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A MESSAGE FROM THE STAFF OF MEDIA ACCESS PROJECT ON YESTERDAY'S VICTORY IN COURT

As you surely know by now, the U.S. Court of Appeals for the Third Circuit has issued a stay of the FCC's new media ownership rules while it considers pending appeals of the FCC's decision. The court ruled shortly after a two-hour long hearing at which Andrew Jay Schwartzman presented argument on behalf of the Petitioners.

This may have been MAP's greatest courtroom victory, but opposition to the FCC's proposed modifications has been a collaborative effort. MAP has served as legal strategist for a coalition of citizen and consumer groups as well as the Georgetown University Law Center's Institute for Public Representation. The accompanying *Wall Street Journal* story describes the argument; the Journal is also preparing a profile of MAP and its partners scheduled to appear tomorrow (September 5).

This is hardly the end of the fight. Even if Congress votes to overturn part of the FCC's decision, MAP surely faces months of intense litigation both at the FCC (on reconsideration petitions), and in the court. As is common when a stay is granted, the court has directed that the case proceed on an expedited basis. Nor does this additional work, and the expenses associated with it, relieve MAP of its other obligations. Indeed, it has been difficult to savor the big win because MAP is preparing for oral argument next week on the AT&T/Comcast merger and on additional legal arguments to be filed in the Third Circuit.

Perhaps the most satisfying aspect of the media ownership fight has been the outpouring of public support for diverse media ownership. The judges in the Third Circuit explicitly acknowledged that the broad, bipartisan opposition to the FCC's actions influenced their assessment of the case and whether a stay was in the public interest.

MAP staff will never forget that this work is possible only with encouragement of its many friends and supporters. MAP counts on continued and increased support from you as it addresses these vitally important issues.

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Leading the News: Judges Stay New FCC Media Rules — Appeals-Court Order Blocks Ownership Regulations From Taking Effect Today By Yochi J. Dreazen

PHILADELPHIA -- In a move with sweeping political and business repercussions, a federal appeals court here issued an order preventing new federal media-ownership regulations from taking effect. The surprise decision by a three-judge panel of the U.S. Court of Appeals for the Third Circuit came just one day before the new Federal Communications Commission rules, which make it easier for companies to snap up more media outlets, were set to become law. The judges issued their decision hours after a heated hearing here featuring lawyers for the Prometheus Radio Project, an advocacy group that was the first to challenge the new regulations in court.

The speed of the decision surprised many observers, who thought the court wouldn't rule for at least a week. Indeed, the courtroom here was devoid of the corporate lawyers and lobbyists who usually pack such hearings, indicating that few expected the late-afternoon drama.

The stay issued by the court will have an immediate impact on the FCC, which will be unable to implement the new regulations until the legal questions surrounding them are resolved. The FCC said in a statement that it will "continue to vigorously defend them and looks forward to a decision by the court on the merits."

But the decision's biggest aftershocks are likely to be felt in the political arena, where an unusually broad coalition of lawmakers from both parties has joined forces to block the new rules.

In July, the House surprised many observers by overwhelmingly approving a spending provision barring the FCC from putting the new rules into place. The Senate Appropriations Committee, which is led by Sen. Ted Stevens (R., Alaska), a vocal critic of the FCC action, will take up a similar provision today. The measure is expected to pass the panel and the full Senate easily, setting up a showdown with the White House, which is threatening a veto.

Yesterday's court decision is likely to strengthen the legislative efforts to stop the new rules because critics of the FCC can point to it as evidence that the regulations are flawed and potentially illegal. The stay also gives opponents more time to marshal support among wavering lawmakers.

"This gives us a chance to make the case to Congress and the courts that the current ownership rules should be maintained," said Andrew Schwartzman, president of the Media Access Project, who argued the case here yesterday morning.

The decision cheered critics of the FCC inside and outside the agency. "The court has done what the commission should have done in the first place," said FCC Commissioner Michael Copps, a Democrat who voted against the rules at a bitter

public meeting on June 2.

At issue is the FCC's controversial and bitterly contested move to drastically relax the nation's long-held media-ownership rules. Voting along party lines, the powerful regulatory commission approved a thicket of new regulations that would make it easier for media companies to buy more newspapers, TV stations and radio outlets.

The FCC, backed by most of the country's biggest media concerns, has defended the move as necessary to reflect a changing media marketplace where Americans get increasing amounts of entertainment and news from cable companies and the Internet. But consumer groups and advocacy organizations, ranging from the National Rifle Association to the National Organization for Women, have said the rules will unleash a wave of media consolidation and stifle diversity.

The appeals court's decision came hours after Mr. Schwartzman faced off with lawyers representing the FCC and three of the four major broadcast networks.

Mr. Schwartzman told the court it would begin "an irreversible process that will result in a wholesale restructuring" of the nation's media industries and said time was of the essence for the court to decide whether to grant the stay.

"Once the floodgates are opened, they really can't be closed," he told the court, citing pending TV-station acquisitions in Shreveport, La., and other cities that wouldn't have been allowed under the older rules.

But lawyers for the FCC and the networks said the new rules were crafted at the direction of Congress and the courts, which have struck down several older media regulations in recent years, and warned that staying them would throw the industry into disarray.

"This amounts to a grab bag of potshots at the agency's decision," FCC lawyer Jacob Lewis told the judges. Henk Brands, a lawyer for the networks, added that a delay would harm his clients because media deals "don't come along every day."

The escalating political war over the new rules was the elephant in the room at yesterday's hearing, with the judges indicating to lawyers for the FCC and the networks that the legislative efforts to derail the new regulations were evidence of enough public interest in the matter to justify a stay.

Indeed, many of the judge's questions to the lawyers centered on how long of a stay might be warranted and whether they should structure it to urge the FCC to remove the issue from the courts by delaying the rules. The judges suggested that a stay would probably not harm media companies, since it would simply preserve the laws under which they are currently operating for a little longer.

Mr. Brands took issue with that suggestion, noting that a federal appeals court in Washington last year remanded one of the existing rules back to the FCC for reconsideration. "We have on the books a set of rules that are simply no good," he told the court.