

May 4, 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**

AT&T/MediaOne Acquisition

Dear Ms. Roman-Salas:

Attached is a notice of an *ex parte* presentation in the above captioned proceeding. I made numerous attempts to file this notice via electronic transmission late on May 3, and into the early morning of May 4, but the ECFS system was down. Please accept this notice as timely filed.

Feel free to contact me if you have any questions about this matter. Thank you.

Sincerely,

Andrew Jay Schwartzman

May 3, 2000

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



RE: **Notice of Ex Parte Presentation**
CS Docket 99-251

AT&T/Media One Acquisition

Dear Ms. Roman-Salas:

This letter memorializes a May 2, 2000 meeting relating to CS Docket 99-251. Gene Kimmelman of Consumers Union ("CU") and Andrew Jay Schwartzman of Media Access Project met with Commissioner Susan Ness and David Goodfriend, her legal assistant.

Mr. Kimmelman pointed out that CU has challenged the FCC's decision to stay enforcement of the horizontal ownership rules until six months after a judicial decision upholds them, and that CU's co-petitioners have appealed the Commission's October 1999 rule revisions upholding the ownership provisions of the 1992 Cable Act. He then set forth his position as to why the FCC should in no event afford no more than 6 months for the newly combined company to comply with FCC ownership rules. This would permit the long-delayed implementation of the 1992 Cable Act to go forward. It would also advance the Commission's announced desire to accelerate telephony deployment on cable systems, since it would require AT&T to cooperate with Time Warner incidental to the orderly disposition of MediaOne's interest in Time Warner Entertainment Co. ("TWE") Additional time, even six more months, are unnecessary to an orderly divestiture of MediaOne's interest in TWE. Such a waiver would enable AT&T to avail itself of options which were less likely to result in advancing the public's interest in reducing monopoly power in the cable industry and accelerating telephone and broadband deployment. He discussed reports that AT&T sought additional time so that it would have the alternative of "spinning off" Liberty Media in a tax free transaction, and observed that such an outcome would not address the danger of AT&T and Time Warner having common ownership in any form of Time Warner Entertainment. He stressed the unenforceability of any of the behavioral safeguards which would have to accompany a Liberty Media "spin off."

Mr. Schwartzman stated that Consumers Union and its co-petitioners ("CU, *et. al*") would likely seek judicial review of a waiver of more than six months' duration. He pointed out that any such would be difficult to reconcile with briefs the Commission has filed with the United States Court of Appeals in which it repeated assured the Court that its six month stay of enforcement of the horizontal ownership rules provided ample time to obtain compliance.

Mr. Schwartzman expressed frustration because it is impossible to respond to other justifications AT&T seems to have advanced in support of its waiver requests in numerous private meetings with Commissioners and staff. He referred to his repeated objections to the misuse of the Commission's "permit but disclose" procedures for adjudicatory cases such as this one, and advised Commis-

sioner Ness that CU, *et. al* was about to file a request for a ruling on this issue. Rumors and press reports indicate that, notwithstanding the absence of anything on the written record, AT&T appears in some way to have justified its waiver request on the fact that tax treatment of a Liberty Media “spin off” would change if the transaction occurred in the second quarter of 2001. He also pointed to the disclosure in Time Warner’s 1999 SEC Form 10-K, and stated that other rumors hold that AT&T has discussed this provision with members of the FCC and staff as well. He provided a copy of what appears to be the relevant passage to Commissioner Ness. (This material is attached to this letter as well.).

Mr. Schwartzman and Mr. Kimmelman speculated on what they imagined AT&T might be arguing, and contended that any waiver granted to permit the employment of these tactics was inappropriate interference in the market on behalf of a particular party. A six month waiver avoids these problems.

Mr. Schwartzman and Mr. Kimmelman thereafter continued the discussion with Mr. Goodfriend. They argued that the Commission has no record basis to grant a waiver upon any reasoning other than that which is on the record, *i.e.*, in AT&T, December, 1999 waiver request and the written notices of *ex parte* presentations AT&T has filed. They noted that the benefits AT&T claims to derive from a waiver are obtainable without having ownership of MediaOne.

Sincerely,

Andrew Jay Schwartzman

cc. Commissioner Ness
David Goodfriend

**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.