

ORIGINAL

Before the
Federal Communications Commission
Washington DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
)
TELEMUNDO ACQUISITIONS)
GROUP, INC.,)
Transferor)
)
and)
)
TN ACQUISITION CORP.,)
Transferee)
)
For Transfer of Control of)
Station KSTS(TV) (Facility ID No. 64987),)
San Jose, California, *et al*)

File Nos. BTCCT-20011101ABK,
et seq.

To: The Commission

PETITION TO DENY

Paxson Communications Corporation ("PCC"), by its attorneys and pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, 47 USC Sec. 309(d)(1), hereby petitions the Commission to deny the applications of TN Acquisition Corp., a wholly-owned subsidiary of the General Electric Company ("GE"), the parent of the National Broadcasting Company, Inc. (together with GE, "NBC"), to acquire control of Telemundo Communications Group, Inc. ("Telemundo") as proposed in the above-captioned application and related applications, all of which were listed as acceptable for filing on the Commission's *Public Notice* (Report No.25106, Broadcast Applications), released November 6, 2001. In support whereof the following is shown:

I. Standing

PCC has standing to file this petition to deny. As verified by the attached Declaration of Anthony L. Morrison, PCC's Executive Vice President, PCC-owned television stations compete for audience and revenue with NBC-owned, operated and affiliated stations in most of the top-50 television markets in the United States, including New York, Los Angeles, Chicago, Dallas and Miami. Additionally, PCC's Pax TV, the nation's seventh largest television network, competes for audience and revenue with the NBC television network on a nationwide basis. Because PCC competes with NBC, it has standing to file this petition. *FCC v. Sanders Brothers Radio Station*, 309 US 470 (1940).

II. Request for Declaratory Ruling

Simultaneously with the filing of this petition, PCC is filing a Request for Declaratory Ruling (the "Request"). The Request, which also is verified by Mr. Morrison's attached declaration, is incorporated herein by reference. In the Request, PCC describes the arrangements now existing between PCC and NBC under contracts entered into in 1999. These agreements provided for a significant financial investment by NBC and the issuance to NBC of convertible preferred stock amounting to a 32 percent equity interest in PCC. NBC also was issued warrants for new common stock and a call on PCC's super-voting (10 votes per share) "control block" of stock. Together these interests created a path for NBC to control PCC at the point when the FCC's multiple ownership rules would permit such a combination.

The rules do not now permit common ownership because PCC and NBC would have impermissible duopolies under Section 73.3555(b), the local television multiple ownership rule, in Hartford, Raleigh-Durham, Birmingham and Providence; and because the combined US

household reach of PCC's and NBC's owned stations would be approximately 45 percent, in excess of the 35 percent cap in Section 73.3555(e)(1), the national television multiple ownership rule.

The purpose of the Request is to seek a declaratory ruling from the Commission as to whether the conduct of NBC under its agreements with PCC has caused it to have an attributable interest in PCC or has impinged on PCC's control of its television stations. Attribution of PCC's stations to NBC would, as noted above, put it in violation of the local and national television multiple ownership rules. The evidence presented in the Request shows that NBC has nominated its own executive employees to the PCC board of directors and has used those directors in attempts to force PCC to act in accordance with NBC's wishes. NBC also has (unsuccessfully so far) asserted control over PCC's budgets and its efforts to raise capital. PCC views these encroachments not only as inconsistent with NBC's contractual obligations to PCC, but also as sufficiently aggressive to remove NBC from the protected class of "passive" investors who are insulated from the multiple ownership rules under the attribution standard. *See* 47 CFR Sec. 73.3555, Note 2, subsection (h)(officer and director positions attributable); *BBC Licensee Subsidiary, LP*, 10 FCC Rcd 7926, 7932 (1995) (the purpose of the attribution rules is to identify those interests or relationships which "confer on its holders a degree of 'influence' such that the holders have a 'realistic potential to affect the programming decisions of licensees.'").

If the Request results in a determination that NBC has overreached to the extent that it no longer can be considered a passive investor with a non-attributable interest in PCC, remedies will be necessary. In the Request, PCC suggests changes in the director-nomination provision in the

stockholder agreement among the parties, to prevent NBC from nominating NBC employees or other agents to the PCC board of directors, or, alternatively, if the FCC determines that the director-nomination provision is unacceptable on its face, that the Commission condemn the restrictive covenants that have been used by NBC in its attempts to control PCC's decision making.¹ PCC also requests that the FCC consider outright divestiture by NBC if it found that the safeguards in the agreements have proved to be insufficient, in themselves, to prevent the encroachments described in the Request. Indeed, this ultimately may be the appropriate remedy in light of the combination of rights NBC, which now is a hostile partner, has in terms of PCC's operations.

III. Impact on the Telemundo Applications

As noted above, NBC is prohibited under the multiple ownership rules from owning PCC's stations or from having an attributable interest in PCC. Attribution to NBC of PCC's stations in the Hartford, Raleigh-Durham, Birmingham and Providence markets would create prohibited duopolies. Adding Telemundo's stations to the NBC stable would create a far worse situation. The table below, shows that prohibited "triopolies" would be created in the New York, Los Angeles, Chicago, Dallas and Miami markets, as a result of cross-attribution of NBC's, Telemundo's and PCC's stations.

¹ As explained in the Request, the existence of three NBC-nominated board members was seen by PCC as a check on NBC's use of various covenants to exert influence. If any one of the three voted in favor of a board resolution, it was deemed to have been consented to by NBC. The problems described in the Request have arisen from NBC's nomination of its own employees instead of independent directors, and from its improper manipulation of them.

<u>Market</u>	<u>NBC</u>	<u>Telemundo</u>	<u>PCC</u>
New York	WNBC-TV	WNJU(TV)	WPXN(TV)
Los Angeles	KNBC-TV	KWHY-TV KVEA(TV)	KPXN(TV)
Dallas	KXAS-TV	KXTX-TV	KPXD(TV)
Chicago	WMAQ-TV	WSNS-TV	WXPX(TV)
Miami	WTVJ(TV)	WSCV(TV)	KPXM(TV)

In short, NBC cannot acquire control of Telemundo if it is found, as PCC believes it will be, that NBC has attributable interests in PCC. Moreover, in light of the existing agreements between PCC and NBC, the conduct of NBC as detailed in the Request, and the NBC applications to acquire Telemundo, one must ask, "Is this too much for the FCC to accept?" Stated differently, does NBC now have to choose between divesting its equity and contractual interests in PCC or foregoing the Telemundo acquisition?

IV. Arbitration Proceeding

PCC also is filing today, with the American Arbitration Association in Atlanta, a Statement of Claim against NBC pursuant to the arbitration clause of its basic agreement with NBC. The Statement of Claim alleges that NBC's planned acquisition of Telemundo violates provisions of NBC's agreements with PCC because such an acquisition, due to the multiple ownership rule implications explained above, prevent NBC from following through with its purchase of control of PCC, as is contemplated in the 1999 PCC-NBC agreements.

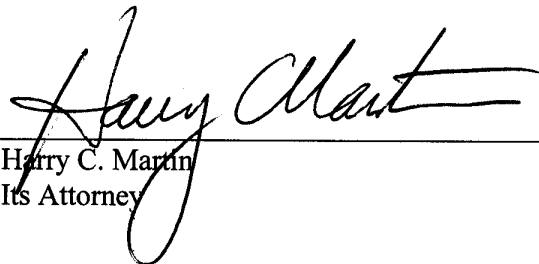
While the Statement of Claim contains many of the same facts as are presented in the Request, the basic relief being sought is different. In the arbitration proceeding PCC asks for,

inter alia, an order enjoining NBC from proceeding with the Telemundo transaction. While this matter may take its course prior to final resolution of the matters presented in this petition and in the Request, and action by the arbitration panel may well moot this petition through issuance of an injunction, the Commission nevertheless is requested to withhold action on the NBC-Telemundo transfer applications until the arbitration proceeding is completed. This will ensure that the Commission's resolution of the issues will be final with respect to the proposed transaction and obviate the need for a disruptive rescission of the transfers, and a return of control to Telemundo's current owners, if the FCC were to approve the applications but the arbitration panel were to find for PCC on its claim for injunctive relief.

WHEREFORE, It is respectfully requested that the Commission, should it determine NBC is in violation of the multiple ownership rules, deny the Telemundo transfer-of-control applications; and/or hold the applications in abeyance pending resolution of PCC's Statement of Claim filed December 4, 2001 with the American Arbitration Association.

Respectfully submitted,

PAXSON COMMUNICATIONS CORPORATION

By 

Harry C. Martin
Its Attorney

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December 4, 2001

DECLARATION OF ANTHONY L. MORRISON

I, Anthony L. Morrison, under penalty of perjury, hereby declare and state as follows:

1. I am Executive Vice President and General Counsel of Paxson Communications Corporation ("PCC"). PCC, through wholly-owned subsidiaries, owns and operates television stations in most of the top-50 ranked US television markets, including New York, Los Angeles, Chicago, Dallas and Miami. PCC also owns and operates Pax TV, the nation's seventh largest television network.

2. The National Broadcasting Company, Inc. ("NBC") also owns and operates television stations in the New York, Los Angeles, Chicago, Dallas and Miami markets (among others) and operates the NBC television network, one of the nation's four largest. PCC and NBC compete for audience and revenue in these five markets, in other markets where each has an owned station, and through their network operations. Indeed, NBC-affiliated stations compete with virtually every PCC-owned station. Although NBC, by contract, is the exclusive sales agent for the sale of time on PCC's stations and Pax TV, the revenue generated by time sales on PCC's stations and the network flows to PCC after the payment of commissions to NBC.

3. I have participated in the preparation of the Petition to Deny to which this declaration will be appended. The facts stated therein, and in the accompanying Request for Declaratory Relief, are true and correct to the best of my knowledge and belief.

Signed and dated this 3rd day of December, 2001.



Anthony L. Morrison

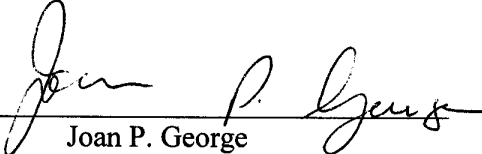
CERTIFICATE OF SERVICE

I, Joan P. George, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that true copies of the foregoing *Petition to Deny* was, on this 4th day of December 2001, delivered by hand where indicated and by first-class mail postage prepaid to the following:

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Joan P. George

* By hand