

Powell Rushes Through Deregulation,
Skirts Appropriate Procedures
December 18, 2001



For Immediate Release:

On Monday December 17, 2001, the Federal Communications Commission released an order (adopted on Dec. 14, 2001) reinstating the single majority shareholder exemption for broadcast stations and cable/multipoint distribution service (MDS), thus loosening rules it had recently strengthened.

In response, Media Access Project issues the following statement:

Last Friday, the Federal Communications Commission, lead by Chairman Michael Powell, put the cart before the horse and repealed an important ownership rule *before* receiving comments from the public. This is an abrupt departure from standard administrative procedure, under which federal agencies change rules *after* receiving comment and weighing the record. "This action forces me to question Powell's insistence that he seeks to regulate based on rational policies built on a thorough record," said Cheryl A. Leanza, Deputy Director, Media Access Project.

The FCC's decision today is egregious. The FCC points to a recent court decision questioning the FCC's rationale for the stronger rule. But the court's decision, as the FCC admits, did not apply to the rule eliminated today. As Commissioner Capps' stated in his dissent, "No court has directed suspending this rule, nor even suggested review of the rule." The FCC's action is the regulatory equivalent of shadow-boxing, and would tie the agency in knots if applied uniformly across all court proceedings.

Nor is the FCC's decision to temporarily "suspend" the rule any comfort. The Commission currently has a proceeding underway to consider repealing this rule altogether. Under these circumstances, in Commissioner Capps' words, "Suspension of this rule is tantamount to its elimination."

Although the rule in question is somewhat obscure, it is one of several "attribution" rules that form the basis upon which the FCC's ownership rules operate. Ownership rules would be straightforward to apply if one person owned each company. However, in today's world, companies are owned and influenced through many complex relationships, partial shares, and subsidiaries. The FCC's attribution rules recognize these complex relationships, and are similar to rules used by the SEC to detect influence over a corporation.

Through this rule's suspension, all ownership rules that depend upon it will become ineffective, including several currently under consideration in various proceedings at the FCC, such as the newspaper-broadcast ownership rule and local radio ownership rules.

30-30-30