Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.658(g) of the Commission's Rules – The Dual Network Rule	)	MM Docket No. 00-108
	)	

To: The Commission

COMMENTS OF PAXSON COMMUNICATIONS CORPORATION

Paxson Communications Corporation ("PCC") submits herewith its comments in response to the Commission's *Notice of Proposed Rule Making*[1] regarding the amendment of the dual network rule to permit the ownership of the UPN or WB networks by ABC, CBS, NBC or Fox. Directly and through wholly-owned subsidiaries, PCC owns the largest group of full power television stations, which, in combination with over 50 non-owned affiliates, makes up the distribution of the PAXTV network, the nation's seventh over-the-air broadcast network. PCC supports the Commission's proposed modification of the dual network rule and applauds its attention to the changing dynamic in the video programming marketplace.

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[1] Amendment of Section 73.658(g) of the Commission's Rules – The Dual Network Rule, MM Docket No. 00-108, *Notice of Proposed Rulemaking*, FCC 00-213 (rel. June 20, 2000) ("*Notice*").

I. PERMITTING MERGERS BETWEEN A MAJOR NETWORK AND AN EMERGING NETWORK WILL PROMOTE THE EMERGENCE OF OTHER NEW NETWORKS.

PCC urges the Commission to adopt its proposed amendment of the dual network rule and permit a major network to merge with an emerging network.[2] PCC generally agrees with the Commission's analysis supporting this proposed amendment. A broadcast network's programming costs and "pure public good" attributes mean "economically-viable television networks must be large rather than small."[3] A network must have enough affiliates to attract national advertisers and reduce its average fixed cost so that advertising revenues cover total operating costs.[4] Yet the ever-increasing number of video programming substitutes has diminished the ability of broadcast networks to reach a national audience.[5] Permitting an emerging network to merge with a major network would create a more competitive entity by allowing it to reach more households, reduce average fixed cost, and attenuate program development risk.[6] Accordingly, PCC supports the Commission's conclusion that the dual network rule should be relaxed as proposed. With video programming substitutes entrenched and growing, the new dual network rule would permit broadcast networks to achieve a scale sufficient for economic viability.

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[2] *Id.* at ¶26.

[3] *Id.* at ¶12.

[4] *Id.* at ¶21.

[5] *Id.* at ¶10.

[6] *Id.* at ¶26.

The Commission's primary concern with the proposed rule is that it will adversely impact broadcast diversity and competition. The Commission believes that a reduction in the number of networks will increase the unit price of network advertising[7] and, perhaps more significantly, eliminate an independent network "voice."[8]

PCC respectfully submits that, with respect to the Commission's proposed rule change, its well-intentioned concern is misplaced. PCC believes, consistent with the Commission's analysis in the *Notice*, that the best means for ensuring robust broadcast competition and diversity is to establish policies that foster the creation of *large emerging* networks. To be economically viable, an emerging network must rapidly acquire significant scale, while the emergence of new networks will create sufficient competitive pressure to keep market advertising costs in check while adding to the diversity of media voices.

The proposed dual network rule would, in fact, advance the development of new, large, and free over-the-air networks by recognizing the natural evolution and dynamics of the competitive media marketplace. In permitting a major network and emerging network to merge, the Commission would lower entry barriers by creating new incentives for parties to develop new networks. Prospective new entrants could point to a bigger carrot down the road, thereby easing somewhat the significant burden of acquiring necessary financing and capital. With a potentially greater reward, prospective new entrants would be more inclined to accept the risk of acquiring stations and/or developing a new network. As such, the loss of an independent network voice

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[7] *Id.* at ¶24.

[8] *Id.* at ¶27.

due to a merger would be viewed as a temporary stage in the broadcast marketplace dynamic, with prospective new entrants then having sufficient incentive to enter.

PCC's analysis presumes an adequate supply of stations for affiliation. As the Commission recognizes, the number of available station affiliates presently is constrained by the amount of allocated broadcast spectrum.[9] Yet, as the Commission also recognizes, this constraint soon may be relaxed as digital television enables broadcast stations to carry multiple program streams.[10] Accordingly, PCC believes that the existing scarcity of broadcast stations will not constrain the marketplace dynamic for long. The proposed dual network rule will, over time, promote broadcast diversity and competition.

PCC thus takes exception to one aspect of the Commission's analysis. The Commission asserts that "encouraging the entry of new, over-the-air broadcast networks may have diminished in importance" due to the growth and success of video programming substitutes.[11] PCC disagrees. Fostering the creation of emerging networks allows critical marketplace pressures to constrain the adverse impact major networks may have on market advertising and programming costs. Moreover, the introduction of new voices in free, over-the-air network broadcasting helps produce a diverse *and* vibrant media marketplace and ensures the medium's continued vitality. Without actively reducing entry barriers, the Commission would ignore the dynamic impact an emerging network can have on the broadcast marketplace.

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[9] *Id.* at ¶21.

[10] *Id.* at ¶25.

[11] *Id.* at ¶27.

To enable the entrance of new networks providing free over-the-air programming, the Commission should remain mindful of the significant front-end costs that new entrants must bear if they wish to gain the scale necessary for economic viability. Given the magnitude of this effort, successful new entrants must strive to keep costs low wherever possible. The Commission's policies regarding diversity, competition, and new entrants should reflect this reality.

II. TO PROMOTE THE EMERGENCE OF NEW, LARGE NETWORKS, THE COMMISSION SHOULD RELAX OTHER OWNERSHIP RESTRICTIONS.

PCC believes the Commission should consider additional steps to foster the creation of new, large broadcast networks. Notwithstanding the Commission's recent determinations in the *Biennial Review Report*,[12] relaxing or eliminating other ownership rules could help unleash the dynamic forces that facilitate the important development of viable emerging networks.

A. National TV Ownership Rule.

The Commission's rules prohibit control of commercial television broadcast stations that have an aggregate national audience reach exceeding 35%.[13] The national ownership rule is intended to promote ownership and program diversity.[14] In the *Biennial Review Report*, the Commission declined to modify the national ownership

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[12] 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35, *Biennial Review Report*, FCC 00-191 (rel. June 20, 2000) ("*Biennial Review Report*").

[13] 47 C.F.R. § 73.3555(e)(1).

[14] *Amendment of Multiple Ownership Rules*, 9 RR 1563 (1953).

rule, maintaining that the relative newness of the current cap warranted further monitoring prior to making additional changes.[15]

As the Commission reasonably concludes in the *Notice*, however, "economically-viable television networks must be large rather than small,"[16] especially given continuing audience erosion. Moreover, as PCC maintains above, the Commission should continue to promote the emergence of new networks as the best means of ensuring legitimate broadcast diversity and competition. PCC acknowledges, however, the Commission's concern about too rapidly modifying the national ownership rule. Accordingly, PCC proposes that the Commission initially raise the national television ownership cap from 35% to 40% as a means of incrementally fostering the emergence of new networks without unsettling national markets. In this manner, the Commission could marginally lower entry barriers for emerging networks.

B. Cross-Ownership Rules.

Relaxation of the cross-ownership rules also would promote the emergence of new broadcast networks capable of attaining the necessary scale for economic viability. Such Commission action would create new groups of potential buyers, thereby increasing the demand for and value of broadcast stations, perhaps closer to the point where prospective new entrants can justify the risk of entry. This opportunity for increasing station value would create incentives for the emergence of new networks.

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15 *Biennial Review Report* at ¶25.

16 *Notice* at ¶12.

The Commission's rules forbid an entity to own a newspaper and a television broadcast station that both operate in the same community.[17] Similarly, no entity can own both a cable system and a television broadcast station located in the same community.[18] These cross-ownership rules are intended to promote viewpoint diversity and economic competition.[19] In the *Biennial Review Report*, the Commission concluded that the newspaper cross-ownership rule should be retained but that it would commence a proceeding in the near future to determine whether modifications should be made.[20] The Commission made no indication, however, that it would modify or eliminate the cable cross-ownership rule, stating that the provision continued to advance diversity and competition.[21]

PCC urges the Commission to consider the impact that the newspaper cross-ownership rule has on prospective broadcast entrants when it formulates the promised Notice of Proposed Rule Making. PCC requests that the Commission commence that proceeding with reasonable dispatch. As explained above, PCC believes that video programming competition has reached a critical mass sufficient to warrant modifying not only the dual network rule but the newspaper cross-ownership rule as well. The existence of sustainable video programming competition provides the Commission with

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[17] 47 C.F.R. § 73.3555(d).

[18] 47 C.F.R. § 76.501(a).

[19] *See, e.g.*, *Biennial Review Report* at ¶¶80, 97.

[20] *Id.* at ¶95.

[21] *Id.* at ¶102.

an opportunity to increase its reliance on marketplace dynamics instead of regulatory statics.

For the same reasons, PCC also requests that the Commission consider relaxing or eliminating the cable cross-ownership rule. Although PCC recognizes that the Commission only recently determined not to modify the rule, PCC hopes that the Commission's reasoning in the *Notice* will be applied to its other ownership rules. It should be noted that local ownership restrictions remain in place to protect actual diversity and competition specific to a viewer.[22] To the extent the Commission finds it can address the cross-ownership rules in this instant proceeding, PCC requests that it do so. The Commission should not abandon its promotion of new entrants, and the time has come for its rules to account for the impact of new competition and audience erosion on emerging or would-be emerging networks.

Conclusion

PCC supports the Commission's proposed modification of the dual network rule. The Commission's recognition that networks must be large to be economically viable, combined with the entrenchment of new marketplace competition, warrants relaxing the existing rule. Moreover, the Commission's conclusions should be reflected in its policies regarding emerging networks and prospective new entrants. The Commission should not abandon its reliance on the potential for and impact of new entrants in the broadcast marketplace. New and emerging networks contribute the most to media diversity because they *have* to represent something new to create audience share and

[22] 47 C.F.R. § 73.3555(a)(1).

scale. Furthermore, they represent the best means to ensure that competitive marketplace pressures continually constrain advertising costs and incumbent market power. Accordingly, the Commission not only should relax the dual network rule as proposed, but it should consider again relaxing its other ownership rules.

Respectfully submitted,

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