

December 22, 2000



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 December 21, 2000 oral *ex parte* presentation to Commissioner Powell and his Legal Assistant Kyle Pope by Andrew Jay Schwartzman of Media Access Project and Gene Kimmelman of Consumers Union.

Messrs. Kimmelman and Schwartzman reviewed issues surrounding AT&T's December 19, 2000 "clarification" of its December 15, 2000 letter purporting to elect a spin-off of Liberty Media to comply with the June, 2000 AT&T/MediaOne decision. They presented Consumers Union's December 20, 2000 response, and argued that the law on the matter is clear. In this instance, the issue is merely one of enforcement: will the FCC enforce its orders, or will the Commission allow gamesmanship and delay under the guise of legal argumentation. Mr. Schwartzman explained that failure to enforce the order invited subsequent requests for delay, interposition of new petitions, etc. which could drag out the matter for months and invite others to follow the same course.

Commissioner Powell raised questions surrounding the impact of treating the election as one of TWE. After a brief discussion of the merits of the options available to AT&T as of June, 2000, Messrs. Schwartzman and Kimmelman stressed that they supported the notion of FCC supervision to insure that neither party uses the negotiation process to extract anticompetitive advantages in the programming or Internet services markets. They stated that the Commission could direct a divestiture of AT&T's TWE assets, employing its jurisdiction under the June, 2000 Order, its review of the pending reconsideration of that order, or by using the opportunity presented by the pending AOL/Time Warner transaction.

After Messrs. Kimmelman and Schwartzman pointed out that addressing the TWE ownership issue in the AT&T/MediaOne docket facilitated completion of the AOL/Time Warner proceeding, Commissioner Powell described his understanding of the FTC's consent decree. Messrs. Schwartzman and Kimmelman addressed the limits of the FTC's authority and expertise, and the appropriateness of the FCC employing its expertise to issues involving telecommunications policy. Mr. Kim-

melman spoke to the instant messaging question in the case, observing that the limits of the FCC's merger jurisdiction suggested that this question can best be handled over the long term by a rulemaking. There was a similar discussion about open access; Mr. Schwartzman pointed out that the problem was exacerbated by the fact that the FCC has opened an inquiry, rather than a rulemaking, on the open access issue.

Respectfully submitted,

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

cc. Commissioner Powell
Kyle Pope