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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	FCC 94-324
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast Interests	)	MM Docket No. 94-150
	)	DOCKET FILE COPY ORIGINAL
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

COMMENTS OF TURNER BROADCASTING SYSTEM, INC.

OF COUNSEL:
Bertram W. Carp
Turner Broadcasting System, Inc.
820 First Street, N.E.
Washington, DC 20002
(202) 898-7670

Bruce D. Sokler
James A. Kirkland
Sara F. Seidman
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, DC 20004-2608
(202) 434-7300

Attorneys for Turner
Broadcasting System, Inc.

May 17, 1995

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SUMMARY

The FCC commenced this proceeding for the purpose of determining whether specific interests should be deemed cognizable under the Commission's multiple ownership rules. Turner Broadcasting System, Inc. ("TBS") does not believe that any changes to the attribution rules are necessary. More importantly, however, any changes to the attribution standards that may be adopted in this proceeding should not be applied to other ownership rules, including specifically, the broadcast-cable cross-ownership rules and the network-cable cross-ownership rules. To do so would exceed the Commission's authority under the Administrative Procedure Act and would be inappropriate as a policy matter.

The question of what interests are attributable cannot be viewed separately from the substantive ownership prohibitions because any changes to the attribution standards would fundamentally alter the scope of ownership rules. The FCC, however, did not solicit comment on whether the attribution criteria should be changed for purposes of ownership rules other than the multiple ownership rules. If the Commission wants to adopt new attribution standards to be applied to the broadcast-cable or the network-cable cross-ownership rules, it must do so on a record devoted to that issue.

Moreover, extending the reach of these ownership rules via expansion of the attribution rules makes no sense in light of the FCC's and Congress' expressed view that the broadcast-cable and

network-cable cross-ownership prohibitions should be eliminated or at least significantly relaxed. It would be extremely ironic if this proceeding, which was commenced in the context of liberalizing the multiple ownership rules, had the unintended effect of raising entry barriers in the communications industry generally.

Under any circumstance, TBS urges the agency to retain the single majority shareholder and non-voting stock exemptions from the attribution rules. Elimination of these long-standing exemptions would have a severe and unnecessary impact on the abilities of companies, like TBS, to obtain financing.

TBS presents a prime example of why this is true. In 1987, to finance its acquisition of the MGM film library, TBS sold a minority interest of the company's equity to a group of cable television operators. TBS selected this cable group because they were the only investors willing to take such a major risk, one that other investors would not undertake on comparable terms.

This infusion of cable equity has allowed TBS to provide more innovative and diverse programming to the public through the establishment of four new national cable networks: Turner Network Television, the Cartoon Network, Turner Classic Movies, and Cable News Network International on a domestic basis.

In contrast to the very real danger of limiting sources of financing for companies like TBS, there are virtually no public interest benefits to eliminating the single majority shareholder and non-voting stock exemptions.

TBS once again presents a significant example. There is no doubt about who controls TBS today and who has controlled TBS every day since its establishment in 1970. Ted Turner has de jure control by virtue of his 64.9 percent voting stock interest. He also has de facto control, acting as the company's Chairman and Chief Executive Officer and being intimately involved in all important decision-making. In addition, despite repeated rounds of financing, Mr. Turner has retained a significant equity stake in the company.

While TBS, as a cable programmer, is not directly within the zone of the broadcast-cable cross-ownership rules, expansion of the attribution rules might result in TBS's operator investors being deemed cognizable for purposes of these ownership prohibitions. Consequently, TBS would be punished for taking advantage of its best source of risk capital. Elimination of the single majority shareholder and non-voting stock exemptions more than likely would preclude TBS, for no apparent reason of public policy, from pursuing its goal of purchasing a broadcast network.

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COMMENTS OF TURNER BROADCASTING SYSTEM, INC.

Turner Broadcasting System, Inc. ("TBS"), by its attorneys, hereby files comments in the above-captioned proceeding.[1/] The Commission commenced this proceeding to reevaluate its mass media attribution rules and asked for comment on a number of proposals to revise the criteria for determining whether specific interests should be deemed cognizable under the FCC's broadcast multiple ownership rules. TBS does not believe that any changes in the attribution rules are necessary. Most importantly from its perspective, however, TBS urges the Commission to refrain from applying any changes in the attribution rules adopted in this proceeding to other ownership rules, including specifically, the

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[1/] Notice of Proposed Rulemaking, MM Docket Nos. 94-150, 92-51, 87-154, FCC 94-324 (released January 12, 1995) ("Notice").

broadcast-cable cross-ownership rules and the network-cable cross-ownership rules. As explained below, it would be particularly ironic and inappropriate for the Commission, in the context of an initiative whose explicit purpose is deregulatory, to apply attribution rules in other contexts to raise barriers to entry in the communications industry generally.

INTRODUCTION

The Commission adopted the broadcast attribution rules in 1953 to identify interests held by parties in broadcast applicants or licensees that give their holders a degree of control or influence sufficient to warrant limitation under the multiple ownership rules.[2/] The multiple ownership rules restrict the number of broadcast properties that may be owned or controlled by a single entity, so as to foster diversity of ownership in the broadcast industry.[3/]

In evaluating "control", the Commission looks at both de jure (more than 50 percent of the outstanding voting stock) and de facto control.[4/] Determining de facto control requires a case-by-case analysis regarding who has actual control over a licensee's programming, financial, and personnel policies. The concept of "influence" involves an evaluation of whether an

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[2/] See e.g., Amendment of Multiple Ownership Rules, 18 FCC 288, 292-93 (1953).

[3/] 47 C.F.R. § 73.3555.

[4/] Notice at ¶ 4.

interest holder "is likely to induce a licensee or permittee to take actions to protect the [holder's] investment."[5] The Commission generally would find a party attributable if it has "a realistic potential to affect [the licensee's] programming and other core operational decisions."[6]

Over the years, the Commission has adopted several benchmarks to help it evaluate the difficult issues of control and influence and to give broadcasters more certainty in structuring their companies. These benchmarks include a five percent non-attributable limit for voting stock, non-attribution of minority interests when a single majority shareholder owns more than 50 percent of the voting stock, and non-attribution of all non-voting stock.[7] The Commission has asked for comment on, among other things, whether the single majority shareholder and non-voting stock exemptions from attribution should be eliminated or their availability restricted in some manner.[8]

The attribution rules first were adopted to accompany the multiple ownership rules, and it appears the focus of the instant proceeding is on the interaction of these two sets of rules. The attribution rules subsequently were extended, however, to apply to other ownership situations involving mass media facilities, such as the television network-cable and television station-cable

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[5] Id.

[6] Id.

[7] 47 C.F.R. § 73.3555, Notes 2(a), 2(b), 2(f).

[8] Notice at ¶¶ 51-54.

cross-ownership regulations.[9] Significantly, however, the Commission did not ask for comment on the effect that changing the attribution rules would have on these other cross-ownership interests. Thus, amending the attribution criteria in this rulemaking proceeding in a way that applies to ownership rules other than the multiple ownership rules would exceed the Commission's authority under the Administrative Procedure Act.

Moreover, in recent years, the Commission has expressed skepticism about the need for, and desirability of, these two cross-ownership rules. Thus, it makes little sense to extend the reach of attribution criteria in the context of ownership rules that the Commission, in its most recent pronouncements, indicated were no longer in the public interest. TBS does not believe that any change in the attribution rules are necessary. Even if the Commission did decide to expand the attribution rules in this proceeding, TBS believes that the Commission must expressly limit the applicability of such changes to the multiple ownership rules. To do otherwise would be contrary to law and would cause a significant and unnecessary impact on the ability of parties subject only to the broadcast-cable cross-ownership rules to attract capital and expand their businesses.

Under any circumstance, TBS would encourage the Commission to retain the single majority shareholder and non-voting stock exemptions from the attribution rules. As discussed below, TBS believes that these limited exemptions are the very mechanisms

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[9] See 47 U.S.C. § 533(a)(1); 47 C.F.R. § 76.501.

that made the growth and survival of TBS possible. Indeed, expanding the reach of the attribution rules in this manner would be inconsistent with the goal of diversity that led the Commission to adopt the multiple ownership rules in the first place.

I. Expanding the Attribution Rules for Purposes of the Broadcast-Cable Cross-Ownership Rules in this Proceeding Would Exceed the Commission's Authority

In undertaking this review of the attribution rules, the Commission's focus was on the need to identify interests that warrant limitation under the multiple ownership rules. Indeed, the Notice repeatedly asks for comment on whether a particular ownership interest in a licensee warrants "attribution for multiple ownership purposes."[10/] In addition, in a companion proceeding commenced the same day, the FCC sought comment on proposals to relax the national and local multiple ownership limits for television stations.[11/]

In contrast, comment was not solicited on whether the attribution rules should be changed for purposes of other ownership regulations, such as the broadcast-cable cross-ownership rules, even though the same attribution criteria currently are applied in both circumstances.[12/] The Commission

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[10/] See e.g., Notice at ¶ 3 (emphasis added). See also Notice at ¶¶ 1, 2, 4, 11, 12, 13, 14, 15, 16, 51, 54, 101.

[11/] Further Notice of Proposed Rulemaking in MM Docket No. 91-221, FCC 94-322 (released January 12, 1995).

[12/] 47 C.F.R. 76.501, Notes 2 and 3.

simply mentioned, in passing, the network-cable cross-ownership policy as an example of other areas in which the Commission has adopted "attribution standards [] identical to those used in broadcasting."[13/]

Under these circumstances, TBS assumes that amendments to the attribution rules made here will not be applied in any context other than with respect to the multiple ownership rules. The question of what interests are attributable cannot be viewed in isolation from the substantive ownership prohibitions because any changes to the attribution standards would fundamentally alter the scope of the underlying cross-ownership prohibitions. Accordingly, if the Commission wants to adopt new attribution criteria for purposes of the broadcast-cable or the network-cable cross-ownership rules, it must do so on a record devoted to that issue. To do otherwise would plainly violate the requirements of the Administrative Procedure Act.[14/]

Apart from being contrary to law, changing the attribution standards as applied to those other cross-ownership rules is inappropriate as a policy matter. The Commission has suggested that these cross-ownership rules are no longer necessary to

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[13/] Notice at ¶ 27.

[14/] 5 U.S.C. §§ 553, 706(2)(A). See also Motor Vehicle Mfrs. Ass'n. v. State Farm Mutual Automobile Insurance Co., 463 U.S. 27, 43 (1983) ("agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"); Home Box Office, Inc. v. FCC, 567 F.2d 9, 36 (CADC 1977) ("[A] 'regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.'").

protect the public interest and, thus, extending their reach via expansion of the attribution rules makes no sense. In 1992, for example, the Commission relaxed the network-cable cross-ownership prohibition and announced that it would commence a proceeding this summer to determine whether continuing ownership restrictions of any sort are warranted.[15] In that decision, the Commission declined to adopt more stringent attribution rules, concluding that its "existing broadcast attribution standards adequately address questions of ownership and control in the context of network-cable cross-ownership."[16] It stated further that more severe restrictions "could prevent certain beneficial financial arrangements between networks and cable operators."[17]

Also, in 1992, the FCC recommended that Congress repeal the television station-cable cross-ownership rule (which had been codified by the Cable Communications Policy Act of 1984)[18] "to permit [the FCC] to allow local broadcasters to own cable systems

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[15] Amendment of Part 76, Subpart J, Section 76.501 of the Commission's rules and Regulations to Eliminate the Prohibition on Common Ownership of Cable Television Systems and National Television Networks, FCC 92-262, MM Docket No. 82-434 (1992) ("Network-Cable Order").

[16] Id. at n.54.

[17] Id.

[18] See 47 U.S.C. § 533(a)(1).

in their service areas."[19] While the FCC clearly is prepared to eliminate, or at least significantly relax the rule, it has no jurisdiction to do so without action from Congress -- except perhaps by liberalizing the attribution rules applicable to the statutory provision.

This year, however, the Senate proposed giving the FCC the requested authority to make changes to the cross-ownership rules, as the agency deems appropriate. In particular, S.652, the "Telecommunications Competition and Deregulation Act of 1995", currently pending in the Senate, would repeal the statutory ban on cross-ownership of overlapping broadcast stations and cable systems, and instructs the Commission to review all its ownership rules biennially.[20]

Any move away from the status quo with regard to attribution would constitute an affirmative policy decision on the part of the Commission to expand the underlying ownership prohibitions. Given the policy views reflected above by the FCC and Congress to eliminate, or at least relax, the broadcast-cable cross-ownership rules, it plainly would be inappropriate to extend the reach of the attribution rules at this point. It would be ironic indeed

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[19] Network-Cable Order at ¶ 17. The FCC relaxed the network-cable prohibition and recommended repeal of the statutory broadcast-cable ban after a 1991 comprehensive report issued by the Commission's staff found that such combinations "could allow efficient use of programming and other resources." F. Setzer and J. Levy, Broadcast Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, June 1991, at 170-71.

[20] S. 652, 104th Cong., 1st Sess. § 207 (1995).

if this proceeding, which was commenced by the Commission in the context of liberalizing the multiple ownership rules, had the unintended effect of stiffening other cross-ownership rules, rules that the Commission has explicitly deemed burdensome and unnecessary.

Moreover, the current attribution rules are more than sufficient to address issues of control and influence. More stringent standards likely would preclude the kind and level of investment the Commission deems not just permissible, but desirable, in both the broadcast and cable industries. Accordingly, should the Commission ultimately decide in this proceeding to enlarge the attribution rules, TBS submits that the decision must be explicitly limited to the context of the multiple ownership rules.

II. The Single Majority Shareholder and Non-Voting Stock Exemptions Have Increased the Ability of Companies to Attract Financing

Under any circumstances, TBS urges the agency to retain the single majority shareholder and non-voting stock exemptions. Before limiting the availability of these long-standing exemptions from the attribution rules, the Commission should consider carefully the potential adverse affect such an action would have on companies, like TBS, looking for legitimate avenues to expand their businesses.

TBS itself presents a vivid example of how relatively non-restrictive investment rules have helped to benefit competition

and increase programming choices to the public. Ted Turner, the Company's chairman, founded TBS in 1970 when he paid $2.5 million to acquire WJRJ, an Atlanta UHF broadcast station close to bankruptcy. Eventually, the call letters of the station were changed to WTBS and it is now known to the public as the TBS SuperStation.

Ten years later, TBS launched the Cable News Network ("CNN"), despite much skepticism and cynicism about the ability of a 24-hour cable-delivered news service to be either professional or profitable. TBS's commitment to quality programming was vindicated, however, and CNN now is seen in more than 61 million homes, constituting more than 66 percent of American homes and over 11,000 systems, in addition to 62 million overseas subscribers in 125 countries.

In 1986, TBS paid approximately $1.4 billion for the MGM film library and extensive rights to the Warner Bros. and RKO libraries. TBS viewed this purchase as crucial to its survival, to its ability to solidify the financial health of its networks, and to its ability to continue to offer innovative programming. Therefore, it was willing to finance the MGM acquisition with what amounted to short-term "bridge" financing and to seek financial help from cable multiple system operators ("MSOs"). Until long-term financing could be obtained, the company's independence was very much at stake. To restructure this short-term debt, in June 1987, TBS sold a minority interest (35 percent of equity and 16 percent of voting shares) to a group of more

than two dozen cable industry investors. Today, Ted Turner retains almost 65 percent of TBS's voting stock and approximately 28 percent of the company's equity. Telecommunications, Inc. and its affiliates own approximately 22 percent of the equity and Time-Warner, Inc. owns approximately 19 percent (on a fully diluted basis, and assuming conversion of all convertible instruments and exercise of all options).

TBS selected this cable investor group because the group was prepared to provide long-term equity while preserving the company's independence. While the operators' investments have proved more than sound, at the time, the operators were perceived as taking a major risk, one that other investors would not undertake on comparable terms. These cable operators were willing to take such a risk, however, because they have a vested interest in the viability of TBS. Specifically, the success of their operations is closely linked to the attractiveness of the programming carried over the systems. Without strong programmers, there will be no strong operators.

In addition to the MGM acquisition, the infusion of cable equity has allowed TBS to provide more innovative and diverse programming to the public through the establishment of four new cable networks. In 1988, the company launched Turner Network Television ("TNT"), which provided many critically-acclaimed and award-winning first-run programs, as well as cable coverage of the National Football League and National Basketball Association.

Later, TBS acquired Hanna-Barbera with its library of cartoons and production company, and started the Cartoon Network. As with its other networks, TBS developed this network as a means of reaching out to viewers with specialized interests. TBS programs the Cartoon Network with shows from its animation library and by developing and originating programming specifically for the network. This innovative programming has allowed the Cartoon Network, in just its second year of operation, to rank among the five highest-rated networks on basic cable.

Turner Classic Movies ("TCM"), TBS's sixth domestic cable service, was launched in April 1994 and by year-end was reaching 3.2 million homes. The majority of these homes were represented by the home satellite market -- an industry first. TCM is a subscription-supported service that features an average of 400 films each month from Turner's film libraries.

Finally, one of TBS's newest efforts began on January 1, 1995, when the company made CNN International available for the first time to audiences in the United States. CNN International, the only worldwide 24-hour news network, currently is available in 145 countries.

Because TBS is a cable programmer, and not an operator, it is not directly within the zone of the broadcast-cable cross-ownership rules.[21/] Nevertheless, if the Commission chooses to expand the attribution rules, TBS's operator investors might be

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[21/] 47 U.S.C. § 533(a)(1); 47 C.F.R. § 76.501.

deemed cognizable for purposes of the cross-ownership rules. Consequently, TBS would be punished for taking advantage of its best source of risk capital; capital that has enabled the company to develop programming designed to cater to the specialized needs of viewers. Elimination of the single majority shareholder and non-voting stock exemptions more than likely would preclude TBS, for no apparent public policy reason, from pursuing its goal of purchasing a broadcast network. As a result, the broadcast-viewing public would be deprived of programming that is generally more innovative and more educational than the programming currently produced for broadcast networks.[22/]

Moreover, at a point where competition in the video services market is becoming incredibly intense, corralling some competitors and not others is bad policy. Specifically, having been freed from the telephone company-cable cross-ownership

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[22/] See H.R. Rep. No. 628, 102d Cong., 2d Sess. 41 ("Other witnesses before the Committee testified that vertical relationships strongly promote diversity and make the creation of innovative, and risky, programming services possible. These witnesses point to C-Span, CNN, [BET], Nickelodeon, and the Discovery Channel as examples of innovative programming services that would not have been feasible without the financial support of cable system operators."); 138 Cong. Rec. S627 (daily ed. Jan. 30, 1992) (statement of Sen. Barbara Mikulski) ("The elderly, those shut in their homes, rely on cable as their links to the world. They rely on CNN or the weather channel. Many use it as a form of companionship . . . We have great programming like the Discovery Channel put together in the State of Maryland."); 138 Cong. Rec. S14610 (daily ed. Sept. 22, 1992) (statement of Sen. John F. Kerry) ("cable's success . . . has come with a lot of hard work by industry leaders. It has come with a lot of investment in innovative programming, coupled with a commitment to high quality and responsiveness to the viewing desires of the public.")

ban,[23] local exchange carriers are entering the programming business.[24] Even if they essentially act as cable operators, under current FCC policy, telephone companies are not subject to the broadcast-cable cross-ownership rules. Likewise, long distance carriers and broadcast networks may freely join forces, as evidenced by the recent announcement of the joint venture between MCI Communications Corp. and News Corp.[25] Thus, while changes to the attribution rules could prevent TBS, under its current ownership and board structure, from buying a broadcast network, competing telephone companies would be bound by no such restrictions.

As the Commission is well aware, the video programming market is changing rapidly. Some of that change is driven by evolving competitive conditions and new technology. Some is prompted by regulatory changes such as the elimination of the financial interest and syndication rules and the statutory

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[23] 47 U.S.C. § 533(b); See e.g., Chesapeake & Potomac Tel. Co. of Virginia v. United States, 42 F.3d 181 (1994); U S West, Inc. v. United States, 48 F.3d 1092 (9th Cir. 1994).

[24] A notable illustration of the LECs' aggressive move into this business occurred earlier this year when a consortium made up of Pacific Bell, Bell Atlantic, and NYNEX issued a request for proposals on the four million "digital entertainment terminals" it will need to build video networks. By combining their orders for these set-top boxes, the companies hope to take advantage of huge volume discounts from the manufacturers. Three Baby Bells are Combining Orders of TV Set-Top "Boxes" in Bid to Cut Costs, Wall Street Journal, February 28, 1995, at B5. Significantly, these same three BOCs comprise another group that joined with Creative Artists Agency recently for the purpose of producing and distributing video programming. Id.

[25] E.g., MCI, Murdoch Plan $2 Billion Media Alliance, Washington Post at A1, May 11, 1995.

prohibition against telephone company delivery of video programming. In this newly emerging fully competitive marketplace, the Commission cannot, based upon a non-existent record, handicap certain participants.

III. The Single Majority Shareholder and Non-Voting Stock Exemptions Present Minimal Risk of Excessive Control or Influence by Investors

In contrast to the very real danger of limiting sources of financing for companies like TBS, there are virtually no public interest benefits to be gained by expanding the scope of the attribution rules. TBS once again presents a prime example of why this is true.

There is no doubt about who controls TBS today and who has controlled TBS every day since its establishment in 1970. Ted Turner exercised both de jure and de facto control of the company he founded before the 1987 cable MSO equity investment, and he has maintained that control since the investment. Indeed, selling equity stakes to cable operators is the very thing that has allowed TBS to retain its independence.

Turner's de jure control is obvious. He holds 64.9 percent of TBS's voting stock and plainly has voting control. With regard to de facto control, Turner acts as the company's Chairman and Chief Executive Officer and is intimately involved in all important decision-making. In addition, Turner owns a

significant equity stake in TBS, giving him a strong incentive to exercise his voting control firmly and independently.[26]

While the cable investors have a non-majority presence on TBS's board and have "supermajority" voting rights on certain decisions, they have no ability to control or excessively influence the company. The Commission has recognized on several occasions that legitimate investor projections do not, in and of themselves, deprive majority shareholders of their ability to control.[26] In fact, the FCC has stated that the inclusion of such provisions in corporate documents is a common practice to induce investment and ensure that the basic interests of investors are protected.[27]

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[26] After the MSO investment, Ted Turner initially retained 51 percent of TBS's equity but, as the need for additional capital arose, TBS's other investors increased their equity holdings. Turner now owns approximately 28 percent of TBS's outstanding stock (which includes 64.9 percent of the company's voting stock). As the Commission has recognized, marketplace realities dictate that, over time, growing firms must undergo successive rounds of financing and that it is unlikely that the original owners will be able to retain the same equity interests. See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Memorandum Opinion and Order, PP Docket 93-253, at ¶ 70 (1994) ("Auction 5th MO&O"). Nevertheless, because the MSO investment has allowed TBS to compete successfully in the marketplace, Turner's almost 30 percent interest in TBS now is far more valuable than his 50 percent interest was years ago.

[26] Id. at ¶¶ 81-82. See also MCI Communications Corporation, British Telecommunication plc, Declaratory Ruling and Order, 9 FCC Rcd. 3960 (1994); McCaw Cellular Communications, Inc., 4 FCC Rcd. 3784 (Com. Car. Bur. 1989); News International, plc, 97 FCC 2d 349, 357-66 (1984); Data Transmissions, 44 FCC 2d 935, 936-37 (1974).

[27] Auction 5th MO&O at ¶¶ 81-82.

In the Notice, the Commission expressed concern that failure to attribute non-voting shares would allow a non-voting shareholder to contribute a large part of the equity of company and thereby "influence the operations of the licensee to protect his investment and limit his risk."[28] Similarly, with regard to the single majority shareholder exemption, the Commission stated that a minority shareholder may be able to exert significant influence on a licensee, even where there is a single majority shareholder.[29]

While these assumptions may have some pertinence in certain situations, the existence of the non-voting stock and single majority shareholder exemptions does not require the Commission to ignore the totality of the circumstances in evaluating control. Indeed, "the Commission has, in adjudicatory proceedings, expressly embraced the conclusion that [it] must assess the cumulative effect of all relevant factors to determine whether the goals of [its] multiple ownership rules will be 'served or hindered by the structure and relationships presented to [it].'"[30]

Moreover, attribution of non-voting stock and deletion of the single majority shareholder exemption will not allow the Commission to forgo this case-by-case analysis. The Commission

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[28] Notice at ¶ 53.

[29] Id. at ¶ 51.

[30] BBC License Subsidiary L.P., FCC 95-179, at ¶ 42 (released April 27, 1995) citing KKR Associates, 2 FCC Rcd. 7104, 7107 (1987); Univision Holdings 7 FCC Rcd. 6672, 6677-78 (1992).

has grappled with issues of control and influence on far too many occasions to believe that there is an one-size-fits-all set of rules that could be applied on a hard and fast basis that would remove the need for a fact-based inquiry. Rather than providing more certainty for licensees, investors and the FCC, expanding the attribution rules in this manner would constitute an overbroad blunt instrument that would have a significant adverse impact on the ability of companies like TBS to access financing.[31/] Consequently, there would be less competition in the marketplace and less diverse and innovative programming. The Commission should not err on the side of safety when the safety to be gained is nothing but an illusion.

CONCLUSION

For the forgoing reasons, TBS urges the Commission not to expand the scope of the current attribution rules, nor apply any

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[31/] The Commission has asked whether there should be "an exemption, similar to the single majority stockholder exemption, for stockholders in firms where management holds some threshold level of stock on the ground that the inherent control afforded managers would preclude significant influence by other stockholders." Notice at ¶ 46. This exemption would take into account the size of a stockholding in relation to others in the firm. Id. TBS agrees with the Commission that this proposal might introduce unnecessary uncertainty into the attribution framework. Id. Nevertheless, TBS submits that if the Commission decides to eliminate the single majority shareholder exemption, this proposal would, to some extent, preserve the ability of companies to attract well-financed investors.

changes it may adopt to the attribution rules to either the broadcast-cable or cable-network cross-ownership rules.

Respectfully submitted,

Bruce D. Sokler
James A. Kirkland
Sara F. Seidman
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, DC 20004-2608
(202) 434-7300

Attorneys for Turner
Broadcasting System, Inc.

OF COUNSEL:
Bertram W. Carp
Turner Broadcasting System, Inc.
820 First Street, N.E.
Washington, DC 20002
(202) 898-7670

May 17, 1995

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CERTIFICATE OF SERVICE

I, James Waddy, hereby certify that on this 17th day of May, 1995, I caused copies of the foregoing Comments of Turner Broadcasting System, Inc. in MM Dockets 94-150, 92-51 and 87-154 to be sent by First Class mail, postage prepaid, or to be delivered by messenger (*) to the following:

Chairman Reed E. Hundt*
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

Commissioner Andrew C. Barrett*
Federal Communications Commission
1919 M Street, NW
Room 826
Washington, DC 20554

Commissioner James H. Quello*
Federal Communications Commission
1919 M Street, NW
Room 802
Washington, DC 20554

Commissioner Rachelle Chong*
Federal Communications Commission
1919 M Street, NW
Room 844
Washington, DC 20554

Commissioner Susan Ness*
Federal Communications Commission
1919 M Street, NW
Room 832
Washington, DC 20554

William E. Kennard*
General Counsel
Federal Communications Commission
1919 M Street, NW
Room 614
Washington, DC 20554

David Solomon*
Deputy General Counsel
Federal Communications Commission
1919 M Street, NW
Room 614
Washington, DC 20554

Roy J. Stewart
Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street, NW
Room 314
Washington, DC 20554

ITS*
Federal Communications Commission
1919 M Street, NW
Room 246
Washington, DC 20554

Meredith Jones*
Chief, Cable Services Bureau
Federal Communications Commission
2033 M Street, NW
Room 918
Washington, DC 20554