

May 8, 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 May 7, 2000 telephone conversation pertaining to Docket 99-251 between Andrew Jay Schwartzman of Media Access Project (MAP) and Kathryn Brown, Chief of Staff .

During this conversation, Mr. Schwartzman reiterated to Ms. Brown the substance of what he had stated in his May 5, 2000 telephone conversation with General Counsel Christopher Wright. A copy of the May 5, 2000 notice of *ex parte* presentation describing that conversation is attached to this letter.

Sincerely,

Andrew Jay Schwartzman
President/CEO

cc. Kathryn Brown

May 5, 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 5, 2000 telephone conversation relating to CS Docket 99-251 between Andrew Jay Schwartzman of Media Access Project and General Counsel Christopher Wright.

Mr. Schwartzman stated that the purpose of his call was to explain the relationship of the declaratory ruling which Consumers Union, *et. al.* (CU, *et. al.*) have requested of him and the pending AT&T/MediaOne merger application. Mr. Schwartzman referred to repeated complaints that CU, *et. al.* have interposed with respect to the abuse of "permit but disclose" procedures in this adjudicatory proceeding. He stated that his clients that AT&T has presented its case in scores of *ex parte* meetings, many of which have not been properly documents. CU *et al.* seek confirmation that material presented in such meetings may not be relied upon in reaching any FCC decision.

Mr. Schwartzman urged Mr. Wright to consult with the Commission and advise them of the litigation risk the Commission faces if it were to give A&T a waiver in excess of six months' duration. The Commission is on record, through briefs Mr. Wright has filed in the Court of Appeals, that six months is sufficient time to attain compliance with the Commission's horizontal ownership rules. AT&T has not made a record to justify a longer waiver, except insofar as it may have made such arguments in *ex parte* presentations, the content of which are unknown to the public. CU *et al.* are unable to address those claims because they do not know what may have been said.

Mr. Wright inquired as to why CU *et al.* perceived there to be an important difference between six months and twelve months. Mr. Schwartzman said that adhering to the 1992 Cable Act was a very powerful reason. He said that it is not possible to be certain as to why AT&T sought an 18-month waiver; there is not a word in the public record indicating that

AT&T has ever indicated that it also supports a 12-month waiver. In any event, based on inferences stemming from *ex parte* notices making reference to unspecified provisions of the TWE partnership agreement to which MediaOne is a party, it seems that AT&T may wish to avail itself of a right to force an IPO of the MediaOne interest, and this would take longer than six months to invoke. There are rumors, unsubstantiated by anything in the public record, that AT&T has discussed the tax consequences of delaying a Liberty Media spinoff until after March, 2001. Mr. Schwartzman said that these circumstances were exemplar of the legal dilemma the Commission faces were it to grant a waiver of more than six months.

Because Mr. Wright was unfamiliar with the provisions of the TWE partnership agreement referred to in the conversation, a passage from Time Warner's SEC 10K form describing it is being attached to this notice.

Sincerely,

Andrew Jay Schwartzman

cc. Christopher Wright

**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.