

ORIGINAL

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

RECEIVED

MAR 15 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Review of the Commission's Regulations)	MM Docket No. 94-150
Governing Attribution of Broadcast/)	
and Cable/MDS Interests)	
)	
Review of the Commission's Regulations)	MM Docket No. 92-51
And Policies Affecting Investment in the)	
Broadcast Industry)	
)	
Reexamination of the Commission's)	MM Docket No. 87-154
Cross-Interest Policy)	

PETITION FOR RECONSIDERATION

Paxson Communications Corporation ("PCC"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules,¹ hereby petitions the FCC to reconsider its decision to eliminate the single majority shareholder attribution exemption adopted in its *Memorandum Opinion and Order on Reconsideration*, MM Docket Nos. 94-150, 92-51, 87-154, FCC 00-438 (rel. Jan. 19, 2001), 66 Fed. Reg. 9962 (Feb. 13, 2001) (the "*Reconsideration Order*").

Reconsideration of this decision and reinstatement of the single majority shareholder exemption are warranted given the recent decision by the United States Court of Appeals for the D.C. Circuit in *Time Warner Entertainment Co., L.P. v. FCC*.²

PCC is a publicly-held company that has the largest owned and operated television station group in the United States. PCC also owns PAXTV, the nation's seventh broadcast television network, providing family friendly entertainment programming. The single majority

¹ 47 C.F.R. § 1.429 (2000).

² 2001 WL 201978 (D.C. Cir. 2001) ("*Time Warner*").

No. of Copies rec'd 011
DATE

shareholder of PCC is Lowell W. Paxson, who owns approximately 74 percent of PCC's voting stock through various entities including partnerships and trusts solely controlled by Mr. Paxson.

The FCC's single majority shareholder attribution exemption provides that where a single shareholder owns more than 50 percent of the voting stock of a broadcast licensee, the interests of the minority shareholders will not be considered attributable under the FCC's ownership rules.³ In 1999, in its order reviewing the broadcast attribution rules, the FCC considered whether to eliminate or limit the availability of the single majority shareholder exemption as it applied to the ownership of broadcast stations, and concluded that the exemption should be retained.⁴ In a companion proceeding involving attribution policies relating to ownership of cable systems, however, the FCC eliminated the exemption because of a stated concern that a minority shareholder of a company owning cable systems might be able to exercise influence over the single majority shareholder and that such influence should be deemed attributable.⁵

In the *Reconsideration Order*, the FCC reversed its position with respect to broadcast attribution and eliminated the single majority shareholder exemption, finding that there was "no rational basis to distinguish between cable and broadcasting that would justify eliminating the exemption from the cable ownership rules while retaining it for the broadcast ownership rules."⁶ The Commission affirmed with respect to broadcast attribution the rationale set forth in its *Cable Attribution Order* that a minority shareholder may not be able to control the affairs or activities

³ 47 C.F.R. § 73.3555, Note 2(b).

⁴ *Report and Order*, MM Docket Nos. 94-150, 92-51, 87-154, 14 FCC Rcd 12559, 12579, ¶ 36 (1999) ("*Broadcast Attribution Order*").

⁵ *Report and Order*, CS Docket No. 98-82, 96-85, 14 FCC Rcd 19014, ¶ 81 (1999) ("*Cable Attribution Order*").

⁶ *Reconsideration Order*, ¶ 41.

of a licensee but clearly could have the potential to influence a licensee's actions and that such influence should be cognizable for ownership purposes.⁷

The D.C. Circuit Court of Appeals, however, recently concluded that the FCC's elimination of the single majority shareholder exemption in the *Cable Attribution Order* was arbitrary and capricious. Specifically, the Court found that the FCC failed to provide any type of affirmative justification for its elimination of the exemption:

Removal of the exemption is a tightening of the regulatory screws, if perhaps a minor one. It requires some affirmative justification . . . yet the Commission effectively offers none. Its "concern" about the possibility of influence would be a basis, if supported by some finding grounded in experience or reason, but the Commission made no finding at all.⁸

The Commission failed to provide any more substantive basis for eliminating the exemption with respect to broadcast station ownership. Indeed, neither the *Broadcast Attribution Report and Order* nor the *Reconsideration Order* contains any findings that minority shareholders of a broadcast licensee with a single majority shareholder would be or have in fact been in a position to influence the actions of the licensee. In fact, the Commission simply repeated the rationale set forth in the *Cable Attribution Order*. As the Court concluded, that rationale does not stand and the Commission therefore must reverse its deletion of the exemption.

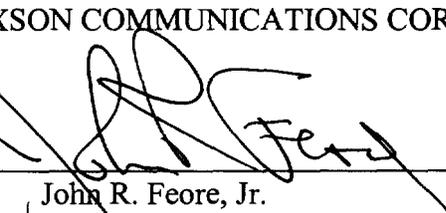
⁷ *Id.*, ¶ 43.

⁸ *Time Warner*, 2001 WL 201978 at *18.

In sum, just as there was no basis for eliminating the single majority shareholder exemption from the cable attribution rules, there is no basis for eliminating it from the broadcast attribution rules. The Commission therefore should reconsider its *Reconsideration Order* and reinstate the single majority shareholder attribution exemption.

Respectfully submitted,

PAXSON COMMUNICATIONS CORPORATION

By: 

John R. Feore, Jr.

Elizabeth A. McGeary

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 776-2000

March 15, 2001