

THE FCC UNDER ATTACK

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The Federal Communications Commission voted in a contentious three-two split to relax rules limiting ownership of TV stations, radio stations, and newspapers. Among its critics are members of Congress who may pass legislation reinstating the old rules. Others will likely file suit against the FCC in the hopes of overturning the decision. This article will discuss the current debate over media deregulation in light of the recent FCC order. Specifically, this ibrief focuses on concerns over media consolidation in the wake of the 'Clear Channelization' of American radio, and addresses the contrasting depictions of the current media landscape by advocates and opponents of deregulation.

INTRODUCTION

¶1 “No other decision made in Washington will more directly affect how you will be informed, persuaded and entertained.”² These foreboding words belong to William Safire, the New York Times Columnist, concerning the Federal Communications Commission’s (“FCC”) June 2nd Order on the future broadcast ownership rules. In a public meeting, the FCC voted in a contentious three-two split to relax rules limiting ownership of TV stations, radio stations, and newspapers. The vote was counted amid the brief clamor of two protesters’ chants: “mass deregulation of mass communication is the end of democracy,” they shouted, as they were carried off by security guards.³ These two protesters do not represent the voice of a trifling dissent. By the date of its meeting, the FCC had received 750,000 letters, 99.9 percent of which opposed deregulation.⁴

¶2 The vote that started as an obscure regulatory process about broadcast ownership and cross-ownership rules morphed into a national debate about the values of a democratic state, and the relationship between its citizens and the people who control and protect the marketplace of ideas. A robust, bipartisan coalition comprised of the National Rifle Association, Common Cause, the National Organization of Women and the Family Research Council, to name a few, have spoken out about the effects of deregulation.⁵ Similarly, both Republicans and Democrats have lambasted the FCC, particularly its Chairman Michael Powell, over the

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² William Safire, Editorial, *The Great Media Gulp*, THE NEW YORK TIMES, May 22, 2003, at A33.

³ Catherine Yang, *Mad as Hell at the FCC*, BUSINESS WEEK, June 16, 2003, at 37.

⁴ Andrew Ratner, *Amid Protests, FCC votes 3-2 to Relax Media Ownership Rules*, THE BALTIMORE SUN, June 3, 2003, at 6A.

⁵ Future of Music Coalition, *Citizens Urge FCC to Retain Current Media Ownership Rules*, at <http://www.futureofmusic.org/images/PRFCCdocket.pdf> (May 14, 2003).

decision.⁶ Three days after the FCC meeting, Senator McCain, chairman of the Senate Commerce Committee, announced he would create legislation to undo the new deregulation decision, and within three weeks such a bill left his committee.⁷ In response, Commissioner Adelstein, one of the two commissioners who opposed the ruling, said: “Today’s Congressional action is a dramatic rebuke of a bad decision. This is what happens when an agency ignores an outcry from Congress and the public to slow down and tread cautiously. The FCC ran right through the warning lights and into a guardrail.”⁸ All of these prophecies of doom have some questioning, is all this worry warranted?

BACKGROUND HISTORY: THE TELECOM ACT OF 1996 AND THE COURT OF APPEALS

¶3 In 1934 Congress passed the Communications Act, in which its touchstone was: “public interest, convenience, and necessity.”⁹ As applied to broadcasters, the FCC would provide a regulatory scheme to ensure that government licenses were used to serve the public. In the more recent Telecommunications Act of 1996, Congress established a biennial review of broadcast ownership rules by the FCC.¹⁰ Congress directed the FCC to review all ownership rules to “determine whether any of such rules are necessary in the public interest as the result of competition” and “to repeal or modify any regulation it determines to be no longer in the public interest.”¹¹ Chairman Powell argues that “necessity” of regulation is the litmus test by which the FCC is to implement, and the courts are to weigh, regulation in the “public interest, convenience and necessity.”¹² As a consequence, the FCC is required to repeal or modify any regulation it cannot prove is necessary to the public interest.¹³

¶4 In addition to this statutory mandate, the old rules had been under attack in court. In February 2002, the U.S. Court of Appeals for the D.C. Circuit found that the FCC’s 35 percent national ownership cap for television was arbitrary and capricious.¹⁴ In *Fox*, the court sided with the broadcasters, calling the FCC’s claim of a need to protect competition in either the national program market or the nation advertising market “wholly unsupported and undeveloped.”¹⁵ The court found no evidence that broadcasters have undue power in any relevant market.¹⁶ A few months later, the same court found that the FCC had also been arbitrary and

⁶ Marilyn Geewax, *FCC’s Action Under Attack*, THE ATLANTA J. AND CONST., June 5, 2003.

⁷ *Id.*; Tom Shales, *Senate Panel Cuts Big Media Down to Size*, THE WASHINGTON POST, June 20, 2003, at C01.

⁸ FCC Commissioner Adelstein Seeks Stay of Media Ownership Decision., at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-235641A1.pdf (June 19, 2003).

⁹ Communications Act of 1934, ch. 655, 48 Stat. 1064 (1934).

¹⁰ Telecommunications Act of 1996, 47 U.S.C. § 161(a)(1) (Supp. V. 1999).

¹¹ *See Id.* at § 202(h).

¹² Michael Powell, *Written Statement on Broadcast Ownership Biennial Review*, Before the Comm. on Commerce, Science, and Transp., at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-235127A1.pdf (June 4, 2003).

¹³ *Id.*

¹⁴ *Fox Television v. FCC*, 280 F.3d 1027, 1044 (D.C. Cir. 2002).

¹⁵ *Id.* at 1042.

¹⁶ *Id.* at 1041.

capricious in its adoption of local television ownership rules.¹⁷ In both cases the court ruled that the Telecommunications Act of 1996 demanded more than broad theories about the benefits of diversity or competition to justify ownership regulations.¹⁸ It is in this backdrop that the FCC decided the recent media ownership rules.

THE NEW RULES

¶5 In their June 2nd decision, the FCC relaxed and eliminated several key media ownership restrictions. One of the material features of the new regulations are relaxed broadcast-newspaper and radio-television cross-ownership rules. The twenty-eight-year-old prohibition on owning a newspaper and television or radio stations in the same city was lifted in large markets served by nine or more television stations.¹⁹ Accordingly, in a market like Los Angeles, one company may own three television stations, eight radio stations, and a newspaper.²⁰ In mid-sized markets between four and eight television stations, one company can now own one of the following: a newspaper, a television station and half the allowable limit of radio stations; two television and some radio stations but no newspaper; or a newspaper and all of the radio stations permitted under the rules, but no television station.²¹ For example, in a market like Memphis, Tennessee, one company may own one television station, four radio stations, and a newspaper, or two television stations, eight radio stations but no newspaper.²² The ban remains in the nation's smallest markets. The FCC concluded that neither the newspaper-broadcast station prohibition nor the TV-radio cross-ownership prohibition could be justified for larger markets in light of the abundance of sources that citizens rely on for news.²³ The FCC found that the cross ownership rules did not promote competition because radio, TV and newspaper compete in different economic markets.²⁴ Because the previous cross-ownership rules were deemed "unnecessary" to promote the public interest, the FCC argued that it was their mandate to provide new cross-ownership rules.

¶6 The national television ownership cap was also relaxed, allowing broadcast networks such as NBC and CBS, to own a group of television stations reaching 45 percent of the national audience, up from 35 percent.²⁵ Two of the networks are currently over the current ownership cap. News Corp.'s Fox is at 37

¹⁷ *Sinclair Broad. Group v. FCC*, 284 F.3d 148, 152 (D.C. Cir. 2002).

¹⁸ Stuart A. Shorenstein & Lorna Veraldi, *Are New Media Really Replacing Old Media? Broadcast Media Deregulation and the Internet: Defining the Public Interest in Terms of Regulatory Necessity*, 17 ST. JOHN'S J.L. COMM. 45, 50 (2003).

¹⁹ *FCC Sets Limits on Media Concentration*, FCC, at

http://www.fcc.gov/Daily_Releases/Daily_Business/2003/db0602/DOC-235047A1.pdf.

²⁰ Edmund Sanders, *Changing Landscape*, LOS ANGELES TIMES, June 3, 2003, at 1.

²¹ *Id.*

²² Sanders, *supra* note 20.

²³ *Id.*

²⁴ *Id.*

²⁵ The share of U.S. television households is calculated by adding the number of television households in each market where the company owns a station. Regardless of ratings, the share is counted for all of the potential viewers

percent; Viacom Inc.'s CBS is around 40 percent.²⁶ General Electric Co.'s NBC is at 34 percent and Walt Disney Co.'s ABC is at 24 percent.²⁷ In numbers of stations, Fox owns 35, Viacom owns 39, NBC owns 29 and ABC owns 10.²⁸ Yet the FCC did impose some consolidation restrictions, still prohibiting one of the top four broadcasting networks (ABC, CBS, NBC, FOX) from buying one of the other four.²⁹

¶7 The FCC also decided to maintain the 50 percent “UHF Discount” when calculating a company’s national reach.³⁰ This discount means that two UHF stations count as one station for the purpose of calculating the national broadcast ownership cap. The FCC said that more than 40 million Americans still have access only to free over-the-air-television.³¹ These UHF stations (channels fourteen and up) have smaller signal coverage areas than VHF stations (channels two through thirteen), which has a significant impact on UHF stations’ ability to compete.³² The FCC determined that when the transition to digital television is complete, the UHF discount would be eliminated.³³ Yet, critics say that it no longer makes sense to give UHF stations less value than their VHF counterparts because the vast majority of Americans subscribe to cable, where there is no distinction.³⁴ Besides finding that the UHF—VHF distinction is obsolete, critics also view the distinction as encouraging more media consolidation. This UHF discount preserves the benefits received by major station owners by mathematically halving UHF in terms of the contribution toward the cap. In addition, the FCC values UHF and VHF the same for local markets, an inherent inconsistency that may be exploited by those who will challenge the FCC’s decision in court.³⁵

¶8 The FCC says that these broadcast ownership rules reflect the public interest in light of the rapid changes taking place in the industry. The theory is that deregulation of the media industry serves the public interest by providing more inter-industry competition, leveling the playing field for those who provide free, over-the-air commercial television.³⁶ It is said that the old rules, like the 35 percent national ownership cap, were outdated and in need of review because they no longer accurately reflected the media landscape, which is now heavily influenced by satellite television, cable and the Internet. The economic reality for broadcasters is that over the last thirty years, the networks’ share of the prime time audience has gradually dropped from

in the market. Therefore, a 45 percent share of U.S. television households is not equal to a 45 percent share of TV stations in the U.S. *Id.*

²⁶ Frank Ahrens, *FCC Rule Fight Continues in Congress; Opponents of Ownership Consolidation Also Plan Legal Strategy*, THE WASHINGTON POST, June 4, 2003, at E01.

²⁷ *Id.*

²⁸ *Disney/ABC Leaves NAB, Becomes the Last Network to Walk*, COMM. DAILY, June 18, 2003.

²⁹ *FCC Sets Limits on Media Concentration*, FCC at

http://www.fcc.gov/Daily_Releases/Daily_Business/2003/db0602/DOC-235047A1.pdf (June 2, 2003).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Brian Lowry, *Revise Regulations Already the Status Quo*, LOS ANGELES TIMES, June 3, 2003, at 1.

³⁵ Bill McConnell, *Congress Won’t Undo FCC Rules, But Courts May*, BROAD. AND CABLE, June 9, 2003, at 22.

³⁶ Shorenstein, *supra* note 18.

95 percent to less than 50 percent.³⁷ Faced with such pressures, the broadcast industry urged the FCC to relax the confinements of heavy regulation so that broadcasters could better compete with the new industries. And for the moment, it seems that they have gotten what they hoped for.

THE MEDIA LANDSCAPE: CONSOLIDATION

¶9 The torrent of protests are not focused on any one of these measures in particular, but rather that a policy of deregulation will encourage some companies to consolidate, grow larger, and eliminate many of the local media outlets. Consolidation of the media and entertainment industry has been the trend for the last decade. For example, in 2000, despite more than 25,000 outlets in the United States, twenty-three corporations controlled most of the business in daily newspapers, magazines, television, books, and motion pictures.³⁸ As of 2000, fourteen dominant companies controlled half or more of the daily newspaper business, three in magazines, three in television, six in book publishing, and four in motion picture production.³⁹ Yet this landscape has changed since the early 1990s. Ten years ago there were twenty dominant companies that controlled half or more of the daily newspaper business, twenty in magazines, eleven in book publishing, and four in motion picture production.⁴⁰

¶10 In particular, consolidation swept broadcasting as a result of the Telecommunications Act of 1996. By the end of 1997, 1996 radio and television station deals were brokered, for more than \$25 billion dollars.⁴¹ Halfway into 1997, 71 daily papers had changed hands in 30 transactions totaling \$3.4 billion – exceeding the highest full-year sales figures of \$3.2 billion set in 1995.⁴² In addition, according to the National Association of Black Owned Broadcasters, since 1997 the number of minority owners of broadcast facilities has plummeted by 14 percent.⁴³ Today, people of color now make up less than four percent of radio and television station owners.⁴⁴ Given the history of media consolidation, it is likely that once these FCC regulations take affect, mergers and other consolidations will result. This would lead to fewer, and less diverse corporate voices in control of media outlets, and a loss in local control of television stations. According to Capitol Broadcasting, if the new media ownership rules were to take affect, one owner buying all VHF stations could control 51 television stations in the largest 21 markets or 310 stations in the bottom 177 markets. One owner buying all UHF stations could control 244 stations in the top 117 markets or 383

³⁷ *Id.*

³⁸ BEN BAGDIKIAN, *THE MEDIA MONOPOLY* 4 (2000).

³⁹ *Id.* at 18.

⁴⁰ *Id.*

⁴¹ DEAN ALGER, *MEGAMEDIA: HOW GIANT CORPORATIONS DOMINATE MASS MEDIA, DISTORT COMPETITION, AND ENDANGER DEMOCRACY* 125 (1998).

⁴² *Id.*

⁴³ *Statement of the Future of Music Coalition on the FCC's Media Ownership Rules*, FUTURE OF MUSIC COALITION, at <http://www.futureofmusic.com/images/PRFCCrulemaking.pdf> (June 2, 2003).

⁴⁴ *Statement of Commissioner Michael J. Copps, Dissenting*, at http://www.fcc.gov/Daily_Releases/Daily_Business/2003/db0602/DOC-235047A9.pdf (June 2, 2003).

stations in 208 markets, every market except New York and Los Angeles.⁴⁵ Although these conclusions seem too incredible to be believable, if the recent past is any indication of the future, massive consolidation is the likely result of such a deregulatory policy.

THE MEDIA LANDSCAPE: CHOICE

¶11 Although the number of media owners is shrinking, the media outlets available to the public are more numerous than ever. In 1960, the average U.S. consumer could watch six TV stations, read 4500 magazines and listen to 18 local radio stations. Today, the average American can choose from more than 100 TV channels, 18,000 magazines, dozens of radio stations, 20 million Websites, and 2400 Internet radio stations.⁴⁶ “Indeed, people today have access to more information from more diverse sources than at any time in our history,” Powell argues.⁴⁷ He summed up the new regulations as “modern rules that take proper account of the explosion of new media outlets for news, information and entertainment, rather than perpetuate the graying rules of a bygone black-and-white era.”⁴⁸ For instance, the old broadcast rules made over 30 years ago could not account for the 69 million households subscribing to cable, with access to almost 300 national and regional cable stations, not including all of the available broadcast TV stations.⁴⁹ Martin, another FCC commissioner that called to relax ownership rules, said that he believed it made no sense to maintain rules designed for another era.⁵⁰

¶12 Yet this reliance on the thriving media landscape for individual choice has not quelled the fears of those who oppose deregulation. In response to this portrayal of the media landscape, Commissioner Adelstein wrote, “A person can always add more electrical outlets throughout their home, but that doesn’t mean they will get their electricity from new sources. The same goes for media outlets.”⁵¹ So although cable is prevalent in U.S. households, 90 percent of the top cable channels are owned by the same giants that own the TV networks and the cable systems. Consequently, even though there are more channels, if they are all owned by the same people, cable television cannot advance localism, diversity, or competition.⁵² Can an industry provide diverse perspectives if only five companies own all the media outlets?

⁴⁵ Bill McConell, *Broadcasters Back Rereg Lite*, BROADCASTING AND CABLE, June 16, 2003.

⁴⁶ Forrester Research, *Commentary: FCC is Right*, CNET NEWS.COM, at <http://news.com.com/2009-1122-1012127.html> (June 2, 2003).

⁴⁷ Powell, *supra* note 12.

⁴⁸ Frank Ahren, *FCC Eases Media Ownership Rules; Party-Line Vote Clears Way for More Consolidation*, THE WASHINGTON POST, June 3, 2003.

⁴⁹ James P. Pinkerton, *Small Hacks Can Chop Down Media Giants*, NEWSDAY, June 12, 2003, at A41.

⁵⁰ *Id.*

⁵¹ Jonathan S. Adelstein, *Dissenting, Re: 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Communications Act of 1996*, at http://www.fcc.gov/Daily_Releases/Daily_Business/2003/db0602/DOC-235047A8.pdf (June 2, 2003).

⁵² Copps, *supra* note 44.

¶13 Some argue that with the changing technological advancements which influence the media landscape, more people – especially the younger generations who grew up with computers – will get their news sources from the Internet. And if more people receive their news from other sources, it is argued that broadcasters need relaxed regulations to compete with other industries. Today the average age of viewers watching the CBS, ABC, and NBC nightly news is fifty-six.⁵³ Yet, according Consumer Federation of America and Consumers Union, in their analysis of the FCC’s study “Consumer Survey on Media Usage,” they found that TV is the public’s dominant source of news and information (cited by 56 percent of survey respondents), while newspapers are the second most important source (cited by 23 percent). Radio is cited by just 10 percent and the Internet by only 6 percent.⁵⁴ So although Google news service brings information from 4500 news sources to one’s finger tip from around the world, only 6 percent of respondents were receiving local news from that source. And even if more young people were accessing news online, those 4500 news sources do not accurately reflect 4500 independent varieties of news. In addition, although the Internet provides an almost limitless number of sources of information, the 6 percent of respondents who said that the Internet is their primary source of news were more likely say they use the web sites of major TV or newspaper outlets than other sites.⁵⁵ Therefore consolidation of the broadcast industry would effect those that are served by the Internet’s news sources, since many of those who check the news online are doing so on the websites of major TV or newspapers outlets effected by these regulation measures.

LESSONS OF RADIO

¶14 Some fear when big businesses are allowed or encouraged to become giant. In the setting of the media, consolidation threatens the media’s ability to serve as an independent watchdog, with large companies having their own political and economic interests. Many fear that consolidation in this context will lead to media that is less representative, less responsive, less diverse and less competitive.⁵⁶ And some look at radio industry as the “cautionary tale” of deregulation, which showed that the radio has become less diverse, less local, and less competitive.⁵⁷ When Congress and the FCC removed radio concentration protections, massive and largely unforeseen consolidation occurred.⁵⁸ Clear Channel Communications is the protagonist in this “cautionary tale” of radio deregulation. In 1995, San Antonio-based Clear Channel owned 25 stations in the United States.⁵⁹ After Congress passed the Telecommunications Act which allowed a media corporation to

⁵³ Martin Garbus, *Law and the Media: Striking a Balance for the Future: Keynote Address: State of the Union for the Law of the New Millennium, the Internet, and the First Amendment*, 1999 ANN. SURV. AM. L. 169, 177 (1999).

⁵⁴ *Key Facts About Media Markets in America*, Consumer Federation of America and Consumers Union, at <http://www.democraticmedia.org/resources/filings/senatecom.pdf> (May 2003).

⁵⁵ *Id.*

⁵⁶ Future of Music Coalition, *supra* note 43.

⁵⁷ *Id.*

⁵⁸ Copps, *supra* note 44.

⁵⁹ Robert Wilonsky, *What’s Left of the Dial*, DALLAS OBSERVER, June 19, 2003.

own up to eight stations in major markets, the radio company added 1200 stations.⁶⁰ This is thirty times more than congressional regulation previously allowed.⁶¹ Clear Channel reaches over one-third of the U.S. population, with over 100 million listeners.⁶² Clear Channel and Viacom now control 43 percent of all U.S. radio listeners and pocket 45 percent of industry revenues.⁶³

¶15 Consolidation in the radio industry has had many effects, including an explosion of new radio formats, which has actually had the effect of shrinking the diversity of music being played on the radio. So although there has been an increase in format variety (the average number of formats available in each geographic market), there is much format homogeneity, with supposedly distinct formats having playlists which overlap as much as 76 percent.⁶⁴ In addition, radio companies who regularly operate two or more stations with the same format in the same geographic market still compete with themselves, providing the public with dauntingly similar playlists.⁶⁵ According to the findings of the Future of Music Coalition's study "Radio Deregulation: Has it Served Citizen's and Musicians," there were 561 instances of format redundancy by owners of the same format in the same market nationwide.⁶⁶ The study concluded that the deregulation of the radio industry has not benefited the public, and instead as led to less competition, fewer viewpoints, and less diversity in programming.⁶⁷ The consolidation of radio has also drastically reduced the number of broadcasters who live and work in the respective towns where the music is being played.⁶⁸ For example, after the Telecommunications Act of 1996, the number of radio station owners was reduced by 34 percent.⁶⁹ Commissioner Copps said: "Competition in many towns became non-existent as a few companies bought up virtually every station in the market. This experience should terrify us as we consider visiting upon television and newspapers what we have inflicted upon radio. 'Clear Channelization' of the rest of the American media will harm our country."⁷⁰

THE PEOPLE AND THE FUTURE

¶16 Every year our society grows more diverse, as the companies who control the media become less diverse. Jay Schwartzman, executive director of the Media Access Project, a non-profit, public interest

⁶⁰ *Id.*

⁶¹ *Executive Summary, Radio Deregulation: Has It Served its Citizens and Musicians?*, FUTURE OF MUSIC COALITION, at <http://www.futureofmusic.com/images/FMCradioexecsum.pdf> (Nov. 18, 2002).

⁶² *Id.*

⁶³ Wilonsky, *supra* note 59.

⁶⁴ Future of Music Coalition, *supra* note 61,

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Wilonsky *supra* note 59.

⁶⁹ Copps, *supra* note 44.

⁷⁰ *Id.*

telecommunications law firm, when discussing the FCC's decision said: "People may not understand the details -- things like 'lifting the cap' and 'the top 12 markets' and so on -- but they know this is bad. They know the idea of a few companies owning everything is a bad one."⁷¹

¶17 Harold Furchtgott-Roth, a former FCC Commissioner, acknowledged that this debate over broadcast rules is political in nature, and one that reaches beyond the Washington insiders. Although mainly a regulatory and economic issue, the question of who controls the media incites much emotion from the public, and may grow to the point where the people, through their elected officials, could decide the fate of the media ownership.⁷² Considering that the issue got very little media coverage on national networks, there has been tremendous outrage from the American public. Many followers of Washington politics consider the Senate's action to reinstate the old rules to be remarkable, given that many major political institutions and federal courts are dominated by deregulatory thinkers. They consider it extraordinary because of the swift pace of the legislation and the depths of criticisms of the FCC by both Democrats and Republicans.⁷³ In fact, only one of eleven Democrats on the committee, and a minority of the twelve Republicans, spoke against the bill. Lawmakers seem to be reacting to a flood of complaints about the FCC that has come from hundreds of thousands of constituents.

¶18 And although the House was not as swift, their criticism of the FCC decision ran just as deep. On July 24, 2003 the House, in a 400-21 vote, agreed to block the FCC from implementing its decision, by attaching the measure to an appropriations bill.⁷⁴ The legislation prohibits the FCC from spending any money to carry out its decision to allow companies to own television stations that reach the 45 percent ownership cap, instead leaving the cap at 35 percent.⁷⁵ The Senate may follow suit with similar appropriations legislation. According to Senator Ernest Hollings, a member of the Appropriations Committee, Congress will almost inevitably send legislation to the White House that rolls back at least some of the FCC's decision on media ownership.⁷⁶ In addition, many lawsuits are likely to be filed attacking the new rules as soon as the FCC reviews petitions to reconsider the changes.⁷⁷ These legal challenges are almost certain from both supporters and opponents of media deregulation.⁷⁸ Affiliates and small-market broadcasters are likely to file

⁷¹ Tom Shales, *Michael Powell and the FCC: Giving Away the Marketplace of Ideas*, THE WASHINGTON POST, June 2, 2003, at C01.

⁷² Tavis Smiley Show, *Janine Jackson and Harold Furchtgott-Roth Discuss the Vote by the FCC Yesterday to Relax Media Ownership Rules*, NAT'L PUB. RADIO, June 3, 2003.

⁷³ Stephen Labaton, *Senators Take Steps to Reinstate Limits on Media Holdings*, THE NEW YORK TIMES, June 20, 2003.

⁷⁴ Christopher Stern and Jonathan Krim, *House Votes to Prevent Change in Media Rule*, THE WASHINGTON POST, July 24, 2003, at A01.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ McConnell, *supra* note 35.

⁷⁸ *Id.*

suit, in addition to FOX and CBS who are expected to demand that the cap go higher.⁷⁹ Consumer groups and public advocates may sue, and Clear Channel might fight the slight tightening of radio-ownership rules.⁸⁰ Many are eager to deliver the deadly blow, rendering the FCC's recent decision lifeless.

¶19 The new broadcast ownership rules have created much controversy. Yet, there has been little discussion on the broader issues of the scope and mandate of the FCC, as it attempts to manage the increasingly fast-paced telecommunication industry in light of public interest. Such challenges facing the FCC include E911 deployment, broadband access, the demand for 3G spectrum, "open access" to cable modem system and the nature of the DTV transition.⁸¹ All of these technologies were barely known three years ago. The question that looms is: how will this regulatory agency continue to adapt to the pace and complexity of those it seeks to regulate, without infringing on the values of the public, frustrating the expectations of lawmakers and possibly inciting them to overturn regulations, or over-stepping their mandate with "arbitrary" rules as analyzed by the courts?

¶20 Commissioner Copps warned that if the FCC passed this legislation it would arise the passions of a sleeping giant – the American public.⁸² This decision has spurred more controversy and public debate than any issue in the history of the FCC. The commission received so many emails opposing deregulation that the FCC office computer systems crashed.⁸³ Learned Hand said that "the hand that rules the press, the radio, the screen, and the far-spread magazine, rules the country."⁸⁴ The fight to be that ruling hand has only just begun.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Kathleen Q. Abernathy, *My View from the Doorstep of FCC Change*, 54 FED. COMM. L.J. 199, 217 (March 2002).

⁸² Copps, *supra* note 44.

⁸³ Yang, *supra* note 3.

⁸⁴ Copps, *supra* note 44.