



FCC MEDIA OWNERSHIP DECISION BACKGROUNDER

Background

In 1945, the Supreme Court declared that “the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society.” As the federal agency charged with regulating the mass media, the Federal Communications Commission (FCC) has long had rules in place to promote “the widest possible dissemination of information from diverse and antagonistic sources.”

Over the years, however, many of the rules designed to foster production of independent news and entertainment have been weakened. This process began in earnest during the deregulatory fervor of the 1980s, and the 1996 Telecommunications Act moved aggressively ahead by eliminating the national radio ownership cap and raising the national television ownership cap to its present 35% of the nation. In addition, the 1996 Act adopted the biennial review provision under which the present proceeding is being conducted. This provision, Section 202(h) of the 1996 Act, requires the FCC to review all of its media ownership rules every two years, and to “repeal or modify” any rule that is no longer in the public interest.

While Congress adopted the biennial review provision because Congress could not agree that a continued rollback of media ownership protections was warranted, media conglomerates have aggressively it to attack media ownership rules in court (a tactic not taken by telecommunications companies under their comparable telecommunications biennial review provision). Urged on by the industry, the courts have concluded that the FCC must rejustify its rules every two years. This interpretation of the law has put the FCC in a position of being the fox guarding the hen house—Chairman Powell has made it clear that he does not believe these rules should remain in place, but he is in charge of marshaling and evaluating the evidence to support their existence. The FCC is charged with obtaining data and has the ability to demand evidence and data from the industry that members of the public do not.

Timeline of Key Events

- February 19, 2002. The U.S. Court of Appeals for the D.C. Circuit issues its decision in *Fox Television v. FCC*, interpreting the biennial review provision for the first time, eliminates the cable-broadcast local cross ownership rule and returning the national TV ownership rule to the FCC.
- September 12, 2002. The FCC initiated its review of all current media ownership rules.
- October & November 2002. After initiating its proceeding, the FCC releases 12 studies that it claims provide data to inform the proceeding, the FCC later releases the underlying data to the public and extends its comment deadlines one month, closing the official comment period on February 3, 2003.
- January - May 2003. Commissioner Copps calls for more public participation, more data to be submitted by the public, and public institutions around the country offer public hearings to educate and learn from the public.

What Happens Now

There will, of course, be litigation. Disappointed broadcasters seeking even greater deregulation have little to lose by appealing, almost certainly to the U.S. Court of Appeals in Washington, and citizen groups will join the case to support retention of those rules. Those who support existing rules will face a more complicated situation in mounting their own appeals. The unusual law under which the FCC conducts its media review may necessitate the filing of reconsideration petitions before judicial review can proceed.

In light of the extraordinary public outcry from across the political spectrum, there is a good chance that Congress will consider enacting legislation to reverse all or part of the FCC’s decision. Several such bills are already pending, most notably HR 2052 (introduced in the Senate as S 1046), which would retain the 35% national TV ownership limit.

Once the rule changes become effective, the first transactions will likely involve newspapers buying one, two or three TV stations in markets where they have been prohibited from doing so in the past.

Media Access Project is a thirty-year-old 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.