

D.C. CIRCUIT DECISION PERMITTING PUBLIC TELEVISION TO OFFER COMMERCIAL PROGRAMMING “COMPROMISES THE SOUL OF PUBLIC TELEVISION.”



On May 9, the United States Court of Appeals for the District of Columbia Circuit affirmed a decision by the Federal Communications Commission (FCC) permitting public television stations, for the first time ever, to offer advertiser supported programming.

Media Access Project (MAP) challenged the FCC’s decision on behalf of concerned viewers of public television and independent programmers seeking to offer more commercial-free educational programming. Harold Feld, MAP Associate Director, had the following statement:

We are disappointed with the court’s ruling. The FCC sets aside special licenses solely for the use of non-commercial educational programming. For programmers to use these non-commercial licenses to offer commercial programming undermines the very purpose of public television. Every party to this challenge supports the mission of public television and believes that it needs more money to continue to produce high-quality programming for the digital age. But this is not the way. As FCC Commissioner Copps said when he dissented from the FCC Order below, this compromises the very soul of public television.

Added Feld: “What does non-commercial mean if not ‘no commercials’?”

The case is *United Church of Christ, et al. v. FCC*, No. 02-1039.

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The conversion to digital television (DTV) will allow all broadcasters, including public television stations, to offer 5-7 programming channels in place of the one channel offered in today’s analog world. Broadcasters will also be able to offer other “ancillary” wireless services over their digital spectrum.

The FCC’s decision, affirmed today by the D.C. Circuit, will allow public television stations to show commercials on their digital channels after they convert from analog to digital, provided the public television station offers one commercial-free broadcast channel and offers the advertiser supported channel on a subscription basis. The public television station may also lease its additional channels to commercial broadcasters, like ABC, NBC, CBS, or Fox, who may offer commercial broadcasts on public television spectrum on a subscription basis.

The FCC issued its *Order* in October 2001. Media Access Project, on behalf of three organizations, challenged the *Order* in the D.C. Circuit as a violation of the law that prohibits broadcasting advertisements on public television. The D.C. Circuit found that because advertising will appear only on subscription television, it is not “broadcasting” and does not violate the law.

Media Access Project. MAP is a non-profit public interest law firm which promotes the public’s First Amendment right to hear and be heard on the electronic media of today and tomorrow. The groups challenging the FCC’s Order were: **The United Church of Christ, Office of Communication, Inc.** UCC has 1.4 million members and nearly 6,000 congregations. It has congregations in every state and in Puerto Rico. **Alliance for Community Media.** ACM is a non-profit organization representing over 1,000 local media access and community media organizations. **The Center for Digital Democracy.** CDD is committed to realizing the full potential of digital communications through the development and encouragement of noncommercial, public interest programming.