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

To: The Commission

COMMENTS OF CBS CORPORATION IN SUPPORT OF RETENTION OF THE SINGLE MAJORITY SHAREHOLDER EXEMPTION TO THE BROADCAST ATTRIBUTION RULES

CBS Corporation ("CBS"), hereby submits its comments in response to the Commission's Fourth Report & Order and Further Notice of Proposed Rulemaking ("*FNPRM*") in the above-captioned proceeding (FCC 07-219, released February 11, 2008).

In the FNPRM, the Commission stated its tentative conclusion that "the record to date supports reinstating the single majority shareholders exemption." FNPRM at ¶ 109. That record includes comprehensive comments previously filed by CBS, which the Commission cited extensively in the FNPRM and which CBS hereby incorporates by reference.[1] CBS therefore limits its comments to the following additional questions posed by the Commission in the FNPRM.

- ► whether contractual rights, such as super-majority voting rights agreements, afford minority shareholders voting power notwithstanding the general voting control of the single majority shareholder (FNPRM at ¶ 111);
- ► whether the equity/debt plus ("EDP") rule and the Commission's discretionary review of unusual cases are adequate safety valves to ensure compliance with the attribution rules (FNPRM at ¶ 112).

As discussed below, CBS, which is controlled by a single majority voting shareholder, NAIRI, Inc., continues to support the retention of the single majority shareholder exemption to the broadcast ownership attribution rules.

I. The Single Majority Shareholder Exemption is Premised on the Assumption that a Majority Vote is Sufficient to Control the Corporation.

In originally adopting the single majority shareholder exemption, the Commission reasoned that minority shareholders, "even acting collaboratively, would be unable to direct the affairs or activities of the licensee on the basis of their shareholdings." *Reexamination of Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities*, 97 F.C.C. 2d 997, 1008-1009 (1984) ("*1984 Attribution Order*"). In the FNPRM, the Commission

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[1] CBS previously participated in this proceeding under the name Viacom Inc. On December 31, 2005, the former Viacom Inc. separated into two publicly traded companies – CBS Corporation (former Viacom Inc.) and the new Viacom Inc.

tentatively concluded that the single majority shareholder exemption should be retained because a majority shareholder "has the right to manage and control a corporation." FNPRM at ¶ 110. Further, the Commission tentatively concluded that "the existence of a single majority shareholder sufficiently attenuates the voting power of a minority shareholder" and that "corporate management cannot be expected to be significantly influenced by a minority shareholder where there is a single majority shareholder." FNPRM at ¶ 110. CBS supports the Commission's tentative conclusions, and directs the Commission to the extensive discussion in the Viacom Comments of the fundamental principles of corporate law that demonstrate that (i) a single majority shareholder ultimately controls a corporation by virtue of its control of the corporation's board of directors, and (ii) a minority shareholder in a corporation controlled by a single majority shareholder does not have the ability to influence the core operating functions of a broadcast licensee. Viacom Comments at 8-10.

Since CBS filed its original comments, another regulatory agency has recognized a similar exemption applicable to corporations with a single majority shareholder. To protect the rights of public shareholders, the New York Stock Exchange ("*NYSE*") requires listed publicly held corporations to have a majority of independent directors, a fully independent nominating/corporate governance committee and a fully independent compensation committee. NYSE Listed Company Manual Sections 303A.01, 303A.04 and 303A.05. Recognizing, however, that public shareholders in a corporation controlled by a single majority shareholder have no expectation that members of the board will be independent of the controlling shareholder, the NYSE exempts companies "of which more than 50% of the voting power is held by an individual, a group or another company." *Id*. at Section 303A.00. The NYSE's standards, including the exemption for controlled corporations, have been approved by the Securities and Exchange Commission. Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (SR-NYSE-2002-33) (subsequent history omitted).

II. The Commission's Existing Rules and Policies Sufficiently Address Super-Majority Voting Agreements That Afford Minority Shareholders Unusual Voting Power.

The single majority shareholder exemption is premised on the assumption that the majority shareholder actually controls the corporation. *1984 Attribution Order,* 97 FC.C.C. 2d at 1009 n.21 ("The exception plainly rests on the assumption that a simple majority vote is sufficient to affirmatively direct the affairs of the corporate licensee."). As noted in the FNPRM, "a minority shareholder cannot *ordinarily* direct the activities of a company when a person or entity can outvote all other shareholders." FNPRM at ¶ 94 (emphasis added).

Where the assumption underlying the exemption is incorrect — for example, where a voting majority shareholder has ceded its ability to control the officers of the corporation by entering into a super-majority voting rights agreement – CBS agrees that the single majority shareholder exemption should not apply. In large part, however, the Commission's attribution rules and policies already address the issue of super-majority voting rights agreements. For example, an otherwise non-attributable minority shareholder interest is attributable if the minority shareholder has the right to designate a member of the corporation's board of directors, which is a right frequently granted in a super-majority voting rights agreement. *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992,* 14 FCC Rcd 19014, 19041 (1999);

Telemundo Group, Inc., 10 FCC Rcd 1104, 1107-1108 & n.8 (1994); *Paxson Management Corporation and Lowell W. Pederson (Transferors) and CIG Media, LLC (Transferee),* Memorandum Opinion & Order, 22 FCC Rcd 22224, at ¶ 26 ("*Paxson*").

The Commission has also expressly retained the discretion to review unusual cases to "assess the cumulative effect of all relevant factors to determine whether goals of [its] multiple ownership rules" will be served. *See, e.g., BBC Licensee Subsidiary*, 10 FCC Rcd at 7926, 7933 (1995). CBS supports the Commission's continued exercise of this discretion.

CBS, however, does not believe that the Commission should weaken the majority investor protections that previously have been found to be consistent with the attribution rules. For example, the Commission has consistently permitted non-attributable investors to enjoy certain minority investor protection rights, including rights to approve certain fundamental corporate actions, without a finding that the minority shareholder's interest is attributable. *Paxson* at ¶ 19. As the Commission has recognized, "[p]ermitting a certain level of minority investor protection without implicating the multiple ownership rules is generally in the public interest because it encourages investment in broadcast properties, and thus enhances the ability of stations to provide better programming to the public." *Id.* Weakening those protections would result in investor uncertainty and would likely impair investment in the broadcast industry, ultimately to the detriment of the public interest.

III. The EDP Rule and the Commission's Discretionary Review of the Cumulative Impact of Minority Investments are Adequate Safety Valves to Ensure Compliance with the Attribution Rules.

In 1999, the Commission examined the influence of minority shareholders in corporations with a single majority shareholder, and determined that the newly adopted EDP rule would act as a safety valve to capture those otherwise non-attributable interests that may give minority shareholders the incentive and means to exert influence or control over a licensee's core operating functions. *1999 Broadcast Attribution Order*, 14 FCC Rcd at 12579. For the reasons described in the Viacom Comments, CBS submits that the EDP rule effectively guards against potential abuse of the single majority shareholder exemption. Viacom Comments at 10-11. Specifically, the EDP rule encompasses the two most logical and likely means by which a minority shareholder could exert meaningful influence over a broadcast licensee's core operational decisions, as a major program supplier or by holding an attributable interest in another media outlet in the same market. Moreover, as discussed above, the Commission retains the discretion to "assess the cumulative effect of all relevant factors" as part of its enforcement of the broadcast attribution rules. The EDP rule in combination with the Commission's discretionary, case-by-case review of otherwise non-attributable ownership interests are more than adequate safety valves to prevent abuse of the single majority shareholder exemption.

IV. CONCLUSION

For the reasons set forth herein, CBS supports the Commission's tentative conclusion and urges the Commission to reinstate the single majority shareholder exemption to the broadcast attribution rules.

Respectfully submitted,

CBS CORPORATION

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