

## D.C. Circuit Decision Tips the Scale in Favor of Media Consolidation, Against the Public



February 19, 2002

In response to the D.C. Circuit's decision today in *Fox Television Stations v. FCC*, Docket No. 00-1122, Media Access Project issues the following statement:

The D.C. Circuit's action today continues its Sherman's March through the FCC's rule book, throwing aside the public in the process. The decision effectively tips the scale in favor of consolidation and against the public's First Amendment rights to receive information by handing the FCC an impossible task.

Under this ruling the FCC will be forced to re-prove each of its decisions every two years. The industry may well soon regret its decision to bring this case, as all other FCC processes grind to a halt in the face of a never-ending obligation to review. The FCC must stop other work to re-justify rules that have stood the public in good stead for twenty years, as well as rules it adopted last week.

The decision violates the separation of powers. The D.C. Circuit is requiring the FCC to answer arguments not presented to it or presented in a tangential manner, depriving the public and the Commission of the opportunity to analyze those arguments before they are second-guessed in court. This part of the decision is so egregious that it may attract the Supreme Court's attention.

As poor as this decision is, the D.C. Circuit rejected again groundless industry arguments that spectrum scarcity is dead and that the public interest is limited to considerations of economic competition alone.

This decision is precisely what Media Access Project hoped to avoid when it sought Supreme Court review of the D.C. Circuit's national cable ownership limit last year. For MAP's petition seeking Supreme Court review see <http://www.mediaaccess.org/filings/CableOwnrshpPetforCert.pdf>

Today's Court of Appeals decision can be found at:  
<http://pacer.cadc.uscourts.gov/common/opinions/200202/00-1222a.txt>

For information contact:  
Andrew Jay Schwartzman, President and CEO at 202-454-5681  
Cheryl Leanza, Deputy Director at 202-454-5683  
[www.mediaaccess.org](http://www.mediaaccess.org)

*Media Access Project is a non-profit public interest telecommunications law firm representing the rights of the public at the Federal Communications Commission and in court on communications issues.*

-30-

