



The public radio show about law and American life

Justice Talking Radio Transcript

The FCC's New Rules for Media Ownership—Air Date: 1/21/08

In mid-December, the Federal Communications Commission approved new rules that affect ownership of the nation's media companies. One rule change gave newspaper owners more leeway to buy radio and television stations in their markets. On this edition of Justice Talking, we'll explore the effect of this new rule and ask whom it will benefit, if it's fair and if it will survive a challenge in the courts. We'll also look at other ways in which FCC rules affect everything from what we see and hear to local programming and the regulation of indecency. The public airwaves, this week on Justice Talking.

This transcript is being provided free of charge for educational purposes. The views expressed herein are those solely of the guests and do not reflect those of the Annenberg Public Policy Center or NPR. Although every effort is made to make a verbatim rendering of the program, this transcript may vary slightly from the audio version and may contain minor grammatical or spelling errors. For permission to reprint, please contact Judy Jarvis at the University of Pennsylvania's Annenberg Public Policy Center, (215) 573-8919.

MARGOT ADLER: From NPR this is Justice Talking. I'm Margot Adler. Recent action by the Federal Communications Commission is stirring controversy.

UNIDENTIFIED MALE: And I'm determined that before I leave this place, we're going to do something to reverse the tide of media consolidation and to reinvigorate those broadcasts airwaves with the public interests.

MARGOT ADLER: But others say the FCC chairman has shown restraint in his push to relax one rule on media ownership.

UNIDENTIFIED MALE: I think he thinks he has taken a compromise position that it applies to only the top 20 markets in removing the ban. Whereas in 2003, the FCC was essentially proposing removing it, let's say, in the top 170 markets.

MARGOT ADLER: On today's Justice Talking we take a look at the public airwaves and what the FCC's new rules mean for the media and for you. Coming up after the news.

MARGOT ADLER: This is Justice Talking from the University of Pennsylvania's Annenberg Public Policy Center. I'm Margot Adler. The Federal Communications Commission is divided on how to regulate mass media. The discussion can get technical fast but scratch the surface and some of the most cherished principals of American society play center stage in the debate. Will so-called cross-media ownership, which just got a pass from the FCC, encourage free enterprise and help secure healthy budgets for newsrooms? Or will it subvert democracy and shut out diverse views and voices? And what about those indecency rules? What do they mean in an era of shifting standards? On Justice Talking today, the public interest on the public airwaves. It was round two last year when Federal Communications Commission Chairman Kevin Martin held a handful of public hearings around the country on cross-media ownership. Until now, a ban has prevented newspapers from owning radio and television stations in the same market. But in 2003 Martin's predecessor Michael Powell confronted a wall of opposition at public hearings to consider lifting the ban and the change was put on the backburner. Similar criticisms faced Chairman Martin in 2007. NPR's Neda Ulaby reported on those public hearings.

CROWD CHANTING: One million, two million, three million dollars, all for Clear Channels stand up and holler. M-O-N-O-P-O-L-Y, monopoly, monopoly, gets us high! Woo!
[APPLAUSE AND CHEERING]

UNIDENTIFIED FEMALE: We are totally for media consolidation. Okay? And we are here to cheer you on, and support you 110 percent, while you give 110 percent of the media to big corporations. [CHEERING]

MARGOT ADLER: And other comments were recorded by the FCC.

UNIDENTIFIED MALE: Um, history shows us that whenever some group in any society wants to consolidate indelible power, there is always a group of men just like you who enables that, uh, in a variety of ways. [APPLAUSE]

UNIDENTIFIED MALE: Did you know that when media outlets merge, the result is layout and how the few reporters need some more news? [APPLAUSE] How can you expect an informed and diverse public to get involved in this democratic process when you only give us a few days notice? Are you even serious about this? [CHEERS FROM AUDIENCE]

UNIDENTIFIED FEMALE: What I want is less corporation control and more media ownership by minorities and women. More, not less.

MARGOT ADLER: These were some of the voices who turned up at public hearings held at select communities around the country from Harrisburg, Pennsylvania to Seattle, Washington. Michael Copps is an FCC Commissioner, one of two Democrats on the five member commission. He says these public hearings reaffirm his position that consolidation is not in the public interest.

MICHAEL COPPS: You see the extent of, uh, disenchantment. I think that's, uh, that makes an impression when you hear that musician — like I remember Tift Merritt down in North Carolina who's pretty well known country musician with her own CDs and all. And she gets up and says, you know, I can't get local airtime here because of media consolidation. And I've seen that so many other places. Or when you go to, uh, we had a meeting in South Dakota and a Native American testified out there and it was just tragic to hear those folks talk about how their stories are not being told, their problems are not being given any coverage. What they're contributing is not covered. So it all adds up to a really kind of a sad story.

MARGOT ADLER: You and your fellow Democrat on the Commission, Jonathan Adelstein, voted against the new cross-ownership rule. I looked at your dissenting statement and your frustration and anger is all over the page. Here's the first sentence: "Today's decision would make George Orwell proud." What did you mean by that?

MICHAEL COPPS: Well, it's just, we had an opportunity here to really do something constructive and finally to face up to some of the problems that have been bedeviling, uh, America's media environment for the past several years. We had, we should have been going forward and doing something about the appalling lack of minority ownership. You know, we're a country that's now one-third minorities. Yet people of color in the United States of America own only about three percent — three percent — of full-power commercial television stations.

MARGOT ADLER: You've been a commissioner with the FCC, you know, since 2001, and my sense is that there are some things where the FCC shows a lot of bipartisan agreement.

MICHAEL COPPS: That's right.

MARGOT ADLER: Am I correct?

MICHAEL COPPS: Yeah, I think that's right. I think probably on 80, 85, 90 percent of the things that we do around here, we do with unanimity. And if there is a difference, lots of times that'll be over an interpretation of the law or a technical fact or something like that rather than a partisan thing.

MARGOT ADLER: So why do you think, I mean, clearly, uh, Kevin Martin's stated that he would never achieve a Commission consensus on media ownership and why do you think compromise on this issue is so hard to achieve?

MICHAEL COPPS: Well, you know, you really have to ask them. In a way I hate to ascribe motives to people. You know, at first I thought, well, maybe somebody really has a strong personal bent for this. But I think probably there are powerful forces that are encouraging folks, encouraging the administration, encouraging the Commission to let the good times roll when it comes to consolidation. These are awfully powerful players in our midst, playing for keeps.

MARGOT ADLER: You're saying that Martin took this action at the bequest of corporate...

MICHAEL COPPS: No, I'm not saying that. I'm just saying there are different theories out there and, uh, to find out what his motivations or anybody else's are you'd have to, uh, you'd have to get that from them. But I don't think you can blank the fact that big media still wants consolidation. You know, a year or so ago they were trying to, well, push the story over on us. Oh, we've learned our lesson about consolidation and we're not going to do it. But I'd looked at all of their pleadings that were coming in at the same time and they want the rules loose. And they would've liked the rules to be loosened considerably more than they ended up being loosened last time.

MARGOT ADLER: What do you think the future is going to be for cross-ownership?

MICHAEL COPPS: I am optimistic long run, uh, that we can reverse this tide. I think there is a new spirit dawning in the land. I've seen it at the grassroots. I see it bubbling up. I see presidential candidates being asked about it. And I'm determined that before I leave this place we're going to do something to reverse the tide of media consolidation and to reinvigorate those broadcasts airwaves with the public interests.

MARGOT ADLER: Michael Copps has been an FCC Commissioner since 2001. Thank you so much for coming on our show.

MICHAEL COPPS: I enjoyed it. Thank you. And thanks for covering this issue. It's really important.

MARGOT ADLER: Staunch critics of consolidation are vowing to fight the recent split decision that would allow newspaper publishers to buy television and radio stations in the nation's 20 largest markets. But the FCC did not lift the ban altogether. Publishers may not buy the biggest broadcasters in town and there must be at least eight other independent media voices in the market. And John Eggerton, the Washington Bureau Chief for Broadcasting & Cable, a magazine covering the cable and television industry says many observers say it's hard to call the new rules a giveaway to corporate ownership. Welcome to Justice Talking.

JOHN EGGERTON: Thanks Margot.

MARGOT ADLER: So when you take these decisions as a whole, what do you think the changes mean for the media and its audience?

JOHN EGGERTON: In terms of localism and diversity, the localism rules — which was really more of a proposal and inquiry than it was coming out with a decision — might have some real impact. Because basically FCC Chairman Martin said that all he was going to change was the cross-ownership ban and in addition I'm going to open an inquiry into what we should do in terms of the licensing procedure for local TV stations; whether they should be required to provide more information on what they are programming in the public interest, how much they are doing, how much news they are doing. And to actually go out and get community advisory

boards to advise them on, you know, what they should be doing. That goes back 20 years to a former regime in which there used to be a fairly strict ascertainment.

MARGOT ADLER: Well there used to be a requirement that you had to do a certain number of hours or whatever that was in the public interest. That got sort of axed, completely. And now it's back?

JOHN EGGERTON: Broadcasters, I think, are concerned that it could be. Because the chairman basically outlined seven or eight different possible proposals including actually quantifying how much and what you were doing in terms of local programming and in terms of local news. Broadcasters were almost immediately e-mailing each other saying we have to pay attention to this.

MARGOT ADLER: Why is that such a concern?

JOHN EGGERTON: Historically, they don't want the FCC determining the content of their programming, I mean, as much as they can avoid. They say they need to be responsive and are responsive to their local communities. Otherwise, you know, the viewers go somewhere else. And they'd say now they have lots and lots of other places to go.

MARGOT ADLER: Now, um, FCC Chairman Kevin Martin says lifting the ban on cross-ownership is a moderate change in the decades old rule, if it goes through. Is it moderate?

JOHN EGGERTON: Well, it depends on who you ask. I think he thinks he has taken a compromise position that it applies to only the top 20 markets in removing the ban. Whereas in 2003, the FCC was essentially proposing removing it, let's say, in the top 170 markets. The other side will tell you that, yes, but there is a very, a more liberal waiver policy than in the old days where in essence, theoretically, any station could own a newspaper so long as they met certain public interest criterion. You know, it's been a 12-year process moving, as Commissioner Robert McDowell says, with the speed of a glacier. And I don't see it's moving any faster in essence. I mean, I'm not sure how much difference that will be except of course for opening this inquiry into station licensing and there could be something there.

MARGOT ADLER: Martin said that newspapers really needed this change. The argument went newspapers are losing readers and revenue and need to own broadcast stations to stay viable. First of all, are newspapers really in trouble? I've read that, you know, readership is down but I've heard that profits aren't so bad.

JOHN EGGERTON: It depends on who you ask. The Newspaper Association will say that the profits are not the, you know, 15 to 20 percent that some people on the other side are arguing. So I think that ... nobody can argue that, you know, print, newsprint pages are going down and that some, you know, dailies have folded and that there's some inflection point between print and the web. But I think it's still an open question, you know, how much, you know, newspapers are in trouble.

MARGOT ADLER: That was John Eggerton, a reporter for the magazine Broadcasting & Cable. In court and in Congress, the FCC's proposed changes are expected to come under scrutiny. Lawmakers are threatening a vote of disapproval for starters. But could the new rules mean stronger newspapers and better local reporting? Coming up, a debate on who benefits and who doesn't if the new rules become the law of the land.

UNIDENTIFIED MALE: That when newspapers are allowed to own a television station, that station does more and better local news and public affairs than its competition.

UNIDENTIFIED MALE: This rule only serves the biggest media companies and their bottom line. It hurts journalism and it hurts the American public.

MARGOT ADLER: Stay with us.

MARGOT ADLER: This is Justice Talking, the public radio show about law and American life. I'm Margot Adler. We're talking today about the regulation of the public airwaves. As the media landscape fragments between television, cable, the internet, radio, and print publications, newspaper publishers have bristled over a 30-year-old ban that prohibits them from owning television and radio stations. FCC Chairman Kevin Martin, citing concerns about the financial health of newspapers in American, has won a Commission vote to relax the ban and it's the most controversial decision among the Commission's recent actions. Here to debate what the ruling will mean is John Sturm, the president and CEO of the Newspaper Association of America, which represents more than 2,000 newspapers in the U.S. and Canada. And Josh Silver, the executive director of the Free Press, an organization that advocates media reform. Welcome both of you to Justice Talking.

JOHN STURM: It's a delight to be here.

JOSH SILVER: Thank you.

MARGOT ADLER: Josh, in your view, what's at stake?

JOSH SILVER: Well, what's at stake here is a media system in the United States that's increasingly consolidated. And more importantly increasingly failing to provide the kind of critical journalism that Americans need to make basic decisions about issues facing our country domestically and around the world. On the 18th of December, we saw the FCC lift the ownership caps that allow newspapers to own TV and radio stations against the will of some 99 percent of the American public who said they didn't want it to happen. So really what we've seen is a continuing trend of the FCC and government agencies giving handaways behind closed doors to the biggest media entities against the public's will.

MARGOT ADLER: John, I am assuming you have a very different take on this?

JOHN STURM: Totally different take. The FCC made a modest change in regulations that frankly were obsolete years ago. And, uh, only, and only, restrict the newspaper business from owning radio and television stations where they publish. Any other entity, uh, any business, can do exactly that. And if newspapers are going to be able to survive they cannot have the thumb of government sitting on them when no one else does. Margot Alder: Before I turn to Josh I want to ask you this, um, how does this new FCC rule improve the situation for newspapers? Give me an example.

JOHN STURM: By getting rid of this rule it allows newspapers to own stations and to produce more and better local news on those stations whether it be radio or television. You may ask yourself why there isn't all-news radio stations in medium-sized or even some of the larger markets in this country; the answer is it's a very expensive format and the newspaper is really the only entity out there that does, can do all-news radio anymore. And this government rule keeps newspapers out of the market. On the television side, all of the studies show for the last 10 years that when newspapers are allowed to own the television station, that station does more and better local news and public affairs than its competition. It's simply a matter of being able to reach the audience in the way the audience wants to be reached whether that be in print, via audio, or video.

MARGOT ADLER: Josh, why don't you weigh in on these issues?

JOSH SILVER: Well, you know, it's amazing. I, I, my hat's off to John because he is one of the finest Washington lobbyists I know. And one can manipulate data to make any answer appear reasonable and that's what he's doing. But if you scratch the surface just a little bit you uncover a completely different picture. First of all, the Federal Communications Commission's own data shows that in markets where there are crossed-owned radio and TV stations there is a 25 percent less local news coverage. Period. It's with the FCC's own data. We're looking at a situation when we're seeing the sort of the violins come out and the old poor newspaper industry statistics come. We're still looking at profit margins in newspapers across the board, across the country at around 20 percent on average. It's still higher than the S&P 500 average. We're still looking at a situation where revenue per printed newspaper increased from 2005 to 2006. Despite John's statistic about the 70 percent shareholder value, if you look at the sale prices of actual newspapers over the last few years including in 2006, 2007 — they still continue to be extremely highly valued properties. This rule only serves the biggest media companies and their bottom line. It hurts journalism and it hurts the American public, because we're getting less news and less critical journalism that we needed in the run-up to the war in Iraq and that we need on so many issues — election coverage, etc.

JOHN STURM: I'd like to comment on a couple of the claims that Mr. Silver made that were, are so off, far off line it's hard to believe. He talked about the valuation of newspapers. The Minneapolis Star Tribune sold to McClatchy in 1998 for 1.3 billion dollars. It was sold in 2006 for 530 million dollars. That paper lost half its value and that is a fairly vibrant market, by the way. The fact of the matter is with the fragmentation in media today with so many choices available from so many angles, all of the audiences of all the media outlets, individual outlets, have been decreasing over time; including broadcast television for that matter. All the FCC studies have shown there is more local news on stations that are owned by newspapers for the

last 35 years since the rule came into play. The only study that has some other kind of result which we have found is statistically invalid, but nonetheless goes to a different result, is amazingly enough the study that they filed, Free Press filed, at the FCC. It's the only one like that.

MARGOT ADLER: Now I'm going to guess that Josh is going to believe that the FCC decision was momentous and bad and that, John, you believe it was modest and a baby step. I've heard you use those phrases. So I'll start with you Josh. Um, am I correct in my assessment of what you think? And then I'll ask John what he means by a baby step.

JOSH SILVER: Well, you are. You are correct in that. What's really clear is in the run-up to this decision by the FCC, they held six official public hearings across the country where they asked the public to come out and tell the Federal Communications Commissioners, five of them, what did they want? Did they want them to loosen media ownership limits or keep them tight? And literally we went through all the records, 99 percent of the people who came out said they do not want media getting bigger. So what's momentous about this is the fact that the debate in this country should not be how much should we let the media companies get bigger; the only debate that's reasonable and rational and logical given those hearings and public will is how much should we force the largest media companies to break up. Kevin Martin, its Chairman, said that he made the decision to save the newspaper industry, but that's not even the FCC's business anyway. So this is just corrupt, you know, newspaper industry and media companies padding the pockets of politicians and making policy in the most corrupt manner imaginable.

MARGOT ADLER: John, you said it was ...

JOHN STURM: Excuse me, I'd like to comment on that last phrase "padding the pockets of politicians."

MARGOT ADLER: Okay.

JOHN STURM: Would you like to explain that, sir?

JOSH SILVER: Well, there's just, Washington is awash in big money campaign contributions...

JOHN STURM: Oh really?

JOSH SILVER: ... and we've seen ...

JOHN STURM: Excuse me, excuse me. The newspaper industry has no PAC and gives no money to politicians that I'm aware of.

JOSH SILVER: Well, but, and you know that the companies that stand to benefit the most from this like, uh, News Corporation owned by Rupert Murdoch, Gannett, these are the guys, these are the companies, Bellow — they are spending lots of money and exerting tremendous influence. Nobody will argue this is one of the most influential lobbies in Washington.

MARGOT ADLER: Let's move on. I wanted to ask you, John, about your statement that the FCC decision was a modest action and a baby step.

JOHN STURM: The record that has been assembled at the FCC, and remember this has been ... this is now the sixth rule-making to deal with this issue over the last 11 years, actually. We filed 12 sets of comments in that period of time. The record, the rule that the FCC clearly supports a complete repeal and elimination of this rule. This rule has no basis in 2007 or 2008. None whatsoever. It may have had a basis in 1975 when there was virtually no media choice. In today's world, with the greatest explosion of media in the history of the world, where cities and even rural areas now in this country have the largest selection of media, print, electronic, whatever in the history of man; it is time to get rid of a rule that only sits over the top of one industry and an industry that is struggling to stay alive at this point.

MARGOT ADLER: Okay, let me ask you both this: the media landscape has radically changed as we've all been talking about. In just the last 10 years, you can get news from cable channels, from the internet. You can pick it up on your cell phone. You can go to countless number of diverse sources. Um, why can't you argue that these many sources make consolidation less of a concern, Josh, or am I wrong?

JOSH SILVER: Well, you're very unfortunately very wrong. And the fact is the number of independent owners of television stations since 1975 has declined nationwide by one-third and the number of radio stations has declined by one-quarter. The number of daily newspaper, independent owners, has declined by two-thirds. So it's simply not true, this idea that the media is more diverse. When you turn on your cable dial and you have 100 channels, guess what? The vast majority of the cable channels that you see are owned by just a handful of the largest media companies in this country.

MARGOT ADLER: John, you want to get in here about the, I'm assuming that you assume that because of this diversity consolidation is less of a problem.

JOHN STURM: It really is. The newspaper industry for one is the least consolidated of all media. The largest company in the newspaper business owns 100 titles and I bet Mr. Silver can't name the company. And the fact that ownership in these other businesses may have gone down over time is not a problem for the newspaper industry when it's been kept on the sidelines for all these years.

MARGOT ADLER: In 2003, the FCC attempted to relax the cross-ownership rules in the top 170 markets. That effort failed. According to the new rules, a company can now own a newspaper and a television station in one of the top 20 markets as long as the TV station involved isn't among the top four in the community. Another requirement is that at least eight independent major media voices remain after the merger. Some would argue, Josh, that this is a compromise to maintain diversity and the financial health of the media. What say you?

JOSH SILVER: Well, it's a good point. And it's really a tribute to the millions of Americans who have stood up in the last five years and said no more media consolidation. What happened in 2003 was nothing short of remarkable. Three million Americans wrote and called the FCC

and Congress and said in response to an FCC proposal to loosen a whole swath of media ownership limits, no way, we don't want it to happen. It was bipartisan. And so what we're seeing today is that the FCC Chairman, Kevin Martin, has been backed into a corner. And, yes, it is a more modest proposal. But the fact is, is that what he passed on December 18th is riddled with loopholes that actually create the onus of justifying, not consolidating, other markets beyond the first top 20. The onus lies with the public and the FCC not with the big media companies. So it really is a Pandora's box and it has to be stopped.

MARGOT ADLER: John, many news organizations have received waivers with quite a bit of ease to bypass the cross-ownership rules that were in place ...

JOHN STURM: No, there's been ... you mean, in this latest, this latest decision?

MARGOT ADLER: Well, before. No, I meant, just, yes, I mean before this ...

JOHN STURM: No, there were four of them in the history, in the history.

MARGOT ADLER: Really? Because I'd heard it was quite easy.

JOHN STURM: Yes.

MARGOT ADLER: Since 2001 to get a waiver. I'm wrong?

JOHN STURM: Not true.

MARGOT ADLER: Not true.

JOHN STURM: Not true. Mr. Murdoch got, uh, actually a pair of waivers, over, historically in order ... you may recall the New York Post was going out of business and he got a waiver to put it back into business in New York. I think there were a couple of, uh, small radio stations that got waivers under the failing station rule, uh, historically. But since the grandfather's, the only...

MARGOT ADLER: The grandfather's, meaning the ones that have been around before 1975.

JOHN STURM: Right, since 1975. The only changes in that have been a few. Gannett has one and there's a couple of others. Well, a couple. The Tribune situation, where they actually acquired a broadcast, excuse me, newspapers where they owned, uh, broadcast stations and they reviewed at license renewal time. The point I'm trying to make there's only been four waivers of this rule since 1975.

JOSH SILVER: But the reality is, is that these waivers should actually be called big media amnesty. Because the fact is what John's not telling you is that several major companies, Media General, bought in four markets. They bought cross-owned properties while it was illegal, fully expecting that the FCC would do what they did December 18th. Gannett did it in Phoenix. News Corporation and Rupert Murdoch did it in New York. And the Tribune Company did it in

four markets. Now it's legal because of the decision at the FCC. But of course there's been no wrist slap. There's been no repercussions for these companies that essentially broke the law expecting a handout from government and they got it.

MARGOT ADLER: A bipartisan group of lawmakers have introduced legislation in both the House and Senate that would overturn the FCC's new cross-ownership rule. There are also some potential lawsuits. I'd like to ask both of you what you see as the future for this new rule. I'll start with you, Josh.

JOSH SILVER: Well, it's clear there's been a major upheaval here. I mean, before the December 18th vote, the Federal Communications Commission was hauled up in front of the House and Senate and asked by members of both parties, implored not to move forward with this decision. They did it anyway. And the only real rationale for it as we talked about, is this massive influence that companies like News Corp. and Gannett have in Washington. And we've now seen a few things happen. One, there's been introduced legislation in both the House and Senate that would, that would repeal the rules and make them invalid. And we're going to see lawsuits filed shortly that will do that in the federal courts. What happens in the court cases in the Congress is going to be tough to call. It is an election year and it's tough to move legislation.

MARGOT ADLER: John, the future for this new rule.

JOHN STURM: Obviously it will be reviewed in the courts. Uh, there, as correctly pointed out, there are lawsuits now. I just wanted to make one point about what the FCC did on December 18th. The FCC is required by law to review broadcast ownership rules every — once upon a time I think it was two years, now it's four years — so the chairman of the FCC was in fact, following the law. Second, you referred to the previous chairman's attempt to change these rules in 2003. That case was remanded back to the FCC with instructions to review it and send it back. So the chairman was simply moving ahead, doing what he was required to do by law, and by the court.

MARGOT ADLER: John Sturm is the president and CEO of the Newspaper Association of America. Josh Silver is the executive director of the Free Press. Thank you both for coming on Justice Talking.

JOHN STURM: Thank you Margot.

JOSH SILVER: Thanks so much.

MARGOT ADLER: As the courts and Congress weigh ownership rules, other FCC regulations are also stirring interest. The FCC has asked the U.S. Supreme Court to weigh in on its indecency standards. Coming up, a journalist talks about the indecency rules and the broadcasters lament.

UNIDENTIFIED MALE: It's anything but clear. You know, the FCC will argue, no, we've given you very clear guidelines. But the producers and the broadcasters maintain that it's very vague. It's arbitrary. They don't know quite where the lines or the borders lie. And it makes them hesitant to take any chances with anything.

MARGOT ADLER: And one advocate welcomes some new protections for very small radio stations and talks about the virtue of low power radio.

UNIDENTIFIED MALE: If there are only 20 people that listen to the city council meeting, they're still getting more out of that than the, you know, the 10,000 people that are listening to Howard Stern in the morning.

MARGOT ADLER: Stay with us.

MARGOT ADLER: This is Justice Talking where we make the connection between law and American life. I'm Margot Adler. Today we're talking about the media and how it's regulated. Low power FM — 100 watt or smaller radio stations — went from underground operations to licensed broadcasters in 2000. But as recently as last year, more than a 100 of these stations were at risk of losing their spot on the dial to make way for expanding stations with full power licenses. Now the FCC has made a few changes. Advocates for low power say it's a small step in the right direction even though low power FM still holds a secondary status to full power radio. Here's Pete Tridish of the Prometheus Radio Project in Philadelphia.

PETE TRIDISH: So the FCC did pretty well on that. They, uh, if you're a low power station, you still are a second-class citizen, but what they did was they made some more flexibility so that you could move your station out of the way of the big station that wanted to take your channel. They also said that if there was no place for you to move to, in order to move out of the way, the FCC said that they were, they would consider not letting the big station just come and steamroll over you. And so, we're in a position right now of trying to get them to reorder the priority, and say, rather than give someone the right to repeat their station 20 times, 50 times, 150 times, if there's a local group that wants to do local broadcasting and actual locally produced programming, that that should be the priority. And, uh, you can't give someone their 150th radio station and then tell the local groups that there's no, there's no channel slot for them.

MARGOT ADLER: Are the stations really diverse and who are they? And what percentage are religious? How many are what we might call familiar progressive voices like Pacifica? How would you sort of characterize these 800 stations?

PETE TRIDISH: There have been a lot of groups that involve musicians. Musicians get a really raw deal from the way that the music industry relates to radio today. There's a real wide, uh, gamut of groups that are involved. There's also a fair number of highway safety groups, amateur radio clubs, schools, colleges. There's even a station in Alaska that they just have an underwater microphone that's in a national park and it's a whale station. And so people have just come up with all kinds of ways of using these stations.

MARGOT ADLER: Now I've heard some people argue that some of these stations are just a kind of cool club for a small group of listeners without really providing a meaningful service and, you know, this is a valuable public resource, etc. How do you answer that?

PETE TRIDISH: Well, I'd say that it's very important that society have some sorts of spaces that are available that are non-commercial, that are experimental, that are not put into the market system. There are certainly low power stations I know that are not the most popular station in their entire town. You know, if you want the most popular you could probably listen to Howard Stern. In fact, you know, that some of these stations maybe they run their city council meeting. And what I would say is if there are only 20 people that listen to the city council meeting, they're still getting more out of that than the, you know, the 10,000 people that are listening to Howard Stern in the morning.

MARGOT ADLER: Well, it's only been about seven years I guess since low power FM was legalized altogether, right? I mean before that you were all pirates, right?

PETE TRIDISH: Um, well there certainly were some of us that were pirates. [LAUGHS]

MARGOT ADLER: Certainly some of you were pirates, right! I mean you took a leadership role in the process of advocating for low power radio. And so I guess my last question is the broader one, you know, what you see at bottom as the real stake and why it's so important for the airwaves to make room for these stations.

PETE TRIDISH: What we're just trying to do is bring some balance, bring some diverse voices of different parts of society so that everybody is in a position to affect the debate and have different points of view. And maybe we'll end up with, with, uh, something that more closely approximates the ideals of democracy.

MARGOT ADLER: Pete Tridish is one of the founders of the Prometheus Radio Project. Thank you so much for coming on Justice Talking.

PETE TRIDISH: Thanks a lot for having me.

MARGOT ADLER: Low power FM stations like to think of themselves as a little bit different and reflective of their communities. There are just over 800 low power FM radio stations operating in cities and towns throughout the country. Despite their small size, sometimes just reaching a few miles in radius, they seek to make a deep impact in their communities by filling a void neglected by corporate media. Reporter Karen Henderson has a profile of one such station, KOCZ-FM, in the small southwest Louisiana city of Opelousas.

[MUSIC] KAREN HENDERSON: On a good day, the signal from KOCZ 103.7 reaches a seven-mile radius which covers the city of Opelousas and then some. The station's two fulltime

paid workers and 16 volunteers like to say that KOCZ is the number one station for Opelousas. Station manager Garrett Lavergne bases that claim not on ratings but on what they offer.

GARRETT LAVERGNE: For instance, the local gospel singers can come and get their music played. Local jazz artists. The southern soul artists. The zydeco artists can come and get their music played on the radio. What that does for us, it gives people a sense that this is really their radio station.

KAREN HENDERSON: That sense of ownership deepens, Lavergne says, when the people of Opelousas find that they have access to the airwaves they would never get from a big commercial operation. Lavergne says charities and businesses get to go on KOCZ to promote their work and he says the station does what it can when people are in trouble.

GARRETT LAVERGNE: We've had instances where, you know, people have had like house fires and so we'll do fundraisers, promote that on the air. People will do fundraisers for other things and, you know, we just give them the opportunity to come and promote. If they're doing something good in the community we let them use the airwaves to get the word out about it.

UNIDENTIFIED MALE: [DISC JOCKEY ON RADIO ANNOUNCING] KOCZ 103.7 FM, Gervis Williams and Jody White, coach Jody White with the LA Lakers. Tell us about the Lakers. What's going on?

JODY WHITE: Um, with the Louisiana Lakers organization, uh, we've been in existence now going on our fifth year. And this year is the second annual Krewe de Lakers Mardi Gras Ball.

KAREN HENDERSON: On this day, weekday host Gervis Williams talks with a local police officer about a fundraiser for a basketball mentoring program he helped create for at risk youth. Williams has worked in radio for 12 years and at 9 stations, many of them commercial. He says he likes KOCZ because it has a community mind and heart.

GERVIS WILLIAMS: Uh, 103.7 is one that you could walk into at the spur of the moment and announce your event, whether it's tomorrow, next week, or the next five minutes, and the information is passed along to the people of the community.

KAREN HENDERSON: That kind of service won the station a lot of praise after Hurricane Katrina hit. KOCZ was able to get back on the air while many higher wattage stations were silenced by the storm. General manager Garrett Lavergne:

GARRETT LAVERGNE: Being one of the only stations on the air, we were able to get out a lot of information about where to go for, um, you know, people that needed the basic survival goods of ice and water. And just the city announcements, we were able to get that information out.

KAREN HENDERSON: KOCZ is run by the civil rights group Southern Development Foundation. Licenses for low power FM stations became available for the first time in 2000 and their presence has irritated full powered stations ever since. The big operations complain that low power signals cause interference, something that low power advocates deny. The FCC has

so far backed low power radio to a point, but without offering many protections. Lavergne says KOCZ has had to defend its right to keep its license over and over again.

GARRETT LAVERGNE: The FCC created this low power FM, uh, license. However, they said we'll give you the license. But if someone else applies for the same license and can prove to us that they may serve the community better or the needs of the area a lot better than what you can, then we have the ability to take that license from you and give it to someone else.

KAREN HENDERSON: Lavergne says in five years they've had five challenges to their license. He takes heart in that they all occurred in the first three years of the station's existence. Maybe, he says, it's a sign that what they offer to Opelousas is succeeding. For Justice Talking, I'm Karen Henderson.

MARGOT ADLER: Whether it's low power radio or network television, the Federal Communications Commission has been taking an increasingly stern view toward indecency on the airwaves. Here to talk about it is William Triplett, a reporter for Variety magazine, which covers the entertainment industry. Welcome to Justice Talking.

WILLIAM TRIPLETT: Thank you very much.

MARGOT ADLER: The FCC under Chairman Kevin Martin has become much more aggressive about policing and punishing indecent content on radio and television. The number of fines have gone up significantly and networks were being targeted for fleeting expletives, things like slip-ups on live television. So what is Martin up to and what brought about this change in the FCC's approach to indecency?

WILLIAM TRIPLETT: Well, Martin really just wants to, uh, toughen up the standards on broadcast indecency. He has said any number of times he believes that shows have pushed beyond, you know, acceptable limits for, for what should go out over broadcast hours when children might be in the television audience. And he just thinks that for years the FCC has been too lax about it and it's time to crack down. Now that didn't come from just out of nowhere. That really is a result of a lot of growing complaints to the FCC about what they consider indecent contents, most notably starting back in late 2003 with a broadcast of the Golden Globe Awards where, uh, a fleeting expletive was uttered. And then just months later you had the Janet Jackson fiasco, the half-time Super Bowl Show.

MARGOT ADLER: Yeah, I was wondering if you could trace this all back to the Janet Jackson incident.

WILLIAM TRIPLETT: Right. Well, certainly this round of it. But bear in mind this is an issue that cycles up and down, and it goes as far as back as even the invention of comic books and what is appropriate content to be out there. It has really gotten attention though as, you know, shock-jock radio has gotten very popular and again just people pushing the envelope has drawn more and more attention. And you have organized groups out there who are very upset about

this, parents' groups, social conservative groups, that have lobbied heavily for tougher indecency standards and fines.

MARGOT ADLER: Congress has also weighed in and passed legislation in June 2006 that jacked up the fines for indecent comments from \$32,500 to \$325,000 per infraction.

WILLIAM TRIPLETT: Yep, ten times up.

MARGOT ADLER: Give us some examples of how this is playing out and what types of programs have been affected so far.

WILLIAM TRIPLETT: You see it mostly in broadcast primetime television. These are the hours where the audiences are the greatest. Children are likely to be in the audience. But the competition between broadcast and cable is very intense. And bear in mind, cable television — because of the way the laws are written — are not subject to indecency rules and regulation. So broadcast, uh, they've come up with racier fare to try to compete with things like the Sopranos and other things on cable but because they're now looking at \$325,000 per infraction versus \$32,500 it's really gotten the attention of producers. So you have seen, uh, there have been any number of reports from producers, and also from broadcast stations, about an unwillingness to take chances, uh, on anything. And it's gotten so far as an Academy Award-winning film like "Saving Private Ryan," which is, as we know, is profanity ridden from start to finish, pretty much, was not aired on a number of broadcast stations when ABC aired it for the second time.

MARGOT ADLER: But I, as I understand it broadcasters have complained that the rules are somewhat arbitrary.

WILLIAM TRIPLETT: Yes.

MARGOT ADLER: For example, you know, "Saving Private Ryan" doesn't get it at some level, but a celebrity cursing for one minute brings a big fine to the network.

WILLIAM TRIPLETT: Right. Right. Or how about this? You have in the context of factual discussion on Oprah you have a very graphic discussion of, um, I don't know if we can say this but [LAUGHS] oral/anal sex in a very detailed clinical factual discussion on Oprah. Drew a lot of complaints. The FCC would not fine, said that was a matter of fact. And yet Martin Scorsese's documentary, a documentary on the lives of blues musicians, many of whom come from poor, rural areas, and their language is laced with profanities. That draws a fine when it's aired on public television.

MARGOT ADLER: So how clear is the new policy? Is the Commission really picking and choosing as it goes along? What's the deal?

WILLIAM TRIPLETT: That's what the television industry says. It's anything but clear. Now, the FCC will argue, no, we've given you very clear guidelines. But the producers and the broadcasters maintain that it's very vague. It's arbitrary. They don't know quite where the lines or the borders lie. And it makes them hesitant to take any chances with anything.

MARGOT ADLER: So Fox sued the FCC. They, uh, basically, the Second Circuit Court of Appeals sided with Fox on the fleeting expletive policy.

WILLIAM TRIPLETT: Right.

MARGOT ADLER: The FCC has now petitioned the Supreme Court to hear the case and if the Supreme Court took it, it would be the first time since that Pacifica case 30 years ago.

WILLIAM TRIPLETT: Exactly.

MARGOT ADLER: What do you think is going to happen if the Supreme Court decides to take up the issue?

WILLIAM TRIPLETT: Well, this is the real, the real question and what, for my money, makes the thing very fascinating. Uh, just back up for just a little bit of context. The ... a large push for the FCC to become more active on cracking down on indecency has come from certain groups that we've already mentioned that wanted to see more action on it. Now that has happened. It's gotten the FCC into some legal trouble and it may end up at the Supreme Court. The Supreme Court, it's very likely, may look at this case and say it's not just this particular fleeting expletive policy that's on trial here. It's your whole indecency authority. The reason you had authority 30 years ago is that there were only ... broadcast dominated the airwaves. Broadcast no longer is the only way to get entertainment. Obviously cable is there and satellite now. So, and cable and satellite have filtering technologies. It's very possible, based on similar internet cases where the Supreme Court said most famously in the Playboy case, since internet blocking technologies exist, you cannot regulate or ban, um, you know, indecent fare. That could very well apply to the broadcast indecency regime. In other words, to put a very short point on it, the FCC could see its indecency authority cut back severely if not eliminated altogether.

MARGOT ADLER: There's also the case CBS brought to federal court challenging the fines over the Janet Jackson incident. The outcome of that case is expected, I gather, any moment.

WILLIAM TRIPLETT: Exactly. That was argued last September in Philadelphia at the Third Circuit and interestingly CBS's lawyers made almost a word-for-word argument that Fox had made in their case, essentially saying, FCC you have overstepped your authority. This incident with Janet Jackson falls outside of the legal definition of what constitutes broadcast indecency. Now as you said, you know, the court hasn't ruled yet but given the Second Circuit decision and the Third Circuit argument, um, you know, it could well come out that the court sides for CBS and deals the FCC another setback. But you know that's anybody's guess right now.

MARGOT ADLER: William Triplett is a reporter for Variety magazine which covers the entertainment industry. Is the public served on the public airways? Tell us what you think at JusticeTalking.org. You can post on our message boards, learn more about our guests, and sign up for our free podcasts. And check out our blog where many of the nation's leading commentators give their views on law and American life. Thanks for listening. I hope you'll tune in next week. I'm Margot Adler.