

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

COMMENTS OF ION MEDIA NETWORKS

ION Media Networks, Inc. (“ION”), by its attorneys, hereby submits these comments in response to the Commission’s *Further Notice of Proposed Rulemaking* in the above-captioned dockets, FCC 07-219 (rel. Feb. 11, 2008) (the “2008 *Further Notice*”).¹ While most of the 2008 *Further Notice* deals with cable issues, one important broadcast attribution rule is also presented for comment: the single majority shareholder exemption. The Commission, properly recognizing how the single majority shareholder exemption can help broadcasters obtain access to capital, tentatively concludes that the single majority shareholder exemption should be permanently reinstated.² ION supports the Commission’s conclusion and urges the Commission

¹ The 2008 *Further Notice* was published in the Federal Register on February 27, 2008, thus setting the comment date as March 28, 2008. See *Public Notice, Media Bureau Announces Comment and Reply Comment Dates for Notice of Proposed Rulemaking on Cable and Broadcast Attribution and Cable Vertical Ownership Limits*, DA 08-445, (rel. Feb. 27, 2008).

² 2008 *Further Notice* at ¶ 109.

to provide certainty to broadcasters in these increasingly uncertain financial times by promptly reinstating the single majority shareholder exemption to its broadcast ownership attribution rules.

Background

The Commission's single majority shareholder exemption to the broadcast attribution rules provides that a minority shareholder's equity interest is not attributable if a single shareholder owns more than 50 percent of the voting stock of the media outlet.³ The Commission first adopted the exemption in a 1984 comprehensive review of its ownership attribution policies.⁴ There, it adopted attribution rules "represent[ing] 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 single majority shareholder exemption thus reflected the Commission's reasoned determination that, while a minority shareholder in a corporation with a single majority shareholder might be able to exert some influence, that minority shareholder is unlikely to exercise either significant influence or control over a licensee's core responsibilities.⁶

In 2001 the Commission eliminated the single majority shareholder exemption from the broadcast rules, following the rationale it had used in 1999 to eliminate the same exemption from its cable attribution rules.⁷ In both cases, the Commission based its decision on its belief that a

³ Former 47 C.F.R. § 73.3555, Note 2(b) (2000).

⁴ *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).

⁵ *1984 Order* at 999.

⁶ *See id.* at 1008-1009.

⁷ *Review of the FCC's Regulations Governing Attribution of Broadcast and Cable/MDS*

Continued . . .

minority shareholder could potentially influence a licensee's actions and that such influence should be cognizable for ownership purposes.⁸ In *Time Warner II*, however, the D.C. Circuit Court of Appeals reversed and remanded the Commission's elimination of the cable exemption, finding that the Commission's decision to eliminate the exemption was not sufficiently justified.⁹ The Commission subsequently suspended the elimination of the single majority shareholder exemption for broadcast ownership as well, recognizing that its rationale for eliminating the exemption in broadcasting was the same as the cable rationale the court had overturned.¹⁰ Since that time, the FCC has continued to utilize the single majority shareholder exemption in applying its broadcast ownership rules.

In its *2001 Further Notice*, the Commission invited commenters to address the *Time Warner II* court's remand of the single majority shareholder exemption.¹¹ Numerous parties, including ION's predecessor Paxson Communications Corporation ("PCC"), filed comments urging the Commission to retain the single majority shareholder exemption for cable and broadcast.¹² The Commission did not, however, act on those comments and now seeks to refresh

Interests, Review of the FCC's Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the FCC's Cross-Interest Policy, 16 FCC Rcd 1097, 1116 (2001) ("*Broadcast Ownership Reconsideration Order*"), stayed, 16 FCC Rcd 22310 (2001) ("*Stay Order*").

⁸ *Broadcast Ownership Reconsideration Order* at 1116-1117.

⁹ *Time Warner v. FCC*, 240 F.3d 1126, 1143 (D.C. Cir. 2001) ("*Time Warner II*").

¹⁰ *Stay Order* at 22310.

¹¹ *Review of the FCC's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Review of the FCC's Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the FCC's Cross-Interest Policy*, 16 FCC Rcd 17312, 17354 ("*2001 Further Notice*").

¹² See, e.g., Paxson Communications Corporation, Comments and Reply Comments in CS Docket Nos. 98-82 and 96-85 and MM Docket Nos. 92-264, 94-150, 92-51, and 87-154 (filed Jan. 4, 2002 and Feb. 4, 2002); see also *2008 Further Notice* at ¶ 108.

the record.¹³ This time ION is pleased the Commission has tentatively concluded that the record to date supports reinstating the single majority shareholder exemption on a permanent basis.¹⁴

I. The Single Majority Shareholder Exemption Has Produced No Harm to the Public.

Despite the revolutionary changes in the media marketplace and the Commission's revisions to its structural ownership rules since 1984, the Commission's original determination, that when a licensee has a single majority shareholder "minority interest holders, even acting collaboratively, [are] unable to direct the affairs or activities of the licensee on the basis of their shareholdings,"¹⁵ remains valid today. As the National Association of Broadcasters explained in its comments filed on the *2001 Further Notice*, general principles of corporate law such as fiduciary duty and insider trading rules greatly limit a minority shareholder's ability to influence a licensee's major decisions.¹⁶

Indeed, over the many years that the Commission has formally been reviewing its broadcast attribution rules, the Commission repeatedly has requested evidence on how minority shareholders may exercise undue influence over broadcast licensees.¹⁷ The Commission has, however, received no evidence that the single majority shareholder exemption does not accurately reflect corporate governance or has led to an unauthorized transfer of control or to the

¹³ *2008 Further Notice* at ¶ 109.

¹⁴ *Id.*

¹⁵ *1984 Order* at 1008-1009.

¹⁶ See National Association of Broadcasters, Reply Comments in CS Docket Nos. 98-82 and 96-85 and MM Docket Nos. 92-264, 94-150, 92-51, and 87-154, at 2-6 (filed Feb. 19, 2002).

¹⁷ See, e.g., *2001 Further Notice* at 17356-17357; *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 11 FCC Rcd 19895, 19905 (1996); *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 10 FCC Rcd 3606, 3631-3632 (1995).

exercise of undue influence over the affairs of a broadcast licensee. ION predicts that the instant proceeding will likewise provide no evidence to support the exemption's repeal.

Further, the "equity/debt plus" attribution rule (the "EDP rule"), adopted by the Commission in 1999, and the rule attributing ownership to directors and officers (the "officer/director rule") sufficiently address any concerns the Commission may have about a minority shareholder's influence.¹⁸ As designed, the EDP rule limits the availability of the single majority shareholder exemption in cases where the otherwise non-attributable interest confers a means of controlling the corporation.¹⁹ By adopting the EDP rule, the Commission "targeted its remedy to address its concerns" about arrangements that confer a means of exercising undue influence over a media outlet.²⁰ Notably, the EDP rule and the officer/director rule perform this limiting function even when the media outlet is controlled by a single majority shareholder. The Commission therefore can maintain regulatory certainty and efficiency by keeping the single majority shareholder exemption a bright-line rule without sacrificing any public interest benefits.

II. The Single Majority Shareholder Exemption Serves the Public Interest by Facilitating Essential Fundraising.

ION operates with a single majority shareholder and owns the nation's largest broadcast television station group, reaching over 94 million U.S. television households via its nationwide

¹⁸ See 47 C.F.R. § 73.3555, Notes 2(g) & 2(i) (2007). The EDP rule deems attributable an otherwise non-attributable interest if that interest exceeds 33 percent of the total 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). *Id.*

¹⁹ 2008 *Further Notice* at ¶¶ 96-98.

²⁰ *Id.* at ¶ 96.

broadcast television stations and through cable and satellite distribution. ION, as an independent television broadcasting company, provides popular TV programming and movies from the award-winning libraries of Warner Bros., Sony Pictures Television and CBS Television, among others, as well as original movies from RHI Entertainment. Utilizing its digital multicasting capability, ION has also launched several digital television brands, including qubo, a television and multimedia network for children, and ION Life, a television and multimedia network dedicated to health and wellness for consumers and families. Through all of these channels, ION reaches a growing audience with its free, over-the-air television programming. ION, however, is competing in an increasingly competitive and vertically integrated world. ION has no major studio or television network to provide a steady stream of programming and is not jointly owned with the major video distributors such as cable or DBS. In fact, ION represents the last truly independent television broadcaster with a national footprint, providing free, over-the-air programming choices.

ION's current single majority shareholder is CIG Media, LLC ("CIG") and prior to that its single majority shareholder was Lowell W. Paxson. Until earlier this year, PCC was a publicly-traded company and the single majority shareholder exemption allowed investors to purchase shares of its publicly-traded stock without having to worry about FCC attribution and ownership rules and without burdening PCC with the need to constantly monitor such interests for FCC compliance. Looking ahead to its existence as a private company, ION believes its single majority shareholder structure will be even more important to enabling its new single majority owner to raise the funding necessary for the digital initiatives that will provide the public with even more high-quality, free, over-the-air programming in the digital era.

Broadly speaking, ION asserts that not only is the single majority shareholder exemption benign, as demonstrated by the lack of any credible evidence that the exemption has ever

produced any public harm, but the exemption also provides tangible benefits that redound to the public interest. Simply stated, the exemption can facilitate the kinds of transactions that today's television companies, particularly independent companies like ION, must participate in to compete in a multi-channel video world. In today's complex, dynamic and competitive media marketplace, broadcasting companies face new financial pressures. Television stations are constructing digital facilities, with radio stations soon to follow, while both media face multi-channel subscription-based competitors. To survive in the face of these and other forces, many broadcasting companies are turning toward consolidation and clustering, which also involve heavy amounts of financing. This makes it all the more difficult for stations that air independent network programming, like the ION stations, to compete for viewers in today's digital age. Programming is expensive and becoming more expensive as television stations seek to program multiple platforms in the digital era.

Obtaining sufficient funding for the initiatives necessary to compete and survive in today's marketplace can, at times, prove too costly and risky for simple debt financing. Especially in the near term, obtaining debt financing has become especially difficult as liquidity decreases in the economy in general. 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, thus potentially preventing companies from obtaining an optimal debt-to-equity funding ratio. Further, with stock prices decreasing as well, companies need to issue even more equity to raise the funds they need. The Commission's single majority shareholder exemption, therefore, plays a crucial role in facilitating significant – and critical – equity investments that otherwise would not be possible. Such investments enable broadcasters such as ION to provide quality content and popular services, ultimately benefiting their viewers and listeners.

III. At a Minimum, the Commission Should Continue Protection for Entities Not Controlled by a Major Integrated Media Company.

While ION urges the Commission to permanently reinstate the single majority shareholder exemption, if the Commission for some reason limits or repeals the exemption it must ensure that its decision does not unnecessarily disadvantage the diminishing ranks of the independent players in the broadcast industry such as ION. Accordingly, at the very least, the Commission should exempt from attribution any investments in entities with single majority shareholders where the majority shareholder is not controlled by one of the major integrated media companies, including companies that control one of the top-four broadcast networks. The Commission should not let its concerns about the major integrated media companies mislead it into over-regulating independent companies like ION. In addition, if the Commission mistakenly decides to eliminate the exemption, ION respectfully requests that any such action grandfather those interests created prior to resolution of this proceeding.

Conclusion

Because the capital markets require, and the public deserves, a final resolution of this long-pending matter, ION respectfully requests that the Commission promptly lay to rest any suggestion that it may repeal the single majority shareholder exemption as to current or future equity investments. Accordingly, ION strongly supports the Commission's tentative decision to

reinstate the single majority shareholder exemption on a permanent basis because it promotes the public interest in fostering media outlets without conferring an unacceptable degree of influence on minority shareholders.

Respectfully submitted,

ION MEDIA NETWORKS, INC.

/s/

John R. Feore, Jr.
Christina H. Burrow
Dow Lohnes PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036-6802
(202) 776-2000

March 28, 2008