

January 9, 2001



Magalie Roman-Salas  
Secretary, Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: CS Docket No. 00-30  
AOL-Time Warner Merger**

**CS Docket No. 99-251  
AT&T/MediaOne Merger**

**Notice of Oral *Ex Parte* Presentation**

Dear Ms. Roman-Salas:

Pursuant to Section 1.1206(b) of the Commission's rules, this letter provides notice of a January 8, 2001 oral *ex parte* presentation by Andrew Jay Schwartzman of Media Access Project and Gene Kimmelman of Consumers Union in a telephone conference call with Chief of Staff Kathryn Brown.

Mr. Schwartzman reiterated the priority his clients placed on assuring that any order granting the AOL/ Time Warner applications should be conditioned on assurances that local and regional ISP's be afforded access. Mr. Kimmelman stated that precatory language was of little value, and provided little more than what was already available under the FTC's consent decree. He emphasized that this area was the major deficiency of the FTC action, inasmuch as it does not assure diversity. Mr. Schwartzman reiterated his view that this directive would be straightforward and enforceable by private parties.

Mr. Schwartzman also endorsed interoperability for instant messaging services. He stated that a mere requirement that a second, unaffiliated IM service be available on any cable internet system was of limited utility. He expressed the view that providing more services was important, and that the standard for waiving those obligations should be high, consistent with ordinary principles of administrative law. He expressed the view that ultimately, competition in instant messaging would become more robust, in contrast to "open access," which might never develop absent FCC action.

Respectfully submitted,

Andrew Jay Schwartzman  
Counsel for CU, *et al.*

cc. Kathryn Brown