

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

In the Matter of	)	
	)	
Review of the Commission's	)	MM Docket No. 94-150
Regulations Governing Attribution	)	
Of Broadcast and Cable/MDS Interests	)	
	)	
Review of the Commission's	)	MM Docket No. 92-51
Regulations and Policies	)	
Affecting Investment	)	
In the Broadcast Industry	)	
	)	
Reexamination of the Commission's	)	MM Docket No. 87-154
Cross-Interest Policy	)	

**ORDER**

**Adopted:** December 3, 2001

**Released:** December 14, 2001

By the Commission: Commissioner Cops dissenting and issuing a statement.

1. In this *Order*, we suspend the Commission's elimination of the single majority shareholder exemption under our broadcast and cable/multipoint distribution service (MDS)<sup>1</sup> attribution rules, pending resolution of the issues outlined in our recently adopted cable *Further Notice of Proposed Rulemaking (Cable FNPRM)*.<sup>2</sup> Effective immediately, for purposes of the broadcast attribution rules, no minority voting interest will be cognizable, subject to the equity/debt plus rule, if there is a single holder of more than 50 percent of the outstanding voting stock of the corporate broadcast licensee, cable television system, or daily newspaper in which the minority interest is held.<sup>3</sup> Similarly, for purposes of the cable/MDS attribution rules, no minority voting stock interest will be cognizable, subject to the equity/debt plus rule, if there is a single holder of more than 50 percent of the outstanding voting stock of the corporate MDS licensee or cable television system in which the minority interest is held.<sup>4</sup>

2. On August 6, 1999, the Commission released a *Report and Order* in this proceeding amending its broadcast and cable/MDS attribution rules, but retaining the single majority shareholder exemption after seeking comment on whether to eliminate it.<sup>5</sup> Upon reconsideration, the Commission granted a request to eliminate the single majority shareholder exemption, relying, in part, on its rationale for eliminating the exemption in the context of cable operators in its *1999 Cable Attribution R&O*, and

<sup>1</sup> MDS includes single channel multipoint distribution service and multichannel multipoint distribution service.

<sup>2</sup> *In re* Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992; Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, CS Docket No. 98-82, *Further Notice of Proposed Rulemaking*, FCC 01-263 (rel. Sept. 21, 2001) (*Cable FNPRM*).

<sup>3</sup> See former Note 2(b) to Section 73.3555, 47 C.F.R. § 73.3555 Note 2(b).

<sup>4</sup> See former Note 1(b) to Section 21.912 of the Commission's rules, 47 C.F.R. § 21.912.

<sup>5</sup> *In re* Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, *Report and Order*, 14 FCC Rcd 12559, 12579, ¶ 36 (1999).

further explaining that regardless of whether minority shareholder interests have the ability to control a licensee, they should be attributed because they potentially have the ability to exert influence over a licensee's core operations.<sup>6</sup>

3. On March 2, 2001, the Court of Appeals for the D.C. Circuit, in *Time Warner Entertainment Co. L.P. v. FCC (Time Warner)*, remanded issues to the Commission related to our cable ownership rules and, in relevant part, reversed the elimination of the single majority shareholder exemption under the cable attribution rules. The D.C. Circuit found that the Commission had failed to offer an affirmative justification for eliminating the exemption.<sup>7</sup> Relying on the decision in *Time Warner*, certain parties sought reconsideration of the Commission's elimination of the exemption in the broadcast attribution reconsideration order.<sup>8</sup> On September 13, 2001, we adopted the *Cable FNPRM* addressing the issues on remand from the D.C. Circuit and seeking evidence regarding whether to eliminate or retain the single majority shareholder exemption under our cable attribution rules.<sup>9</sup> We also incorporated the pleadings seeking reconsideration of elimination of the single majority shareholder exemption for purposes of our broadcast and cable/MDS attribution rules by reference into that proceeding and asked commenters to provide evidence on whether to reinstate the exemption.<sup>10</sup> We further stated that we would separately issue this suspension order pending resolution of the issues in that proceeding.<sup>11</sup>

4. We find that suspending the repeal of the single majority shareholder exemption for purposes of the broadcast and cable/MDS attribution rules pending resolution of the issues outlined in the *Cable FNPRM* is in the public interest. We recognize that, in making its decision to eliminate the exemption, the Commission relied in part on the rationale from the *1999 Cable Attribution R&O* rejected by the Court in *Time Warner*. We further recognize that a suspension will enable us to consider all evidence provided in response to our *Cable FNPRM* on whether to reinstate the single majority shareholder exemption under our broadcast and cable/MDS attribution rules. We find that no harm has occurred or will occur by making the suspension effective immediately because applying the exemption in determining attributable interests may result in fewer restrictions under our ownership rules. We also

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<sup>6</sup> *In re* Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 1097, 1116-17, ¶¶ 41-44 (2001) (*Broadcast Attribution MO&O*) (citing, in part, *In re* Implementation of the Cable Television Consumer Protection and Competition Act of 1992, CS Docket No. 98-82, *Report and Order*, 14 FCC Rcd 19014, 19046, ¶ 81 (1999)). In the *Broadcast Attribution MO&O*, the Commission noted that the rationale supporting adoption of the exemption in 1984, was based on the conclusion that minority interest shareholders would be unable to direct the licensee's affairs or activities. The Commission stated that "attribution rules are designed to identify not only interests that enable an entity to control a company, but also interests that give an entity the potential to exert significant influence on a company's major decisions, even if the entity cannot control the company. Minority shareholders may not be able to control the affairs or activities of licensees, but, in certain circumstances, they clearly have the potential to influence a licensee's actions." *Broadcast Attribution MO&O*, 16 FCC Rcd at 1116, ¶ 43. The Commission found that eliminating the exemption for purposes of the broadcast and cable/MDS attribution rules would, therefore, improve the precision of the attribution rules in identifying cognizable interests. *Id.* at 1116, ¶ 42. The *Broadcast Attribution MO&O* was published in the Federal Register on February 13, 2001, and the rule amendments became effective on April 16, 2001. 66 Fed. Reg. 9962 (2001).

<sup>7</sup> 240 F.3d 1126, 1143-44 (D.C. Cir. 2001).

<sup>8</sup> The National Broadcasting Company, Inc. filed a petition for reconsideration of the *Broadcast Attribution MO&O* on March 12, 2001. Paxson Communications Corporation and Viacom, Inc. each filed petitions for reconsideration of the *Broadcast Attribution MO&O* on March 15, 2001. On April 19, 2001, the National Association of Broadcasters filed comments supporting the petitions.

<sup>9</sup> *Cable FNPRM*, FCC 01-263 at ¶¶ 88-90.

<sup>10</sup> *Cable FNPRM*, FCC 01-263 at ¶¶ 91-92.

<sup>11</sup> *Cable FNPRM*, FCC 01-263 at ¶¶ 91.

believe the suspension will provide for consistent processing of pending and future applications and other relevant documents. Accordingly, for good cause shown, we suspend the elimination of the single majority shareholder exemption under our broadcast and cable/MDS attribution rules, effective immediately upon release of this order.<sup>12</sup> The suspension applies to the processing of all pending and future applications and will remain in effect until the issues outlined in our *Cable FNPRM* proceeding are resolved.

5. Authority for issuance of this *Order* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 553(d) of the Administrative Procedure Act, 5 U.S.C. § 553(d).

6. Accordingly, IT IS ORDERED that repeal of the single majority shareholder exemptions contained in former Note 1(b) to Section 21.912 of the Commission's rules, 47 C.F.R. § 21.912 Note 1(b) (2000), and former Note 2(b) to Section 73.3555 of the Commission's rules, 47 C.F.R. § 73.3555 Note 2(b) (2000) IS SUSPENDED effective immediately upon release of this order for all pending and future applications until resolution of the issues outlined in the *Cable FNPRM* proceeding. This action is taken pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 553(d) of the Administrative Procedure Act, 5 U.S.C. § 553(d).

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>12</sup> See 5 U.S.C. § 553(d)(1) and (3) (providing that “[t]he required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except . . . (1) a substantive rule, which grants or recognizes an exemption or relieves a restriction; . . . or (3) as otherwise provided by the agency for good cause found and published with the rule”).

**DISSENTING STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Review of the Commission's Regulations Governing Attribution of  
Broadcast and Cable/MDS Interest, Suspension Order*

I dissent from suspending enforcement of the elimination of the single majority shareholder exemption to the broadcast ownership rules. Suspension of this rule is tantamount to its elimination. No court has directed suspending this rule, nor even suggested review of the rule. Nor has the Commission completed its rulemaking to ascertain whether a change in policy would serve the public interest. Before considering such an important policy change, I would need to review the record in the rulemaking proceeding including the comments of all interested stakeholders.

I am fully aware that earlier this year the D.C. Circuit ordered the Commission to revisit its cable ownership rules, including its rules governing attribution of cable ownership interests, and to build a strong record upon which to base any new rules. This decision left the Commission, the cable industry, and the American people temporarily without clear rules governing cable system ownership. This is an unfortunate circumstance, and I am pleased that the Commission has commenced a proceeding to build a record upon which to base new cable ownership rules.

But broadly as it may have affected our cable ownership rules, the D.C. Circuit decision did not address any rules governing broadcast ownership or attribution. These rules, and in fact the entire regulatory scheme under which broadcast licensees operate, exists independently of the D.C. Circuit decision. While we all talk about convergence these days – convergence of technologies, convergence of regulatory schemes – no one would assert that broadcast stations and cable television systems have converged to the point that they are subject to the same regulatory scheme.

The broadcast attribution rules – including the elimination of the single majority shareholder exemption – were promulgated pursuant to a rulemaking proceeding with an opportunity for input from all stakeholders, and with consideration of all viewpoints. While the Commission relied in part on consistency with the cable attribution rules in eliminating the single majority shareholder exemption, there was an additional basis, specific to broadcast licensing – providing consistency to applicants in the application of our attribution rules.

Ironically, consistency is the rationale stated by the majority for the suspension of this rule at this time. While I am sympathetic to potential broadcast license applicants' concerns that they need clear rules of the road to plan their business transactions, the point is that there are rules in effect at this time: the rules adopted by the Commission eliminating the single majority shareholder exemption.

Until we have completed the proceeding addressing our broadcast attribution rules, the elimination of the single majority shareholder exemption should be enforced. Only after I am convinced that such a rule change would serve the public interest and the principles of competition and diversity would I support the elimination – by suspension or by rulemaking – of this rule.