April 19, 2001

Separate Statement of Commissioner Susan Ness

In re: Amendment of the Commission's Rules – The Dual Network Rule, MM Doc. No. 00-108

It is important to point out what this Order does not do.

The Commission does not relax the existing prohibition on mergers among the top four broadcast networks. While the item points out that the issue of mergers between the top four networks was not raised in the *Notice*, I believe that a combination of any of the top four broadcast networks would dangerously diminish source and viewpoint diversity in the United States. As the item points out, the four major broadcast networks are unique among the media in their ability to reach a wide audience. Even though network ratings have declined over the last twenty years, those ratings still far outpace any other video platform. Moreover, the competition between network news operations serves an important First Amendment function by encouraging journalistic rigor and a relative variety of editorial priorities and viewpoints. Even in an era of 24-hour cable news networks, the ratings dominance of the broadcast networks should lead future Commissions to hesitate before diminishing competition and diversity among the top four broadcast networks.

This item also does not implicate other media ownership restrictions. As the competition analysis makes clear, the provision of the dual network rule at issue here identifies a very small universe of affected parties: UPN and the WB. By allowing mergers involving these two "weblets," the Commission willingly diminishes source diversity, something I ordinarily resist, in order to maintain outlet and viewpoint diversity, something I strongly support. The net benefit to diversity through the preservation of small, niche-oriented broadcast networks leads me to support this action.

Finally, the economic analysis in this item carefully avoids sweeping assumptions about possible public interest benefits accruing from post-merger economic efficiencies. While vertical integration tends to reduce transaction costs, and horizontal mergers tend to reduce redundancies, it is not at all clear to me that the resulting savings to the merged entity are, *ipso facto*, passed on to the consumer in the form of an improved product. That certainly is a theoretical possibility. But in the real world of media mergers, I believe it is a dangerous assumption that larger entities will, by virtue of their increased efficiency, produce better programming, more news, or wider arrays of editorial positions. Rather, the Commission should remain vigilant in preserving the vibrant and competitive media marketplace that will encourage media companies to channel their resources toward a better product.