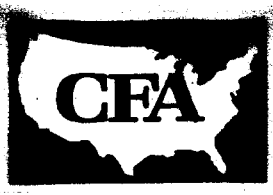

Consumer Federation of America

For immediate release
More Information: Dr. Mark N. Cooper at 301/384-2204 or markcooper@aol.com

Statement in reference to the Federal Communications Commission's July 27, 2000, *en banc* hearing in the matter of the application of America Online, Inc., and Time Warner, Inc., for transfer of control

The following statement is in reference to the Federal Communications Commission's July 27, 2000, *en banc* hearing in the matter of the application of America Online, Inc., and Time Warner, Inc., for transfer of control. It should be attributed to Dr. Mark N. Cooper, Director of Research of Consumer Federation of America.

> "Unless the FCC provides some guidance from the control tower, consumers are going to be stuck at the gate, forced to pay unnecessarily stiff premiums, and limited in their choices to reach the fast-flying Internet.
>
> "Absent sound FCC policy, the exclusive deals and proprietary barriers to competition that are being imposed on the broadband Internet industry will drive it further down an anti-competitive, anti-consumer path that falls somewhere between the cable TV and airline industry models. With most markets dominated by one or two firms that control the gateways of communications and commerce, it doesn't take a genius to figure out why these industries treat consumers so poorly.
>
> "Now is the time —during review of the proposed AOL/Time Warner merger— for the FCC to do what it must. First, it should follow the direction of the recent decision of the U.S. Court of Appeals for the Ninth Circuit and guarantee consumers open and non-discriminatory access to the high-speed Internet. Second, it should follow the lead of the Department of Justice and order AOL Time Warner to divest its interest in competing broadband distribution and programming interests."

Dr. Cooper's separate written statement, delivered on behalf of Consumer Federation of America, Consumers Union, Media Access Project, and Center for Media Education to the FCC on July 27, is available online at http://www.consumerfed.org/internetaccess/aoltw_fccstatement270700.pdf.

The full filing made with the FCC is available at
http://www.consumerfed.org/internetaccess/aoltwfiling270700.pdf.

The Consumer Federation of America (CFA) is a non-profit association of some 260 pro-consumer groups, with a combined membership of 50 million. It was founded in 1968 to advance the consumer interest through advocacy and education.

30

PREPARED STATEMENT OF DR. MARK N. COOPER

ON BEHALF OF
CONSUMER FEDERATION OF AMERICA,
CONSUMERS UNION, MEDIA ACCESS PROJECT, AND
THE CENTER FOR MEDIA EDUCATION

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
EN BANC HEARING IN THE MATTER OF APPLICATION OF AMERICA ONLINE, INC., AND TIME WARNER, INC., FOR TRANSFER OF CONTROL

July 27, 2000

Since we petitioned the Commission a few months ago to deny or substantially restructure the AOL/Time Warner merger, developments in market structure and patterns of corporate conduct in the cable TV and broadband Internet industries only reinforce the strength of our case. Unless the Commission takes decisive action, the broadband Internet industry will continue to move down an anti-competitive, anti-consumer path that lies somewhere between the cable TV model and the airline industry model.

The choke points on the broadband Internet have been identified: backbone, bit rates, and the boot screen. The sticky features that lock customers in to proprietary platforms have become clear: instant messaging, buddy lists, key words, e-mail addresses, and electronic programming information. The dominant firms continue to leverage these choke points, while they work out deals that would dampen competition, to the detriment of the consumer.

Consumers have enjoyed vigorous competition from hundreds of narrowband Internet service providers. As the Internet moves into a broadband medium, if the Commission fails to check the market power of the dominant firms, the competition consumers enjoy today will become but a faint memory. Independent firms will be winnowed to a precious few. Those who get access to consumers will be squeezed by a handful of dominant broadband platform providers and vertically integrated facility owners. Multichannel TV markets and broadband Internet markets will continue to look like airline markets: most will be dominated by one or two firms that control the gateways to the network, while niche competition provides at best a modicum of relief in some markets for some customers.

THE GROWING THREAT TO COMPETITION AND CONSUMER CHOICE

In its recent filing at the FCC, America Online (AOL) paints a rosy picture of competition that will flow from its proposed merger (Letter to Ms. Royce Dickens, July 17, 2000). We see a completely different landscape. The signs of actual and potential anticompetitive problems are clear in the emerging market structure, as described by the Department of Justice, and in the continuing refusal of dominant firms to provide access to networks or support communications between customers, as documented in regulatory and legal proceedings.

The Department of Justice (*U.S. Department of Justice v. AT&T Corp. and MediaOne Group, Inc.*, Amended Complaint, May 26, 2000) has determined that the broadband Internet market is a separate and distinct market from the narrowband Internet market. Once this obvious economic fact is accepted, the severe concentration in the broadband market – resulting in a high degree of market power – and the blatantly anti-competitive effect of the

exclusionary tactics of the dominant broadband firms become apparent. The Department of Justice determined:

> *AT&T's ability to affect the success of individual content providers also could be used to confer market power on individual content providers favored by AT&T.*
>
> *By exploiting its "gatekeeper" position in the residential broadband content market to extract anticompetitive terms and to disfavor certain content providers, AT&T could make it less attractive for content providers to invest in the creation of attractive broadband content thereby reducing the quality and quantity of broadband content in the future.*
>
> *AT&T could profit from the creation and exercise of such market power either through direct ownership of a favored content provider, or by obtaining payments from favored content providers in exchange for favorable treatment by Excite@Home and Road Runner.*
>
> *Excite@Home and Road Runner are positioned to become two of the most important providers of aggregation, promotion and distribution of residential broadband content. By virtue of the large number of subscribers to their residential broadband services, both firms will be able to significantly assist or retard the competitive efforts of broadband content providers, by granting or withholding aggregation, promotion, and distribution services or through the prices, terms, and conditions by which such services are provided. Moreover, because of their ownership affiliations and exclusive contracts with many of the largest cable MSOs, it is unlikely that other providers of residential broadband service will be able to enter and attract comparable numbers of subscribers in the near term.*

The dispute over AOL's exclusionary practices in instant messaging continues unabated. A twist of irony has been added with Excite@Home, whose own business model is built on exclusion, joining the fray to demand access to AOL's customers (Letter to Robert Pitofsky and William Kennard, June 7, 2000)

> *A bedrock principle of our approach to communications has been that users of critical communications functions should be able to communicate with all others, even those who use different service providers... It would have been a disaster for the Internet if e-mail had been held captive to a proprietary technology so that users of one e-mail system could not communicate with e-mail users of a different system or if one company could dictate the terms by which all other companies could use e-mail. Instant messaging must be subject to the same principle.*

AOL's would-be cable subsidiary has given the public and policymakers a brutal lesson in what negotiations look like when one side has the power to pull the plug. When Time Warner put Disney/ABC off the air at the start of a sweeps period, it underscored the need for "open access" and "open protocols." As convergence leads to the emergence of interactive TV (ITV) as the killer application of the residential, broadband, multimedia Internet our concerns grow over the ability to use control over cable-based broadband Internet service to determine how the next generation of broadband Internet services gets to the consumer and which companies can provide ITV most effectively. If wire owners that give their own programming an edge stand to gain from that preference, they will have an advantage in competing for viewers' attention. Fair competition for eyeballs will be impossible.

The Commission needs to address the question of how to preserve open access and open protocols, which are the cornerstones of the Internet. It is quite clear that as the commercial value of the Internet grows, these huge communications corporations are more than willing to destroy its fundamental openness to further their private economic interests. Competition and open communications would suffer a disastrous setback, if Internet service providers, by virtue of proprietary platforms, or cable companies, by virtue of exclusionary practices, can dictate the terms by which independent Internet service providers can provide communications functions or provide access to cable modem facilities for their customers.

Because of the powerful interest these companies have in maintaining exclusionary, proprietary leverage, reliance on commercial negotiations to establish nondiscriminatory access continues to yield virtually no progress. Commercial negotiations will inevitably fail to produce meaningful nondiscriminatory access. By flip-flopping on the principle of open access, AOL demonstrated its intention to use that leverage to its advantage. The frailty of voluntary open access was made clear when AOL was unwilling to allow its promises to be turned into obligations, as the City of Los Angeles tried to do. Exclusionary contracts are still in place. Virtually no details of negotiated commercial access have been provided, not to mention agreed to. The dominant cable modem firms continue to resist having their commercial promises turned into enforceable obligations. Preferential contracts have been extended far out into the future in some cases.

Federal and state regulators no longer have to abide the anticompetitive, exclusionary tactics of cable TV firms. The U.S. Court of Appeals for the Ninth Circuit has concluded that the use of facilities to transmit interactive communications for broadband Internet access is a telecommunications service.

> *Among its broad reforms, the Telecommunications Act of 1996 enacted a competitive principle embodied by the dual duties of nondiscrimination and interconnection... Together, these provisions mandate a network architecture that prioritizes consumer choice, demonstrated by vigorous competition among telecommunications carriers. As applied to the Internet, Portland calls it "open access," while AT&T dysphemizes it as "forced access." Under the Communications Act, this principle of telecommunications common carriage governs cable broadband as it does other means of Internet transmission such as telephone service and DSL, "regardless of the facilities used."*

In its most recent filing at the Commission, Time Warner failed to comply with its statutory duties to provide nondiscriminatory access to cable modem service providers. Time Warner continues to exploit its control over essential cable modem-related inputs, not only to prevent advanced services competition, but also to perpetuate its virtual monopoly over the market for multichannel video services.

Both the Department of Justice and the Ninth Circuit draw a sharp and important distinction between the content of information transported over the communications network and the conduit through which that information flows. As the Ninth Circuit put it:

> *Like other ISPs, @Home consists of two elements: a pipeline (cable broadband instead of telephone lines), and the Internet service transmitted through that pipeline. However, unlike other ISPs, @Home controls all of the transmission facilities between its subscribers and the Internet. To the extent @Home is a conventional ISP, its activities are one of an information service. However, to the extent that @Home provides its subscribers Internet transmission over its cable broadband facility, it is providing a telecommunications service as defined in the Communications Act.*

The Ninth Circuit also emphasized the fundamental compatibility between Internet principles of openness and the principles of telecommunications common carriage that it concluded must be applied to cable modem services.

> *The Internet's protocols themselves manifest a related principle called "end-to-end": control lies at the ends of the network where the users are, leaving a simple network that is neutral with respect to the data it transmits, like any common carrier. On this role of the Internet, the codes of the legislator and the programmer agree.*

THE GROWING COST OF INACTION

Almost two years have passed since we first asked the Commission to take action to ensure open access over cable wires. Since then, the cable industry has succeeded in delaying competition for video programming by banning the streaming of video. Millions of consumers already have been denied a choice of broadband Internet service providers. Had the Commission ordered open access two years ago, the network architecture would already be far friendlier to competition and support many more Internet service providers. We would be done with the trials and instead be working on providing access.

The Commission is confronted with a highly concentrated market for residential broadband service in which cable modem facility owners dominate, cable TV firms have exhibited repeated patterns of exclusionary and anticompetitive behavior, and barriers to communications driven by private interests are developing. The Commission can and should prevent this anticompetitive and anti-consumer industry structure from taking hold. At the very least, the Commission should undertake the following steps:

- The Commission should prevent any cross ownership and sweetheart deals between the dominant firms to minimize their opportunity to collude and to maximize the rivalry between their interests.
- Although cross technology competition has failed to discipline market power in the communications industries in the past, to maximize the hope for future cross-technology competition, the Commission should forbid firms from owning potentially competing technologies.
- To prevent vertically integrated service providers from leveraging their market power over facilities into the content market, the Commission should impose a clear legal obligation to provide open access.
- Proprietary platforms should not be allowed to wall consumers off from competition, or to destroy the communications functions of interactive communications networks.

The Commission now has before it an opportunity to ensure that consumer interests in the broadband Internet are protected. While Commission rules take years to develop, and antitrust cases can take decades to resolve, merger conditions can immediately be imposed and implemented. The Commission will recall, for example, that it imposed on SBC and Bell Atlantic open access conditions on DSL service when approving their recent mergers. In light of the Ninth Circuit ruling, now is the time for the Commission to impose a similar condition on AOL Time Warner.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Application of America Online, Inc. and Time Warner, Inc. for Transfer of Control	)	Docket CS 00-30,
	)	

STATEMENT OF DR. MARK N. COOPER

On Behalf of

CONSUMERS UNION

CONSUMER FEDERATION OF AMERICA

MEDIA ACCESS PROJECT

and

THE CENTER FOR MEDIA EDUCATION

Before the

EN BANC HEARING

July 27, 2000

FUNDAMENTAL CONCERNS ABOUT THE AOL/TIME WARNER MERGER

Several months ago the Consumer Federation of America, Consumers Unions, Media Access Project and the Center for Media Education (Consumer Petitioners), petitioned the Federal Communications Commission (the Commission) to deny or substantially restructure the AOL/Time Warner merger.[1] Outlining our deep concern about the proposed AOL/Time Warner Merger, Consumer Petitioners concluded that the merger is not in the public interest and should be rejected unless the Commission

- requires AOL to divest its interest in Direct TV's parent company,
- requires Time Warner, Inc. to divest its interest in Road Runner,
- prohibits AOL and Time Warner from consummating the merger until AT&T and MediaOne divest their interest in Time Warner, Inc. and Time Warner Entertainment Co., LP, and
- imposes the same kind of requirement for open, nondiscriminatory access to the parties' cable systems as American Online, Inc. ("AOL") had asked to be imposed on AT&T.

Developments in the industry and legal rulings, as well as AOL/Time Warner's wholly inadequate responses to information requests, since we reached those conclusions have only strengthened our case. Rather than repeat the lengthy analysis presented to the Commission earlier, in our comments today we focus on the market structure and corporate conduct patterns that have developed in the past several months that reinforce the need for the Commission to substantially restructure or block this merger.

---

[1] "Petition to Deny of Consumers Union, Consumer Federation of America, Media Access Project and the Center for Media Education," In the Matter of Application of America Online, Inc. and Time Warner, Inc. for Transfer of Control, Federal Communications Commission, Docket CS 00-30, April 26, 2000.

THE GROWING THREAT TO COMPETITION AND CONSUMER CHOICE

In its recent filing at the Commission, America Online (AOL) paints a rosy picture of competition that will flow from its proposed merger.[2] We see a completely different landscape. The signs of actual and potential anticompetitive problems are clear in the emerging market structure, as described by the Department of Justice, and in the continuing refusal of dominant firms to provide access to networks or support communications between customers, as documented in regulatory and legal proceedings.

(1) The Department of Justice has determined that the broadband Internet market is a separate and distinct market from the narrowband Internet market.

> For providers of broadband content, i.e., content that either requires broadband speeds or is much superior when viewed at broadband speeds, links that will attract more broadband customers, and only broadband customers, are more valuable than links that will be seen predominantly by narrowband users who will not access broadband content. Therefore, links that will be viewed by the general mass of Internet users – a substantial majority of which today are narrowband users – are not a good substitute for links that will be widely and exclusively viewed by broadband users.
>
> In addition, content providers seek network services such as caching that will facilitate the distribution of their data so as to enhance the quality and accessibility of their content. Caching stores a content provider's content at various locations throughout the country, closer to end users, thereby improving speed and performance. This is a particularly important service for broadband content providers who must rely on the rapid delivery of large quantities of data in order to provide the most attractive content...
>
> The aggregation and promotion of content, and the efficient physical distribution of content, are valuable services to content providers that heavily influence their success or failure in the content market. Content providers typically contract on a nationwide basis with firms that provider such services. The relevant geographic market for the aggregation, promotion and distribution of broadband content is the United States.[3]

---

[2] Letter to Ms. Royce Dickens, July 17, 2000

[3] U.S. Department of Justice v. AT&T Corp. and MediaOne Group, Inc., Amended Complaint, May 26, 2000.

Once this obvious economic fact is accepted, the severe concentration in the broadband market – resulting in a high degree of market power – and the blatantly anticompetitive effect of the exclusionary tactics of the dominant broadband firms become apparent.

> Through its control of Excite@Home and its substantial influence or control of Road runner, AT&T would substantially increase its leverage in dealing with broadband content providers, enabling it to extract more favorable terms for such service. AT&T's ability to affect the success of individual content providers also could be used to confer market power on individual content providers favored by AT&T.
>
> By exploiting its "gatekeeper" position in the residential broadband content market to extract anticompetitive terms and to disfavor certain content providers, AT&T could make it less attractive for content providers to invest in the creation of attractive broadband content thereby reducing the quality and quantity of broadband content in the future.
>
> Excite@Home and Road Runner are positioned to become two of the most important providers of aggregation, promotion and distribution of residential broadband content. By virtue of the large number of subscribers to their residential broadband services, both firms will be able to significantly assist or retard the competitive efforts of broadband content providers, by granting or withholding aggregation, promotion, and distribution services or through the prices, terms, and conditions by which such services are provided. Moreover, because of their ownership affiliations and exclusive contracts with many of the largest cable MSOs, it is unlikely that other providers of residential broadband service will be able to enter and attract comparable numbers of subscribers in the near term.
>
> AT&T could profit from the creation and exercise of such market power either through direct ownership of a favored content provider, or by obtaining payments from favored content providers in exchange for favorable treatment by Excite@Home and Road Runner.[4]

(2) The dispute over AOL's exclusionary practices in instant messaging has been simmering for about a year and continues unabated. A twist of irony has been added with

[4] U.S. Department of Justice v. AT&T Corp. and MediaOne Group, Inc., Amended Complaint, May 26, 2000.

Excite@Home, whose own business model is built on exclusion, joining the fray to demand access to AOL's customers.[5]

> A bedrock principle of our approach to communications has been that users of critical communications functions should be able to communicate with all others, even those who use different service providers... It would have been a disaster for the Internet if e-mail had been held captive to a proprietary technology so that users of one e-mail system could not communicate with e-mail users of a different system or if one company could dictate the terms by which all other companies could use e-mail. Instant messaging must be subject to the same principle.

(3) AOL's would-be cable subsidiary has given the public and policymakers a brutal lesson in what negotiations look like when one side has the power to pull the plug. When Time Warner put Disney/ABC off the air at the start of a sweeps period, it underscored the need for "open access" and "open protocols." As convergence leads to the emergence of interactive TV (ITV) as the killer application of the residential, broadband, multimedia Internet, concerns grow over the ability of vertically integrated network owners to use control over cable-based broadband Internet service to determine how the next generation of broadband Internet services gets to the consumer and which companies can provide ITV most effectively. If wire owners that give their own programming an edge stand to gain from that preference, they will have an advantage in competing for viewers' attention. Fair competition for eyeballs will be impossible.

The Commission needs to address the question of how to preserve open access and open protocols, which are the cornerstones of the Internet. It is quite clear that as the commercial value of the Internet grows, these huge communications corporations are more than willing to destroy its fundamental openness to further their private economic interests. Competition and open communications would suffer a disastrous setback, if Internet service providers, by virtue of proprietary platforms, or cable companies, by virtue of exclusionary practices, can dictate the

[5] Letter to Robert Pitofsky and William Kennard, dated June 7, 2000.

terms by which independent Internet service providers can provide communications functions or provide access to cable modem facilities for their customers.

(4) Because of the powerful interest these companies have in maintaining exclusionary, proprietary leverage, reliance on commercial negotiations to establish open access continues to yield virtually no progress. The overwhelming leverage enjoyed by the dominant firms will prevent commercial negotiations from producing meaningful nondiscriminatory access. By flip-flopping on the principle of open access, AOL demonstrated its intention to use that leverage to its advantage. The frailty of voluntary open access was made clear when AOL was unwilling to allow its promises to be turned into obligations, as the City of Los Angeles tried to do.[6] Exclusionary contracts are still in place. Virtually no details of negotiated commercial access have been provided, not to mention agreed to. The dominant cable modem firms continue to resist having their commercial promises turned into enforceable obligations. Preferential contracts have been extended far out into the future in some cases.

(5) Federal and state regulators no longer have to abide the anticompetitive, exclusionary tactics of cable TV firms. The Ninth Circuit Appeals Court has concluded that the use of facilities to transmit interactive communications for broadband Internet access is a telecommunications service. [7]

> Among its broad reforms, the Telecommunications Act of 1996 enacted a competitive principle embodied by the dual duties of nondiscrimination and interconnection... Together, these provisions mandate a network architecture that prioritizes consumer choice, demonstrated by vigorous competition among telecommunications carriers. As applied to the Internet, Portland calls it "open access," while AT&T dysphemizes it as "forced access." Under the Communications Act, this principle of telecommunications common carriage governs cable broadband as it does other means of Internet transmission such as telephone service and DSL, "regardless of the facilities used."

[6] "L.A. Grants AOL Cable Rights After Heated Debate," Los AngelesTimes, April 29, 2000.
[7] AT&T v. City of Portland, Case No. 99-35609, Decided June 22, 2000.

In its most recent filing at the Commission, Time Warner failed to comply with its statutory duties to provide nondiscriminatory access to cable modem service providers. Time Warner continues to exploit its control over essential cable modem-related inputs, not only to prevent advanced services competition, but also to perpetuate its virtual monopoly over the market for multichannel video services.[8]

(6) Both the Department of Justice and the Ninth Circuit decision draws a sharp and important distinction between the content of information transported over the communications network and the conduit through which that information flows. The Ninth Circuit makes clear that the Commission has the authority to prevent this abuse by making a clear distinction between content and conduit.

> Like other ISPs, @Home consists of two elements: a pipeline (cable broadband instead of telephone lines), and the Internet service transmitted through that pipeline. However, unlike other ISPs, @Home controls all of the transmission facilities between its subscribers and the Internet. To the extent @Home is a conventional ISP, its activities are one of an information service. However, to the extent that @Home provides its subscribers Internet transmission over its cable broadband facility, it is providing a telecommunications service as defined in the Communications Act.

The Ninth Circuit also concluded that the principles underlying the development of the Internet were consistent with the principle that conduit should be required to be open.

---

[8]This paraphrases AT&T's complaint about SBC in Texas, a state in which AT&T has ownership interests in over 2 million cable subscribers, which it operates on a closed, discriminatory basis, Comments Of AT&T Corp. in Opposition to SBC's Section 271 Application for Texas, CC Docket No. 00-44, January 3, 2000.

> Today, SWBT is exploiting its control over essential xDSL-related inputs, not only to prevent advanced services competition from AT&T and others, but also to perpetuate its virtual monopoly over the market for local voice services...
>
> SWBT has not, in fact, complied with its statutory duties to provide nondiscriminatory access to xDSL-capable loops.

> The Internet's protocols themselves manifest a related principle called "end-to-end": control lies at the ends of the network where the users are, leaving a simple network that is neutral with respect to the data it transmits, like any common carrier. On this role of the Internet, the codes of the legislator and the programmer agree.

It is clear that rights to communications and commerce on the broadband Internet cannot be determined by the economic interests of private corporations. Open access cannot rely on promises by huge, vertically integrated facilities owners to behave properly, even if those promises are motivated by powerful market incentives. In light of these rulings, these rights need not rely on private economic interest; open, nondiscriminatory access can and must be a right, under the Communications Act.

THE GROWING COST OF INACTION

Almost two years have passed since we first asked the Commission to take action to ensure open access over cable wires. The cable industry has succeeded in delaying competition for video programming for over two years with its ban on the streaming of video. Millions of consumers have already been denied a choice of broadband Internet service providers. Had the Commission ordered open access two years ago, the network architecture would already be far more friendly to competition and support many more Internet service providers. We would be done with the trials and working on providing access.

The costs of failing to act now are even larger because concentration and convergence have shrunk the ranks of the potential competitors to a very few. The choke points on the broadband Internet have been identified – backbone, bit rates, and the boot screen. The sticky features in proprietary platforms that lock customers in have become clear – instant messaging, buddy lists, key words, e-mail addresses, electronic programming information. The dominant

- Although cross technology competition has failed to discipline market power in the communications industries in the past, the FCC should not allow firms to own potentially competing technologies to maximize the hope for cross-technology competition in the future.

- Vertically integrated service providers should be prevented from leveraging their market power over facilities into the content market by imposing a clear legal obligation to provide open access.

- Proprietary platforms should not be allowed to unduly wall consumers off from competition or destroy the communications functions of interactive communications networks.

Delaying these requirements and trying to fix the problem after the fact imposes enormous costs on the public. Waiting for an 80 percent market share in a three million customer market to turn into a 70 percent market share in a 10 million customer market before the Commission acts does not solve the problem, it only imposes the cost of anticompetitive conduct on seven million more consumers. Commission rules take years to develop, antitrust cases take decades. On the other hand, merger conditions go into effect immediately. The Commission imposed open access to DSL service on SBC and Bell Atlantic as a condition of its merger with Ameritech.[9] In light of the Ninth Circuit Appeals Court ruling, it should impost a similar condition on AOL Time Warner. Now is the time to act.

Finally, we must register our vehement objection to the procedures the Commission has employed in administering this and other recent merger applications.[10] In this case, as in all recent major merger proceedings, it has ignored the position recommended by the Federal Communications Bar Association in scrapping procedural rules designed to insure press scrutiny

[9] FCC Docket No. 99-279; October 8, 1999; Docket No. 00-221, July 19, 2000.

[10] The Commission has responded with alacrity to charges that it moves too slowing in acting on merger applications. By contrast, once it acts upon merger cases, it is callously unresponsive to consumers' complaints that it ignores much less complex petitions for reconsideration of those decisions. Similarly, it has now been more than

and to assure fairness. Instead, it has substituted so-called "permit but disclose" rules designed for rulemakings, but which are utterly inadequate to protect the public in adjudicatory cases. In the ATT/MediaOne merger, this allowed the applicants to have scores of unannounced closed-door meetings with FCC members and staff, the details of which have been kept secret from the press and the public. This practice inherently benefits applicants, who can negotiate the terms of their merger in private, and cripples citizens and consumers, who cannot rebut arguments they have not heard.[11]

---

seven months since the filing of reconsideration petitions of the Commission's cable horizontal ownership rules. This inaction unfairly denies CFA and its colleagues the right to pursue judicial review.

[11] Consumers Union, CFA and Media Access Project have sought reconsideration of the AT&T/ MediaOne decision. They have also filed a complaint against AT&T for failing to disclose the contents of one such meeting. Their two month-old request asking the General Counsel to issue a ruling on these abuses remains unanswered