January 8, 2004

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

Re: *Notice of Ex parte* presentation in MB Docket No. 98-120
MB Docket No. 03-15

Dear Ms. Dortch:

On January 7, 2004, Andrew Jay Schwartzman, President, Media Access Project, and Harold Feld, Associate Director, met with Commissioner Martin and his legal Advisor Catherine Bohigian, regarding the above captioned dockets.

MAP representatives stated that the First Amendment arguments raised by the cable operators have merit, to the extent that *Turner* requires a compelling government purpose to justify multicast must-carry. MAP representatives opined that simply furthering the digital transition did not appear to be a sufficiently compelling government purpose.

MAP representatives further argued that the FCC could satisfy the interest identified in *Turner* by requiring broadcast licensees to provide genuine local programing and other public interest mandates before granting multicast must carry. If local broadcasters provided genuine local programming, additional children's programming, access to local and federal political candidates, and other public interest obligations fully supported in the *Public Interest Obligations of Digital Broadcasters* docket, then carriage of these signals would serve the compelling government purpose "of the highest order" identified in *Turner*, maintaining an informed citizenry and insuring a diversity of media voices.

Commissioner Martin stated that he opposed a *quid pro quo*, under which individual broadcasters could elect multicast must carry by fulfilling certain conditions on a licensee by licensee basis. He stated that he would not object to resolving the issue of public interest obligations on an industry-wide basis first, based on the evidence already submitted into the relevant dockets. Commissioner Martin also stated that he saw no need for a *Further Notice of Proposed Rulemaking* in either 98-120, or 03-15 to decide the multicast must carry issue.

MAP representatives agreed that they did not advocate a *quid pro quo* under which licensees elected to provide public service as the price of mandatory carraige. Rather, MAP argued that (a) licensees owed such public interest obligations based on their use of public spectrum and dty to serve their local communities, as fully supported by the record, and (b) without such public interest obligations, it was doubtful that multicast could be justified under intermediate scrutiny.

Commissioner Martin asked whether multicast must carry was needed to protect small independent stations or public television stations. MAP representatives generally agreed that small indepedent stations which provide genuine local programming, and public television stations, needed

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must carry to ensure carriage and viability because they did not have the same market leverage as network affiliates. This was the reason why MAP fully supported the must carry requirements in the 1992 Act. However, MAP representatives stated that since 1992, the Commission's continued refusal to require genuine public interest obligations and increased concentration in local markets had undercut this argument as the sole basis for justifying multicast must carry. In many markets, stations not directly owned by networks are held by large group owners who do not invest the same level of resources in local programming or in such public interest programming as children's programming – as demonstrated in the media ownership proceeding.[1] Accordingly, the Commission should not rely on the rational of *Turner* that saving small stations and public broadcasters is, in and of itself, sufficient to serve the public. Instead, the Commission should mandate genuine public interest obligations on the industry as a whole.

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
Media Access Project

cc: Commissioner Martin
Catherine Bohigian

[1]MAP referred specifically to the study by the PEW Project for Excellence in Journalism demonstrating that the smallest ownership groups produced the best newscasts. Available at http://www.journalism.org/resources/research/reports/ownership/size.asp.