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FCC ELIMINATES THE MAJOR NETWORK/EMERGING NETWORK MERGER PROHIBITION FROM DUAL NETWORK RULE

Washington, D.C. – Today, the FCC amended the “dual network” rule to permit one of the four major television networks – ABC, CBS, Fox and NBC – to own, operate, maintain or control the UPN and/or the WB television network.

In a Report and Order (R&O) adopted today, the FCC eliminated that part of the dual network rule that prohibits mergers between a major network and emerging networks UPN and WB. The FCC recognized that the economics of the broadcast television network industry have changed to the point that retention of the rule in its current form is no longer in the public interest.

Background

The original dual network rule grew out of the Commission’s investigation of so-called “chain” broadcasting in the 1940s. The initial dual network rule was adopted in 1941, and was extended to television in 1946. That rule prohibited broadcast stations from affiliating with any entity that maintained more than a single network. Although the rule was eliminated with regard to radio in 1977, it remained in this form with regard to television until 1996. Section 202(e) of the Telecommunications Act of 1996 directed the FCC to revise its dual network rule to prohibit a party from affiliating with an entity if that entity controlled more than one of the four largest networks – ABC, CBS, Fox and NBC – or with an entity that controlled one of these four networks and either of two emerging networks. These two emerging networks were identified in the legislative history of the 1996 Act as being the UPN and WB television networks.

In its 1998 Biennial Review, completed in 2000, the Commission tentatively concluded that the portion of the dual network rule that effectively prohibits one of the four major networks from merging with the UPN or WB networks was no longer necessary. Accordingly, it commenced this proceeding. In today’s action the Commission eliminated this portion of the dual network rule. The provision of the dual network rule that bars mergers between the four major networks was not before the Commission and was not affected by the decision.

In the R&O, the Commission analyzed the emerging network provision of the rule in the context of the significant changes in the video marketplace that have taken place since the 1996 Act. The Commission stated that, between 1996 and 2000, the number of commercial and noncommercial television stations had increased, but in that same period prime time viewership among the top six broadcast networks declined from 71% in 1996 to 58% in 2000. It noted that this reduction in broadcast network viewership was accompanied by the steady expansion of the cable and direct broadcast satellite industries to the point where, today, nearly 84 percent of households receive their video programming from one of these two multichannel video programming distribution services. Additionally, the Commission pointed to an increase in the programming available from cable and DBS providers since the 1996 Act. It stated that in 1996, there were 162 cable programming services and that by 2000 that number had increased to 214 such channels. Furthermore, the Commission stated, each of the two operating DBS providers offers subscribers access to hundreds of channels of video programming. Cable and DBS, the Commission said, provide an independent avenue through which producers of video programming can distribute, and viewers may access, video programming.

Competition

In the R&O, the FCC analyzed both UPN and WB as nascent subsidiaries of large, well-established program producers, as well as networks. It concluded that the benefits of vertical integration between a program producer and television networks may well be augmented by a merger of one or more emerging networks with a major network. Additionally, it determined that the horizontal integration of an emerging and major network should not adversely affect competition or pricing in the relevant television advertising markets and may produce merger-specific efficiencies that provide new benefits to consumers not otherwise available prior to the merger.

Diversity

The FCC noted that diversity is produced at the local level by network affiliates and that this level of diversity will remain irrespective of modification of the dual network rule. Also, it concluded that allowing the merger of a major and emerging network would sustain diversity at the national level by allowing the emerging networks to continue to provide the minority and niche oriented programming for which they are known. The Commission concluded that, particularly with regard to the UPN network, failure to amend the rule could cause this source of programming to fail, depriving viewers of the network's programming. Due to the cascading effects that such a network's failure would have on its affiliates, it determined that the failure of a network could also imperil

the position of many of that network's affiliates and have a negative impact on diversity of outlets at the local level. Thus, it concluded that eliminating the emerging network portion of the dual network rule will preserve rather than diminish, the diversity of voices at the local level.

The R&O also stated that the proliferation of video programming networks warrants relaxation of the rule. It noted that at present, approximately 84 percent of television households obtain their service from a multichannel video programming distributor such as cable, DBS, or Multichannel Multipoint Distribution Service. Most of the subscribers to such systems have available to them a cornucopia of video services. Although many of the video programming networks presented on cable systems are vertically integrated with cable multiple system operators, they nevertheless contribute to diversity by providing programming to most viewers that is from a source other than the six broadcast networks covered by this rule. This, the R&O concluded, diminishes the importance of maintaining UPN and WB as independently owned network "voices."

Action by the Commission April 19, 2001 by Report and Order (FCC 01-133). Chairman Powell, Commissioners Ness and Furchtgott-Roth, with Commissioner Tristani dissenting; Chairman Powell and Commissioners Ness and Tristani issuing separate statements.

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