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

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FEDERAL COMMUNICATIONS COMMISSION
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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

REPLY COMMENTS

Paxson Communications Corporation ("PCC"), by its attorneys, hereby submits these Reply Comments to the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned dockets, FCC 01-263 (rel. Sept. 21, 2001) (the "*Further Notice*"). Despite nearly one thousand Comments filed in response to the *Further Notice*, there remains absolutely no substantive evidence to support the repeal of the single majority shareholder exemption. Without such evidence, the Commission cannot support any "affirmative justification" to repeal the single

majority shareholder exemption, as required by the D.C. Circuit in *Time Warner II*.[1] As the Commission noted in the *Further Notice*, the D.C. Circuit reversed the elimination of the single majority shareholder exemption under the cable attribution rules because the Commission failed to provide an "affirmative justification," supported by relevant findings, for such an action.[2]

In its prior *Comments* in this proceeding, PCC noted that the Commission failed to support its decision to repeal the single majority shareholder exemption with actual evidence that the exemption caused or threatened to cause actual harm. PCC predicted that the "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."[3] Time and over nine hundred commenters have proven PCC right. Not one Comment provided actual evidence of the alleged harms caused by the single majority shareholder exemption.

Moreover, only the *Comments* of the Consumer Federation of America, *et. al.* ("CFA"), directly argued in favor of the exemption's repeal.[4] CFA's *Comments*, however, provide neither evidence nor specific examples of the harms that CFA alleges will follow restoration of the exemption. Instead, CFA simply concludes that, because a minority shareholder can influence a Commission licensee, the exemption must be eliminated.[5] Theory and speculation, however, cannot support CFA's conclusory arguments. More importantly, CFA's comments provide

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

[2] *Further Notice* at ¶3.

[3] Paxson Communications Corporation, *Comments* in CS Docket Nos. 98-82 and 96-85 and MM Docket Nos. 92-264, 94-150, 92-51, and 87-154 at 5 (*filed* Jan. 4, 2002) ("*PCC Comments*").

[4] Conversely, several commenters, including Time Warner Cable, AT&T Corp. and Viacom, Inc., supported retaining the exemption.

[5] Consumer Federation of America, et. al., *Comments* in CS Docket Nos. 98-82 and 96-85 and MM Docket Nos. 92-264, 94-150, 92-51, and 87-154 at 43 - 44 (*filed* Jan. 4, 2002).

exactly the type of unsupported rationalization already rejected by the D.C. Circuit. Faced with a direct challenge to support factually a repeal of exemption, CFA merely restates the Commission's conclusions without adding to the record. Lacking the evidence it sought in the *Further Notice*, the Commission cannot offer any type of affirmative justification for its elimination of the exemption.

Not only does CFA fail to provide the evidence necessary to support its conclusions, but CFA demonstrates a fundamental misapprehension regarding the single majority shareholder exemption. CFA assumes that the exemption is fatally flawed because, regardless of its inability to control a licensee entity, a minority shareholder may have means "to make its desires known."[6]

The decision to exempt minority shareholder interests, however, was not based on the assumption that minority shareholders lacked any influence. Rather, the Commission adopted the exemption in the context of a number of 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."[7] Thus, the exemption reflected the Commission's reasoned determination that, while a minority shareholder could exert some influence, a minority shareholder (in a corporation with a single majority shareholder) is unlikely to exercise significant influence over a licensee's core responsibilities.

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6 *Id.*

7 *Attribution of Ownership Interests,* 97 FCC 2d 997 at ¶ 2 (1984), *reconsidered in part*, 58 R.R.2d 604 (1985), *further reconsidered*, 1 FCC Rcd. 802 (1986) (emphasis added).

As demonstrated in PCC's *Comments* in this proceeding, this determination has proven accurate.[8] Despite repeated requests for evidence on how minority shareholders may exercise undue influence over broadcast licensees – including the latest request in this proceeding – 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.

Conclusion

Since the Commission commenced this proceeding in 1992, it has not provided any affirmative justification for eliminating the single majority shareholder exemption. Moreover, the latest round of comments failed to deliver a record upon which such an affirmative justification might be based. Thus, lacking any evidence that the exemption permits the exercise of unauthorized control or undue influence, the Commission may not "tighten the regulatory screws" by eliminating the single majority shareholder exemption.

Respectfully submitted,

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8 *PCC Comments* at 2 - 4.