more within Judiciary's jurisdiction and perhaps a little less in the jurisdiction of my friend Senator DeWine's subcommittee, and that is in my Subcommittee on Immigration.

You talked, Mr. Case, in particular about the digital divide and the commitment that you have made, and I know Time Warner has likewise tried to make and Mr. Levin mentioned just a few minutes ago. One of the things that we are confronting this year is yet again an enormous shortfall in the number of IT and high-tech workers available to fill slots and assignments that we have in this country.

I don't believe immigration can be a permanent solution or a long-term solution to those problems, and I know neither of you do as well. Therefore, as a result, we just are looking at legislation that would increase at least for a couple of years the number of high-tech worker visas that would be permitted to be issued.

Those who are not immediately supportive of that idea have argued that the private sector is not doing very much with respect to training and education, and that instead of immigration visas we should crack down on industry because they are not pulling their fair share.

I would like to ask both of you to comment, at least within the context of AOL/Time Warner, what you all are doing so that we might at least partly address some of those criticisms, and then also for any comment you might have with respect to the high-tech worker needs and then the issues that relate to high-tech worker visas and whether or not you see them at this point as a positive versus a negative piece of legislation.

Mr. Case.

Mr. CASE. We think it is terrific legislation, and we support and appreciate your leadership on this issue. We think it is great for this Nation to continue to be the beacon for talent around the world, people wanting to come here and participate in this phenomenon of the Internet, and that stimulated development of a lot of new companies in this country has been the beneficiary of that. So anything that is supportive of that process of getting the best and the brightest into this country so they can help us stimulate this economy and create these new companies and new services for consumers I think is a healthy thing.

In terms of training specifically, we have had to do a lot on training because when we started our company 15 years ago, we started with a couple of dozen people. Even 5 years ago, we had less than 1,000 people, and now we have over 12,000 people. So we have grown very rapidly and we have had to do a lot of things internally to train our people to make sure they have the right skills going forward.

And we also are taking on a very active role to try to stimulate training, new ways to even think about education, marrying these new technologies with educational systems. We have an initiative called AOL at School, for example, that is precisely designed to do that. So we think it is very important to invest in education, to invest in training, and to recognize that this new medium creates new opportunities, and to try to embrace those new opportunities so we do have a better educated society, not just people when they are going through school, but people throughout life.

Mr. LEVIN. Just to connect two points, the underclass and the digital divide, we have a program that we put into 10 public schools in New York City where we have been training teachers to take young people who are in the 11th and 12th grade to give them a certificate so they can become digital software engineers.

In the past, they might have certainly not gone on to higher education, might have gravitated toward auto mechanics. And we do this in our own facility where we are training people at Time Warner because these jobs are actually—a high school graduate with this 2-year program can fill—there are 50,000 or 60,000 jobs going unfilled at a very decent salary.

And we have picked obviously 10 disadvantaged schools in the City of New York. It is a program started by Cisco Academies, but in this case we are trying to expand it. So it is just coming at it from another direction and it is another way of saying that the skill base in our companies, including AOL and Time Warner, that we ought to make those skills available not only for our own purposes—that is, training for our own company—but also to supplement what the schools are unable to do.

Senator ABRAHAM. Ten school districts. Approximately how many——

Mr. LEVIN. Ten schools within New York City.

Senator ABRAHAM. Approximately how many people will be a part of that program?

Mr. LEVIN. Well, at any one time we have put—we are training the teachers, who then train the students. So we probably train 20 teachers at a time. It is a several-month program, and then they go into each of their schools. This program is now in its third year, so we had the first class graduating, and it has probably been one of the most successful programs because we broke through some of the difficulty in the school governance system to do it.

Senator ABRAHAM. Great. Well, my time is up, but I would be interested in getting more information about what each of you and your companies are doing. Thank you for being here today.

Chairman HATCH. Thank you, Senator.

Senator Feinstein, we will turn to you.

Senator FEINSTEIN. Thanks very much, Mr. Chairman.

You know, gentlemen, as I sit here and listen to this, I just cannot fathom the enormity of this. I am led to believe that this is the largest combination of businesses in the history of this Nation.

I am concerned with three things and I would like to contain my comments and questions to those. The first is your Paul Revere aspect, Mr. Case, and that is open access. The second is really a narrowing of journalistic sources, and the third is privacy.

Before the merger was announced, AT&T answered your demands about open access by pointing to contracts with At Home that required exclusivity for a number of years. Open access was an impossibility in the near term, they said, because the contracts could not be broken. And your company, as you know, did not agree with that.

I have looked through the Memorandum of Understanding. I am not a lawyer, but it doesn't appear to me to be binding. In point 11, "All of the foregoing is subject to all preexisting obligations of Time Warner, including, without limitation, Time Warner's agreements with," and then it mentions some companies, or Road Runner, "and its fiduciary and other obligations to its partner." Now, I have no idea of what that is.

"However, Time Warner will endeavor to reach agreements and accommodations with third parties to whom preexisting obligations are due that would permit the full implementation of the commitments described herein as quickly as possible." I mean, this does not seem like a binding commitment to me of open access. Could you respond?

Mr. CASE. Sure. Let me give you a little bit of the history of the Paul Revere ride. It was several years ago when it became clear that the Internet was about to move into another phase, that broadband was going to become more important, and I and others made the point that it is critical that the kind of openness and competition that exist in today's Internet continues to exist and flourish in tomorrow's Internet. Therefore, it is critical that all broadband networks be open and consumers have choice.

We initially were hoping that companies in the cable industry would just voluntarily do that because we thought it made good business sense. When AT&T announced that they were acquiring TCI, we actually, I remember, put a statement out that day saying this is great, we look forward to working together to help build broadband.

And what we found is at that point in time there was not a willingness to embrace this idea of consumer choice. The only way to get broadband access from an AT&T system was going to be if you bought the AT&T ISP, which was At Home. And that disappointed us. We therefore said, well, if it is important from a consumer standpoint and a policy standpoint and at this point in time the cable companies aren't willing to do it voluntarily, then it does seem like this is a need for Government involvement, and we said the Government needs to take a look at this.

And I testified in a variety of hearings and talked to a lot of people, and the general reaction was we agree with you that this is a matter of concern, but our sense is we should see if the market will work on this before the Government needs to step in. And we said, well, OK, that is not exactly what we would have liked at that time, but we understand.

Then two things happened really in the last few months. The first was AT&T, which up until then had said that open access was not technically possible nor financially feasible, issued some principles stating they were committed to open access. And we said that was a major step forward, but there are some details that needed to be looked at. We had some questions about billing relationships, we had some questions about video streaming, we had some questions about timing, but we thought it was a step forward.

The second big thing was we announced the merger of AOL and Time Warner. We committed on that day that Time Warner systems would embrace the concept of consumer choice and that we would work as quickly as possible to achieve that. Today, we put out a Memorandum of Understanding that I think goes a major step ahead of where AT&T was, adding clarity on video streaming, adding clarity on billing relationships, and saying that we will move as quickly as possible to achieve that.

That specifically references the Road Runner agreement. Road Runner is a partnership of Time Warner and AT&T. They are the principal owners, as well as Microsoft and Compaq, and there are some cable partners that have an interest in different cable systems. The present agreement for Road Runner in terms of exclusivity expires at the end of next year, the end of 2001, and the commitment that we have made is that we will move as quickly as possible to accelerate that. So instead of having to wait until the end of next year, the hope and the expectation is that this open access would happen faster.

And an important point to point out is AOL will not get this open access. AOL will not be distributed on Time Warner systems until this exclusivity is renegotiated and Time Warner has the flexibility to work with us and also work with others. So I think we have done a lot in the past couple of years to take the issue, make it a major priority, build momentum for it, and now get several of the major companies, we hope all the cable companies, to embrace that notion of open access which we think is good for our business, but most importantly good for consumers.

Senator FEINSTEIN. Let me ask you both, do you regard this as a binding agreement?

Mr. LEVIN. Well, here I think we are talking about a legal nicety. We are appearing today and asserting a commitment, and that commitment is as strong a statement as we can make by putting these principles out. So I don't think it is a lawyer-like question. I think this is a personal commitment that we are making, I am making, with respect to the cable systems that we have.

Also, the principles that are embedded here do go much beyond some of the general outlines that have occurred before and are designed to send a signal that this is very healthy opportunity for the cable industry. I can't turn back the history where there were exclusivity agreements entered into both with respect to Road Runner and Excite At Home because this was an untested area for high-speed broadband access.

No one truly knew the opportunities or the difficulties, and now that we have had experience over the past year it is clear that there is capacity in this digital bank account. And the principle that is being articulated of non-discriminatory access is a fundamental principle really for, I think, the cable industry. Therefore, I think today's commitment has real significance.

Senator FEINSTEIN. Could I respond to that? I am not doubting that it has significance. Let me tell you one of the problems. I have been on this committee for 7 years. This is the biggest thing I have ever sat through. I have not had one letter or one phone call. I reached over to my staff and said have we had anything that has come in on this. He said we usually get a lot of stuff—my Judiciary counsel—not one thing. Senator Torricelli was sitting over here. I reached over and I said have you had any input? Not a thing.

So this huge combination of companies is happening for us at a point where there is very little input as to exactly what means what. So I am not trying to in any way question you. I am trying to understand it and I am not an attorney, so I am pressing for that understanding. So please bear with me.

The situation Senator Kohl outlined to you was one—and the issue wasn't the Apollo Theater; the issue was a narrowing of journalistic interests, the ability to participate. And I am trying to figure out how much of the American public this merger will actually affect. I suspect it is almost close to half. I mean, it has got to be enormous in its impact. Therefore, trying to think 5 years, 10 years down the line, what does this do to the kind of input one gets in a decisionmaking process if most of the input into that process is controlled by one combination of companies.

Mr. LEVIN. Well, Senator, I actually feel as deeply as you do about the importance of the dissemination of news and information in our Republic. In fact, I think the evidence is crystal clear that in more conventional terms, the amount of news and information before we turn to the Internet as a result of the multiple channels, particularly what has occurred through cable and through DBS, in this political season there is more opportunity for consumers to receive a diversity of voices and news on issues that really affect our society than ever before in the history of our Republic.

Now, we add to that the Internet, and by definition the Internet is a wildly democratic, chaotic network with no central control. We have never had anything like that in our human history. Therefore, no matter what AOL or Time Warner may do, you can't prevent these billion Web sites from being sent around the world with as much information as possible. There isn't a subject available either that is happening today or relates to lifestyle information.

You know, it is somewhat like having the old dream of the central library in Alexandria where all human wisdom would be recorded in a place that people would have access to. That is essentially what we are living in, and so the old concept that anyone could control this source of news just really is turned on its head.

In addition, I have to return to the heritage of our company. I would like you to have some comfort that our company has been built on this separation of church and State, immunizing the news sources from any business input. And, in fact, in this era when some have cut back on the number of bureaus, in our case on a worldwide basis we have been adding to the opportunity particularly with respect to international news. So I feel deeply about this issue. It is at the cornerstone of our company. I would not have proceeded with the AOL/Time Warner merger if I thought that this would be either interfered with or narrowed.

Mr. CASE. If I could just add on this open access because I think it is very important, I think you should take some comfort in the fact that 6 weeks ago we announced the merger and today we are announcing a fairly detailed Memorandum of Understanding that addresses in a very direct way the precise concerns we and others have had over the years about open access, saying that it is important that video streaming be permitted, it is important that ISP's really be able to build directly with customers, it is important that there be no technical limits on the number of ISP's.

And we have done that in a relatively rapid period. We have understood all along, because we were on the other side of this issue for so long, what was necessary to really ensure open access, and we have been working in a relatively brief period to achieve that and that is what we announced today. What we will be doing in the months ahead is putting that into practice, make it binding not just between our companies but between Time Warner and other cable systems, and between Time Warner and other cable systems and many other Internet service providers.

So I think we have made tremendous strides here, really I think demonstrating that the commitment we have had to open access is a real commitment and it is not just about talk, it is about action.

Chairman HATCH. Well, if I could just follow up more quickly on Senator Feinstein's concern here, Mr. Case, you were so concerned about the AT&T–TCI merger's possibility of suppressing competition that you urged an open access policy or requirement should be adopted as a matter of policy.

Of course, you have both now attempted to address this through your Memorandum of Understanding between your two merging entities. As you have heard here today, some do appear skeptical about this voluntary pronouncement while the mergers are pending. To show your commitment, would you agree to have a more definitive version of the MOU, or Memorandum of Understanding, be a further on condition on regulatory approval of your proposed merger?

Mr. CASE. Well, I think we have made a lot of progress in the last 6 weeks and I think you will see us making a lot of progress in the coming weeks and months. And I think you will find that it will be unnecessary because we will actually have done in the marketplace precisely what consumers need and other ISP's need, which is stimulate choice and competition.

So I understand there is always going to be some cynicism about this, and it is sort of the concept, I guess, of trust but verify. And I think you will find in the months ahead that we are dead serious about this and there will be no need for Government involvement because our companies, and we believe other cable companies, will get on this bandwagon.

If that is not what happens in the marketplace, if there is not real definitive open access not just with our company, but with other companies, it would be certainly fair for you to readdress it at that particular point in time. I don't think you will find that that is going to be a concern.

Chairman HATCH. Senator Feingold, I am sorry to delay your questioning.

Senator FEINGOLD. Thank you, Mr. Chairman.

Mr. Levin and Mr. Case, welcome to both of you. We appreciate your coming and how generous you have been with your time.

First, I would like to commend you, Mr. Levin, for your announcement back in November that Time Warner would no longer make soft money contributions to the political parties.

You have obviously been in the news a lot in more recent months as a result of this merger, but I believe that the decision I have just referred to was very significant, and you deserve a lot of credit for it not only from me and others in Congress who support campaign finance reform, but also from the public. So I want to make sure that your important contribution to political reform is part of the record of this hearing.

I would like to give you an opportunity to tell us about your decision and why you made it in a moment, and I would like Mr. Case to comment as well. But, first, I just want to tell you and my colleagues that I just came from a somewhat extraordinary event that bears upon this discussion.

A few minutes ago, a 90-year-old great grandmother named Doris Haddock—many across the country know her as Granny D—took the final steps in an extraordinary journey that started back in January 1999 at the Rose Bowl Parade in Pasadena. Granny D literally walked across the country; she walked across the country from the Rose Bowl to the Capitol steps, 10 miles a day, 6 days a week, through the rain and snow, relying on the kindness of average people who walked with her and took her into their homes. And she did this to call attention to the specific issue of banning soft money.

So here we have this 90-year-old woman from New Hampshire doing her part, and I want to say again we have here sitting before us a powerful CEO of a major media corporation doing his part to address the problem. I think it is noteworthy that you made this decision in a changing and challenging regulatory and political environment for your business when many of your peers in the information technology industry are becoming more involved, not less involved, in trying to influence the process through huge political contributions.

So again I want to commend you for what you have done. I would like to give you a chance to elaborate on your reasons for doing it and explain the other components of your plan to revise Time Warner's participation in the political process. I would also like to ask you and Mr. Case if AOL/Time Warner will continue these policies if and when the merger is consummated.

Finally, if I could squeeze one more question in before turning to you, have you had any response, positive or negative, to Time Warner's new policy from others in the industry?

Mr. Levin.

Mr. LEVIN. Well, thank you, Senator. We have had some response from some people in the industry applauding it, not as much as I would have liked, and it is not a singularly popular decision here in Washington.

Just to turn the clock back, Time Warner was built over several years, an aggregation of several companies having disparate views on political contributions. We finally reached a point where it became clear to me as a result of almost personal principle that the insidious effects of soft money were obviously—to me, it taints the underbelly of the electoral process because it is subject neither to regulation and therefore to real abuse. Also, what is the bargain being struck?

So with some pain because of past practices by several of our constituent companies, it became clear to me that we couldn't really hold ourselves out with the journalism that we have discussed with Senator Feinstein before and maintain this. So we spent some time analyzing it, and in making the decision I decided to make one other statement, and that is I wasn't going to benefit from the reduction in expenditures from any business point of view.

We would take that money which would otherwise have gone into soft money contributions and redeploy it. And it has been redeployed, I am pleased to say, including at several of the debates, in what we simply asked for more issues coverage in this political season. So with no strings attached, the money was dispatched to CNN, Time, and the five 24-hour news services that we have on our local cable systems. And I am pleased to say that, in fact, I think that has occurred.

As an example, if I look at *Time* magazine—and by the way, I have no input in anything that is published there—there has been continuing coverage, first of all, in very specific terms of the rather lengthy piece that isn't necessarily the most commercially appealing piece, but had to do with the effects of one particular large contributor and what that did to the political process.

At the same time that campaign finance reform is an issue that I think our journalists are holding before our country, they are also trying to keep the political focus on education. So there have been many reports to try and make sure that that issue gets addressed in this political season, including just this past week a pretty interesting piece in *Time* on a more structured, disciplined curriculum. So my own feeling is that this has succeeded.

In the case of New York One News, there will be a lot to cover in the upcoming senatorial campaign. So I am really satisfied. I can't say that there is a bandwagon effect because I think that this is still a controversial issue both within corporations and certainly here in Washington. But I think it is absolutely essential, and the new AOL/Time Warner will follow the same policy.

Mr. CASE. Yes, I think that is very important. We share your concern about some of the issues related to the campaign financing process, and I have enormous respect for Jerry taking this bold, sort of controversial position as the leader of a major media company to stop soft money. Indeed, that, along with some other things, was one of the factors we considered in thinking about merging together because we really do want to be part of a company that is not just the most valuable in the world but also the most respected in the world.

And being willing to lead on some of these controversial issues is part of that. So this combined company will embrace that notion that there are lots of things we can do to stimulate the political process, but we will not do anything related to soft money.

Senator FEINGOLD. Well, I will leave it at that. I really appreciate those answers. Thank you very much for being here.

Chairman HATCH. I would like to wrap this up, but Senator Leahy has a question or two left.

Senator LEAHY. Thank you, Mr. Chairman. Senator Feingold mentioned about the soft money. Of course, the most relieved person with your position on that was Tim Boggs because instead of getting 300 phone calls a day, he now only gets about 100 phone calls a day.

I know there has been some discussion about the Apollo Theater. I was pleased in that debate to hear the question about the way the death penalty is handled in this country and the number of people on death row who, in some cases just hours before execution, they found they had the wrong person, and the need to do a better job of making all evidence available.

Let me just ask one question and it relates to a question I have raised with both of you over the years, but especially since this happened. Mr. Case, you have got 21 million subscribers at AOL and Time Warner has 13 million-or-so cable subscribers, and then you have got millions of people with subscriptions to your publications, and so on.

Now, you have made no secret about the fact that you want to cross-promote and distribute your products and services, and nobody questions that that is a good corporate thing to do. What we do worry about is what happens about the databases that are there. How does that get shared? If somebody goes on AOL to buy something and they put their credit card in, everybody knows about that. They buy a sports magazine but don't want another magazine and all these things that could be done.

How much information should be shared, how much should be sold, how much can be sold? As Double Click and others go into these questions, what are you doing to form a corporate policy and one that can evolve as technology evolves on privacy?

Mr. CASE. I will start, if you like. We think privacy is a key issue in this new Internet Century. As we move to a more connected society, I think it is critically important that people feel like their privacy is protected. If they don't, they won't use these services and the medium will not flourish. So it is the right policy decision and it is also the right business decision.

At AOL, we have established a policy several years ago that really said that people should know what is going on, have notice of what information is being tracked, and also have the ability to opt out if there is anything they do not want to participate in. And we have encouraged others within the industry through the Online Privacy Alliance and other initiatives to join with us, and we are pleased to say in the last 2 years we have gone from a situation where very few Internet sites posted a privacy policy now to a majority of sites do. So that is progress, but there is still work to be done.

We are in continuing discussions with companies and with people in Congress about what is the right balance to strike here. We do think that privacy needs to be protected. We don't have an allergic reaction to any legislation related to privacy. If there is something that really deals with the issue in a focused way so that every consumer has the kind of basic principles of notice and choice, we would be supportive of that.

Time Warner—Jerry could speak to this—also has policies in place for many decades and it is part of building these brands and building this trusting relationship. So this combined company hopes to be a leader in really defining how privacy should work in the future and being protective of privacy in any way we possibly can.

Mr. LEVIN. This is a fundamental concern of ours that is a historic concern that we share because the direct marketing business in advance of the development of the Internet has involved issues of privacy. And we have—this is 75 years—supported what today are known as the DMA's privacy promise, and that is we make sure there is notice, there is choice, there is the ability to opt out before any information is used. I mean, this is really ingrained in the direct marketing side of the development of our businesses because you have a special bond of trust with the consumer.

And now fast forward to our relationship. Steve and I are Cochairs of something called the Global Business Dialogue, and here we are trying to establish on a worldwide basis a set of standards that relate to privacy for companies around the globe so that there can be the form of consumer confidence and trust. And this also is an issue where our own communication with you is to work through where is that line between self-regulation and is there any necessity to do something about it. We are really very open because we really share the same concern. There is no dissimilar interest here.

Mr. CASE. I think one point to add is although I understand why there would be sort of a natural concern about big companies with all these databases, and so forth, I think the real concern is less likely to be the big companies and more likely to be the smaller companies. As Tom Friedman in the *New York Times* has said, it is not the fear of Big Brother, it is more a fear of Little Brother.

I think the big companies, certainly ours, really recognize the importance of privacy and the importance of trust and the importance of putting principles in place that do make sense. It may be some of those kind of smaller companies on the fringes of the Internet where the real risks are, which is why some kind of legislation may be necessary. I think you will find companies like ours really leading the charge in trying to protect privacy, working with you to try to do the right thing in the right way.

Senator FEINSTEIN. Mr. Chairman, would you allow me a follow-up on that?

Chairman HATCH. Sure.

Senator FEINSTEIN. This has to do with another subcommittee of this committee, which is the Technology Subcommittee. Mr. Levin, you mentioned the words "opt out/opt in," which is something that we are looking at in this subcommittee. I happen to believe very strongly that all of our Social Security numbers and our drivers' licenses shouldn't be used for commercial purposes without our permission, nor should our personal financial or our personal medical data.

Now, opt in/opt out touches on that. My belief is very strongly that the company ought to get the permission of the individual before they use that personal information. Would you agree with that?

Mr. LEVIN. Just to get beyond some of the rhetoric that sometimes invades this issue, it really is a question of notice and choice so that consumers will understand and know exactly what is intended, and they have the ability to choose, to make a decision, as opposed to somebody——

Senator FEINSTEIN. Just say yes or no. In other words, they have notice first?

Mr. LEVIN. Yes. I would use the——

Senator FEINSTEIN. In other words, if you wanted to use my personal health information or my personal financial information, what mortgage I had, where, you would agree that you would need my permission?

Mr. LEVIN. We would need to—I will use these words. Notice should be given and the choice should be left to the consumer.

Mr. CASE. But I would add that I think there are different aspects of this that require different approaches. For example, last year we were supporters of the legislation trying to protect children's privacy. We think the standards should be higher for children. We think the standards should be higher for medical information, for example.

At the same time, we need to strike the right balance, making sure consumers know what is being done with information and if they don't like it, say I don't want that to happen, balancing that with trying to make sure the Internet continues to flourish and some of the benefits to consumers of personalized information are real as well.

So ultimately it is about consumers knowing what is happening and feeling in control of their own information. That is the principle that we support, but we agree that there are some situations that require a higher standard and children being the highest of all.

Senator FEINSTEIN. Well, I would very much like to discuss this with you because we have a hearing on identity theft coming up and this relates exactly to that issue.

Mr. CASE. I look forward to it.

Chairman HATCH. Well, let me just say that I really appreciate your views on online privacy. Senator Leahy and I are working very hard to try and come up with some solutions here and we could use your advice and your counsel in helping us to know how to do it because I think you are right. The major companies—this is something they are really concerned about and want to do something about. It is the fly-by-nighters that you have to be concerned about and that is a fact.

Now, let me just ask a couple of last questions. Gentlemen, your MOU, your Memorandum of Understanding, does not address the issue of emerging Internet telephony. I think I would like to ask the question this way. Will competitor ISP's that have access to your cable pipes be able to offer Internet telephony services without any restrictions?

Mr. LEVIN. Yes.

Chairman HATCH. OK, that is all I wanted to know on that.

Now, Mr. Case, you were quoted last July by the *New York Times* as saying—and I am sorry to bring these things up, but I want to get it cleared up, and I think it is better we do it here in these hearings to give you a chance to clarify it.

Mr. CASE. I appreciate that.

Chairman HATCH. You were quoted as saying in the *New York Times,* "Windows is the past. In the future, AOL is the next Microsoft." Now, I understand that you later clarified that quote.

Mr. CASE. Particularly with Microsoft, which did not appreciate it, I assure you. [Laughter.]

Chairman HATCH. Listen, that is not a bad goal to have in mind is all I can say.

However, the committee has received a number of consumer complaints that installing the new AOL 5.0 access software disables other ISP's that the consumer might have on his or her computer. Now, this happens even if the consumer chooses through the AOL 5.0 prompts to have another ISP as his or her default first screen.

Can you explain why this happens and the steps, if any, you have taken to address this technical problem that, in my opinion, would clearly eliminate consumer choice?

Mr. CASE. Well, first of all, I would like to clarify that I never said we wanted to be the next Microsoft or expected to be the next Microsoft. It would be presumptuous for me to say that and I am not a presumptuous person. We have said that we do hope that someday we could be the most valuable company in the world, and we also said that we hope to be the most respected company in the world. I would just leave it at that.

As it relates to the AOL 5.0 issue, we and other companies try to simplify the process of installing and using our services. There are a lot of things built into operating systems such as Windows that encourage people to set defaults, whether it be for their audio program like real networks or for many other features related to the Internet. If you set those preferences properly, then the software will work faster and more seamlessly.

So when people install AOL 5.0, it asks them would you like us to set this up so that AOL is your primary service. If you say yes, we set it up that way. If you say no, we don't set it up that way. And if you say yes and then change your mind, you can turn back those settings. So we do tell people what we are doing. We are doing it because it is better for consumers, and indeed for 95 percent of our members they only use AOL. They don't use other Internet service providers, so this isn't even an issue. It is only an issue for the 5 percent or so that have multiple ISP's and they have the choice about whether they want AOL to be the default ISP.

Chairman HATCH. But I have been informed that even those that have been selected have been disabled with other ISP's.

Mr. CASE. When you ask the question, if you say you do not want AOL to be set up as a default, it will not be set up as a default. Or if you say yes and then change your mind, you can change the settings. And we do that, as I say, as many companies do, simply because that results in a seamless software interface. So when you access certain sites, it will happen faster than having to ask you or find the right software on your hard drive.

Chairman HATCH. Recently, some have raised the idea of granting compulsory copyright licenses to Internet service providers to retransmit broadcast signals similar to those granted to cable and satellite. As you well know, Mr. Levin, I am generally skeptical of compulsory licenses for intellectual property, except perhaps as a stop-gap measure to remedy antitrust violations or compelling marketplace failures. Indeed, I fully endorse longstanding trade policy to curtail such practices by foreign governments.

Now, do you believe such compulsory licensing is appropriate for broadband Internet services given the interactive nature of the service, and do you believe that with the advent of broadband Internet, with its a la carte program selection possibilities, it might allow us to move away from the need for compulsory licensing of programming altogether in favor of more fluid market relationships?

Mr. LEVIN. Well, I certainly don't think compulsory licensing is necessary in the Internet environment, either narrow band or broadband. In fact, you have a very thriving marketplace in the licensing of material that is really quite dynamic, with a whole source of new suppliers, new companies emerging everyday with commercial arrangements for Internet distribution. So I am comfortable at this point that that would really be a mistake because it is just not necessary. It would be nice at some point with respect to compulsory license throughout the rest of our regulations as to whether at some point it might be necessary. I don't think we are at that point yet.

Chairman HATCH. Do you have any comments on that, Mr. Case?

Mr. CASE. No, not really. There was some concern a few months ago about this issue, but that related more to it being appended to something else in the wee hours of the night without really having any discussion about the issue. We just think there should be a discussion about any of these issues.

We do think the Internet is going to become more and more important and we need to look at these issues in a serious way. I am actually encouraged that as people move more and more toward the Internet, there are going to be some benefits to consumers, particularly parents in terms of how parental controls work not just on your PC but maybe on your television or your music jukebox, things like that.

And some of the debates we have in the television world that I am starting to learn about about retransmission consent and must-carry and things like that is different in the Internet world because everybody gets carried. There is no debate about must-carry. So I think in this new world, this more converged world, it will require us to look at a lot of these issues from a fresh perspective. The good news is consumers are getting more choices through more different kinds of systems.

Chairman HATCH. Well, Mr. Case, let me ask one more question. We understand that start-up companies sign agreements with AOL in order to provide access by the start-ups to consumers accessing the Internet through AOL. These agreements, according to what I have been told, typically involve tens of millions of dollars in cash payments to AOL and the granting of equity in these companies to AOL, presumably due to the strong market power and subscriber base.

As Mr. Levin is familiar, in 1992, due to abuse by cable companies, Congress overwhelmingly passed legislation limiting the ability of cable companies to extract equity in programmers as a condition of carrying programming signals to the consumer. Now, do you think that these cable restrictions are applicable to AOL/Time Warner's ability to equally extract equity in independent content providers who wish to be indiscriminately accessible to AOL Internet subscribers, and without such restrictions will this new merger not tend to thwart the ability of alternative voices to reach the vast AOL subscriber base?

Mr. CASE. Well, as I was just referencing, I think is really is apples and oranges. The world of television is really a world of scarcity, where the debate is can you get your channel carried on systems that have limited channel capacity. There is no issue of scarcity on the Internet. There really is an issue of abundance where everybody can be carried. There really is universal carriage in that sense.

So we do not have to enter into any relationship with any company for their software, their service to be available to all of our subscribers. And we are not playing any role in terms of trying to block access to certain things, even direct competitors. People can go through AOL or go through Netscape, Net Center, and get to anything they want and do anything they want.

All we really do is for some of our services in the entertainment area or the sports area, we will promote some sites. And we are compensated for promoting those sites much as a grocery store is compensated for promoting Kellogg's cereal at the end of the aisle. But nobody needs to pay us to be on the system. Everybody is on the system instantaneously. And some start-ups have asked to give us some equity as opposed to some dollars because they don't yet have the dollars and therefore want a shot.

So we talk to all kinds of companies. We are willing to enter into relationships with all kinds of companies, but this is really about getting more promotion. It is not in any way, shape, or form about getting carriage, which was the issue in the television world. So I think it is apples and oranges.

Mr. LEVIN. If I could add that unlike the situation with the 1992 Act, part of the genius of the American capital system that is operating now is the various ways of financing start-ups who would otherwise be capital-starved have this opportunity. So that is why we are seeing so much innovation and so many new, young companies getting started. Very different from the cable situation.

Chairman HATCH. Now, I have had a number of calls from the music industry, as you can imagine. I am not going to ask you this question. I would like you to think it through and then write to me and tell me how you are going to handle this, but many in the music industry, with your acquisition of EMI, are very concerned that it will give you such leverage that you will be able to dictate whose music will be used for filming, for television shows, et cetera, et cetera, because you control about 50 percent of the copyright publishing rights in the world.

Mr. LEVIN. That figure is not correct in terms of music publishing. We will respond appropriately.

Chairman HATCH. If you would. I don't expect a definitive answer here today, but it would be good for you to respond to that in writing to us so that it will alleviate the concerns that some people have, if they can be alleviated.

Mr. LEVIN. I will acknowledge that we own the musical copyright to "Happy Birthday."

Mr. CASE. Also, on the music issue I think I should point that the Internet really is going to transform music. And new companies have emerged, including many that are public with multi-billion-dollar valuations, that are trying to change the paradigm of music. There are lots of electronic distribution issues and copyright issues related to that. So I think if you are a music company, the focus should really be on the Internet and how it is going to transform the experience and some of the risks in terms of protecting copyright. I don't think there is anything to fear with EMI getting together with Warner.

Chairman HATCH. Nobody even has a beginning understanding of how that is going to splurge and, it seems to me, just develop. It is going to be a terrific area, and I think, done right, it will open up opportunities for many people in the music industry.

Well, this has been a very interesting and productive hearing, and I would like to thank both of our distinguished witnesses for their time and cooperation. The issues raised today affect not only e-commerce, entertainment, and the next generation communications services, but these issues have a deeper social impact due to the Internet's powerful liberating effect.

As this merger is reviewed, we need to ensure that proper public policies are in place at the outset that will ensure that no single company acts as the, "gatekeeper," of the Internet, limiting or influencing consumer choice or adversely impacting the pace of innovation. Doing so will ensure that we will not find ourselves in the position we were in in the early 1990's, when the public called for, and Congress overwhelmingly imposed regulations on cable operators to ensure that owners of the cable infrastructure do not abuse their distribution power by discriminating against competitor programmers.

These are very important issues that have been raised today and I will have a few additional questions which I will submit to you in writing, and I think the distinguished ranking member will do the same. And we would appreciate your responses, if you could, within 2 weeks of receipt. I think it is to your advantage to do that. We are making sure we are covering this issue.

I and the ranking member and our colleagues on this committee look forward to working with you as we both examine the multiplicity of issues that are involved here. So I really want to thank you both for your time and the answers to all of our questions that we have had here today, and we will submit some others to you and I hope that we can help to resolve this matter in a way that is pleasing to everybody.

Senator LEAHY. Mr. Chairman, if some of the e-mails that have been coming through here this afternoon are an indication, there is a great deal of interest not only in this hearing, but I suspect in having similar follow-up ones subsequently. It is an interesting time.

Chairman HATCH. Well, as you know, we respect both of you and we appreciate your willingness to come and inform the public and inform the committee of what is going on here.

Thanks so much, and we will adjourn until further notice.

[Whereupon, at 3:49 p.m., the committee was adjourned.]

APPENDIX

QUESTIONS AND ANSWERS

RESPONSES OF AOL/TIME WARNER TO QUESTIONS FROM SENATOR LEAHY

Question 1. The commitments in the Memorandum of Understanding between AOL and Time Warner are conditioned by reference to phrases like "consistent with providing a quality consumer experience" and "consistent * * * with any technological limitations" and "consistent with technological capacity." In addition, Time Warner has made the entire MOU subject to all of its pre-existing obligations and its fiduciary and other obligations to its partners while indicating that it will endeavor to reach accommodations with third parties to whom pre-existing obligations are due. What is meant by those conditions and what progress have you been able to make to allow Time Warner to fulfill the commitments to "open access business practices" for Internet service?

Answer. As your question indicates, the conditions referred to in the Memorandum of Understanding ("MOU") between Time Warner and AOL relate principally to Time Warner's fiduciary and other pre-existing obligations with respect to the provision of the Road Runner cable modem service to Time Warner Cable subscribers and to the technical issues associated with the offering of multiple ISPs over Time Warner's broadband cable platform. In the MOU Time Warner committed itself to addressing both of these conditions and we are pleased to report that progress is being made in this regard.

More specifically, with respect to Time Warner's fiduciary and other pre-existing obligations, Time Warner is working with its Road Runner cable partners (namely AT&T and Advance/Newhouse) to achieve an early termination of contractual provisions that give Road Runner the right to be the baseline provider of cable modem service to Time Warner Cable subscribers for a specified period of time (typically through the end of 2001). While Time Warner's fiduciary and other obligations to its partners preclude Time Warner from unilaterally terminating such provisions of these binding contracts, we are highly optimistic that we will be able to achieve an early termination. Indeed, there is growing evidence of a recognition in the cable industry that a multiple ISP approach to cable modem service is good business. *See* Communications Daily, "Leading Cable MSOs Quietly Shifting Toward Open Access," April 6, 2000 at 4–5 (copy attached). We also wish to bring to your attention the fact that AT&T, in connection with its acquisition of Road Runner partner MediaOne, has entered into a consent decree with the Department of Justice requiring it to divest its interest in Road Runner and requiring Justice Department approval (for two years following divestiture) of certain agreements between AT&T and AOL Time Warner relating to the provision of cable modem or residential broadband service in order to ensure that such agreements do not lessen competition.

AOL and Time Warner also are dedicated to resolving the technical and operational issues associated with the creation of a multiple ISP environment for cable modem service. The language quoted in the question above was merely intended to reflect the fact that, when the MOU was agreed to, the extent of any technical, operational, or other issues in offering a multiple ISP environment over cable systems was largely unknown. The reference to possible limitations reflects the parties' recognition that as the Internet has evolved, promises of boundless capacity and virtually instantaneous response times have sometimes run up against a surfeit of demand that can slow or otherwise impede use of the Internet. Maintaining a high-speed connection, after all, is the principal basis by which cable modem service can provide "a quality customer experience." Indeed, the MOU embodies a pledge to work to overcome any technological barriers so that the goal of consumer choice among multiple ISPs, without sacrificing the quality of service, can be achieved as quickly as possible.

It would be premature, however, to attempt to describe with any particular specificity what, if any, limitations might be necessary on the way that the cable platform is used for high-speed Internet access as demand, capacity, and the number of providers grow. A "white paper" prepared in May 1999 for the White House National Economic Counsel concluded that there could be substantial technical costs associated with the offering of multiple ISP access on cable systems. Some of the issues identified in this white paper included: quality of service (e.g., delay, jitter, error rate, etc.), subscriber and service provider containment (i.e., limiting the extent to which the use of the system by one subscriber/group of subscribers or one service provider interferes with the use of the system by other subscribers/groups of subscribers or other service providers), link privacy, and content preservation.

Neither AOL nor Time Warner necessarily subscribe to the specific assumptions and/or conclusions found in the aforementioned white paper, and the companies intend to conduct their own technical and operational tests in order to identify and resolve any technical impediments to the provision of multiple ISP choice. AT&T has announced that it too will be conducting field tests, and it is expected that other cable operators will follow suit. Indeed, it has just been announced that Charter Communications intends to conduct a test of multiple ISP carriage this Fall. Through these efforts, AOL and Time Warner intend to find and implement solutions to any technical or other issues that may arise. In any event, AOL and Time Warner stand by the commitment made in the MOU not to place arbitrary limits on the number of ISPs which they will offer over their cable facilities and to enable cable modem customers to exercise broad choice in a meaningful way.

Time Warner has developed a "Multiple ISP Program" to address the technical and operational issues associated with consumer choice among multiple ISPs. As part of this program, Time Warner and AOL are cooperating in a technical and operational trial being conducted using Time Warner's Columbus, Ohio broadband cable facilities. These efforts will involve the participation not only of Road Runner and AOL, but also of other ISPs, as well. In addition, AOL has been invited and intends to participate in the trial that AT&T has scheduled to take place in Denver.

Question 2. Paragraphs 3, 8 and 10 of the MOU refers to partners and "partnering." Is use of those terms meant to suggest that the only ISPs with which AOL Time Warner will enter into arm's length non-discriminatory agreements for Internet service are companies willing to enter into partnerships agreements and share their profits with AOL Time Warner?

Answer. We do anticipate that deals between Time Warner Cable and ISPs, including AOL, will include an element of revenue sharing as those deals relate to revenue generated from services provided over Time Warner Cable systems. However, no ISP will be required to share profits and AOL will be treated the same. We are also not using the term "partner" in its legal sense of the word. By "partner" and "partnering," we mean that we will work with other ISPs to offer consumers broad choices in gaining access to the Internet and the rich content available through broadband access to it. While the terms of each deal will be individually negotiated, we will not discriminate based on affiliation with AOL-Time Warner.

Question 3. In documents submitted to the Committee by AOL to explain its instant messaging technology, AOL has said that it "strongly supports open standards—in fact, we think the future of the medium depends on them, and we're working with other companies to develop those standards." Yet, AOL has in the past aggressively blocked competitors with instant messaging services from communicating with users of AOL's instant messaging software. In light of the fact that the future of the medium depends on interoperability, what progress has been made to develop standards that will result in such interoperability?

Answer. We are committed to extending the benefits of instant messaging technology to as many consumers as possible. In an effort to permit all Internet users to communicate by means of instant messaging whether or not they subscribed to the AOL online ISP service, we made our AOL Instant Messenger client software available for free to anyone on the Internet. In addition, we have entered into more than a dozen royalty-free licensing agreements to allow industry leaders to include instant messaging features in their products with their own brand identification. Indeed, today consumers have more than 40 choices of instant messaging services, all of which are free; and consumers are able to communicate with anyone by means of instant messaging, regardless of which system they are using, by downloading free instant messaging software from the Internet.

Over the past two years, we have participated in industry discussions through the Internet Engineering Task Force about how to achieve the goal of interoperability among instant messaging networks. In doing so, we have resisted efforts by certain of our competitors to impose a "quick fix" system that would jeopardize our members' privacy and security and risk the proliferation of spam which is a pervasive problem in the e-mail environment where interoperability came early. Throughout this effort, we have been guided by a bedrock commitment: to provide consumers with a secure, private, and convenient online experience.

Indeed, we remain committed to achieving real interoperability consistent with those fundamental principles. To that end, on June 15 we submitted to the co-chairs of the Instant Messaging and Presence Protocol Working Group of the Internet Engineering Task Force our proposed architectural design for a worldwide instant messaging system. (A copy of our proposal is attached.) While our competitors have tried to use the political process to their business advantage, none have submitted a proposal to the IETF for the kind of world-wide interoperability we have or shown that their proposals would not result in consumers being deluged by a new barrage of a spam by instant messaging.

Question 4. Progress in distributing music online has been bogged down in disputes over standards—whose are more secure, whose can be easily adapted to recording devices, and so on. With the AOL reach into different distribution channels, combined with the Time Warner music catalogue, this merger raises the possibility that AOL Time Warner may be able to impose digital music standards not just one industry, but on several: copyright owners, online distributors, and hardware manufacturers. What assurances can you give that you will move forward as a partner with these interests.

Answer. Recognizing the value of the digital music revolution, the combined company will remain committed to maximizing the market potential for distribution of music over the Internet and through other electronic means. The company will have no interest in imposing a single technical solution for digital distribution of music, whether downloading or streaming, over the Internet, nor will it have the ability to impose such a solution. It should be noted that AOL's Winamp player does not make use of standards or protocols that are proprietary to AOL and the Winamp player supports all of the popular music formats. AOL Time Warner would lack the ability to successfully promulgate some kind of music standard, even if it wanted to. Imposing a standard would require the cooperation of all of the various parties at the different levels of the online music distribution chain—including music labels, industry associations, and the various firms that provide the relevant encryption, downloading, streaming, digital rights management and compression technology (none of which technology AOL Time Warner owns or controls). The Company could not possibly impose a standard without the assent of all of these powerful representatives from all these areas.

As a business matter, whether looked at from the perspective of Time Warner's music business, or of AOL's Internet business, the combined company will have compelling interests in supporting multiple technologies and modes of distribution and making any contribution necessary to ensure growth in the marketplace for digital music distribution.

Time Warner, through the Warner Music Group, is engaged in the business of selling music. Just as Time Warner currently seeks to maximize its sales of compact disks by selling through as many outlets as possible, it will seek to maximize it sales of online music by selling through as many digital outlets as possible. The company will not be able to reach its goal of maximizing sales by supporting a single technology, because no single technology (or set of technologies) works with all digital music players. In light of this overriding goal, AOL Time Warner will have no incentive to support a single technical solution, but instead will have powerful incentives to support multiple technologies.

Thus, AOL Time Warner will support technologies that maximize the outlets for its music, while providing a secure, technically sound, easy-to-use, and affordable means of downloading or streaming. This is fully consistent with Time Warner's past practice. To date, Time Warner has generally provided downloads as a promotional device. In so doing, Time Warner has supported a variety of technologies, including those of Liquid Audio, Microsoft, and Mjuice; and it recently entered into a licensing arrangement with MP3.com for digital downloading.

Question 5. Music is one of the experiences revolutionized by the Internet. MP3 and other digital technologies are revolutionizing the music business, and giving consumers access to many more groups, and giving many aspiring musicians a chance to get noticed by both music fans and music companies. The companies have indicated that the prospect of a huge market in digital music one of the forces driving this merger.

(A) Do you acknowledge that AOL Time Warner would have enormous financial incentives to drive customers to music within its own proprietary labels?

(B) What assurances can you give that musicians who are not affiliated with the newly expanded Warner Music-EMI venture, will be treated equitably with affiliated musicians?

Answer. To be successful, the joint company will be driven to offer the best listening experience it can. To that end, the company's overriding financial incentive is to give subscribers access to the broadest possible array of music in the most easy-to-be affordable digital format. We will never accomplish that objective if we limit the online experience of our members to listening to albums in the Warner Music and EMI collections. Rather, we must provide our subscribers with the broadest array of content produced by the broadest possible group of musicians, including musicians who are not affiliated with either Warner Music or EMI which is the corollary to Warner Music's need to serve its music through the broadest array of digital and non-digital outlets.

Question 6. AOL has retreated from its early pro-active position for statutory or regulatory requirements for open access and will now rely on the marketplace. How long do you think is reasonable for Congress to give the marketplace to ensure open access before we step in, as we have in other contexts, to mandate the opportunity for consumer choice?

Answer. It is true that with steps being taken by AT&T, AOL-Time Warner and other MSOs, AOL believes that government intervention may not be necessary to bring choice and diversity to consumers in the cable broadband marketplace. However, we remain as committed as ever to the importance of open access as an end result. Indeed, even with AOL's merger with Time Warner, Time Warner's cable systems will only pass about 20 percent of the cable households. As a national service, AOL needs access to cable systems throughout the country. We are therefore committed to working with other members of the industry to achieve open access and believe it is in the entire industry's interest to get there. We certainly believe that Congress' vigilance in monitoring the industry's progress in reaching this goal has helped the marketplace move to where it is today and such activity should continue. With AT&T committed to offering multiple ISP services over its cable plant by July 1, 2002, with AOL Time Warner committed to achieving that goal before the scheduled expiration of its RoadRunner agreement at the end of 2001, and with the announcement by Microsoft and Juno of broadband services over DirectTV, we believe that the multiple ISP model is already taking hold in broadband. Indeed, Time Warner took another step in this regard by announcing a deal in principle with Juno to offer broadband ISP services to Juno's customers ISP service over the Time Warner cable plant and the company looks forward to announcing additional deals with unaffiliated ISPS soon.

Question 7. The FCC has mandated open access and nondiscrimination requirements for DSL services provided over telephone lines, and Internet Service Providers have flourished in a highly competitive market. Should the same requirements be authorized for cable broadband access and, if not, please explain why?

Answer. Over the past two years, the FCC has repeatedly concluded (most recently in its order approving the AT&T/MediaOne merger), that the imposition of mandatory broadband cable requirements is not necessary and that the marketplace can and should be relied upon to ensure that consumers are offered the greatest diversity of choice of service options. While we had proposed a "light touch" approach that would move the cable marketplace toward a multiple ISP model, the FCC decided to rely on marketplace developments to achieve that result. With the AOL Time Warner announcement, we have been able to move the marketplace toward that model without FCC intervention. Given the steps that AOL and Time Warner have taken to move the market toward an "open access" model, and given the increased competition among differing broadband platforms, it would be surprising were the FCC to reverse course and determine that government intervention were needed to move the marketplace.

Question 8. Mark Lemley, a law professor at the University of California at Berkeley, thinks federal regulators should approve mergers such as the proposed merger between AOL and Time Warner—and any similar mergers involving broadband access issues—only if the companies agree to adhere to open-access standards. In light of the MOU and the strong arguments AOL and Time Warner have raised in favor of open access to broadband delivery, would the companies oppose such a conditions?

Answer. AOL Time Warner has announced that it intends to adopt a strategy of competing in the market, by offering its users a choice of multiple ISPs. This strategy is consistent with AOL's widely publicized pre-merger views that such an approach would accelerate the development and deployment of advanced broadband services. Indeed, evidence of marketplace growth in DSL deployment is already emerging, in part, as a result of these announcements. Given our public commitment, which is in our financial interest, we see no reason for the Commission to condition our merger in this respect. We share the same commitment to consumer choice as Professor Lemley, and hope to achieve them quickly. As we indicated in our MOU, AOL Time Warner will not place any fixed limit on the number of ISPs with which it will enter into commercial arrangements to provide broadband service to consumers. AOL Time Warner will provide its consumers with a broad choice among ISPs, consistent with providing a quality consumer experience across the entire nation and any technological limitations in providing multiple ISPs on its broadband cable systems. To the extent necessary to achieve this level of access and quality experience, we will work with the rest of the industry to achieve any necessary standards. Moreover, given the decision of the FCC and the Department of Justice not to impose open access conditions when approving the AT&T/Media One or AT&T/TCI mergers and its announced decision to initiate a proceeding to examine the issue on an industry-wide basis, it has become clear that policy questions surrounding the issue of open access should not be resolved in the context of this merger review.

Question 9. Open access sometimes means different things to different people. Under the MOU, does "open access" mean open access to all ISPs, so that consumers can get the full benefit of unlimited competition over Time Warner cables, or just to a select group?

Answer. The MOU is intended to establish a framework whereby consumers will be able to select among multiple ISPs for the delivery of cable modem service. AOL Time Warner will seek to provide a wide array of choices and will not establish an arbitrary limit on the number of ISPs with which it will be willing to negotiate cable modem service relationships. We will try to reach agreements with a diverse group of ISPs, without regard to affiliation with Time Warner. The precise number will depend on a variety of technical and other factors and will vary by region and by demand. None of them will discriminate based on affiliation with Time Warner.

Question 10. The International Federation of Journalists has warned that the proposed merger "could threaten democratic values and freedom of speech unless editorial independence was protected. Unless action is taken to ensure journalistic independence some argue that we face a dangerous threat to media diversity." How do you respond to these concerns and what specific steps do you intend to take to assure this journalistic integrity?

Answer. As we explained in our appearance before the Committee, we are absolutely committed to maintaining the highest levels of journalistic integrity. We cannot hope to grow our business and serve our customers if they lose confidence in our integrity. We at AOL and Time Warner deeply respect the tremendous legacy of Henry Luce, to operate "in the public interests as well as the interests of shareholders" and fully expect that proud tradition to continue.

Apart from our deep commitment to and legacy of journalistic independence, it is important to recognize that the very nature of the Internet answers the question posed about the impact of the merger on media diversity and freedom of speech. The Internet is the ultimate "open forum"—literally millions of users, representing every conceivable view point on every conceivable subject, are able to express themselves. There is no entity—not any government nor any corporation—that can control this unbridled explosion of speech.

Question 11. David Rubin, Dean of the Public Communications School at Syracuse University, has commented that "what could happen is that users could be sufficiently lazy that their behavior could be essentially circumscribed by Time Warner/AOL-type deals" making it "really, really easy" to get to Time Warner and AOL content and "really, really difficult to get anywhere else." Even if it is as easy to get to other content, accessing it may take more time. How do you respond to these concerns and what do you plan to do to make it as easy and as fast to get to other content as to AOL or Time Warner content over the cable broadband system?

Answer. Ever since the widespread consumer deployment of the Internet, AOL has been built on the fundamental proposition of giving people access to everything on the Internet in the most easy-to-use, user-friendly way. Nothing about the merger will change that approach. We cannot block the access of users to the Internet without denying them the value for which they subscribe. Efforts to deny users access to non-Time Warner content would be self-defeating and would merely cause users to go to competing Internet service providers, of which there are many. We do cache material coming from Internet sites in order to provide a faster, more compelling user experience, and we do so based on user demand and not affiliation. Often the sites we cache are those of our largest competitors like Yahoo. In addition, AOL does not determine what is cached, our subscribers do. We cache whatever they go out to retrieve, subject to the constraint that websites have the ability to set their own caching frequency and duration of cached pages. If we do not give our users what they want quickly and efficiently, we know (and they know) they have other ways to access the Internet. Any technological ploys that affect the user experience—like selective caching, slowing the return path on certain networks, or slowing downstreams on competitors' content—will drive our members to competitive services. We want them to stay with us.

As we remind ourselves everyday, our members are volunteers. Nothing requires them to visit our site or to maintain an account with us. We will only keep them coming back and staying with us if we meet the challenge of providing them with content from a variety of sources in easily accessible format through simple tools.

Question 12. The companies have made no secret about their plans to cross-promote and distribute their products and services, which raises the specter of the huge databases held by both companies being combined in powerful and valuable ways for the merged company's own commercial purposes, or for resale to their parties.

(A) Does either company currently resell to third parties information about their subscribers and, if so, what kind of information?

(B) AOL states in its posted privacy policy that it does not disclose personal information to "outside companies." After the merger, will AOL share information about its Internet service subscribers, including their names, addresses, phone numbers, credit card numbers, email addresses and web viewing habits, with affiliated companies as diverse as Rhino Records, New Line Cinema, Fortune Magazine, and Time-Warner Cable, and will AOL have access to personal information gathered by those other companies?

Answer A. Both AOL and Time Warner have made commitments about respecting customer privacy and those commitments will continue in the merged company. Consistent with our respective privacy policies, AOL and Time Warner only make select information available to third parties after providing our customers with an opportunity prevent us from doing so, in other words a choice about the use and disclosure of their information. Both companies' commitment to notice and choice for all consumers as it relates to personally identifiable information will remain the bedrock principle of the combined company. Of course where Time Warner has statutory obligations surrounding the collection, use and disclosure of personally identifiable information in the case of the Cable Act privacy requirements, the company currently complies with the letter of the law and the combined company will continue to do the same with respect to its cable properties.

Answer B. In the case of AOL, we never share any personal information about our members with outside or affiliated companies beyond their names and addresses and, even then, only after providing them with the choice not to have us make such disclosures. We do not share phone numbers, credit cards or email addresses with anyone and we do not even use personally identifiable "web viewing" practices internally and most certainly do not make that information available to anyone.

As for Time Warner, as a general proposition, we are looking for ways, and indeed are beginning, to cross-promote our magazine and other products with AOL just as we do with our current affiliates such as HBO and Warner Bros. But we again do not do so, nor will we with AOL, without first offering each consumer notice and an opportunity to say no—an opt out—not only for affiliate-sharing, but for all internal uses.

Question 13. Concerns have been raised about a few online services, such as DoubleClick and Abacus, that combine personal information, financial information, web purchasing behavior and web browsing records to get a fairly complete personal profile of individuals. Since many people pay for AOL Internet service by credit cards, browse using AOL's web browser, and shop online through their AOL connection, is AOL currently in a position to do what Double Click has been criticized for doing.

Answer. Our commitment to our members not to follow them around online or use personally identifiable online information to target market to them is a core principle of our privacy policy. We have not and will not link the web surfing habits or interests of our members with personally identifying information about them.

RESPONSES OF AOL/TIME WARNER TO QUESTIONS FROM SENATOR THURMOND

Question 1. Mr. Levin and Mr. Case, many experts have suggested that this merger is the beginning of a rapid trend of mergers between Internet and more traditional companies. Do you agree with this view?

Answer. There can be no doubt that the Internet Century will provide tremendous opportunities for traditional media companies to reach their existing audiences and to find new audiences. Technology is transforming not just the global media industry but the global economy in general and the merger of AOL and Time Warner represents a prototype for the 21st Century—a company prepared to meld quality content and a creative infrastructure with the evolving Internet culture. The question of whether our merger will mark the beginning of a trend is dependent upon whether others believe that such combinations can offer value to their customers. We are starting to see some that do, but the future remains hard to predict.

Question 2. Mr. Case, broadband Internet access is very important to the future of the Internet. Do you believe that this merger will accelerate the availability of broadband access for consumers, especially in rural areas?

Answer. I do believe that our merger will accelerate the deployment of broadband services and certainly hope that broadband availability will increase for all consumers, particularly in rural areas and other under-served markets, as quickly as possible. You can be assured that we will do our part to accelerate the rollout of broadband services. I do not want to see anyone left behind in the Internet Century, and have committed numerous resources, both corporate and foundation, to ensuring we bridge rather than widen the existing digital divide.

Question 3. Mr. Case, clearly AOL will promote Time Warner's products. How far will it go in this area? For example, will AOL refuse to accept advertisements from Time Warner's competition or refuse to display a competitor's content?

Answer. As I have reiterated on numerous occasions, the key to the success of AOL's online service and to Time Warner's distribution businesses is that we both deliver consumers the best content from whatever sources they demand. As an online service, we will distribute Time Warner content and products and we will distribute that of others. We will not block Internet users from obtaining any lawful material that resides on the Internet. As for Time Warner's content businesses, we will seek distribution from both AOL and its other online brands and from a panoply of other content distribution networks. Through diversity on both the content and distribution side the combined company will maximize consumer benefits and our company's success.

Question 4. Mr. Case and Mr. Levin, the Internet and television provide great access to programs and information. However, much of the content is not suitable for young children. Do you have plans for giving parents more effective tools for controlling children's access to inappropriate material?

Answer. We are absolutely committed to providing parents with the most effective tools possible so that they can control access to inappropriate material on the Internet by their children. At both companies, we in fact are quite proud of what we have developed to help parents. We will continue to refine the tools we have developed as technology changes and as we introduce new services. AOL's parental controls functionality which has been such an important benefit to AOL's 23 million online subscribers is, for example, an integral element of our recently launched AOLTV service. These and other tools will continue to be refined as technology and content demand.

Question 5. Mr. Levin, clearly traditional media companies will need their content to be available on the Internet in the future. Do you believe that these companies can be successful without merging with Internet providers?

Answer. There is no doubt that the Internet will provide tremendous opportunities for traditional media companies to reach their existing audiences and to find new audiences and our merger with AOL will help us achieve that goal. However, the combination of Time Warner and AOL is not just about finding an outlet for Time Warner's content. It is about finding means to competitively distribute others' content as well. As I pointed out in my testimony, as large as our merger may seem, it pales beside the open-ended expanse of broadband media and the growing array of wired and wireless distribution systems. In such an environment, no content owner need fear that it will be unable to find distribution. Indeed, while we obviously believe that combining the assets of Time Warner and AOL affords us with the flexibility to compete in the new global market, we recognize that the open protocols of the Internet make it possible for anyone, traditional media company or upstart, large corporation or individual, to establish a worldwide platform for their messages.

Question 6. Mr. Levin, Time Warner has always had strict separation between its advertising and editorial departments. Some new articles have suggested that AOL does not have such a strict separation. Will this merger put pressure on the new company to ease this strict separation?

Answer. No. At Time Warmer, the independence of our editorial staff has been at the core of our value system, and the most revered component of our corporate heritage. Our "church/state" system of complete separation of editorial from business operation has served us well, both assuring purely journalistic decisions about editorial matters and in creating confidence that we are safeguarding the public's trust to accurately report and comment upon the news and other information. Moreover, it is in our business interest. If the independence of our editorial operations is eroded, public trust in our journalism will be undermined, and our subscribers/viewers will turn to other more objective competitors. Steve Case personally and explicitly embraced our journalistic ethics, and articulated support of our policy of "church/state" separation.

Question 7. Mr. Case, privacy is certainly an important issue with the Internet today. What steps will AOL Time Warner take to ensure a consumer's privacy?

Answer. Based on our discussions, we are confident both companies share an overriding and mutual desire to ensure the privacy of our members and our subscribers. We have set a very high standard at AOL and we will maintain it once the merger has been completed, through the implementation of clear user-friendly privacy policies and practices.

Question 8. Mr. Case, after the announcement of the merger AOL stock price dropped. What do you believe is the main reason investors did not initially appear enthusiastic about the merger?

Answer. We had anticipated that it would take time for investors as a whole to understand the value proposition underlying the merger. As we have had an opportunity to explain our shared vision about creating enhanced shareholder value, we have found increasing support among investors in their support for the company and had an enormously strong vote in favor of the merger in June by the shareholders of both companies. Their positive recommendations confirm that they recognize the tremendous value represented by the merged company.

Question 9. Mr. Levin, I understand that Time-Warner has entered into a transaction concerning the combination of its Warner music division with EMI, essentially combining the first and second largest music publishing companies in the world (i.e., Warner/Chappell Music and EMI Music publishing). The combination of these companies would provide Time-Warner and presumably AOL, with control over nearly one-half of all copyrighted songs in the United States. Why do these companies need to combine to compete in the music publishing market? Is there a risk that the combination of these music publishing companies reduce competition in the payments of advances to aspiring songwriters for their copyrighted songs? Please explain.

Answer. Your question raises three issues. First, in terms of the number of copyrights, as you may know, the music publishing industry does not track this type of information. So, to address this issue, we asked ASCAP and BMI, which are the two principal U.S. performing rights organizations, to provide us with information so that we could estimate the combined entity's share of copyrights. BMI and ASCAP have informed us that, together, they have 10.25 million to 12.25 million registered compositions. We estimate that the combined entity would own (or even just administer) well under 10 percent of the copyrights registered to ASCAP and BMI.

Second, as for the reasons underlying the proposed transaction, we estimate that the combination of our businesses will save approximately $400 million per year, largely from the consolidation of back-office functions on both the recorded music and music publishing sides of the business. These savings will better enable the combined entity to discover new songwriters and singers, to promote their work, and to transition our traditional bricks-and-mortar music businesses to the Internet world. This should benefit not only songwriters and artists, but also consumers.

Third, the proposed transaction will not reduce competition for aspiring songwriters and their compositions. Just like today, after the transaction, there will be hundreds of music publishing companies, not only those associated with the large record companies (sometimes called the "majors"), but also numerous significant independent music publishing firms. In addition, it is easy to enter and prosper in the music publishing business—indeed, many songwriters from novices to Paul McCartney, do not hire a music publisher, but choose to self-publish. Further the Internet is making it even easier for individuals and smaller music publishing companies to promote their works on a global basis.

Question 10. Mr. Levin, what assurances can you provide that this music will be licensed to other companies to permit the digital downloading of popular music recordings over the Internet on the same basis as will be available to Time-Warner recordings and the AOL properties?

Answer. There are many reasons that, after the merger, Time Warner's music will continue to be available online through a diversity of outlets. First, and perhaps most importantly, it has and will continue to be in the company's economic interest to do so. As a music company, Time Warner can succeed only if it makes its music as widely available to as many people as possible through as many outlets as possible. It would be economic suicide to limit the distribution of its music to subscribers of a single Internet provider. It would, of course reduce music sales of the company's existing artists. Even more importantly, no artist would want to sign with a record company that would only distribute its music to AOL subscribers, when any other record company competing for the same artist could distribute music online to everyone connected to the Internet in the world.

Second, Time Warner's past experience in making music available online demonstrates that it has consistently sought broad distribution. Time Warner's records are sold widely through all "brick and mortar," "click-and-mortar" and exclusively online retailers. Indeed, Time Warner has made digital downloads of its songs available through the online sites of retailers such as Amazon, CDNow, and Barnes & Noble. That is also consistent with our practices in other areas such as our cable networks. for example, on HBO over 80 percent of the programming is owned by parties other than Time Warner or one of its subsidiaries.

Third, the proposed transaction between Time Warner's music business and EMI would create Warner EMI Music, which would provide additional assurance that its music would be available through many outlets. Under the proposed combination agreement with EMI, any dealings between Warner EMI and AOL Time Warner would need to be on an arms-length basis. This will further guarantee that the independent interest of Warner EMI Music, as a record company, in broad distribution would be protected.

Question 11. Mr. Levin, Warner/Chappell and EMI Music both sit on the board of directors of ASCAP, the National Music Publishers Association. Will this provide AOL with disproportionate influence over the licensing policies of these organizations to the disadvantage of other music publishers and songwriters? Please explain.

Answer. Combing Time Warner's and EMI's music publishing businesses will not provide the resulting partnership with disproportionate influence over either ASCAP or the National Music Publishers Association ("NMPA"). Indeed, in certain respects, the combined entity will have a smaller role than the two companies now have separately.

As for ASCAP, Warner/Chappell and EMI each currently has a representative on the board of directors. After the transaction, the combined entity will have only one board member. In addition, Warner/Chappel land EMI both currently vote as members of ASCAP. After the transaction, the combined entity will represent less than 10 percent of the votes of ASCAP's music publisher—and music publishers as a group represent a minority of the votes of ASCAP, with songwriters representing a majority of votes. Thus, the combined entity will have only a small stake within what is itself a minority group is ASCAP.

Similarly, for NMPA, Warner/Chappell and EMI each now has a representative on the board, but the combined entity will have only one member. Further, after the transaction, the combined entity would represent less than 10 percent of the votes of NMPA.

Question 12. Mr. Levin, I understand that AOL recently purchased WinAMP, the most popular MP3 software player, and Spinner.com, an influential web radio property. At the press conference announcing the proposed merger, Mr. Levin referred to these properties as key parts of AOL's music strategy. What assurances will there be that content owners and other Internet music companies will have access to these key properties on a level playing filed with AOL/Time-Warner for the delivery of music go Internet users? Do any other Internet companies have access to these properties today and under what terms?

Answer. Both the Winamp MP3 software player and Spinner.com are very successful Internet offerings with a loyal online following of music fans. They are, however, very different products with equally different business models. Nullsoft's Winamp MP3 player is a software player that can be used to play any MP3, regardless of the label or musician who produces it. The player is available for free on the Internet to anyone who wishes to download and use it. The joint company is not likely to change this policy of making the Winamp player freely available online.

Spinner.com is an Internet site, also available for free, that streams Interent radio, including a wide diversity of music genres. As part of its commitment to music diversity, Spinner has developed the Spinner.com Music Partern Program to expand content on its music channels, simultaneously providing a more effective distribution mechanism for record labels. The Spinner.com site currently represents over 350 labels (independent and otherwise), including Rykodisc, High Tone, Matador, Bloodshop, Rounder, Ubiquity, Touch and Go, Arhoolie, and 4AD. Unsigned artists are also encouraged to submit their music to the site. Following the merger, Spinner will continue to make available the music of a diverse group of artists and labels or as with our other Internet properties our consumers would go elsewhere. Again, we will never accomplish our objective of giving subscribers access to the broadest possible array of music if we limit the online experience of our Spinner.com users to listening to albums in the Warner Music and EMI collections. We are committed to providing our subscribers with the broadest array of content produced by the broadest possible group of musicians.

Question 13. Mr. Case, AOL has shown great agility in the marketplace. Some analysts have stated that this merger will force AOL to loose some of its agility. How do you respond to these suggestions?

Answer. In short, we disagree with these suggestions and intend to demonstrate our agility and our ability to bring our members the best possible online experience. To succeed in the Internet Century, we will have to move faster and smarter. As a combined company, we are confident that we can meet that challenge.

Question 14. Mr. Case, AOL is rapidly growing with many acquisitions and investments. However, some analysis have stated that your company has taken on too many new business ventures recently. How do you respond to these charges?

Answer. We intend to demonstrate that we are able to continue to create value for our shareholders and our members. We make acquisitions and undertake new business ventures for the sole purpose of meeting that twin objective. We are confident of our ability to continue to do so.

RESPONSES OF STEVE CASE TO QUESTIONS FROM SENATOR DEWINE

Question 1. Mr. Case, at the hearing I asked if you believed it would make sense to consider using a group of independent, private industry technical experts to help create industry protocols for open design of the cable broadband architecture. You responded that AOL has supported similar groups or efforts in the past. It was not clear to me whether you would be in favor of such an independent group to specifically examine the questions of open design for cable broadband architecture. Do you believe such an organization would be useful in addressing some of the concerns that have been raised about the openness of the cable broadband architecture with an eye toward establishing industry protocols?

Answer. We believe the industry will soon be able to make the necessary technical adjustments to ensure consumers have real choice of multiple ISPs in cable broadband. We certainly do not have all the answers, and recognize that private technical experts may be able to contribute to our efforts to achieve this shared objective. At this point, however, we are making great progress, in particular with our trial in Columbus, Ohio, and it does not appear that a specific group of independent experts is needed.

Question (A). If you do believe such a group would be useful, what are your recommendations concerning participants, structure and purpose of the group?

Question (B). If you do not believe such a group would be useful, why not? How would you recommend addressing concerns that many have that individual cable companies will have the ability to design cable broadband systems in ways that favor themselves and limit competition?

Answer. We have been looking forward to being able to provide consumers with a choice of multiple ISPs, and thus have been making engineering and design decisions that would allow us to take full advantage of the availability of expanded broadband access throughout the country. We are quite confident that other companies similarly have been working towards this goal. We have not designed in and will not place any artificial barriers in the paths of ISPs connecting their customers to our broadband networks, and would hope that other industry members would see problems with attempting to do so themselves. We certainly are prepared to address company-specific problems as they arise, and to work with the entire industry should systemic problems need addressing by the industry as a whole.

Question 2. Regardless of the number of ISPs that are eventually able to provide services on AOL Time Warner's broadband system, some have expressed concern that your combined company will have the ability to discriminate against competitors by manipulating the technology or format of the system. While all cable broadband providers may have this ability, the concern is particularly acute when the cable broadband provider is also an ISP, Internet content provider and/or traditional media content provider because of the numerous opportunities for preferential treatment in such a vertically integrated company.

For example, AOL Time Warner could seek to assign more favorable channel positions to its own content, the combined company might favor its own content with "front screen" positioning or better menu placement, or it could provide local caching of only their own content leading to superior response time and performance. Will you commit not to use technological or formatting control of the system in such a way as to burden your competitors? In other words, will you compete on the merits, and not use your ownership of the cable broadband system to give you an unfair advantage?

Answer. AOL Time Warner will absolutely compete based on the merits of its services and will not use its ownership of cable broadband platform as a means of obtaining an unfair advantage over competitors. We note that the amount of unaffiliated programming that Time Warner offers on its cable systems is far, far greater than the amount of vertically integrated programming and includes programming, such as the Showtime movie channel, that directly competes with Time Warner content (e.g., HBO). Time Warner's willingness to deal with competitors also is reflected by the fact that Time Warner programming is available to DBS providers and wired multichannel distribution systems that compete head-to-head with Time Warner cable systems. Time Warner's program networks buy programming content from a variety of sources and Warner Bros. sells programming to various broadcast networks. In short, Time Warner has allowed marketplace forces to dictate its business practices.

With respect to the Internet, marketplace forces will similarly ensure that AOL Time Warner non-discrimination prevails. For example, AOL Time Warner has made clear, consistent with the commitments embodied in the MOU, that consumers electing to obtain cable modem service on AOL Time Warner cable systems from competing ISPs will not be required to "click through" AOL's first screen. And even AOL broadband Internet customers can elect any other web page as their default first screen. AOL clearly understands the value of attracting subscribers to its front page. But with so many alternatives available to consumers. AOL has every incentive to make its front page consumer friendly, easy to use, and to highlight that content of greatest value to subscribers. Otherwise, consumers will simply go elsewhere. Thus, marketplace forces are fully adequate to protect consumers in this area.

On caching, AOL has always cached content on the basis of member activity alone. We have never engaged in discriminatory caching and never would. It would ruin our member experience. Competitive marketplace forces are the most effective safeguard against any discriminatory caching practices. In its recent order approving the AT&T/MediaOne merger, the FCC analyzed the caching issue as follows:

> [B]oth Excite@Home and Road Runner use "caching" technology, a technology that places certain content at regional distribution centers to allow faster access by their customers. Excite@Home and Road Runner cache (a) the content most often accessed by customers as determined by mathematical algorithms and (b) the content for which content providers have negotiated for preferred caching. *MediaOne Group, Inc.,* FCC 00–202 (June 6, 2000) at ¶112.

After full consideration, the FCC rejected concerns that the merged firm could use its control over caching technology "to discriminate against unaffiliated providers:"

> Given the nascent condition of the broadband industry and the foregoing promises of competition, we find it premature to conclude that the proposed merger poses a sufficient threat to competition and diversity in the provision of broadband Internet services, content, applications, or architecture to justify denial of the merger or the imposition of conditions to supplement the Justice Department's proposed consent decree.
>
> The evidence of growing competition from both alternative broadband providers and unaffiliated ISPs gaining access to cable and other broadband networks indicates that any action taken by the merged firm to disfavor unaffiliated broadband content and applications providers is likely to threaten the networks' ability to attract and retain customers. *Id*. at ¶123.

RESPONSES OF GERALD LEVIN TO QUESTIONS FROM SENATOR DEWINE

Question 1. Mr. Levin, the Cable Act of 1992 prohibits cable companies from selling data about subscribers' viewing habits, but it permits using the information for internal purposes. After the merger, Time Warner may legally be permitted to provide information about its cable subscribers to AOL, and alterntively, AOL might legally be able to transmit its information about 20 million subscribers to Time Warner.

Question (A). Given the consolidation that we are seeing, and the creation of huge companies that serve separate markets and have vast customer bases, does it make sense to distinguish between selling customer data to outside companies and sharing it between separate departments within the same company?

Questions (B). How will AOL Time Warner use information concerning the television viewing and Internet usage habits of its millions of customers? And specifically, how will you ensure that consumer rights are protected by your use of such information?

Answer (A). At both AOL and Time Warner we have long given our consumers the most robust notice we can about our data collection, use and disclosure policies and have provided them with choices when information is to be shared with people outside the company for marketing purposes. We believe this practice is an important one that recognizes the needs of consumers in the commercial marketplaces in which both companies operate. Regardless of this merger or others, we continue to believe that this is an important commitment to make to our customers and we will continue to do so.

Answer (B). Neither AOL nor Time Warner uses information about television viewing habits or Internet usage habits in a personally identifiable manner. Any use of such data is only on an aggregated basis to determine general usage habits of consumers as a whole. For example, while AOL's system may automatically collect online usage information, such information is only used or stored in a non-identifiable manner to help us determine the aggregate behavior of our members, including the most popular areas on our service and where we might make changes to better serve consumers. As a result, we believe that there is no risk to the privacy of any of our members today, nor will there ever be in the future.

RESPONSES OF AOL/TIME WARNER TO QUESTIONS FROM SENATOR KOHL

Question 1. We've heard that Cisco Systems makes "routers" than can speed up broadband to one web site and slow it down to another. There may be some valid uses for this—but this technology raises some troubling questions. It might be possible to use this technology to give quicker access to Time Warner web sites. For example, you could slow down traffic to the ESPN/Disney site while speeding it up to your own CNN/Sports Illustrated site. Do you plan to give preferential treatment to Internet sites owned by, or affiliated with, AOL Time Warner, Mr. Case and Mr. Levin?

Answer. No. We reiterated our commitment to non-discrimination in traffic management in our April 29th letter to Senators DeWine and Kohl and attach it here as our response.

Question 2. After this merger, your combined company will be a true media and telecom powerhouse, offering both an enormous range of content, from news and entertainment, cable television networks, movie production, book and magazine publishing, and also offering the means to deliver this content over the Internet as the largest ISP.

Mr. Case and Mr. Levin, won't your merger cause your competitors—both content providers and ISPs—to follow your example? That is, won't the major media and entertainment companies need to find an Internet partner, and the major Internet companies a content partner, in order to compete with AOL Time Warner? And won't independent producers of content be in a very disadvantageous situation if they are left outside of this system?

Answer. There will certainly be new alliances and other combinations among our competitors. But we disagree with the premise that independent producers of content will find themselves in a disadvantageous situation if they are not part of a larger entity. In fact, as is our history at AOL, we can serve as a great enabler of independent producers of good content. Today, a majority of the programming on Time Warner Cable system is provided by unaffiliated programmers. Similarly, Time Warner programming is available to DBS providers and wired multichannel distribution systems that competes head-to-head with Time Warner cable systems. Together AOL/Time Warner can offer content providers the combined audience of

AOL members and Time Warner subscribers. Independent producers of the best content should be excited about the prospect of reaching so many potential homes. We remain committed to providing our members with the best content, irrespective of who produces it.

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