

March 14, 2001

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



**Re: Notice of *Ex Parte* presentation in  
CS Docket No. 99-251**

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(2) of the Commission's rules, this letter memorializes a meeting held on March 13, 2001, between Andrew Jay Schwartzman, President, Cheryl A. Leanza, Deputy Director, Harold Feld, Associate Director, Media Access Project (MAP), Gene Kimmelman, Co-Director, and Chris Murray of Consumers Union (CU), and Jane Mago, Acting General Counsel, and Jim Carr, and Erez Kalir of the Office of General Counsel.

CU and MAP representatives inquired as to the status of the AT&T/MediaOne *Order*. FCC staff stated that they had one *ex parte* oral conversation with AT&T representatives informally requesting that the Commission suspend the deadlines given in the Commission's *Order*. Ms. Mago stated that she intended to examine the impact of the D.C. Circuit's opinion in *Time Warner v. FCC* issued on March 2, and make recommendations to the Chairman and Commissioners based on her conclusions. She agreed that, absent Commission action, the deadlines given in the Commission's June 2000 *Order* remain in force.

CU and MAP representatives urged several reasons why the D.C. Circuit's decision should not impact the AT&T *Order*: 1) by contrast to the rule in question in *Time Warner*, the Commission made explicit findings of fact regarding collusion in the *Merger Order*; 2) the Commission's authority for the divestiture rested not on §613(f), but on the broader public interest standard of §310; 3) AT&T did not appeal either the initial divestiture *Order*, or the Commission's subsequent *Order* determining that AT&T had elected to divest TWE; 4) the ordering paragraphs did not reference the rule overturned by the Court, but simply ordered divestiture in accordance with the *Order*; and 5) even using the analysis set forth by the Court, AT&T would violate the level the Court deemed "safe" absent an appropriate record by the FCC.

After the meeting with Ms. Mago, Mr. Carr, and Mr. Kalir, representatives from MAP and CU encountered Commissioner Tristani and repeated the arguments made to Ms. Mago to Commissioner Tristani.

Sincerely,

Harold Feld  
Associate Director

cc: Commissioner Tristani  
Jane Mago  
Jim Carr

Erez Kalir