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AOL TIME WARNER INC
Form S-8
March 31, 2003

Registration No. 333-

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

AOL TIME WARNER INC.
(Exact name of registrant as specified in charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

13-4099534
(I.R.S. Employer
Identification Number)

75 ROCKEFELLER PLAZA, NEW YORK, NEW YORK 10019
(Address of principal executive offices)

AOL Time Warner Inc. Deferred Compensation Plan
(Full Title of the Plan)

PAUL T. CAPPUCCIO
Executive Vice President, General Counsel and Secretary
AOL Time Warner Inc.
75 Rockefeller Plaza
New York, New York 10019
(212) 484-8000

(Name, address, including zip code, and telephone number, including area code,
of agent for service)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price (2)

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Deferred Compensation Obligations	\$300,000,000	100%	\$300,000,000
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- (1) The Deferred Compensation Obligations are unsecured obligations of AOL Time Warner Inc. to pay deferred compensation in the future in accordance with the terms of the AOL Time Warner Inc. Deferred Compensation Plan.
- (2) Estimated solely for purposes of determining the registration fee.

EXPLANATORY NOTE

AOL Time Warner Inc. (the "Registrant") hereby files this Registration Statement on Form S-8 relating to the Deferred Compensation Obligations of the Registrant pursuant to the AOL Time Warner Inc. Deferred Compensation Plan (the "Plan"). The contents of the Registration Statement on Form S-8 (Registration No. 333-53574) as filed with the Securities and Exchange Commission on January 11, 2001, as it relates to the Plan, are hereby incorporated by reference to the extent not replaced hereby.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I will be sent or given to employees as specified by Rule 428(b)(1). Such documents are not being filed with the Securities and Exchange Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Form, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act of 1933.

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PART II

INFORMATION REQUIRED IN
THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Securities and Exchange Commission by the Registrant (File No. 1-15062) pursuant to the Securities Exchange Act of 1934 (the "Exchange Act") or as otherwise indicated, are hereby incorporated by reference in this Registration Statement and shall be deemed to be a part hereof:

- (a) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2002 (filing date March 28, 2003).
- (b) The Registrant's Current Reports on Form 8-K dated:
 - o December 31, 2002 (filing date January 14, 2003)
 - o January 12, 2003 (filing date January 14, 2003)
 - o January 16, 2003 (filing date January 23, 2003)
- (c) Current Report on Form 8-K dated January 11, 2001 (filing date January 12, 2001) in which it is reported that the Common Stock of the Registrant is deemed registered pursuant to Rule 12g-3(c) under the Exchange Act.

All documents subsequently filed by the Registrant or pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed

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to be incorporated herein by reference and shall be deemed a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein and to be a part hereof shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

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Item 4. Description of Securities.

Under the Plan, the Registrant will provide eligible employees the opportunity to defer a specified percentage or amount of their cash compensation. The obligations of the Registrant under the Plan (the "Obligations") will be unsecured general obligations of the Registrant to pay the deferred compensation in the future in accordance with the terms of the Plan, and will rank on a parity with other unsecured and unsubordinated indebtedness of the Registrant from time to time outstanding. However, because the Registrant is a holding company, the right of the Registrant, and hence the right of creditors of the Registrant (including participants in the Plan), to participate in any distribution of the assets of any subsidiary upon its liquidation or reorganization or otherwise is necessarily subject to the prior claims of creditors of the subsidiary, except to the extent that claims of the Registrant itself as a creditor of the subsidiary may be recognized. Accordingly, participants in the Plan may be deemed to be effectively subordinated to such claims. In addition, dividends, loans and advances from certain subsidiaries to the Registrant are restricted by certain agreements.

The amount of compensation to be deferred by each participating employee (each a "Participant") will be determined in accordance with the Plan based on elections by each Participant. Each Obligation will be payable on the date selected by each Participant in accordance with the terms of the Plan or, if

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earlier, death, disability or other termination of employment pursuant to the terms of the Plan. The Obligations will be indexed to one or more investment crediting rate options (the "Crediting Rate Options") individually chosen by each Participant from a list of investment fund options. Each Participant's Obligation will be adjusted to reflect the investment experience, whether positive or negative, of the selected Crediting Rate Options, including any appreciation or depreciation. The Obligations will be denominated and be payable in United States dollars.

A Participant's right or the right of any other person to the Obligations cannot be assigned, alienated, sold, garnished, transferred, pledged, or encumbered except by a written designation of a beneficiary under the Plan, by written will, or by the laws of descent and distribution.

The Obligations are not subject to redemption, in whole or in part, prior to the individual payment dates specified by each Participant, at the option of the Registrant or through operation of a mandatory or optional sinking fund or analogous provision. However, the Registrant reserves the right to amend or terminate the Plan at any time, except that no such amendment or termination shall adversely affect the right of the Participant to the balance of his or her deferred account as of the date of such amendment or termination.

The Obligations are not convertible into another security of the Registrant. The Obligations will not have the benefit of a negative pledge or any other affirmative or negative covenant on the part of the Registrant. No trustee has been appointed having the authority to take action with respect to the Obligations and each Participant will be responsible for acting independently with respect to, among other things, the giving of notices, responding to any requests for consents, waivers or amendments pertaining to the Obligations, enforcing covenants and taking action upon default.

Item 5. Interests of Named Experts and Counsel.

Not applicable

Item 6. Indemnification of Directors and Officers.

Section 145(a) of the General Corporation Law of the State of Delaware ("Delaware Corporation Law") provides, in general, that a corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, because the person is or was a director or officer of the corporation. Such indemnity may be against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such

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action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and if, with respect to any criminal action or proceeding, the person did not have reasonable cause to believe the person's conduct was unlawful.

Section 145(b) of the Delaware Corporation Law provides, in general, that a corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed

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action or suit by or in the right of the corporation to procure a judgment in its favor because the person is or was a director or officer of the corporation, against any expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to be indemnified for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145(g) of the Delaware Corporation Law provides, in general, that a corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation against any liability asserted against the person in any such capacity, or arising out of the person's status as such, whether or not the corporation would have the power to indemnify the person against such liability under the provisions of the law.

Article VI of the Registrant's By-laws requires indemnification to the fullest extent permitted under Delaware law of any person who is or was a director or officer of the Registrant who is or was involved or threatened to be made so involved in any proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was serving as a director, officer, employee or agent of the Registrant or was serving at the request of the Registrant as a director, officer, employee or agent of any other enterprise.

The foregoing statements are subject to the detailed provisions of Section 145 of the Delaware Corporation Law and Article VI of the By-laws of the Registrant.

The Registrant's Directors' and Officers' Liability and Reimbursement Insurance Policy is designed to reimburse the Registrant for any payments made by it pursuant to the foregoing indemnification.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

The exhibits listed on the accompanying Exhibit Index are filed or incorporated by reference as part of this Registration Statement.

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Item 9. Undertakings

(a) The Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement;

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high and of the estimated maximum offering range may be reflected in the form of a prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if this Registration Statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and

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the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

- (c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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EXHIBIT INDEX

Exhibit Number -----	Description of Exhibit -----	
4.1	Restated Certificate of Incorporation of the Registrant as filed with the Secretary of State of the State of Delaware on January 11, 2001 (which is incorporated herein by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K dated January 11, 2001 (the "January 2001 Form 8-K")).	*
4.2	Certificate of the Voting Powers, Designations, Preferences and Relative, Participating, Optional or Other Special Rights, and Qualifications, Limitations or Restrictions Thereof, of Series LMC Common Stock of the Registrant as filed with the Secretary of State of the State of Delaware on January 11, 2001 (which is incorporated herein by reference to Exhibit 3.2 to the Registrant's January 2001 Form 8-K).	*
4.3	Certificate of the Voting Powers, Designations, Preferences and Relative, Participating, Optional or Other Special Rights, and Qualifications, Limitations, or Restrictions Thereof, of Series LMCN-V Common Stock of the Registrant as filed with the Secretary of State of the State of Delaware on January 11, 2001 (which is incorporated herein by reference to Exhibit 3.3 to the Registrant's January 2001 Form 8-K).	*
4.4	By-laws of the Registrant as of July 18, 2002 (which are	*

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incorporated herein by reference to Exhibit 3 of the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002, as amended (the "June 2002 Form 10-Q")).

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|------|--|---|
| 4.5 | AOL Time Warner Inc. Deferred Compensation Plan, as amended and restated as of August 1, 2001 (the "Deferred Compensation Plan") (incorporated herein by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001). | * |
| 4.6 | Amendment No. 1 to the Deferred Compensation Plan, effective October 15, 2001 (incorporated herein by reference to Exhibit 10.14 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2001, as amended). | * |
| 4.7 | Amendment No. 2 to the Deferred Compensation Plan, effective August 9, 2002 (incorporated herein by reference to Exhibit 10.1 to the Registrant's June 2002 Form 10-Q). | * |
| 5 | Opinion of Brenda C. Karickhoff, Vice President of the Registrant. | |
| 23.1 | Consent of Ernst & Young LLP, Independent Auditors. | |
| 23.2 | Consent of Brenda C. Karickhoff, Vice President of the Registrant (included in Opinion filed as Exhibit 5). | * |
| 24.1 | Powers of Attorney | |

* incorporated by reference

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Registration Statement on Form S-8 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on March 28, 2003.

AOL TIME WARNER INC.

By: /s/ Wayne H. Pace

Name: Wayne H. Pace

Title: Executive Vice President and

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Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons on March 28, 2003 in the capacities indicated.

	Signature -----	Title -----
(i)	Principal Executive Officer * ----- Richard D. Parsons	Director and Chief Executive Officer
(ii)	Principal Financial Officer /s/ Wayne H. Pace ----- Wayne H. Pace	Executive Vice President and Chief Financial Officer
(iii)	Principal Accounting Officer /s/ James W. Barge ----- James W. Barge	Senior Vice President and Controller
(iv)	Directors: * ----- Daniel F. Akerson * ----- James L. Barksdale * ----- Stephen F. Bollenbach * ----- Stephen M. Case	

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(iv) Directors - continued:

*

Frank J. Caufield

*

Miles R. Gilburne

*

Carla A. Hills

*

Reuben Mark

*

Michael A. Miles

*

Kenneth J. Novack

*

Franklin D. Raines

*

R.E. Turner

*

Francis T. Vincent Jr.

By: /s/ Wayne H. Pace

Name: Wayne H. Pace
Attorney-In-Fact

* Pursuant to Powers of Attorney dated
as of March 28, 2003.

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