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

February 23, 2006

Re: *Notice of Ex Parte Presentation in MB Docket No. 05-192*

Dear Ms. Dortch:

On February 21, 2006, Harold Feld, Senior Vice President, Media Access Project, and Dr. Gregory Rose, MAP's consulting economist, met with Leslie Marx, FCC Chief Economist, Tracy Waldron, Chief Economist of the Media Bureau, and Julie B. Salovaara, Legal Counsel, Industry Analysis Division, Media Bureau, in the above captioned matter. In accordance with the *Second Protective Order*, all portions containing information subject to the *Second Protective Order* have been redacted.

Dr. Rose read the statement in Attachment A. Mr. Feld made the statements contained in Attachment B. In addition, Mr. Feld provided a copy of the Media Access White Paper, "The 'Switching Equation' and Its Impact On the Video Programming Market," filed with the Commission on February 13, 2006.

In a subsequent email in response to a question by staff regarding source material, Mr. Feld explained that the most comprehensive theoretical paper for the geometric impact of switching costs and network externalities on the ability of consumers to switch is Joseph Farrell & Paul Klemperer, "Coordination and Lock In: Competition With Switching Costs and Network Effects," (December 2004). Available at http://elsa.berkeley.edu/%7Efarrell/index.shtml. As explained by Farrell & Klemperer, while switching costs and network effects do not preclude competition, they allow an unregulated dominant actor to impose costs for switching and depress the ability of competitors to compete effectively. This "lock in" effect extends to additional markets, and becomes more powerful with each new related market in which a customer chooses the dominant firm, providing additional incentive for the dominant firm to maximize switching cost and depress competition so as to retain market share. Accordingly, absent pro-competitive regulation, it is far more likely that the incumbent will seek to maximize incompatibility with rival products and maximize switching costs.

For the same reason, the January 17, 2006 response of Applicants to Free Press, *et al.* with regard to control over PVRs and consumer electronic devices generally does nothing to address the core issues raised by Free Press. Certainly open standard processes exist. What it is at issue here is a physical reality that Comcast and Time Warner will emerge post-transaction as the dominant industry actors with control of key markets. As such, they will have the *de facto* power to dictate standards and practices to the industry. Further, as supported by the work of Farell and Klemperer and others, the Applicants will have both the ***power*** to set *de facto* standards and the ***incentive*** to do so, since creation of incompatibilities with competitors increases customer lock in.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206, and ¶8 of the *Second Protective Order*, this redacted letter is being filed with your office. An unredacted copy has been provided to the submitter of the confidential information (Comcast), filed by hand with your office, and a courtesy copy delivered to Julie Salovaara. If you have questions, please do not hesitate to contact me.

Respectfully Submitted,

Harold Feld
Senior Vice President

CC: (redacted copy only) Leslie Marx (OSP), Roy Stewart (MB), Michele Ellison (OGC), Sarah Whitesell (MB), Royce Sherlock (MB), Julie Salovaara (MB), Neil Delar (OGC), Jamila Bess Johnson (MB), Tracy Waldron (MB), Amy Byett (MB), Patrick Webre (MB), Marcia Glauberman (MB), Daniel Shiman (MB), Jim Bird (MB), Wayne T McKee (MB), Jonathan Levy (OSP) and Ann Bushmiller (OGC), Fred Campbell, Jordan Goldstien, Rudy Brioche, Aaron Goldberger