



CHAIRMAN

Federal Communications Commission

Washington, D.C.

April 11, 2003

The Honorable John McCain
United States Senate
Washington, D.C. 20510

Re: *March 19, 2003 Letter from the Honorable Olympia Snowe, et al.; March 20, 2003 Letter from the Honorable John Sununu; March 21, 2003 Letter from the Honorable Sam Brownback; March 28, 2003 Letter from the Honorable Cliff Stearns, et al.; April 10, 2003 Letter from the Honorable Olympia Snowe, et al.; April 10, 2003 Letter from the Honorable Fred Upton; and, April 10, 2003 Letter from the Honorable John McCain*

Dear Chairman McCain:

Thank you for your interest in the completion of the Federal Communications Commission's current broadcast ownership biennial review. As demonstrated by the above-referenced letters received from you and your colleagues, the Commission has heard differing views of the best procedural course for the biennial proceeding. As always, we appreciate hearing and understanding fully your concerns on matters before the Commission and take them into particular consideration as part of our deliberations.

Respectfully, I would like to explain the reasoning behind our present course toward completing this proceeding by early June 2003, without an additional, and unprecedented, notice and comment period. First, the Commission is legally obligated to complete this proceeding in the timeframe established by Congress. Congress mandated in the Telecommunications Act of 1996 that the Commission "*shall* review ... all of its ownership rules *biennially*." Section 202(h) (emphases added). This directive expressly demands timely review and its perpetual character requires closure in order to ready for the subsequent review that shortly follows. I regretfully note that the Commission already is tardy in satisfying its responsibilities, given that the current review should have been finished by the close of 2002 (two full years since the completion of the first biennial review). If the Commission were to issue a further notice, as some propose, the Commission would be hard pressed to finish this 2002 biennial review before late this calendar year and would be forced to start the 2004 review almost immediately.

In fact, Congress chastised the Commission for failing to finish the first biennial review in a timely fashion. Congress took the extraordinary step of demanding, in legislation, that the Commission complete within 6 months its delayed review, because the Commission failed to act promptly on a complete record. *See* Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, § 5003, 113 Stat. 1501, 1501A-593 (1999). Thus, given this prior Congressional rebuke, I feel especially obligated to complete this proceeding promptly.

Moreover, there must be a fair opportunity between the completion of the present proceeding and the initiation of the next to resolve the inevitable challenges to our decision that will ensue. Parties will undoubtedly seek Commission reconsideration and mount substantial court challenges to our decisions, no matter what the outcome. The 2004 biennial review will be impossible to conduct responsibly, if court cases remain pending thereby denying the Commission and the parties an understanding of the permissible parameters of the choices we may make. This is not trivial, given that the courts have spoken aggressively about the burdens placed on the government for defending its regulations in this area, and that judicial sustainability is a key objective of this proceeding.

I fully concede, however, that getting it right is more important than just getting it done. If I were convinced the record was deficient, or that any proposed course required additional comment, I would not hesitate to seek it, even at the expense of time. But, I do not, at present, see that any of those situations are present.

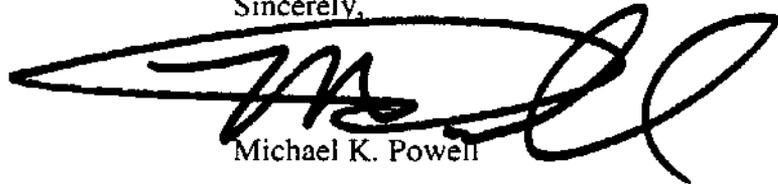
As several of the letters recognize, the Commission has compiled the most extensive record ever for a biennial review. It is a record of over 18,000 comments (with over 17,000 coming from individual Americans), compiled over an extended comment period. It is a record consisting of twelve empirical studies of various aspects of the media marketplace that were separately made available to the public for comment, as were the underlying data that supported those studies conclusions. It is a record that has significant input from the American public through individual comments, through public hearings and through the unprecedented Commission action of reaching out and asking the public how they use the media to access news, and public affairs information. This Commission can proudly say that it has conducted the most thorough and comprehensive review of our broadcast ownership rules in their sixty year history. The Commission has spent the past several months studying this record and the time to make judgments based on that record is before us.

The Commission understands the importance of its obligations under the Administrative Procedures Act to solicit input from interested parties and to base our decisions on that input. I assure you, again, that if, in our sound judgment, further comment on any specific rule changes in this proceeding is required, we will seek it. I understand that many would appreciate the opportunity to see each specific proposed rule change prior to adoption, but we do nothing radical by declining the invitation. In my five and a half years at the Commission, I do not recall a single instance in which such a process was pursued—including numerous matters involving media and ownership rules. In fact, the Commission's last biennial review did not follow such a course, yet it made significant changes in the rules. Indeed, not until this late point in a proceeding that has been pending over eight months have I heard any concerns expressed about the form of the current notice of proposed rulemaking. It is late in this process to suddenly adopt an alternative, even if worthy, procedural course.

I have personally spent hours with the record and probably have the fullest understanding of the possible actions that might be taken in this proceeding. I firmly believe, based on where the Commission is today, that further and more specific notice is unwarranted in light of the full record before us, and weighed against the pitfalls of further delay. I would highlight that the public interest is presently being ill-served by a body of rules that have been severely wounded and rendered substantially ineffective by withering judicial fire. Survival demands action.

Again, I thank you for your interest in this proceeding. Your input is greatly appreciated. I look forward to keeping you apprised of our progress not only with this proceeding but with the rest of the Commission's efforts in promoting the public interest. If you have any questions, I stand ready to answer them.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Powell', written over a horizontal line.

Michael K. Powell