

# How FCC Justifies Relaxing Media Ownership Restrictions:

## An Interview with the Chairman

By Andrew Jay Schwartzman

*Kevin J. Martin has served on the Federal Communications Commission since 2001 and was promoted to Chairman by President George W. Bush three years ago this March. During this time he has presided over drastic changes in long-standing rules, notably those affecting media ownership and media consolidation. Last October he announced a plan to repeal a decades-old rule that forbids a company to own both a newspaper and a television or radio station in the same city.*

*Seeking his rationalization for these proposed changes, Television Quarterly invited Andrew Jay Schwartzman, President and CEO of the Media Access Project (MAP), to interview Mr. Martin. MAP is a non-profit public-interest telecommunications law firm which promotes the First Amendment's rights to speak and hear. Mr. Schwartzman has appeared on behalf of MAP before Congress, the FCC and the courts on such issues as cable TV regulation, minority and female ownership and employment in mass media. Salient portions of his recent interview with Mr. Martin follow. --Ed.*

**ANDREW SCHWARTZMAN:** Mr. Chairman, you've long stated a belief that newspaper/broadcast cross-ownership rules should be modified. And you voted to lift the rules in 2003. Without discussing what's presently before the FCC, can you explain why you've taken this position in general?

**KEVIN MARTIN:** In general, Congress actually modified all of the ownership rules in 1996, except for the newspaper cross-ownership rule, which they

deferred to the Commission to study and update as they saw fit. When I was Commissioner, I think you said that I voted to lift the rule. What I voted for in 2003 was a removal of an absolute ban that said that if you owned a newspaper you couldn't own any other broadcast property in that same market. So in New York city, if you owned a newspaper you couldn't even own a single radio station. And actually the court upheld the Commission's

decision in determination to remove that ban.

And I think the reason why is that they said that they upheld it as a rational decision in today's media environment with the proliferation of other outlets and the changes that occurred in our other rules. To say that the newspaper/broadcast ban, which was put in place in the mid-1970's before there was cable, before there was an opportunity to get access to information on the internet; we needed to update that rule, to take those other avenues for information and for entertainment into account, was appropriate. And I continue to think that today. The Commission has to take those things into account in our rules.

**AS:** Do you think that the newspaper/broadcast cross-ownership rule merits special attention from the Commission or should be viewed holistically in connection with all the other ownership rules?

**KM:** Well, I think that all of the ownership rules have to be looked at in the context of the other rules. So they all have to be looked at in context. When you say does it merit special attention, I think what's special about it is that the other rules have all been changed and that one wasn't changed. In other words, prior to 1996 there were rules prohibiting you from owning two TV stations in the same market, except in a very limited circumstance. And that rule was changed to allow much more widespread ownership of two TV stations in the same market. And I think that similarly the Commission has been talking about making changes to the newspaper rule since Reed Hundt was chairman, three chairmen ago. He opened up the initial inquiry and said there was no need to have a prohibition on a newspaper owning

a radio station any longer. And while that's been discussed for a long time at the Commission, that change has never occurred. Other rule changes have moved forward. The only special attention that I think they deserve is to get the same kind of attention to their rule as we've given to the [others].

**AS:** I use a book as a text in my college class called *Fighting For Air* by Eric Klinenberg. There's a chapter in there about an incident, which I know you're familiar with, in Minot, North Dakota. [On January 18, 2002, a toxic spill occurred outside the town. A train derailment sent a cloud of poisonous gas over the area. But emergency services were unable to advise residents what to do and when to evacuate. All six of the area's non-religious commercial radio stations, owned and operated by Clear Channel Communications, were empty of humans. Their play lists and disk jockeys originated several states away. The result was one death and over a thousand injuries.--Ed.]

**KM:** Yes.

**AS:** Which raises the question of how public service can suffer in the cost cutting environment of deregulation. Do you think the actions of competition can threaten public safety? Do you think this is a valid concern that's related to deregulation?

**KM:** The question is: In the absence of competition, can that threaten public safety?

**AS:** Yes.

**KM:** I'm not sure I agree with the premise [that] there [is] a non-absence of competition. But do I agree that if there was no competition that it could be harmful to public safety? Sure. Because I believe that a vibrant competitive market is one of the best things of driving innovation



Stanley Zenor

*Andrew Jay Schwartzman*

and consumer choice out to the market place. But I actually think public safety is something that in many ways, I almost put it as more important than competition one way or another—even in the other areas. We provided deregulation because we want to see competition between telecommunication companies and cable companies in the delivery of video services; or between the wireless platform and landlines and voice providers. We've still said that even in that area of vibrant competition, public safety is something that transcends it. And we have to make sure that all of those providers still provide access to 911. So in many ways I think that public safety is something that's more important; whether there's a whole bunch of people competing or there's fewer parties competing, public safety is something that we



Joshua Roberts / Bloomberg News / Landov

*Kevin J. Martin*

have to mandate and it's critical to ensure, no matter what.

You were asking if a lack of competition adversely affects public safety. Some people could argue that, sure. Some people have argued to us before that actually increased competition on the telecommunications side has hurt public safety. For example, voice providers come in and are competing with landline telephone companies and don't want to have to provide public safety because it costs too much. So that competitive pressure has led them to cut back on services.

I think what the Commission has to do across the board, and across all these media platforms is to say that public safety is something that we need to ensure irrespective of what else they're trying or not doing. And so we need to be requiring that above

and beyond the other issues.

**AS:** That's very interesting.

**KM:** Now what occurred in Minot was troubling. There was an investigation done with them. I think there could have been several failures that occurred in Minot. I think that one of the public safety people called the wrong phone number. There were a series of events that occurred, both on the public-safety side and that occurred by not having someone live there. But what I would say is that: do I think that what occurred there is troubling? Yes. And indeed, that's one of the reasons why the Commission has asked recently whether we need to modify our rules about always having always somebody present in the context of radio broadcast.

**AS:** That raises a question. What did you take away from the Commission's examination of the events surrounding Hurricane Katrina and what insights you might have gained about public safety broadcasting in that context?

**KM:** I think that one of the most important things that the Commission would have seen from Katrina is the really critical and unique role that broadcasting still plays, particularly during disasters. Because many of the other means of delivering news, information, entertainment are more dependent upon physical infrastructure that can be damaged. And broadcasting can still be damaged. A tower goes down and some broadcasters have difficulty. But it's not the same as the cable wires and telephone wires going ... Even when they have had access to cable services or their telephone services cut, people can still have battery-powered radios and still get access to information. So it only highlights in an emergency like that the critical role

that broadcasting can play. And it's really a unique localized role that they play. It's because of the nature of the distribution makes it more resilient and the fact that it's distributed locally and with more local content makes it more unique. And so I think that that's one thing.

But I think there was another thing that was interesting to learn. When we had panels of people come and testify to us about what occurred is that some of the broadcasters there, including the public-broadcast stations that end up relying on the commercial broadcast facilities after their facilities have been damaged, talked about the support they got from being part of a larger media company financially; to be able to continue to broadcast in a way that would have been very difficult for them if they had only been a local community and from a financial perspective.

So I do think that it was an example both of the unique role broadcasters provide and why people are so concerned about so many issues surrounding the broadcasting media; but also the importance of understanding at times how broadcasters can benefit financially from being connected to other broadcast companies.

**AS:** I'd like to ask you a couple of questions about indecency, which is an area of particular concern to the readers of this interview. How do you reconcile your strong position on broadcast and decency enforcement with your laissez-faire views on other issues and on content questions and on media ownership?

**KM:** While again, I'm not sure I accept the premise that I have a laissez-faire view on everything else. And there's times I think you probably

could ask other companies and they might not describe me that way either. So do I think that there are times when we need to update our other rules, including media ownership? Sure. But I don't think that I think that that means we should get rid of all the rules. And I think that the rules for example that ensure that limitations on network ownership, national network ownership, I thought were important and indeed in even in 2003 I said that the change we made in that rule ...

On indecency, I also think that Congress has passed a law that says that the Commission should restrict the broadcast of certain kinds of inappropriate content during the hours that children are likely to watch. And I think that that is something that we have an obligation to enforce, like any other group. And I think it's an important rule; again, because of the unique role that broadcasting plays. Just the same as the underpinnings of why people are concerned about broadcasting from an ownership perspective regarding a hurricane, or the content that's provided to their children are all similar in that they play a very unique role in our communities and a unique role historically.

I think that actually—even legally—many if not all of the concerns still arise from what we call “the doctrine of spectrum scarcity”—the fact that there's a limited number of broadcast stations in any one market. And as a result there's more people who would want to get in than we have spectrums to accommodate. And as a result we have certain obligations and expectations that we think should apply to the people who get the privilege of doing it. I think that same philosophy and legal understanding that arises out of indecency is also

important when you're talking about issues of ownership.

**AS:** I would observe that one of the benefits of addressing market power in broadcasting through ownership rules is that it's content neutral. Are you comfortable with more content-based kind of regulation such as indecency regulation? Or would you prefer to do more through structural rules like ownership regulation?

**KM:** I think it's always easier for the Commission to try to do more through structural changes as opposed to direct regulation of content. It's the very reason why I think the biggest single most important issue that we can make to empower or to address both some of the content issues and some of the price issues in cable is to empower the individual consumer to pick and choose the channels they want. Because if the consumers get to pick and choose their own channels, then they are in more control of the content that they are receiving. So I think if we had a la carte cable service out there, where people could pick and choose different channels, they would have more control over the prices and more control over the content. Then the government wouldn't have to be in control of either the prices or the content. Instead, we'd have individual people in control of both.

I think that's an example of a real structural change, where we're really empowering consumers to be able to make those choices. But I think that there are times when consumers don't have any of those choices or that same choice. And it's in those contexts that at times Congress has said the Commission has to set some minimum standard ...

**AS:** Do you think that documentaries and live or almost real-time broadcasts

should be subjected to the same kinds of indecency standards as recorded or film program?

**KM:** You know, we take context into account for all of our decisions. And I think that that context includes whether something is a documentary or a live documentary—or whether it's live or not; on programming, we take context into account in all of our decisions about content.

**AS:** A lot of broadcasters report that the effect of the Commission's strengthened enforcement on indecency is to make them err on the side of toning down their material, to steer wide of possible problems. Are you happy about that?

**KM:** I don't know if that's true or not true. I don't know. We also have a significant increase in the number of complaints that the Commission has received. So I don't know if the premise of your question that they're toning down their material is true or not. I know the number of complaints that we get at the Commission has increased significantly since I first arrived. When I first arrived at the Commission we got a few hundred complaints. Then we went up to a few thousand, then tens of thousands, and then hundreds of thousands of complaints. In 2004, we had a million complaints. And, indeed, we've had hundreds of thousands of complaints in every year since then. So I'm not sure whether that's true or not.

**AS:** In a somewhat related area, you've used your position as a "bully pulpit" to encourage broadcasters to tone down their programming, to restrict advertising of junk foods to children. Do you think that that's an appropriate role? You must, because you do it, I guess. Why do you think it's an appropriate role?

**KM:** I think we have a significant problem in this country related to childhood obesity. And it's an issue that can't be addressed alone. The media plays an important role ... And I think that this has been increasing problem, an increasing health crisis that's occurring to some of our children today. And I think that that involves both the food manufacturers, the advertisers, and the media that distributes that advertising. We've formed a task force trying to look at ways, all segments of the industry, along with the advocates, the children's advocates—and there are advocates concerned about this—to get together and try to provide a forum that maybe can make some progress without the Commission having to adopt regulations. But yes, I think that's an appropriate role. We are concerned about the impact that these things are having on our children.

**AS:** Would you like legal authority to address cable content and indecency on cable and violent programming?

**KM:** You know what? I would like for consumers to have the authority and the ability to address it fully; and for them to be able to say, "I don't want a channel and [will not have to] pay for it any longer." That's what I'd like.

**AS:** What about legal authority to address violence?

**KM:** It's the same thing. I think that the most important thing we could do is to give consumers the real ability to have a meaningful choice, and for their choices to have meaning. So that when they make a choice out it has a meaningful economic consequence; that they no longer have to pay for a channel that they don't like.

**AS:** You advocated steps to lower barriers to entry for video programming. Do you think there's a

market failure in that area?

**KM:** Well, I think there have been some barriers or difficulties for people to be able to get on with additional independent programming. And I think that one of the things the Commission needs to reexamine is the ability of independent program providers to get across to the underlying cable platform through leased access and through program access, through our program access rules. And I think the Commission needs to go back and reexamine those and see if the current rules are providing enough support and avenues for those who are independent producers of programming, to be able to get access for the distribution of their content. And I think it's something the Commission can take some steps to address.

**AS:** You obviously have to meet with and balance the input of many, many different groups and constituencies. Have you had any difficulty in connection with your contacts with the artistic and production communities in understanding and addressing their concerns?

**KM:** You're going to have to ask them as well. But I think we've tried to address some of their concerns. At the most recent ownership hearing we announced we're going to be looking at, for example, changing our rules on product placement because that was a concern we had from the artistic community; the pressure they were coming under for placing products in the writing of shows. And that was one of the concerns that was raised with us actually when we were out in Los Angeles at a community ownership hearing that I took it very seriously and we're trying to find a way to address it. So I would like to say that I try to work with all the different constituents.

**AS:** Last question. What benefits do you think you've drawn from your travels to Silicon Valley, to Hollywood and elsewhere around the country, to learn about issues relating to media and telecommunications?

**KM:** I think whenever you have the opportunity to get outside of Washington you get an additional perspective on some of the problems that individuals and companies are facing. And I think it's been important when I get outside of Washington to hear about the complaint that average people have about the high prices they're paying for their cable television service for a whole bunch of channels that they don't want. I think it was important when we were in Silicon Valley to hear from some of the developers of additional innovation about the difficulties they were having in getting that innovation on the wireless platforms of the major carriers. When we were in California hearing about the concern that the Writers Guild had about the pressure that was being put on them on product placement. I think those are all examples where there were issues that were able to be highlighted when we got outside of Washington and there are steps the Commission can take to try to address them.

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*Andrew Jay Schwartzman, since 1978 President and CEO of the Media Access Project, graduated from the University of Pennsylvania and its law school he was staff counsel to the Office of Communication of the United Church of Christ and later worked for the U.S. Department of Energy. He teaches at Johns Hopkins University and serves on the International Advisory Board of Southwestern Law School's National Entertainment and Media Law Institute, among many other academic positions.*