

June 26, 2000

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



**Re: CS Docket No. 00-30**  
**Notice of *Ex Parte* Presentation**

**AOL-Time Warner Merger**

Dear Ms. Roman-Salas:

Pursuant to Section 1.1206(b)(2) of the Commission's rules, this letter memorializes a meeting held on June 23, 2000, between Harold Feld, Associate Director, Media Access Project (MAP), Jeffrey Chester, Executive Director, Center for Media Education, and Carl E. Kandutsch, Attorney, Cable Services Bureau (CSB).

Mr. Feld and Mr. Chester discussed the significance of the Ninth Circuit ruling in *AT&T v. City of Portland*. They expressed the opinion that under this decision ISPs clearly have the right to pursue Section 251 interconnection requests, but that this is certain to be the subject of needless and time consuming litigation unless the Commission imposes open access as a condition of the merger. Such action would accelerate deployment of advanced services. Mr. Feld gave Mr. Kandutsch a diagram depicting the concentration of market power which the combined AOL-Time Warner company would hold (The chart, which is attached to this electronically filed notice as a Power Point file, essentially replicates the April 26, 2000 *Petition to Deny* that CU, *et al.* have filed in this docket).

Mr. Feld and Mr. Chester reiterated their concerns regarding concentration of market power and potential for discrimination of content as articulated in the *Petition to Deny*. The meeting participants also discussed whether mandated interoperability of set-top boxes and electronic program guides, over and above those contained in the Commission's rules, would be necessary. Mr. Feld and Mr. Chester urged Mr. Kandutsch to request additional information on what proprietary protocols may allow discrimination of content through the set-top box, through electronic program guides, or any other point in the network. Mr. Feld and Mr. Chester noted that DTV signals or other information retransmitted as part of broadcast signals might potentially allow others to compete with AOLTV's interactive features even without must carry or open access requirements. Mr. Feld and Mr. Chester also suggested that the Commission should consider what metrics to use to determine if content discrimination is taking place.

Sincerely,

Harold Feld  
Associate Director

cc: Carl Kandutsch  
Attachment