

Before the
Federal Communications Commission
Washington DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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FLETCHER, HEALD & HILDRETH

In re Applications of)
TELEMUNDO COMMUNICATIONS)
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

CONSOLIDATED REPLY TO OPPOSITIONS TO PETITION TO DENY

Paxson Communications Corporation ("PCC") hereby addresses the oppositions, filed December 19, 2001, to PCC's December 4, 2001 Petition to Deny directed to the captioned applications. Such oppositions were filed by National Broadcasting Company, Inc. ("NBC"), Telemundo Communications Group, Inc. ("Telemundo") and Council Tree Hispanic Broadcasters II, LLC ("Council Tree"). NBC's opposition is directed primarily to PCC's Request for Declaratory Ruling (the "Request"), also filed December 4. Except as noted below, NBC's opposition is being addressed in a separate reply.

I. Telemundo

Telemundo's opposition, which primarily is addressed to the petition to deny filed by the "Hispanic Coalition," also asks the FCC to reject PCC's request that the FCC defer action on the

NBC-Telemundo transfer applications pending completion of the related arbitration proceeding. NBC at page 2 of its opposition also takes issue with PCC's deferral argument. PCC does not dispute the FCC's authority to proceed without regard to the outcome of the arbitration proceeding. Rather, PCC's request for deferral was intended to alert the FCC to the existence of the parallel litigation and give the agency the option of avoiding the waste of public and private resources and the inconvenience of ruling on the NBC-Telemundo merger when it is subject to being enjoined in the arbitration proceeding.

II. Council Tree

Council Tree argues that PCC, by its petition, is attempting to enlist the FCC's help in resolving a private dispute with NBC. Relatedly, it claims PCC has waited "one and one-half years" (after the dispute with NBC began) to seek such redress. While admittedly there exists a "private" dispute with NBC over which the FCC has no jurisdiction, PCC's pleadings allege misconduct by NBC arising only under the FCC's multiple ownership rules, over which the FCC has exclusive jurisdiction. Council Tree cites no example where PCC alleges misconduct or any other wrong that is not cognizable under the Commission's rules or policies. With regard to any alleged delays in the filing of PCC's pleadings, the NBC-Telemundo transfer applications provided a timely opportunity for PCC to bring to the FCC's attention the encroachments on PCC's licensee prerogatives in light of the July-October, 2001 exchanges between NBC and PCC (as well as previous incidents). *See Request, Exs. 14-23*. In any event, Council Tree concedes that PCC has standing to file its petition to deny on the basis of its status as a competitor to NBC.

Its effort to disparage PCC for simply exercising its petition right, under Section 309(d) of the Communications Act, adds nothing to the debate.

Council Tree nevertheless argues that denial of the NBC-Telemundo merger applications would not afford any meaningful redress for the injuries PCC claims to have suffered. This is not true. Denial of the applications would, as PCC has argued in its arbitration complaint, keep the path open for NBC to obtain control of PCC, something PCC views as significant to the future of the company and, moreover, as a commitment to which PCC and NBC are bound by contract. But this is irrelevant to the FCC's consideration of PCC's petition to deny. What is important is that PCC, a competitor of NBC's, has standing to file a petition to deny and the arguments it raises in its petition deal with cognizable FCC misconduct. Council Tree's citation to *California Association of Physically Handicapped v. FCC*, 778 F. 2d 823 (DC Cir. 1985), is unavailing in this context. That case involved standing to file a court appeal under Section 402(b)(6) of the Communications Act, not the broader "party in interest" standing criteria which apply to petitions to deny under Section 309(d) of the Act. PCC not only has standing under Section 309(d) as a competitor of NBC's (*see FCC v. Sanders Brothers Radio Station*, 309 US 470 (1940)), also, as stated above, it has a cognizable financial stake in the FCC's disposition of the NBC-Telemundo transfer applications.

III. NBC

PCC's Request and NBC's Opposition place before the FCC a truly unique situation. In addition to its substantial equity interest in PCC, NBC has sales agreements allowing it to control

the local and national sale of air time on PCC's television stations and, through time brokerage agreements, has the right to provide certain NBC programming to PCC's stations. NBC has added to this multitude of connections by placing its own employees on PCC's board and then directing their conduct. The end result may be that one company (NBC) has an attributable interest, as that is defined by the FCC, in another company (PCC) which would place NBC in violation of the local and national television multiple ownership rules.. If the FCC now were to permit NBC to add the Telemundo stations to this mix, these rule violations, as shown below, would be far worse. The FCC must answer this question: If the PCC-NBC agreements were in full compliance with the FCC rules when executed, will the Telemundo acquisition by NBC still comply with the FCC rules in light of NBC's conduct?

The record suggests that the FCC has never been present with such a litany of ownership rule violations in its history. But the FCC is not powerless to act. The FCC "has long presumed the authority to order divestiture of stock to effect compliance with the multiple ownership rules," *See, Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, 97 FCC 2nd 997, 1033 (1984), "and has ordered individual stockholders to divest themselves of violative holdings on several occasions." *Id* (fn. omitted). This is what the FCC may be required to do in this case, i.e., order NBC to divest its interest in PCC prior to proceeding with its Telemundo acquisition.

A significant procedural issue is raised by NBC's attempt to sidestep PCC's Request by addressing the Request only in the context of its Opposition to PCC's Petition to Deny. Clearly,

NBC, without saying it, does not want the FCC to act on the Request separately. But such a separation would serve the public interest and, indeed, is required in this case to assure the integrity of the Commission's rules and processes.

As shown in PCC's Petition to Deny, attribution to NBC of PCC's stations would create prohibited duopolies in Hartford, Raleigh-Durham, Birmingham and Providence. Such attribution also would cause NBC's national audience share to be approximately 45 percent, in excess of the 35 percent national cap. When Telemundo's stations are factored in, prohibited "triopolies" would be created in New York, Los Angeles, Chicago, Miami and Dallas. NBC does not dispute any of these facts in its Opposition. Thus, a declaratory ruling addressing the *existing* situation is a necessary predicate for consideration of the NBC-Telemundo transfer applications.

Equally important, by dealing separately with the attribution issues raised in the Request, the Commission can avoid having to deal with those issues in other contexts. For example, in an application filed December 21, 2001, NBC is seeking FCC consent to become the owner of Station KNTV(TV), San Jose, California (File No. BTCCT-20011121AAS). Because KNTV serves the San Francisco-Oakland-San Jose market, yet another "triopoly" would be created if NBC were permitted to own that station, plus Telemundo's KSTS(TV), San Jose, while having an attributable interest in PCC, which owns KKPX(TV), San Jose. Future NBC acquisitions also will be implicated given PCC's station presence in a majority of the top US television markets.

Given the bigger picture that exists as a result of NBC's expansion plans, and NBC's status as one of the nation's leading broadcasting companies, declaratory relief affords the most

efficient, appropriate and expeditious means to deal with NBC's conduct vis-à-vis PCC. Section 1.2 of the rules authorizes the Commission to terminate controversies or remove uncertainties in just this type of broader context. A declaratory ruling could prescribe administrative remedies, up to and including divestiture of NBC's interests in PCC, that would resolve the controversy. Such a resolution could clear a route for approval of the Telemundo transfer applications. But, at the present time, NBC simply is reaching for too much. The FCC should not consider either the Telemundo applications or any other NBC application to acquire stations that would potentially create unauthorized duopolies or triopolies until the matters raised in PCC's Request are resolved. A broadly applicable ruling, if issued soon, would permit an orderly resolution of the multiple ownership rule violations which already have occurred, and would stop future and grosser violations--whether in connection with NBC's acquisitions of Telemundo, KNTV or others to come.

The FCC must answer the questions raised by PCC in the Request prior to ruling on the NBC-Telemundo application. If the PCC-NBC agreements were in compliance with the FCC rules when executed, are they still in compliance in light of NBC's conduct and its proposed acquisition of Telemundo? Is an NBC-PCC-Telemundo combination with equity ownership, JSAs, programming agreements, duopolies, triopolies and 45 percent television household coverage acceptable to the FCC? If not, the FCC has the power to order a divestiture of PCC prior to any acquisition of Telemundo.

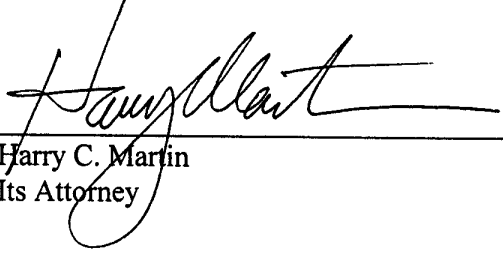
WHEREFORE, For the reasons stated above, it respectfully requested that the Commission reject the opposition pleadings filed by Telemundo and Council Tree, and that portion of the NBC opposition which relates to the timing of FCC disposition of PCC's petition

to deny. Also for the reasons stated above, it is requested that the FCC proceed with disposition of PCC's Request for Declaratory Ruling before ruling on its Petition to Deny.

Respectfully submitted,

PAXSON COMMUNICATIONS CORPORATION

By



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Its Attorney

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January 10, 2002

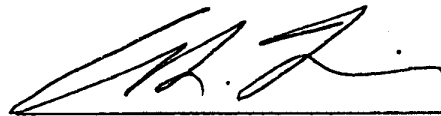
DECLARATION OF ANTHONY L. MORRISON

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

I am Executive Vice President and General Counsel of Paxson Communications Corporation ("PCC").

I have participated in the preparation of PCC's "Consolidated Reply to Oppositions to Petition to Deny," to which this declaration is attached, as well as its "Reply to Opposition to Request for Declaratory Ruling," both of which are being filed with the FCC today. The facts stated in those pleadings are true and correct to the best knowledge and belief.

Signed and dated this 10 day of January, 2002.



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 *Consolidated Reply to Oppositions to Petition to Deny* was, on this 10th day of January 2002, delivered by hand where indicated and by first-class mail postage prepaid to the following:

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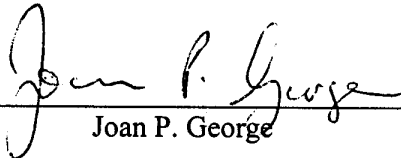
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