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THIRD CIRCUIT SCHEDULES ORAL ARGUMENT ON STAY OF FCC MEDIA OWNERSHIP RULES

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This morning the U.S. Court of Appeals for the Third Circuit scheduled an oral argument to consider whether the FCC's media ownership rules should be stayed while the court considers challenges to the FCC's media ownership order. The argument will be held in Philadelphia on September 3, 2003 at 10 am.

"The court's decision to hear oral argument demonstrates the weighty nature of citizens' requests that the rules be stayed," said Cheryl Leanza, Deputy Director of the Media Access Project. "As compared with the FCC, which has not even dignified repeated requests for a stay with a response, the federal court recognized rules of this magnitude should not necessarily go into effect while their legality is considered," she said. "The oral argument will give public interest advocates the opportunity to present our case." Harold Feld, Associate Director of Media Access Project, expressed cautious optimism that the court would grant the stay, "While the legal burden is high, we have made a sound case to the Third Circuit. It will only be more chaotic if media corporations to conduct transactions under rules that may well be changed via court review."

Procedural Background and Information

The FCC adopted the order on June 2, released it on July 2, and published in the Federal Register on August 5. The rules, if they are not stayed, will go into effect on September 4, thirty days after they were published in the Federal Register.

A number of parties have challenged the rules in court. On August 6, 2003, the National Association of Broadcasters (NAB), Media General, and the Network Alliance of Station Affiliates (NASA) filed in the US Court of Appeals for the D.C. Circuit. NAB stated it will challenge the local radio and local television rules, the network affiliates will challenge the increase in the national

television cap, and Media General is challenging the FCC's decision not to repeal the newspaper-broadcast rule in its entirety.

On August 13, 2003, three public interest organizations filed in three different circuits both challenging the FCC's decision and asking the courts to stay the FCC's rules. The National Council of Churches, represented by Shelby Green of Pace University working in conjunction with the Minority and Media Telecommunications Council, filed in the Second Circuit in New York; the Media Alliance, represented by the Georgetown Institute of Public Representation, filed in the 9th Circuit in California; and MAP's attorneys, assisted by Spear Wilderman a private firm in Philadelphia, represent Prometheus Radio Project in the Third Circuit.

On August 15, 2003, three networks – Viacom, Fox, and NBC – filed in the D.C. Circuit challenging the FCC's decision. The networks did not state which rule(s) they will challenge.

Under court rules, because parties filed in multiple circuits, the court conducted a lottery to select one circuit. The Third Circuit was selected by a lottery from among the circuits on August 19, 2003, and all pending cases were transferred there. Subsequently, the FCC and the networks have opposed public interest requests to stay the rules. In addition the networks asked the Third Circuit to transfer the case back to the D.C. Circuit, and the FCC supported that request.

The timing of the court proceeding is not certain. The court could rule as early as September 4 on the request for stay, but it could wait longer. It also has the option to fashion relief as it sees fit, it could issue a temporary decision immediately followed by a later decision upon more consideration, for example.

The courts will likely consider requests to transfer the case shortly. Typically in cases where Petitions for Reconsideration are pending, the court accedes to an FCC request that the court delay its review until the FCC issues a Reconsideration Order. Even under a speedy time frame, full briefing and oral argument of the FCC's full order could four months to complete. A court opinion decision would come later.

