



December 17, 2004

VIA ELECTRONIC FILING

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Jonah Seiger

RE: Notice of Oral *Ex Parte* Communication
MB Docket 02-277
MB Docket 01-317
MB Docket 01-235
MB Docket 96-197
MB Docket 00-244

Dear Ms. Dortch:

In compliance with 47 CFR §1.1206(b), this letter gives notice of the undersigned's oral *ex parte* presentation on December 16, 2004 to Chairman Powell with respect to the above-cited dockets.

During the course of discussion about other matters, the subject of whether the Commission should seek *certiorari* of the U.S. Court of Appeal's *Prometheus* decision came up. I observed that the Commission put at risk a number of important victories, including obtaining a precedent which essentially adopted the position the Commission had originally taken in the D.C. Circuit's *Fox* case. I also pointed out that the likelihood of *certiorari* being granted was remote, and that even if the Supreme Court did agree to take the case, it was by no means certain that the Court would reverse the Third Circuit. I said this would take a considerable amount of time, during which period the broadcast industry's ability to conduct transactions would remain frozen, and that it would be better for the economy to proceed with executing the Third Circuit's directives. I told the Chairman that I thought a remand proceeding would be shorter and far less difficult than the original rulemaking. I also told him that other pending cases would offer "cleaner" cases which would inevitably allow testing of the legal and policy issues that various of the parties are likely to pursue by seeking *certiorari* in the *Prometheus* case.

Sincerely,

/s/

Andrew Jay Schwartzman
Counsel to Public Interest Petitioners

cc. Michael K. Powell