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

In the Matter of	)	
	)	
Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992	)	CS Docket No. 98-82
	)	
Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996	)	CS Docket No. 96-85
	)	
The Commission's Cable Horizontal and Vertical Ownership Limits and Attribution Rules	)	MM Docket No. 92-264
	)	
Review of the Commission's Regulations Governing Attribution Of Broadcast and Cable/MDS Interests	)	MM Docket No. 94-150
	)	
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

Paxson Communications Corporation ("PCC"), by its attorneys, hereby submits these Comments on the continuing need for the single majority shareholder exemption to the broadcast and cable ownership attribution rules in response to the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned dockets, FCC 01-263 (rel. Sept. 21, 2001) (the "*Further Notice*"). In this proceeding, the Commission can best promote the public interest by retaining the single majority shareholder exemption to its ownership attribution rules, because

the exemption facilitates the financing of media outlets without conferring an unreasonable or unacceptable degree of influence on minority shareholders.[1]

PCC is a publicly-held company that is the largest owner and operator of television stations in the United States. PCC also owns PAXTV, the nation's seventh broadcast television network, providing family values entertainment programming. The single majority 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.

I. The Single Majority Shareholder Exemption Has Not Harmed the Public.

The FCC's single majority shareholder exemption provides that a minority shareholder's equity interest will not be considered attributable under the FCC's ownership rules if a single shareholder owns more than 50 percent of the voting stock of the media outlet.[2] The minority shareholder is attributed with ownership, however, if he or she or a representative thereof serves as a director or officer of the corporation.

The Commission first adopted the exemption in a 1984 comprehensive review of its ownership attribution policies.[3] There, the Commission concluded:

> In those instances where a corporate licensee, whether closely or widely held, has a single majority voting stockholder, it appears neither necessary nor appropriate to attribute an interest to any other stockholder in the corporation. In these circumstances, the minority interest holders, even acting collaboratively, would be

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1 *See Review of the Commission's Regulations Governing Attribution Of Broadcast and Cable/MDS Interests*, Order, FCC 01-353 (rel. Dec. 14, 2001) (suspending the elimination of the single majority shareholder exemption pending resolution the *Further Notice*).

2 47 C.F.R. § 73.3555, Note 2 (b).

3 *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984) ("*1984 Order*"), *reconsidered in part*, 58 R.R.2d 604 (1985), *further reconsidered*, 1 FCC Rcd. 802 (1986).

> unable to direct the affairs or activities of the licensees on the basis of their shareholdings.[4]

The decision to exempt minority shareholder interests did not reflect a singular concern about *de facto* control of a licensee. Rather, the Commission adopted the exemption in the context of a number of significant changes to its attribution policies that it determined best "represent[ed] the Commission's judgment regarding what ownership interest in or relation to a licensee will confer on its holder that degree of *influence or control* over the licensee and its facilities as should subject it to limitation by the multiple ownership rules."[5] The exemption, therefore, reflected the Commission's reasoned determination that minority shareholders are unlikely to exercise either influence or control over a licensee's core responsibilities. Significantly, the Commission's decisions in that order followed an examination of similar ownership provisions utilized by other government agencies, an analysis of the results of a survey of Commission ownership files, and a review of a significant volume of comments.

Despite the revolutionary changes in the media marketplace and the Commission's structural ownership rules since 1984, the Commission's original determination remains valid today. In the nearly 18 years since adoption of the single majority shareholder exemption, the Commission has yet to receive any evidence that the exemption has led to an unauthorized transfer of control or to the exercise of undue influence over the affairs of a broadcast licensee. This lack of evidence is especially noteworthy in light of the fact that the broadcast attribution rules have been the subject of a formal Commission rule making proceeding since 1992, during

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4 *1984 Order* at ¶ 21.

5 *Id.* at ¶ 2 (emphasis added). *See, e.g., id.* at ¶ 14 (adopting active investor benchmark of five percent "to identify nearly all shareholders possessed of a realistic potential for *influencing* or controlling the licensee") (emphasis added).

which time the Commission repeatedly has requested evidence on how minority shareholders may exercise undue influence over broadcast licensees.

II. The Record Does Not and Will Not Support Repeal of the Exemption.

Despite the lack of evidence of harm caused by the single majority shareholder exemption, the Commission eliminated the exemption from the cable rules in August 1999 and from the broadcast rules in January 2001.[6] In both cases, the Commission based its decision on its belief that a minority shareholder could have the potential to influence a licensee's actions and that such influence should be cognizable for ownership purposes.[7]

In *Time Warner II*, however, the D.C. Circuit Court of Appeals concluded that the FCC's elimination of the single majority shareholder exemption in the cable context 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 court's holding is equally applicable to the Commission's decision eliminating the exemption from the broadcast rules, because that decision also was unsupported by a finding that minority shareholders of a corporation with a single majority shareholder would be or have in fact been in a position to influence the actions of the licensee.

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[6] *Reconsideration Order*, ¶ 41.

[7] *Id.*, ¶ 43.

[8] *Time Warner v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001).

It is telling that the Commission could not support its decision in either the cable or broadcast context on actual evidence, despite the many years during which the ownership attribution proceeding has remained pending. The Commission's most recent solicitation of evidence on the effects of the single majority shareholder exemption in the *Further Notice* is unlikely to produce a different record. Moreover, in light of the absence of such evidence produced to date, PCC predicts that the instant proceeding will not provide the Commission with the "affirmative justification" necessary to support a repeal of the 18-year old exemption, as clearly required by the D.C. Circuit. In fact, PCC submits that if the Commission had any such affirmative justification, it was obligated to put forth such information and subject it to public scrutiny. The Commission has not done so.

III. Retention of the Single Majority Shareholder Exemption Serves the Public Interest.

The dearth of evidence supporting repeal of the exemption can best be explained by the fact that the single majority shareholder exemption provides tangible benefits that redound to the public interest. It is fair to say that the exemption facilitates transactions. In today's complex, dynamic and competitive media marketplace, newspapers, broadcast stations, and cable systems face new financial pressures. Newspapers must make costly investments in Internet content and find new ways of maintaining profitability despite declining circulation. Television stations are constructing digital facilities, with radio stations soon to follow, while both media face multi-channel subscription-based competitors. Cable systems are rebuilding their plants to offer a new array of services. To survive in the face of these and other forces, many media outlets are turning toward consolidation and clustering, which also involve heavy amounts of financing.

Providing sufficient funding for the initiatives necessary to compete and survive in today's marketplace has proven too costly and risky for simple debt financing. Yet, in many

cases, the Commission's five percent attribution benchmark prevents media outlets, especially television stations, from utilizing equity financing to the same extent as most other industries. The Commission's single majority shareholder exemption, therefore, plays a critical role in facilitating significant – and critical – equity investments that otherwise would not be possible. These investments ultimately benefit the readers, viewers, and listeners of media outlets, who, through these investments, are better able to provide quality content and popular services.[9]

Throughout the ten-year history of the current ownership attribution proceeding, the Commission has worried about and requested evidence of possible abuses of the single majority shareholder exemption. As noted previously, the FCC has yet to cite to any evidence that the exemption has been abused. Indeed, as Media Access Project recognized in Comments it filed at an earlier stage of this proceeding, repealing the exemption fully could unduly disrupt the flow of capital to broadcast licensees.

Any concern the Commission has regarding the amount of influence a minority shareholder might exercise over a media outlet with a single majority shareholder is sufficiently addressed through application of the "equity plus debt" attribution rule (the "EDP rule"). The EDP rule is expressly designed to limit the availability of the single majority shareholder exemption (and the nonvoting stock exemption) in cases where the otherwise nonattributable interest conferred a means of controlling the corporation. Specifically, the EDP rule deems attributable an otherwise non-attributable interest if that interest exceeds 33 percent of the total

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[9] In a separate proceeding, PCC is challenging certain conduct of NBC but that proceeding does not involve to exercise influence of PCC's major decisions via restrictive covenants in loan agreements and certain actions of officers and directors employed by NBC. The circumstances at issue in that proceeding do not relate to NBC's minority equity investment in PCC and therefore do not call into question the continuing need for the single majority shareholder exemption.

asset value of the corporation and the interest holder is either a "major program supplier" or an owner of a same-market media entity subject to the broadcast multiple ownership rules (including broadcasters, cable operators, and newspapers).

By adopting the EDP rule, the Commission has fashioned a means by which to "capture" those arrangements that confer a means of exercising undue influence over a media outlet. Significantly, the EDP rule performs this valuable function even if the media outlet is controlled by a single majority shareholder. Consequently, because the Commission already has a means by which to guard against a minority shareholder exerting significant influence on a company's major decisions, there is simply no need for the Commission to tighten further its ownership attribution rules. Indeed, to repeal the single majority shareholder exemption, especially in light of the lack of any evidence of harm caused by the exemption, would constitute regulatory overkill.[10]

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[10] If the Commission decides to eliminate the exemption, PCC respectfully submits that any such action should grandfather those interests created prior to resolution of this proceeding.

Conclusion

Since the Commission commenced this proceeding in 1992, it has not provided any affirmative justification for eliminating the single majority shareholder exemption. Accordingly, the exemption should be retained. Any other decision would simply amount to a solution in search of a problem. Moreover, because the capital markets require and the public deserves a final resolution of this long-pending matter, PCC respectfully requests that the Commission promptly lay to rest any suggestion that the exemption may be repealed as to current or future equity investments.

Respectfully submitted,

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