

MEDIA

A No-Frills Fighter Stuns The FCC, Media Goliaths

By YOCHI J. DREAZEN Staff Reporter of THE WALL STREET JOURNAL

REGULATORY BATTLE

- Senate Panel Opposes FCC Policy1
• Page One: Networks Fight Ownership Backlash2
09/02/03
Read the court's decision3



In his quest to loosen the nation's media-ownership rules, Federal Communications Commission Chairman Michael Powell has faced down fellow commissioners and defied hundreds of angry lawmakers. But he may not be able to defeat a rump, 55-year-old consumer advocate named Andrew Schwartzman.

Mr. Schwartzman, who runs the Media Access Project, a small public-interest law firm in Washington, has spent decades waging passionate -- but usually unsuccessful -- legal campaigns against bigger, better-funded opponents including the FCC and such New York media conglomerates as Viacom Inc. and AOL Time Warner Inc.



Andy Schwartzman

On Wednesday, though, Mr. Schwartzman won a big one. He bested legal teams from the FCC and three of the nation's broadcast networks by persuading a federal appeals court in Philadelphia to grant an emergency stay barring the FCC from implementing the new rules.

The court's ruling shocked the industry and raised new questions about the future of Mr. Powell, whose hold on the FCC has increasingly weakened in recent months amid the controversy over the rule changes. In another blow to Mr. Powell, the Senate Appropriations Committee Thursday bucked White House pressure and approved an amendment barring the FCC from spending money enforcing a new ownership rule making it easier for companies to own more local TV stations. The measure, identical to one that passed the House this summer, is expected to pass the full Senate easily.

The appeals court decision also helped push Mr. Schwartzman onto center stage of the high-profile fight over the new media-ownership rules, which would allow media companies to expand their holdings of newspapers, TV stations and radio outlets. Mr. Schwartzman's legal challenge, filed on behalf of an ad-hoc group called the Prometheus Radio Project, which describes itself as a nonprofit organization of radio activists, is now one of the biggest threats to the future of the rules.

The prospect heartens Mr. Schwartzman, who had been one of the loudest opponents of changing the old rules in the months leading up to the FCC's June 2 vote approving the regulations. He since has focused almost exclusively on defeating the changes in the courts or working with other advocates who are lobbying members of Congress to kill the rules legislatively.

"It had been extremely frustrating because we made the case against the rules in court and in the realm of public opinion, and we were still getting these regulations shoved down our throats," he says. "So this was a special win."

Mr. Schwartzman has long stood out in the button-down world of Washington telecommunications lawyers because of his rump suits, thick New York accent, shock of white hair, bushy mustache and exuberant, high-pitched laugh.

"Andy's forte is legal reasoning, not trying to look like a Wall Street lawyer," his friend Gene Kimmelman, the co-director of Consumer Union's Washington office, says. "What you see is what you get."

Indeed, current and former FCC officials and executives of companies that have faced Mr. Schwartzman in court express admiration for his legal skills.



Michael Powell

— "When I was at the FCC, even when he was berating me publicly, I always tried to listen to what he said because he was so often right," says former FCC Chairman Reed Hundt. "As a lawyer, he is more than a match for any of the lawyers the agency has or these companies can hire."

ABC parent **Walt Disney** Co., as with the owners of the other broadcast networks, vigorously opposes Mr. Schwartzman's efforts to kill the new media-ownership rules. Nevertheless, Preston Padden, Disney's chief lobbyist in Washington, praises Mr. Schwartzman as "a great lawyer who has more fun doing what he does than anyone else I know."

Mr. Schwartzman's father was a doctor and his mother was a local Democratic Party official in suburban New York's Westchester County. He grew up in a politically active household and began reading the New York Times when he was six. For much of his youth, he assumed he would be a journalist. However as he grew older, he realized he wanted to shape public policy, not simply report about it. After graduating from the University of Pennsylvania in Philadelphia, he attended Penn's law school where he discovered a passion for communications law.

"Mass media is how public opinion is shaped," he says. "It's the forum in which democracy functions."

After law school, Mr. Schwartzman worked for what is now the Energy Department, then joined the Media Access Project in 1978. He has been there ever since, and now is its president and chief executive. It is a bare-bones operation: The organization has three lawyers and its entire budget is just \$650,000 a year, less than the annual income of many of the corporate lawyers the organization argues against.

The organization's funding comes from such foundations as George Soros's Open Society Institute, individual donors, and several media companies and trade groups. The latter point has been the cause of some contention within the public-interest community, but Mr. Schwartzman says the money helps keep the law firm afloat and is too small -- well under 10% of its total budget -- to give any company or corporate entity undue influence.

In Washington, Mr. Schwartzman is part of a small group of public-interest advocates who frequently join forces on issues like the ownership rules. In addition to Mr. Schwartzman, who handles any litigation or court filings, the group includes Mr. Kimmelman, who works Capital Hill; Mark Cooper, of the Consumer Federation of America, whose specialty is statistical analysis of the claimed harm caused by FCC rules; and Jeff Chester, a media-savvy advocate who ensures the group's message gets out. Mr. Chester jokingly refers to the group as "the four Jewish horsemen of the Apocalypse."

Mr. Schwartzman says he knows he'll lose most of the cases he tries but points out that he has had some significant victories. In the early 1990s, he helped preserve rules requiring cable companies to carry local over-the-air TV stations and later served as co-counsel in a Supreme Court case that struck down the Communications Decency Act and helped establish free-speech rights on the Internet.

After making his arguments at Wednesday's hearing, Mr. Schwartzman was riding a train back to Washington when his cellphone rang with news of the stay.

Mr. Schwartzman was ecstatic, but he has had little time to celebrate. The judges want a lengthy brief Monday explaining why they shouldn't send the case back to a federal panel in Washington, and Mr. Schwartzman has a lot of work to do.

Write to Yochi J. Dreazen at yochi.dreazen@wsj.com⁴

URL for this article:

<http://online.wsj.com/article/0,,SB106271067476704400,00.html>

Hyperlinks in this Article:

- (1) <http://online.wsj.com/article/0,,SB1062708040864500,00.html>
- (2) <http://online.wsj.com/article/0,,SB106245564775778000,00.html>
- (3) <http://online.wsj.com/documents/fccstayorder.pdf>
- (4) <mailto:yochi.dreazen@wsj.com>

Updated September 5, 2003 1:10 a.m.