

October 25, 2002



Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554

Re: *Ex parte* presentation in: Docket No. MB 02-70

Dear Ms. Dortch:

On Thursday, October 24, Jim Bird (OGC) and Michelle Ellison (OGC) spoke by telephone with Harold Feld and Andrew Jay Schwartzman of Media Access Project, Counsel for CFA, *et al.*

Mr. Schwartzman stated that he and Mr. Feld had visited the Commissioners and summarized the meetings that took place (see *ex parte* filings of October 23 and October 24). Mr. Schwartzman also stated that these meetings indicated that there were grounds for concern that Commission staff had viewed the HSIA but had not entered it into the record, despite relying upon this review to determine if the HSIA were material.

Mr. Bird and Ms. Ellison stated that Applicants had visited OGC and cited a line of cases that the Commission had discretion to consider what was material. The lead case referred to was "Bellsouth," in which the Commission declined to review the Hart-Scott-Rodino documents collected by DoJ in the course of the ATT-McCaw merger.

Mr. Feld replied that it was difficult to reply without seeing the *ex parte* Notice filed by Applicants. Based on the description, however, it seemed that these cases were easily distinguishable. Petitioners here had not asked the Commission to review thousands of documents and embark on a "fishing expedition." Rather, Petitioners here had provided reasons pertaining to the relevance of a single document. The facts were therefore far closer to *David Oritz Radio Corporation* and other cases cited by Petitioners in their motion, wherein parties have provided evidence of a relevant material fact which, if brought into the record, could effect the analysis of the license transfer and without which the Commission cannot fulfill its responsibilities under the Act.

Mr. Feld promised to provide a more detailed response when the Applicant's *ex parte* was available.

Finally, Mr. Feld observed that in both the ATT-TCI merger, and the ATT-Media One merger, the FCC had placed great significance on the parties' promise not to interfere with any content subscribers may wish to access. See 15 FCC Rcd 9816, 9871-73 (2000); 14 FCC Rcd 3160 at 3206-07 (1999).

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office today.

Respectfully submitted,

Harold Feld
Associate Director