

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

In the Matter of)	
)	
1998 Biennial Regulatory Review—)	
Review of the Commission's Broadcast)	MM Docket No. 98-35
Ownership Rules and Other Rules)	
Adopted Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
)	

Memorandum Opinion and Order

Adopted: March 26, 2002

Released: March 28, 2002

By the Commission: Commissioner Copps concurring in part, dissenting in part, and issuing a statement.

1. The Commission has before it for consideration a request for interim relief filed by Viacom, Inc. (Viacom) in which Viacom seeks a stay of enforcement of the requirement in *Shareholders of CBS Corporation*¹ that it come into compliance with the national television ownership limit.² Viacom asks that this relief continue until 12 months after the issuance of a final Commission decision, pursuant to the remand in *Fox Television Stations, Inc.*,³ resolving the question of whether to retain the rule as directed in the remand of *Fox*. For the reasons stated below, we grant the requested relief.

2. In *Shareholders of CBS*, the Commission permitted Viacom to acquire the various license subsidiaries of CBS Corporation (CBS). As a result of this transaction, Viacom became the licensee of 38 television stations licensed in 32 separate markets. The combined national audience reach of these stations was slightly more than 41%.⁴ The Commission's rules prohibit the grant, transfer or assignment of any television license to any entity if it would result in that entity having a cognizable interest in television stations with an aggregate national audience reach exceeding 35 percent.⁵ Because the aggregate national reach of the stations owned by the combined CBS/Viacom was more than 6% in excess of the permitted level, the parties asked for 24 months to come into compliance with the statute and rule. Relying on previous Commission decisions that allowed for an orderly divestiture of broadcast properties in multi-station transactions, Viacom was given 12 months to come into compliance with the national ownership cap.⁶ That period expired on May 4, 2001.

3. Viacom was a participant in the *Fox Television* proceeding, in which Viacom and other parties challenged the existing national television ownership limit. In the context of that proceeding, the

¹ 15 FCC Rcd 8230 (2000). (*Shareholders of CBS*).

² 47 C.F.R. § 73.3555(e).

³ See *Fox Television Stations, Inc.*, No. 00-1222, -- F.3d -- (D.C. Cir., rel. Feb. 19, 2002)(*Fox Television*).

⁴ *Shareholders of CBS*, 15 FCC Rcd at 8235.

⁵ 47 C.F.R. § 73.3555(e); see also, Telecommunications Act of 1996, § 202(c)(1)

⁶ *Shareholders of CBS*, 15 FCC Rcd at 8236.

United States Court of Appeals for the District of Columbia Circuit stayed the requirement that Viacom come into compliance with the national television ownership limit. On February 19, 2002, the Court issued its decision in *Fox Television*. The Court vacated the Commission's decision not to modify or repeal the national television ownership limit⁷ and remanded the question of whether to retain the rule to the Commission for further consideration. In its decision the Court also vacated its stay order without prejudice to Viacom's ability to seek a further stay from the Commission during the pendency of the remand proceedings.⁸

4. In its request, Viacom asks us to grant it continued relief from coming into compliance with the national television ownership limit until 12 months following the issuance of a final Commission decision on the remand. Given the court's remand and given that the court previously stayed the national ownership portion of our decision in *Shareholders of CBS* with respect to Viacom pending its decision in *Fox Television*, we believe it is appropriate to grant Viacom a period of time to come into compliance following the Commission's reexamination of the national ownership rules on remand. Therefore, we will grant Viacom a period of 12 months following the issuance of a final Commission decision resolving the question of whether to retain or revise the existing national television ownership limit, as directed by the Court in *Fox Television*, to file the necessary applications to come into compliance with those limits at that time.

5. Accordingly, IT IS ORDERED, That the Request of Viacom, Inc. for Interim Relief is GRANTED and THAT within 12 months of the issuance of a final Commission decision on national television ownership limits, pursuant to the remand of the Court in *Fox Television Stations, Inc.*, No. 00-1222, -- F.3d -- (D.C. Cir., rel. Feb. 19, 2002), Viacom, Inc. shall file any application or applications that may be necessary to come into compliance with any limits that exist at that time.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

⁷ 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, 15 FCC Rcd 11058 (2000)(1998 Biennial Review).

⁸ *Fox Television*, at p. 37.

**STATEMENT
OF COMMISSIONER MICHAEL J. COPPS
CONCURRING IN PART, DISSENTING IN PART**

Re: *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*

I concur in the Commission’s decision to grant Viacom a stay of the requirement that it come into compliance with the national television ownership limit. Almost two years ago, in approving the acquisition of CBS by Viacom, the Commission granted the combined company twelve months in which to come into compliance with this rule. In so doing, the Commission acknowledged that Viacom was required to comply with the Commission’s existing rules, but that doing so could not be accomplished overnight. Those two factors have not changed. The television national ownership cap remains in place until changed by the Commission through a proceeding not yet commenced, and Viacom’s compliance with this rule cannot be accomplished without a reasonable time to divest itself of sufficient properties to come into compliance with the cap.

My strong preference is to grant Viacom twelve months from the date of this Order to come into compliance with the television national ownership cap. I cannot, however, support that portion of the Order that grants twelve months from “the issuance of a final Commission decision.” Given the lengthy time period required for a proceeding on the national television ownership cap, and the subsequent reconsideration of any decision resulting from that proceeding, the twelve month period granted here is not likely even to commence for many more than twelve months. Under this scenario Endgame could well be the twelfth of never and, as the song reminds us, that’s a long, long time.