July 25, 2001

STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: *Assignment of Broadcast Licenses Held by Subsidiaries of Chris-Craft Industries, Inc., to Fox Television Stations, Inc.*

Today the Commission approved the assignment of certain licenses from Chris Craft Industries, Inc. to Fox Television Stations, Inc., finding the assignment to be in the public interest. The Commission conditioned its approval on the divestiture of various assets in order to bring the company into compliance with our broadcast ownership rules. I write separately to highlight the basis upon which the Commission found the transaction to be in the public interest; and, to challenge the suggestion by the minority that the Commission has somehow abandoned its public interest obligation. To the contrary, today's decision affirms the fact that Commission rules and long standing Commission precedent guide our public interest deliberations.

I. THE PUBLIC INTEREST STANDARD

The Commission is required to examine a license transfer (often in the context of a merger) and must affirmatively find that the transfer is in the public interest.[1]

In the context of mass media transactions, the Commission's analysis is simplified by the extensive structural ownership rules Congress and the Commission have promulgated. The benefits of these prophylactic rules are that they are clear and provide some certainty to marketplace participants. They have the additional benefit of administrative efficiency in reviewing combinations.

The extensive rulemaking proceedings used to develop the broadcast ownership rules take full account of the Commission's diversity goals and concentration concerns. These rules squarely embody the Commission's public interest goals of limiting the effect of market power and promoting diversity of viewpoints in the market.[2] A transaction that complies with structural rules designed to advance the public interest (when they exist), should not be subject to further ad hoc review; otherwise the exalted benefits of such rules would be eviscerated.

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[1] Section 310(d) of the Communications Act provides, in pertinent part, that the Commission may only grant a proposed license transfer if it determines that "the public interest, convenience, and necessity will be served thereby." 47 U.S.C. § 310(d).

[2] *See, e.g.,* In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules, MM Docket Nos. 91-221, 87-8, FCC 99-209, *Report and Order*, 14 FCC Rcd 12903, ¶¶ 1, 15 (1999) ("ultimate objectives of [the Commission's] ownership rules are to promote diversity and to foster economic competition. . ."); In the Matter of 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35, FCC 00-191, *Biennial Review Report*, 15 FCC Rcd 11058, ¶¶ 5-6 (2000); *Time Warner Entertainment Co. v. United States*, 211 F.3d 1313, 1320 (D.C. Cir. 2000) (government responded "the promotion of diversity in ideas and speech, as well as the preservation of competition, are important governmental interests. . .").

In other areas, Congress and the Commission have not set out strict structural rules. As a result, the Commission reviews these transactions in a more case specific manner. This is the case with telephone mergers. In this area there are no rules on the number of lines or central offices that a company may own. As a result, the Commission developed a four-prong test to guide its review in such cases. The analytical framework suggested by the minority would have the Commission overlay this four-prong test, or some other equally ambiguous standard, on top of our structural rules, to determine if the transaction would "*otherwise* serve the public interest." I fail to see the wisdom of this redundancy, applying two bodies of law designed to achieve the same basic objectives.

II. PUBLIC INTEREST FINDINGS

This transaction contravenes three of the Commission's broadcast ownership rules; the national ownership cap,[3] the local television multiple ownership rule,[4] and the television/newspaper cross-ownership rule.[5] The Commission *specifically* conditioned its approval on the licensee's compliance with these rules. Consistent with long-standing Commission precedent, the *Order* gives the licensee a reasonable amount of time to divest assets in order to comply with our rules. In so doing, the *Order* conducts a public interest test under each rule; weighing the request for a temporary waiver against our underlying goals of diversity and competition in the broadcast marketplace.[6]

For example, with regard to the national ownership cap, the *Order* finds; "The Commission has consistently determined that in multiple station transactions the overall benefits of allowing time for an orderly transition will outweigh any temporary impact on diversity and competition from common ownership during a reasonable period following grant of the application."[7] The *Order* further notes that "given the size of the proposed transaction, the practical difficulties of divesting the necessary stations, and our policy of avoiding forced sales, … the advantages of granting a … *temporary waiver* … will outweigh any temporary impact on diversity and competition and is in the public interest."[8] In regard to the duopoly in Salt Lake City, the fact that ten independent commercial and non commercial stations and 30 broadcast media voices will remain in the market post merger, provided a basis for the *Order* to find that a six month waiver from the duopoly rule would not "disserve the public interest." Furthermore, in granting the temporary waiver of the television/newspaper cross-ownership rule, the *Order* points out that the New York market would still have 19 independent TV voices, over 120 commercial and noncommercial radio stations, 25 daily newspapers and hundreds of weekly papers.[9]

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[3] Telecommunications Act of 1996, § 202(C)(1); 47 C.F.R. § 73.3555(e).
[4] Review of the Commission's Regulations Governing Television Broadcasting (Television Ownership Order), 14 FCC Rcd 12932-12933 (1999).
[5] 47 C.F.R. § 73.3555(d)
[6] *See LINT Co.*, 15 FCC Rcd 18130, 18133 (2000); *Shareholders of CBS Corporation,* 15 FCC Rcd 8230 (2000).
[7] *Shareholders of CBS Corporation,* 15 FCC Rcd at 8236.
[8] *Order* at para. 23. (emphasis added)
[9] *Order* at para. 43.

Given these findings, one is left wondering why the minority so mischaracterizes the *Order's* grant of compliance periods as somehow constituting "permanent waivers of the Commission's rules." As is highlighted above, granting parties a reasonable period of time for divestiture of assets to satisfy our rules is a long-standing and well-settled Commission principle. *See Shareholders of CBS Corporation*, 15 FCC Rcd 8230, 8236 (2000) (Commission grants 12 months for company to comply with the national ownership cap); *AT&T/MediaOne*, 15 FCC Rcd 9816 (2000) (Commission grants slightly under 12 months for company to divest assets to comply with the cable horizontal ownership cap). The Commission is not unique in this regard. In its antitrust review of mergers, the Department of Justice and the Federal Trade Commission typically provide parties with a reasonable amount of time for divestiture in order to come into compliance with the antitrust statutes. I find it fantastic that the minority would characterize these divestiture periods as deviations from our rules in order to approve the transaction.

III. FOREIGN OWNERSHIP

The Commission takes seriously the statutory limits placed on certain transactions. Under Section 310(b)(4) of the Communications Act, Congress prohibits the grant of a license to "any corporation directly or indirectly controlled by any other corporation of which more than one fourth of the capital stock is owned of record or voted by aliens … or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the revocation or refusal of such license."[10]

In 1995, the Commission, pursuant to the requirements of Section 310(b)(4), found that, although News Corp.'s interest in Twentieth Holdings Corporation (the parent of Fox Television Stations ("FTS" or "Fox")) exceeded the 25% benchmark established in Section 310(b)(4), the ownership structure was in the public interest.[11] The Commission also held that, "it would disserve the public interest to confine our decision to stations FTS already owns, for doing so would unnecessarily hinder the company's ability to expand and frustrate its reasonable expectations for doing so."[12] The Commission concluded that, "FTS, as presently structured may, consistent with the public interest, acquire additional broadcast stations."[13] As the Order discusses in detail, the corporate structure present here is consistent with our previous Fox decision.[14] The claim that News Corp/Newco, rather than FTS, controls the stations is simply not consistent with Commission precedent.

The Commission's analysis of the station's locus of control generally rests on three factors; programming, personnel and finances. FTS will have the ultimate control and decision making authority in each of these three areas: all of its programming activities are subject to the approval and control of FTS; the general manager and all of the department heads of each station report to FTS; and FTS controls the budget process.[15] The Office of General Counsel and the Mass Media Bureau found that the proposed ownership structure complies with the

[10] 47 U.S.C. § 310(b)(4)
[11] *Fox Televisision Stations*, 11 FCC Rcd 5714, 5723 (1995)
[12] *Id.* at 5728.
[13] *Id*.
[14] *Order* at para. 19.
[15] *Order* at para. 16-18.

Commission's 1995 Fox decision; thereby concluding that no additional public interest analysis is necessary under Section 310(b)(4). I have the highest confidence in the independent legal analysis and judgment of the Commission staff in reaching this conclusion.

The minority's strained effort to distinguish the corporate structure presented in this transaction from the prior Fox decision is not persuasive. By elevating "form over substance," the minority essentially presents the Commission with two alternatives. We could undo the 1995 Fox decision, that created for the first time in the history of television, a competitive fourth network that provides a uniquely diverse voice in American political discourse; or turn the clock back to 1995 and freeze the company forever as it existed at that time in an environment in which its competitors are not similarly restrained. One is left to wonder why anyone who places a high value on diversity of voices and competition in the media marketplace would find either result serves the public interest.

IV. CONCLUSION

In short, where there are clearly applicable structural rules, reflecting the Commission's or Congress' diversity and concentration judgments, I believe a license transfer to be in the public interest if the parties satisfy the rule. As is the case here, in multiple-station, multiple market transactions, it is common for the combined entity to create temporary violations of our ownership rules. Consistent with Commission precedent, however, the *Orde*r balances the grant of a compliance period, against any potential harm to the goals underlying the rule. Beyond this detailed analysis, engaging in an additional, more subjective, evaluation using some ambiguous standard is unnecessarily complex and redundant. This additional burden places more weight on a review process that is already laboring under the demands of a fast-paced, innovation-driven marketplace.

Finally, on behalf of the agency, I feel compelled to address Commissioner Tristani's assertion that; "the decision also shows the lengths the Commission will go to avoid standing in the way of media mergers." While we may have a respectful disagreement over the public interest standard and the rote application of the four-prong test in license transfers, this sweeping assertion is not only offensive, but absurd. If the majority was on the crusade she suggests, then the Commission would have granted permanent waivers of our rules, which it clearly did not.