

October 30, 2002



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

Re: Docket No. 02-70

Dear Ms. Dortch:

This letter responds to the Applicants' October 30, 2002, Response ("*Response*") addressing the October 28, 2002 *Memorandum* submitted by MAP on behalf of the citizen petitioners in this case.

The *Response* adds no new arguments, and is notable principally for its injection of an intemperate and shrill tone to what has thus far been a debate on principle. Only one sentence in the nine pages of verbiage merits any further response.

The Applicants raised one new factual assertion. Their *Response* states:

Multiple ISP access over cable has only recently become a commercial reality and there are no conceivable metrics against which the Commission could, in this proceeding, determine "right" or "wrong" prices or other terms.

Response at 7-8.

This is wrong. There is, indeed, a significant body of negotiated agreements for multiple ISP access over cable. For nearly two years, AOL Time Warner has negotiated numerous agreements of precisely this nature pursuant to the FTC Consent Decree, which required that AOL TW conduct such negotiations in "good faith." Such material is, presumably, readily available for Commission inspection as appropriate.

The Commission also has the power to compel AT&T to submit its own, previously negotiated agreements with other ISPs. This latter step would appear particularly productive, since it would provide a benchmark for AT&T pre-Comcast against which the power of the combined AT&T-Comcast could be measured. While such a measurement would not be conclusive (AT&T had significant market power *vis-a-vis* smaller ISPs even before the AT&T-Comcast exacerbated the situation), it would be informative.

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