

April 25, 2000

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



**Re: Notice of *Ex Parte* Presentation**  
**CS Docket No. 99-251**  
***Merger Application of AT&T & MediaOne***

Dear Ms. Salas:

In accordance with Section 1.1206(b)(2) of the Commission's rules, this letter memorializes a meeting pertaining to Docket 99-251 on April 24, 2000, between Andrew Jay Schwartzman of Media Access Project (MAP) and Gene Kimmelman of Consumers Union (CU) and Kathryn Brown, Chief of Staff. Chairman William E. Kennard joined the meeting in progress.

At the meeting, MAP and CU representatives addressed the following issues:

1. MAP and CU complained about misuse of the "permit but disclose" rules in the context of this proceeding. In particular, they noted that AT&T and MediaOne have filed numerous notices of oral *ex parte* communications which lack the requisite disclosure as to the substance discussed at those meetings but instead merely consist of one or two sentence references to the topic of the discussion without reference to the details discussed. As an example, they pointed out that several recent *ex parte* meetings indicated that provisions of the Time Warner Entertainment Co., LP (TWE) partnership were discussed, but that there was no basis to understand which aspects of that agreement were under discussion, and why. MAP representatives stated that the April 18, 2000 *ex parte* submission of AT&T and MediaOne offering new conditions to insulate MediaOne's TWE interests do not even begin to address concentration concerns posed by the merger.
2. The MAP and CU representatives stated that the April 18, 2000 *ex parte* submission of AT&T and MediaOne offering new conditions to insulate MediaOne's TWE interests does not even begin to address concentration concerns posed by the merger. The proposed conditions are unenforceable, in that it is utterly unrealistic to preclude the relevant parties from collaboration, or to know when such communications take place. The proposals arguably violate the First Amendment. Moreover, the precedent thereby established would result in perhaps scores of similar requests, particularly from broadcasters.
3. MAP and CU urged the Commission to require the divestiture of MediaOne's ownership interest in TWE. This would not only be the appropriate policy, but it would also vindicate the Commission's enforcement of the 1992 Cable Act. MAP and CU have challenged the "insula-

tion" options which were made available in the Commission's October, 1999 decision, but since AT&T and MediaOne have spurned the opportunity to avail themselves of that route, divestiture is appropriate from the Commission's perspective as well.

4. MAP and CU urged the Commission to deny AT&T's requested waiver. The Commission has yet again assured the Court of Appeals that the six month stay period provided in the Commission's rules is sufficient to assure compliance, and there is no reason why the Commission should create a new violation and then require an even longer period to remediate it. Moreover, there is reason to believe that AT&T would attain compliance not by divesting groups of cable systems, but by selling off the TWE interest. This can be done quickly, and any Commission waiver would simply transfer negotiation leverage to AT&T at the expense of Time Warner, thereby interfering with an arms-length relationship among private parties. Support for this concern is found in a passage from the TWE's March 30, 2000 SEC Form 10K. The passage refers to a provision of the TWE partnership agreement. A copy is attached hereto. The publicly filed *ex parte* notices in this docket provide no basis for knowing what AT&T and MediaOne may have said about this provision to FCC staff and members, but if there is an intent to employ this provision during the period of any such waiver the Commission may give to AT&T, no such intent has been stated in any formal or informal written submission to the FCC.

Sincerely,

Andrew Jay Schwartzman  
President/CEO

cc. Chairman Kennard  
Kathryn Brown

**Excerpt from Time Warner Entertainment Co., LP  
1999 Form 10K  
Filed 3/30/00**

**REGISTRATION RIGHTS**

Within 60 days after June 30, 1999, and within 60 days after the last day of each 18 month period after June 30, 1999, the Class A Partners holding, individually or in the aggregate, at least 10% of the residual equity of TWE will have the right to request that TWE reconstitute itself as a corporation and register for sale in a public offering an amount of partnership interests held by such Class A Partners determined by an investment banking firm so as to maximize trading liquidity and minimize the initial public offering discount, if any. Upon any such request, the parties will cause an investment banker to determine the price at which the interests sought to be registered could be sold in a public offering (the 'Appraised Value'). Upon determination of the Appraised Value, TWE may elect either to register such interests or purchase such interests at the Appraised Value, subject to certain adjustments. If TWE elects to register the interests and the proposed public offering price (as determined immediately prior to the time the public offering is to be declared effective) is less than 92.5% of the Appraised Value, TWE will have a second option to purchase such interests immediately prior to the time such public offering would otherwise have been declared effective by the Securities and Exchange Commission at the proposed public offering price less underwriting fees and discounts. If TWE exercises its purchase option, it will be required to pay the fees and expenses of the underwriters. Upon exercise of either purchase option, TWE may also elect to purchase the entire partnership interests of the Class A Partners requesting registration at the relevant price, subject to certain adjustments.

In addition to the foregoing, MediaOne will have the right to exercise an additional demand registration right (in which the other Class A Partners would be entitled to participate) beginning 18 months following the date on which TWE reconstitutes itself as a corporation and registers the sale of securities pursuant to a previously exercised demand registration right.

At the request of any Time Warner General Partner, TWE will effect a public offering of the partnership interests of the Time Warner General Partners or reconstitute TWE as a corporation and register the shares held by the Time Warner General Partners. In any such case, the Class A Partners will have standard 'piggy-back' registration rights.

Upon any reconstitution of TWE into a corporation, each partner will acquire preferred and common equity in the corporation corresponding in both relative value, rate of return and priority to the partnership interests it held prior to such reconstitution, subject to certain adjustments to compensate the partners for the effects of converting their partnership interests into capital stock.