

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

In the Matter of)
Telemundo Communications Group, Inc.) File Nos. BTCCT-20011101ABK, ABT,
(Transferor)) ABW, ABY, ACA-ACC, ACE,
and) ACI, ACN and ACP
TN Acquisition Corp.) BTCCTL-20011101-ABM-S
(Transferee)) ABX, ACF-ACH, ACO, and
ADK
For Consent to the Transfer of Control of) BTCTTA-20011101ABL
Estrella License Corporation) BTCTTV-20011101ACJ
Licensee of Television Stations) BTCTT-20011101ACK-L
KVEA(TV), Corona, California) FIN: 15772, 19780, 19783, 20373,
K47GD, San Luis Obispo, California) 26229, 26231, 35994, 64871,
64973, 64974, 64975, 64976,
64979, 64981, 64982, 64983,
64984, 64987, 64969, 64990,
64991, 64996, 64997, 65000,
67532, 67545, 70119 and
73333
Telemundo of Los Angeles License Corp.)
Licensee of Television Stations)
KWHY-TV, Los Angeles, California)
KWHY-LP, Santa Barbara, California)
Telemundo of Florida License Corporation)
Licensee of Television Station)
WSCV(TV), Fort Lauderdale, Florida)
Telemundo of Galveston-Houston License)
Corporation)
Licensee of Television Station)
KTMD(TV), Galveston, Texas)
Telemundo of Northern California License)
Corporation)
Licensee of Television Stations)
KSTS(TV), San Jose, California)
K15CU, Salinas, California)
KEJT-LP, Salt Lake City, Utah)
K47DQ, Sacramento, California)

K52CK, Stockton, California)
W32AY, Boston, Massachusetts)
K27EI, Santa Maria, California)
K52FF, Reno, Nevada)
K61FI, Modesto, California)
)
Telemundo of San Antonio License)
Corporation)
Licensee of Television Station)
KVDA(TV), San Antonio, Texas)
)
WNJU License Corporation)
Licensee of Television Station)
WNJU(TV), Linden, New Jersey)
)
Telemundo of Steamboat Springs Colorado)
License Corporation)
Licensee of Television Stations)
KMAS-TV, Steamboat Springs, Colorado)
KSBS-LP, Denver, Colorado)
KMAS-LP, Denver, Colorado)
K34FB, Pueblo, Colorado)
)
Telemundo of Puerto Rico License)
Corporation)
Licensee of Television Stations)
WKAQ-TV, San Juan, Puerto Rico)
W09AT, Fajardo, Puerto Rico)
W32AJ, Utuado, Puerto Rico)
W68BU, Adjuntas, Puerto Rico)
)
Telemundo of Colorado Springs, Inc.)
Licensee of Television Stations)
K49CJ, Colorado Springs, Colorado)
)
Telemundo of Dallas License Corporation)
Licensee of Television Station)
KXTX-TV, Dallas, Texas)
)
Video 44)
Licensee of Television Station)
WSNS-TV, Chicago, Illinois)

MEMORANDUM OPINION AND ORDER

Adopted: April 9, 2002

Released: April 10, 2002

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

I. INTRODUCTION

1. The Commission has before it for consideration the applications for consent to the transfer of control of eleven full power television stations and seventeen low power and television translator stations held by subsidiaries of Telemundo Communications Group, Inc. (Telemundo) from Telemundo to TN Acquisition Corporation, a subsidiary of the National Broadcasting Company, Inc. (NBC). NBC has requested a twelve-month period of time to come into compliance with Section 73.3555(b) of the Commission's Rules in order to permit it to temporarily own three television stations in the Los Angeles television market.¹ A coalition of Hispanic public interest groups (Hispanic Groups)² filed a petition to deny the transaction and Paxson Communications Corporation (Paxson) filed a petition to deny and request for declaratory ruling.³ For the reasons stated below, we deny the Hispanic Groups' and Paxson's petitions, grant in part and deny in part Paxson's request for declaratory ruling, admonish NBC and Paxson for their actions, grant NBC's request for a twelve-month period of time to comply with the television duopoly rule, and grant the applications.⁴

2. As a result of the transaction, television duopolies will be formed in the New York, Los Angeles, Chicago, Dallas and Miami Designated Market Areas (DMAs). NBC has made showings

¹ 47 C.F.R. § 73.3555(b). The television duopoly rule provides that a single entity may own two stations in the same television market (Nielsen DMA) if, following the acquisition, there would remain at least eight independently owned and operated television stations and at least one of the stations is not ranked in the top 4 in the market based upon the most recent all-day audience share.

² These groups are: The Puerto Rican Legal Defense and Education Fund, Inc., National Council of La Raza, League of Latin American Citizens, National Hispanic Media Coalition, NOSOTROS, Mexican American Grocers Association, National Puerto Rican Coalition, and the National Association of Hispanic Publications.

³ Also before the Commission are the following pleadings: a Consolidated Opposition to Petitions to Deny and Request for Expedited Resolution filed by Council Tree Hispanic Broadcasters, LLC (Council Tree); NBC's separate Oppositions to the Hispanic Groups and Paxson Petitions to Deny; a Consolidated Opposition to Petitions to Deny filed by Telemundo Communications Group, Inc.; Paxson's separate Replies and a Reply filed by the Hispanic Groups; and two amendments filed by NBC on January 25, 2002; and February 5, 2002. Paxson filed a Motion for Extension of Time (Motion) to permit additional time to submit its Replies. NBC, Telemundo and Council Tree opposed Paxson's Motion. On December 26, 2001, the Chief of the Television Branch granted Paxson's Motion and extended the deadline for submitting its Replies to January 10, 2001. On December 26, 2001, the Hispanic Groups requested additional time to submit their Reply that was submitted on January 9, 2001. We grant the Hispanic Groups' request and we will consider their Reply.

⁴ Paxson also filed a petition to deny the sale of KNTV(TV), San Jose, California, from Granite Broadcasting Corporation to NBC (File No. BTCCT-20011221AAS) raising the same arguments as it raised in this proceeding. Paxson's petition against the sale of KNTV(TV) will be addressed separately.

that these television duopolies will comply with our local multiple ownership rules, except in the case of Los Angeles. There, NBC would own three television stations in the same television market, which is not permitted by our television duopoly rule. These stations are: KNBC-TV, Channel 4 (NBC), Los Angeles, which NBC presently owns; KWHY-TV, Channel 22 (TEL), Los Angeles; and KVEA(TV), Channel 52 (IND), Corona, both of which NBC is acquiring from Telemundo. The applicants have demonstrated that ownership of any two of these stations would comply with our rules, and NBC requests a twelve-month period of time to come into compliance with the multiple ownership rules which will permit it time to divest one of the two Telemundo stations.

II. BACKGROUND

3. On November 1, 2001, NBC and Telemundo filed applications seeking Commission consent to the transfer of control of corporations holding the licenses of eleven full power television stations and seventeen low power and television translator stations (Telemundo Stations). NBC is the licensee of thirteen full power and two low power and television translator stations. NBC is a wholly-owned subsidiary of General Electric Company (GE).

4. Telemundo has six stockholders: Station Partners, LLC (55.48% voting, 29.35% equity), Bron-Villanueva Capital, LLC (3.33% voting, 5.29% equity), TLMD, LLC (0.59% voting, 0.94% equity), Liberty TelemundoNet, Inc. (24.92% voting, 39.56% equity), and Sony Pictures Entertainment Inc./SPE Mundo Investment, Inc. (15.67%, 24.87% equity). The single majority shareholder of Telemundo is Station Partners, LLC, which holds a direct 55.48% voting interest in Telemundo and controls 80.40% of the voting interest in Telemundo by virtue of an irrevocable proxy it holds from Liberty TelemundoNet, Inc. (24.92% voting interest).⁵ The four members of Station Partners, LLC are: Council Tree Hispanic Broadcasters, LLC (CTHB); BCF Media, LLC; Villanueva Investments, Inc.; and the Bron 2000 Trust. CTHB is the managing member of Station Partners, LLC and it holds a 65.96% voting interest therein.

5. Pursuant to an Agreement and Plan of Merger executed October 11, 2001, NBC will acquire all of the capital stock of Telemundo through a merger of Telemundo into TN Acquisition Corp. for consideration in the amount of approximately \$1.98 billion (excluding the debt of Telemundo that NBC will assume). Specifically, each share of common stock and preferred stock of Telemundo will be converted, at the election of each stockholder, into cash and/or the common stock of GE. The exchange ratio will be determined based on the average of the daily volume-weighted sales price per share of the common stock of GE on the New York Stock Exchange for each of the ten consecutive trading days ending on the fourth trading day prior to the closing on the merger. TN Acquisition Corp. will then be a wholly-owned subsidiary of GE.

⁵ Last year, the Commission eliminated the single majority shareholder exception to its attribution rules, while grandfathering the nonattributable status of existing minority shareholders. *See* Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, *Memorandum Opinion and Order*, 16 FCC Rcd 1097 (2001). In December 2001, the Commission suspended the elimination of the single majority shareholder exception. *See* FCC 01-353, released December 14, 2001. Either way, pursuant to the single majority shareholder exception or through the grandfathering provision, the minority interests held by the other stockholders of Telemundo are nonattributable.

III. DISCUSSION

A. Introduction

6. Section 310(d) of the Communications Act provides that no station license shall be transferred or assigned until the Commission, upon application, determines that the public interest, convenience and necessity will be served thereby.⁶ We generally consider whether the proposed transaction will be consistent with the Communications Act and our rules and, in addition to complying with those rules, whether the transaction would otherwise serve the public interest.

7. Under Section 309(d) of the Communications Act, there is a two-step test for determining whether a petition to deny raises issues requiring that a transfer or assignment application be designated for hearing.⁷ First, the petition to deny must set forth "specific allegations of fact sufficient to show that . . . a grant of the application would be *prima facie* inconsistent with [the public interest]."⁸ Second, if the Commission concludes, based upon the totality of the evidence, that there is a "substantial and material question of fact" concerning whether the grant of the application would serve the public interest⁹ it must formally designate the application for a hearing in accordance with Section 309(e) of the Communications Act.¹⁰

8. To satisfy the first prong of the test, a petitioning party must set forth allegations, supported by affidavit, that constitute "specific evidentiary facts, not ultimate conclusionary facts or mere general allegations . . ." ¹¹ The Commission determines whether a petitioner has met this threshold inquiry in a manner similar to a trial judge's consideration of a motion for directed verdict: "if all the supporting facts alleged in the affidavits were true, could a reasonable fact finder conclude that the ultimate fact in dispute had been established."¹²

9. If the Commission determines that a petitioner has satisfied the threshold standard of alleging a *prima facie* inconsistency with the public interest, it must then proceed to the second phase of the inquiry and determine whether, "on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice," there is a "substantial and material question of fact."¹³ If

⁶ 47 U.S.C. § 310(d).

⁷ 47 U.S.C. § 309(d).

⁸ 47 U.S.C. § 309(d)(1); *Gencom Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987)(*Gencom*); and *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1562 (D.C. Cir. 1988)(*Astroline*).

⁹ 47 U.S.C. § 309(d)(2); *Gencom*, 832 F.2d at 181; and *Astroline*, 857 F.2d at 1562.

¹⁰ 47 U.S.C. § 309(e).

¹¹ *United States v. FCC*, 652 F.2d 72, 89 (D.C. Cir.1980) (*en banc*) (quoting *Columbus Broadcasting Coalition v. FCC*, 505 F.2d 320, 323-24 (D.C. Circuit 1974)).

¹² *Gencom*, 832 F.2d at 181.

¹³ 47 U.S.C. § 309(d)(2); *see also Gencom*, 832 F.2d at 181.

the Commission concludes that the "totality of the evidence arouses a sufficient doubt" as to whether grant of the application would serve the public interest, the Commission must designate the application for hearing pursuant to section 309(e).¹⁴

10. For the reasons set forth below, we find that neither the Hispanic Groups or Paxson have raised a substantial and material question of fact warranting designation for hearing of the Telemundo applications. We further find, given the totality of the evidence, that grant of the Telemundo applications would serve the public interest.

B. Hispanic Group's Petition to Deny

11. The Hispanic Groups ask the Commission to deny the various transfer applications because they claim the applications are insufficient on their face to satisfy legislative and administrative standards.

Alternatively, the Hispanic Groups ask that NBC and Telemundo be directed to supply "missing information" and open another opportunity for public comment. Specifically, the Hispanic Groups allege that NBC has not demonstrated that grant of the applications would serve the public interest as required by Section 310(d) of the Communications Act of 1934,¹⁵ arguing that "although NBC is qualified to operate and to serve as the transferee of broadcast licenses, insufficient information is provided to allow the Commission to grant this transfer on a public interest determination." The Hispanic Groups note that, pursuant to the Communications Act, the Commission must make an affirmative determination that the public interest would be served by a grant of the transfer applications. The Hispanic Groups claim that NBC has not shown how its ownership of Telemundo will result in Telemundo becoming a more effective competitor to its chief Spanish language programming rival – Univision, as NBC claims. The Hispanic Groups argue that NBC has not addressed "strategic matters like budgetary measures and timetables" to develop Spanish-language programming. They contend that NBC must demonstrate that its emphasis on competition will not be "at the expense of programming dilution by limiting programming sources." The Hispanic Groups also argue that NBC has not shown that its ownership of Telemundo will ensure Hispanic employment at the Telemundo stations. They contend that NBC must describe what will happen to the stations' Hispanic employees when their operations are eventually combined.

12. The Hispanic Groups are also concerned that, if NBC follows through on its promise to operate KNBC-TV and KVEA independently from KWHY-TV, that this will result in the Hispanic employees of KWHY-TV being "deprived of an opportunity to interact with and influence the programmers" at the other stations.

13. NBC, Telemundo and Council Tree all oppose the Hispanic Groups' Petition. Telemundo argues that Section 309(d) and (e) of the Communications Act place the burden on a petitioner to deny to demonstrate that grant of the application will not serve the public interest. NBC, Telemundo and

¹⁴ *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) (quoting *Citizens for Jazz on WRVR Inc. v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985)).

¹⁵ 47 U.S.C. § 310(d).

Council Tree argue that the Hispanic Groups have not met this burden. Telemundo maintains that the transfer applications (filed on the requisite FCC Form 315) were complete and provided all necessary documentation required by the rules. NBC states that the inquiries demanded by the Hispanic Groups concerning NBC's proposed management and programming of the Telemundo stations are not within the scope of the Commission's public interest evaluation. As Council Tree points out, the Hispanic Groups have conceded that NBC is qualified to be the licensee of Telemundo's stations. No further inquiry is justified or required, contend NBC and Telemundo. NBC states that it is not *per se* required to make a showing that its ownership of the Telemundo stations will result in more diverse programming, other than perhaps in support of its temporary request.

14. Further, NBC and Council Tree argue that NBC is not required to submit detailed information concerning its post-merger employment plans. Council Tree notes that the Commission's former Equal Employment Opportunity rules have twice been vacated by the U.S. Court of Appeals for the District of Columbia Circuit and the Commission would have no rules in place under which to evaluate such a submission.¹⁶ Contrary to the Hispanic Groups' assertion, NBC and Telemundo maintain that the merger will enhance programming diversity by meeting the needs of a broad segment of the Spanish-speaking population.

15. The Hispanic Groups concede that NBC is qualified to act as the licensee of the Telemundo Stations. They suggest, however, that we should withhold a grant on the transfer applications because NBC has failed to demonstrate how the Telemundo Stations will continue to meet the needs of the Hispanic community when NBC takes over operation of the stations. We see no basis in the record here to do so. Moreover, we note that NBC has pledged to continue the Spanish-language programming at the Telemundo Stations.

16. Similarly, we do not find that the Hispanic Groups have raised a substantial and material question of fact with respect to the employment matters contained in their petition to deny. The Hispanic Groups have provided no evidence, other than their own opinion, that Hispanic employment will suffer if NBC is permitted to own the Telemundo Stations. To the extent that such allegations imply that NBC may intentionally discriminate against certain employees during the term of a temporary common ownership as it endeavors to keep the operation of its Los Angeles station separate from that of Telemundo's Los Angeles stations, we find no support for this contention. We accept NBC's representation that it is simply taking steps to prevent the concentration of control of its television stations during the temporary period of time that it is permitted to own three television stations in the Los Angeles market. This does not translate into intentional discrimination on the part of a licensee.¹⁷ Therefore, we conclude that the Hispanic Groups have not met the standard under Section 310(d) of

¹⁶ See *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13 (D.C. Cir. 2001). On January 31, 2001, the Commission suspended all EEO rules for broadcast, cable, and multichannel video programming distributors, except for the non-discrimination provisions. *Equal Employment Opportunity Outreach Program Requirements*, 16 FCC Rcd 2872 (2001) ("*Suspension Order*"). See also *In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules*, MM Docket No. 98-204, *Second Notice of Proposed Rulemaking*, FCC 01-363, released December 21, 2001 (*EEO Second NPRM*).

¹⁷ See *EEO Second NPRM*, *supra*.

the Act and we deny their petition to deny.¹⁸

B. Paxson's Petition to Deny and Request for Declaratory Ruling

17. Paxson filed a Petition to Deny the NBC/Telemundo transaction and a separate Request for Declaratory Ruling.¹⁹ In the Petition to Deny, Paxson asks that, if pursuant to the Request for Declaratory Ruling, the Commission finds that NBC has violated the multiple ownership rules, it should deny the Telemundo applications. In light of our decision herein with respect to the Request for Declaratory Ruling, we deny Paxson's Petition to Deny.

18. Furthermore, Paxson also notes that it has initiated an arbitration proceeding with the American Arbitration Association in Atlanta by filing a Statement of Claim against NBC. The Statement of Claim alleges that NBC's planned acquisition of Telemundo violates provisions of NBC's agreements with Paxson because it would prevent NBC from following through with its purchase of Paxson. The Statement of Claim requests an order enjoining NBC from consummating the Telemundo transaction. Paxson asks that the Commission withhold action in this case until the arbitration proceeding has been completed. The matters before the arbitrator are private contractual disputes. We have consistently held that the Commission is not the proper forum for resolving such private matters.²⁰ Therefore, we will not withhold action or condition our decision on the outcome of the arbitration proceeding. Our consent does not require consummation prior to appropriate resolution of the parties' contractual dispute and does not, therefore, prejudice the parties' rights.

19. As for Paxson's Request for Declaratory Ruling, the allegations contained therein involve an on-going dispute between Paxson and NBC concerning certain agreements entered into by the parties in 1999. In September of that year, Paxson entered into a partnership with NBC pending regulatory changes which would permit the outright purchase of Paxson by NBC. These agreements were, as Paxson describes them, "designed to comply with the multiple ownership rules" and they "created relationships which individually or as a whole would not result in 'attribution' of NBC's station ownership to Paxson, or vice versa, or result in prohibited delegations of licensee control to NBC." Compliance with the multiple ownership rules was important, Paxson notes, because both it and NBC

¹⁸ With respect to their demonstration of the requisite standing to oppose the NBC/Telemundo merger under Section 309(d) of the Communications Act, the Hispanic Groups claim standing by relying on the fact that they are members and representatives of Hispanic organizations and that some of their members are residents within the viewing area KVEA-TV, Corona, California, one of the stations being transferred from Telemundo to NBC. One of these members claims in a Declaration that he will be seriously aggrieved if the Petition to Deny is not granted because he will be deprived of program service and diversity in the public interest. We find that the Hispanic Groups have demonstrated standing to file their petition to deny. See *CHET-5 Broadcasting, L.P.*, 14 FCC Rcd 13041, 13042 (1999).

¹⁹ Paxson claims standing to file its Petition to Deny by virtue of the fact that its stations compete in the same television markets as NBC and Telemundo stations. See *United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966). We find that Paxson has the requisite standing to file its petition to deny.

²⁰ See *O.D.T. International*, 9 FCC Rcd 2575, 2576 (1994); *Decatur Telecasting, Inc.*, 7 FCC Rcd 8622, 8624 (1992).

owned television stations in four markets (Hartford, Raleigh-Durham, Birmingham, and Providence) where a single entity could not have interests in two television stations. Also, attribution of Paxson's stations to NBC would have caused NBC to have interests in stations reaching approximately 45% of the United States, in excess of the 35% national multiple ownership limit.²¹

20. The September 1999 agreements included: an Investment Agreement; a Stockholder Agreement; and a Warrant and Call Agreement. Pursuant to the Investment Agreement, NBC purchased a 32 percent economic interest in Paxson in the form of 8% non-voting Class B preferred shares (NBC Preferred Stock) for \$415,000,000. Those shares are convertible into Paxson common shares. Under the Warrant and Call Agreement, NBC is permitted to purchase Paxson common voting shares and to purchase Paxson's control shares held by Paxson controlling shareholder - Lowell "Bud" Paxson. Those options are valid for ten years or until September 2009. However, unless the multiple ownership rules are modified, NBC cannot convert its NBC Preferred Stock, or exercise either its warrants or call on Mr. Paxson's control shares.

21. The Investment Agreement gave NBC the right to nominate three members of Paxson's board of directors. While not clearly delineated, it appears from the Investment and Stockholder Agreements that the NBC-nominated members of Paxson's board are permitted to vote on all matters that come before the Paxson board. This includes the right to vote on certain extraordinary Paxson corporate matters for which NBC has a "veto right." These extraordinary matters are outlined in Article IV, Section 4.1 of the Investment Agreement and limit such actions as Paxson amending its corporate documents, increasing the size of its board of directors, or incurring large amounts of additional debt, without NBC's consent. The associated Certificate of Designations of the NBC Preferred Stock also include a covenant that limits Paxson's ability to incur additional indebtedness, a common shareholder protection provision. That provision also provided that, if any one of the NBC-nominated members of Paxson's board of directors voted in favor of an action falling within the specified categories, then NBC would have been deemed to have consented to such action. Paxson claims that this provision was included to ensure that Paxson could continue to act freely with respect to the corporate matters covered by Article IV. Paxson argues that that freedom is dependent on NBC-nominated directors acting independently consistent with their fiduciary obligations as directors. Paxson states that it would not have entered into the agreements with NBC without this insulating mechanism or without the understanding that NBC-nominated directors would put Paxson's interests first.

22. It is the alleged conduct of the NBC-nominated directors that forms the basis of Paxson's Petition to Deny and Request for Declaratory Ruling. Specifically, Paxson claims that certain actions by the NBC-nominated members of Paxson's board of directors have violated certain terms of their 1999 agreements and may have caused attribution of Paxson's television stations to NBC contrary to the multiple ownership rules. In 2000, NBC nominated three persons to serve as Paxson directors.

²¹ See 47 C.F.R. § 73.3555(e). On February 19, 2002, the U.S. Court of Appeals for the District of Columbia Circuit found that the Commission's 1998 decision not to initiate a rulemaking proceeding to consider repeal or modification of the national television station ownership rule was arbitrary and capricious and the court remanded to the Commission the case for further consideration whether to repeal or to modify the rule. See *Fox Televisions Stations, Inc. v. FCC*, No. 00-1222, (D.C. Cir. 2002). The rule, however, remains in effect.

Paxson characterizes these three persons as “NBC senior employees.” They were elected at the annual shareholders’ meeting in 2000 after a vote of Paxson’s shareholders. They were R. Brandon Burgess, Vice President and Chief Financial Officer of NBC Business Development and New Media; Keith G. Turner, President of NBC Television Network Sales; and Harold N. Brook, Executive Vice President of NBC Entertainment and NBC Studios Business Affairs. Mr. Brook was later replaced by R. Edward Wilson, President of NBC Enterprises and Syndication.

23. Paxson states that, in October 2000, it requested NBC to extend further financing. In a letter on NBC letterhead, Mr. Burgess responded that NBC would provide the requested financing, however it would “have to coincide with modifying some of the initial transactional features that we (NBC) feel have been in part responsible for a slower than desired ability on our part to create full value for both of our companies.” Specifically, Mr. Burgess asked for changes in three areas from the original Paxson/NBC agreements: (1) the creative process as it relates to programming so as to “better align” Paxson’s and NBC’s programming and marketing efforts on the West Coast; (2) the structure, timing, and the reduction in the exercise price payable by NBC under the Warrants and the Call including the right to be able to call Mr. Paxson’s control stock before it exercised the Warrants; and (3) the terms of the Joint Sales Agreements which Mr. Burgess described as too restrictive in terms of limiting the amount of programming that could be placed on Paxson’s stations by local NBC stations. Paxson rejected Mr. Burgess’ requests and began exploring alternative methods for refinancing some of its debt.

24. In July 2001, Mark W. Begor, NBC’s Executive Vice President and Chief Financial Officer sent a letter to Paxson alleging that Paxson’s alternate plan for refinancing would violate the debt incurrence covenant associated within NBC Preferred Stock. At a June 2001 Paxson board meeting, the possibility of Paxson undertaking a \$200 million senior note was discussed. NBC had previously informed Paxson that it was unacceptable because it created long-term debt that would be costly to refinance when NBC obtained control of Paxson. In his July 2001 letter, Mr. Begor demanded that NBC be provided with a “detailed plan specifying how the additional funds...will be used...” In a subsequent letter, Paxson’s president, Jeff Sagansky, denied that the increase in indebtedness would violate the terms of Paxson’s Certificate of Designations relating to NBC Preferred Stock.

25. Following Mr. Sagansky’s letter, NBC’s Executive Vice President and General Counsel Lawrence Tu sent emails dated August 27, 2001, and September 5, 2001, asking for the agenda for the upcoming September 7, 2001 Paxson board meeting. Mr. Tu asked that an additional matter be added to agenda for the meeting – Paxson’s plan for incurring additional debt to fund capital expenditures and related purposes and the “controls applicable to such debt incurrence.” At the following board meeting on September 7, 2001 in New York, Paxson states that the NBC-nominated members of Paxson’s board abstained from voting on certain matters raised at the meeting including the refinancing of certain preferred stock. Paxson maintains that Mr. Burgess stated the need to resolve the issues raised by Mr. Begor in his letter before he could vote on any Paxson financing matter. In addition, the board also addressed the agenda item requested by Mr. Tu. Paxson alleges that the NBC nominees to its board were unable on their own accord to proceed with the agenda item requested by Mr. Tu without first discussing it with him.

26. According to Paxson, its communications counsel expressed his concern to NBC about

NBC's nomination of its own employees to Paxson's board and its purported use of these board members to attempt to influence Paxson corporate decision making. Following this communications, NBC then offered to remove the NBC directors from Paxson's board. Paxson alleges that removal of the NBC members from its board would be worse for it from a control standpoint than leaving them in place. Paxson cites to Article IV Section 4.1 of the Investment Agreement which provides that NBC's consent to certain Paxson corporate actions, including the annual Paxson corporate budget, program acquisitions, station sales, equity offerings and executive compensation, will be deemed given if any one of the three NBC-nominated board members votes in favor of it. Without this provision, Paxson claims, it would not have entered into its partnership with NBC. Paxson concludes that removal of the NBC-nominated directors will subject Paxson to direct intervention by NBC of the sort evidenced in the NBC communications outlined above.

27. Paxson concludes that NBC's conduct has exposed Paxson to a potential finding that it has participated in violations of the multiple ownership rules. Paxson cites to: (1) NBC's nomination of its own employees as Paxson directors; (2) their conduct as board members; and (3) NBC's efforts to not only have NBC's directors represent NBC's interests, but also to control the agenda and minutes of a Paxson board meeting. This is strong evidence, Paxson contends, that NBC is an attributable owner of Paxson. Finally, Paxson cites to the 1993 merger of Viacom, Inc./Paramount Communications, Inc. wherein the Commission approved a short-term trust.²² In that case, the Commission required that, while the trust was in effect, Viacom not be permitted to nominate persons to serve on Paramount's board or influence Paramount's selection of directors. Paxson argues that the issue is the same here – whether NBC's employees' presence on Paxson's board equates to the presence of NBC itself on the Paxson board.

28. Furthermore, Paxson argues, the use of NBC-nominated directors to enforce rather than buffer the covenants included in the Investment Agreement has sufficiently eroded NBC's insulation from direct involvement to make NBC a non-passive investor in Paxson. NBC's actions, Paxson alleges, show disregard for Paxson's prerogatives as a FCC licensee. Paxson asks that the Commission resolve the issue of whether NBC's conduct raises regulatory issues, both from an attribution and licensee control standpoint. If the Commission finds that NBC has an attributable interest in Paxson, then Paxson asks that the Commission consider the following remedies: The Commission should require reformation of the Stockholder Agreement to make it provide that any NBC-nominated director must be independent such that they have no employment or other relationships with NBC. Alternatively, assuming a finding that NBC may not nominate members of Paxson's board, the Commission should order that the covenants contained in Article IV of the Investment Agreement be stricken. If the Commission finds that the rights granted to NBC in the various agreement cannot be reconciled with the requirement that NBC be a nonattributable owner of Paxson, then it should require divestiture of NBC's equity and contractual interests in Paxson.

29. In its Opposition, NBC argues that Paxson's Petition to Deny and Request for Declaratory Ruling are "wholly lacking in merit." The only issue that is conceivably within the Commission's jurisdiction in this case, NBC argues, is whether NBC has an attributable interest in Paxson. NBC

²² See *Viacom, Inc.*, 8 FCC Rcd 8439 (1993).

agrees with Paxson that the contracts at the heart of the dispute in this case comply fully with Commission rules and policy. However, NBC chides Paxson for attempting to portray “ordinary commercial behavior as sinister.” NBC states that the following actions are all ordinary and appropriate exchanges between business partners – NBC-nominated directors abstaining on certain proposed corporate actions; NBC objecting to a transaction on the grounds that it appeared to be inconsistent with certain protective provisions; and NBC seeking to add an item to the agenda of a board meeting. NBC notes that Paxson has not alleged that any of these actions has compelled or thwarted any actions on the part of Paxson. NBC contends that Paxson has been able to carry out every action it desired notwithstanding any disagreements expressed by NBC. In fact, NBC states, it has not blocked or vetoed any Paxson corporate action.

30. NBC maintains that it structured its investment in Paxson as a nonvoting stake that fell well below the Commission’s recently-adopted Equity or Debt Plus (EDP) attribution rule.²³ NBC states that it specifically structured its investment to ensure that it would only constitute 32 percent of Paxson’s outstanding equity and less than 21 percent of the total asset value of Paxson. As for the rights conferred on NBC through the various agreements, NBC contends that those rights are consistent with those previously recognized by the Commission as appropriate to protect the interests of nonvoting shareholders.

31. NBC contends that the agreements contemplate two possible avenues for NBC to be represented on Paxson’s board – through nomination rights and appointment rights. Under a nomination right set forth in Section 5.7 of the Investment Agreement, it is stated that “NBC intends to nominate three directors....” These nominees are not permitted to have an attributable interest in NBC either through holding an officer or director position or ownership interest in NBC. The second scenario gives NBC an “appointment right” and only applies when the rules have changed to allow NBC to have such a right. This is an important distinction, NBC contends, because the Commission has previously permitted the holder of a non-attributable interest in a broadcast licensee to have the right to nominate a member of the licensee’s board of directors, but may not have the right to designate or elect a director.²⁴ In other words, NBC contends, the licensee entity must have the ability to reject the nominees of the non-attributable interest holder. NBC notes that Section 2.1(b) of the Stockholder Agreement provides that if the rules eventually permit it, then NBC shall have the right to appoint members of Paxson’s board. Only in this clause is NBC assured that its nominees will be elected to Paxson’s board. NBC states that it has never invoked Section 2.1(b). The three persons that served on Paxson’s board did so only because the stockholders of Paxson (including Bud Paxson) elected them to the board. They were not obligated to do so, argues NBC, and NBC did not compel that

²³ See Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests, *Report and Order*, 14 FCC Rcd 12559 (1999). That rule provides as follows: “where an investor is either (1) a ‘major program supplier,’ as defined herein to include all programming entities....that supply over 15 percent of a station’s total weekly broadcast programming hours, or (2) a same-market media entity subject to the broadcast multiple ownership rules...its interest in a licensee or other media entity in that market will be attributed if that interest, aggregating both debt and equity holdings, exceeds 33 percent of the total asset value (equity plus debt) of the licensee or media entity.” *Id.* at 12579.

²⁴ See *News International, PLC*, 97 FCC 2d 349, 357-8 (1984).

result.

32. As for its conduct in the relationship, NBC states that the facts show that Bud Paxson tightly controls his company and has not been thwarted or deterred in pursuing his plans for his company. The actions cited by Paxson are characterized by NBC as randomly-selected, ordinary commercial behavior that were fully within NBC's rights as a nonvoting, minority shareholder. As to Paxson's allegations concerning NBC's nominees to Paxson's board, NBC states that the employees it nominated to sit on Paxson's board "are neither NBC officers or directors" and therefore do not have attributable positional interests in NBC or cognizable interests in the NBC stations. Therefore, NBC concludes, these individuals could sit on Paxson's board without triggering attribution of Paxson's stations to NBC.

33. Paxson replies that NBC's manipulation of its nominees to Paxson's board is evidence that the NBC directors acted as agents for, and under the direction of NBC. The request for concessions from Mr. Burgess, the request for materials for a Paxson board of directors meeting, as well as the request to add an item to the agenda are all evidence, Paxson suggests, that NBC's directors were not acting independently. Thus, under Note 2 of Section 73.3555(h) of the Commission's rules, the attribution rule was triggered creating an attribution problem for NBC.

34. The fact that NBC's directors have resigned from Paxson's board is important for two reasons, argues Paxson. First, it is an admission by NBC that it should never have placed its employees on Paxson's board and second it does not resolve the prior director attribution problem. NBC should have nominated members to Paxson's board that were independent from NBC as required by the Commission's rules. NBC still has the right to nominate members to Paxson's board. Paxson expects that NBC will do so and that the new directors will be no more independent than previously-appointed members.

35. The parties agree that the majority of the provisions in their agreements comply with the Commission's Rules and policies. These provisions mirror provisions that we have previously allowed to ensure that non-voting, minority shareholders are able to protect their investments while avoiding attribution.²⁵ However, Paxson maintains that we should find problematic Section 4.1 of the Investment Agreement that provides NBC with a right of approval for the annual operating budget of the Paxson corporation. Under the agreement, however, if the parties disagree on the annual operating budget, the budget from the previous year shall be used, thus assuring access to operating funds by the licensee. We find that this limited approval right with respect to certain Paxson budget matters is a permissible method of affording a minority shareholder like NBC the means by which to protect its investment and does not create a problem under our attribution rules.

36. There are also Paxson's allegations concerning directors nominated by NBC to sit on its board. Having reviewed the record, including the related agreements between the parties and other

²⁵ See, e.g., *AM/FM, Inc.*, 15 FCC Rcd 16062 (2000); *Roy M. Speer*, 11 FCC Rcd 14147, 14155-56 (1996), *aff'd*, 13 FCC Rcd 19911 (1998); *Quincy Jones*, 11 FCC Rcd 2481, 2482-83, 2487 (1995); *BBC License Subsidiary, L.P.*, 10 FCC Rcd 7926, 7927, 7933 (1995); *National Broadcasting Company, Inc.*, 6 FCC Rcd 4882, 4883, n.2 (1991); and *News International, PLC*, 97 FCC 2d at 355.

documentary evidence, we find that these directors were not adequately independent of NBC to avoid attribution of those directors to NBC for purposes of multiple ownership compliance. Moreover, it appears that by voting to elect these directors Paxson was complicit in this failure. We agree, however, with Paxson and NBC that nothing on the face of the agreements between NBC and Paxson established attribution.

37. Two aspects of the participation of NBC-nominated directors on Paxson's board raise concerns. First, the conduct of the NBC-nominated directors (and of NBC) after they took their positions on Paxson's board reflected the exercise of influence over Paxson sufficient to establish attribution to NBC. For example, Mr. Burgess, one of the NBC-employee directors of Paxson, sent a letter, on NBC letterhead, to Paxson demanding certain concessions be made with respect to the original agreements between the companies. Mr. Burgess states that, as a condition of NBC extending its investment in Paxson, Paxson agree to certain critical changes in their agreements such as changes to the companies' programming to "better align" their programming and marketing efforts; changes to the structure, timing, and the reduction in the exercise price payable by NBC under the Warrants and the Call Agreements; and changes to the terms of the Joint Sales Agreements. Paxson rejected Mr. Burgess' requests and began exploring alternative methods for refinancing some of its debt. The fact that he was speaking on behalf of NBC about high-level business matters demonstrates that Mr. Burgess was acting as a senior NBC executive protecting NBC's interests and not as an independent member of Paxson's board.

38. Later, NBC attempted to use its nominated directors to influence the outcome of a Paxson board of directors meeting. NBC's Executive Vice President and General Counsel, Mr. Tu, asked that the matter of Paxson's seeking to restructure certain of its debt be added to the agenda of the meeting. At the meeting, the NBC nominees represented that they could not discuss or vote on the debt refinancing plan without first conferring with Mr. Tu. Had these nominees been acting independently, they would not have had to engage in such discussions with a senior NBC executive and would have been able to vote on the refinancing plan.

39. Second, NBC's nomination of its own employees to sit on Paxson's board, and their subsequent election, creates a relationship between NBC and Paxson that is attributable pursuant to the "officer and director" attribution provisions of our ownership rules.²⁶ The close relationship between an employee and his employer, the financial dependence of the employee on the employer, and the resulting allegiance typically shown by the employee to the employer, suggest that an employee nominated to a Board of Directors of another company by his employer can be expected to represent the interests of his employer. Thus, this relationship gives the employer the degree of influence sufficient to warrant positional attribution.²⁷ As we recently stated in connection with our cable attribution rules:

²⁶ See 47 C.F.R. §73.3555 Note 2(g).

²⁷ Attribution in this instance is not based upon a key employee relationship. In the past, the Commission attributed to an employee the interests of his employer if the employee held a "key" position, such as station manager or program director, with the employer. This attribution, a component of the Commission's former cross-interest policy, was premised upon the possible influence the employee could assert over the affairs of his employer due to his position. See *Cross-Interest Policy Statement*, 4 FCC Rcd 2208 (1989). The Commission (continued....)

A party that has the right to appoint a director to the board of an entity has the ability to influence that entity's conduct by virtue of the director the party selects; thus under the directors and officers rule that party has an attributable interest in the entity. Likewise, if two entities share common directors or officers, or have employees that serve as directors and officers of the other entity, the directors and officers render the entities attributable. . . .²⁸

We have reached a similar conclusion in other contexts. For example, if an entity seeks to avoid attribution through a trust mechanism, we have required that the trustee "be an independent person with no familial or business relationship with the beneficiary or grantor."²⁹ Similarly, where a limited partner seeks to avoid attribution of its partnership, it must meet certain insulation criteria, including a requirement that the "limited partner cannot act as an employee of

the limited partnership. . . ."³⁰ We conclude that NBC's nomination³¹ of its own employees to sit on Paxson's board, and their subsequent election thereto, resulted in NBC having an attributable interest in Paxson.³²

40. Based upon the information before us, we find that the placement of NBC employees on Paxson's board as well as the subsequent actions of these directors resulted in NBC having an attributable interest in Paxson, and ultimately in violation of our multiple ownership rules. NBC should not have nominated its employees to Paxson's board and Paxson should have taken steps to exercise its ultimate board member approval authority to ensure that NBC's nominees were truly independent.

41. While there was a failure to comply with our insulation requirements, we believe that
(Continued from previous page) _____
eliminated this form of attribution when it adopted its Equity-Debt-Plus attribution standards in 1999. *See Attribution Report and Order*, 14 FCC Rcd at 12610. Here, we are not concerned with the influence of an employee on the company for which he works. Rather, we are concerned with the influence of the employer on the employee whom the employer has nominated to a highly influential position at a company in which the employer has a substantial interest.

²⁸ *Cable Competition Report and Order*, 14 FCC Rcd at 19060 (footnote omitted).

²⁹ *See Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, MM Docket No. 83-46, *Report and Order*, 97 FCC 2d 997, 1042 (1984).

³⁰ *See Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, MM Docket No. 83-46, *Memorandum Opinion and Order*, 1 FCC Rcd 802, 806 (1986).

³¹ Although Paxson argues that NBC also holds the right to designate directors to its board, the agreements do not appear to support that contention. In any event, as noted above, designation by NBC of any individual to sit as a Paxson director would result in attribution of Paxson's interests to NBC.

³² We do not reach here the question of whether an employee-director could be insulated from its employer by some means, such as express restrictions on the employee-director's voting rights, sufficient to avoid attribution to its employer. No such insulating mechanisms were in place in this case. In any event, a determination of the effectiveness of any such insulation would require a specific factual record and review by the Commission.

admonishment is the appropriate remedy in this case and that further inquiry is not necessary. First, we note that the NBC nominees have resigned from Paxson's board. Therefore, they are no longer in a position to influence Paxson's corporate affairs. More importantly, it appears that NBC and Paxson clearly intended to comply with our attribution policy and took steps to ensure that their various agreements would comply. Only when those agreements were put into practice did they result in attribution and thus run afoul of our multiple ownership rules. It also appears from the record that NBC and Paxson may not have understood our broadcast attribution rules in this area; namely, that NBC's nomination of its own employees to serve on Paxson's board would result in attribution. While we have previously addressed the employee-director issue in the context of cable attribution,³³ this is the first time we have done so in the broadcast attribution context. We do not, therefore, admonish the parties for the nomination and subsequent election of NBC employees as Paxson directors, but rather for the conduct of those directors after their election. We further clarify that we do not admonish Paxson for the decision to approve as directors NBC's employees, but rather for the decision not to remove the directors as offered by NBC and to continue this relationship in place, despite the actions taken by the NBC directors. We do, however, caution both NBC and Paxson to conduct any future business activities pursuant to the Investment Agreement in a manner consistent with this order. Accordingly, should NBC choose to exercise its rights to nominate new members of Paxson's board, we require that such persons not be NBC employees or agents but persons who would reasonably be expected to act independently in all future Paxson matters. We also expect Paxson to evaluate more carefully any NBC-nominated new members to its board of directors.

D. NBC's Request for Twelve-Month Period of Time to Comply With the Television Duopoly Rule

42. *NBC's Request.* In support of its request for a twelve-month period of time to come into compliance with the television duopoly rule in the Los Angeles market, NBC argues that its requested relief is consistent with the goals of the television duopoly rule: (1) to promote diversification of programming sources and viewpoints; and (2) to prevent undue concentration of economic power. NBC notes that, when weighing a request for temporary grant of the duopoly rule, the Commission evaluates whether the grant would undermine these goals. NBC maintains that this would not be the case here. NBC argues that any concerns about the temporary ownership of three television stations in a single market is diminished by the tremendous diversity of media outlets in the Los Angeles DMA. Further, NBC contends, the temporary request will not have an adverse impact on economic competition in the Los Angeles market because the NBC and Telemundo stations serve distinct audiences and do not compete directly for advertising dollars. NBC notes that Spanish-language broadcasting is the fastest growing segment in the U.S. television industry targeting 35 million Hispanic viewers. NBC claims that the Spanish-language market is dominated by Univision Communications, Inc. (Univision). While Telemundo has been "gaining strength" in recent times, NBC notes that in each of the eight markets where Univision and Telemundo compete head-to-head, Univision's stations have a "substantially greater audience share."³⁴ NBC also claims that Univision dominates in the competition for

³³ See *infra* note 30.

³⁴ NBC provided Nielsen audience share data to support its claims.

advertising. NBC hopes that, by combining its resources with those of Telemundo, the merger will result in Telemundo becoming a more effective competitor to Univision, which in turn will benefit the rapidly growing Hispanic segment of the U.S. population.

43. NBC also pledges to operate KNBC-TV and KVEA independently from the third station – KWHY-TV, during the period of common ownership. NBC states that it will maintain the stations’ separate programming strategies, and will refrain from engaging in joint sales in the Los Angeles market. Finally, NBC argues that its temporary request is consistent with past precedent where the Commission has accommodated multi-station transactions by granting a waiver of its multiple ownership rules where the conflict in question is incidental to the proposed merger.³⁵ NBC maintains that a forced sale of one of the stations would not serve the public interest during a difficult economic climate. Allowing a sale under the twelve-month temporary request will, in NBC’s opinion, preserve the unique characteristics of one of the nation’s oldest Spanish-language television stations.

44. *Hispanic Groups’ Opposition.* The Hispanic Groups oppose NBC’s request. They contend that NBC’s stated rationale falls short of the “special circumstances called as justification for such a request.” As the Hispanic Groups note, NBC claims that the extended period of temporary relief will enhance the possibility that KWHY-TV is sold to a qualified buyer who will “appreciate and foster the unique characteristics of the divested station.” The Hispanic Groups argue that it is unlikely that NBC will have difficulty selling a commercial television station in the second largest market in the nation. The Hispanic Groups also note that NBC has cited to the recent economic slow-down in support of allowing it additional time to sell one of the Los Angeles Telemundo stations. However, the Hispanic Groups argue, NBC has not shown “how the economy will make a miraculous turn twelve months rather than six months later.” While NBC claims that temporary ownership of the three television stations will not diminish competition in the Los Angeles market, the Hispanic Groups argue that, as the Telemundo stations’ ratings grow as a result of NBC’s ownership, this will “adversely impact the market.” Finally, the Hispanic Groups cite to other decisions where they claim the Commission has denied twelve-month waivers where the applicant “failed to provide evidence that market conditions warranted more than six months to come into compliance.”³⁶

45. NBC and Telemundo respond that the Hispanic Groups have failed to show how the temporary request will impede the stated objectives of the television duopoly rule – to prevent concentration of economic power and promote diversity in programming sources and viewpoints. NBC notes that the Federal Trade Commission has found that the merger is not anti-competitive and has granted early termination of its merger review. NBC and Telemundo dispute the Hispanic Groups claim that Los Angeles is not sufficiently diverse to support the temporary request. NBC points out that the Los Angeles market is the largest Hispanic broadcast market in the country and “is well served by competitive media outlets.” NBC notes that eighteen of the sixty-nine radio stations in the market, as

³⁵ See, e.g., *UTV of San Francisco, Inc.*, 16 FCC Rcd 14975 (2001); and *Westinghouse Electric Corporation*, 11 FCC Rcd 3733 (1995).

³⁶ See, e.g., *United Television, Inc.*, 16 FCC Rcd 14975 (2001); and *Shareholders of CBS Corporation*, 15 FCC Rcd 8230, 8243 (2000).

well as four television stations, provide programming directed to the Hispanic market. Telemundo maintains that NBC's ownership of its Los Angeles television stations will benefit Telemundo's employees for they will have greater opportunities for career training and advancement. Finally, NBC maintains that a forced sale of one of the Telemundo stations could result in an artificially depressed sales price and would have a disruptive effect on programming to the community.

46. *Grant of NBC's Request.* When we revised the local television ownership rule in 1999, permitting the common ownership of two television stations in certain markets, we found that the benefits of same-market television station combinations support allowing the formation of such combinations in certain cases where competition and diversity will not be unduly diminished.³⁷ However, we did not eliminate or relax the rule further because we believed that television broadcasting plays a very special role in our society and that we must continue to ensure that the broadcast television industry has a diverse and competitive ownership structure.³⁸ Therefore, in permitting common ownership of two television stations in only certain television markets, we carefully balanced these two considerations. In considering NBC's request for temporary relief, we must once again weigh the benefits of permitting temporary common ownership of the three Los Angeles stations against the possible harm to diversity and competition that might occur as a result of such common ownership.³⁹ After factoring in the possible benefits that will occur as a result of the grant of NBC's request, we find that, on balance, permitting NBC's temporary ownership of three stations in the Los Angeles market while it takes steps to come into compliance with the television duopoly rule would serve the public interest and is warranted.

47. We find that the possible harm that may result by permitting a single entity to temporarily control three television stations in the Los Angeles television market is significantly diminished because of the special circumstances that are present in this case. These are: (1) the limited adverse impact of a temporary waiver on diversity and competition in the Los Angeles market; and (2) NBC's pledge to continue operating KWHY-TV independently during the period of common ownership.

48. Los Angeles is the number two television market in the United States according to Nielsen rankings. Moreover, Los Angeles actually has more independently-owned television stations (nineteen) than the number one ranked market, New York. Therefore, permitting common ownership on a temporary basis of three television stations in the Los Angeles market will likely have less of an impact on both diversity and competition than in other smaller television markets. We thus agree with NBC's assessment that Los Angeles is an "exceptionally diverse" television market. Furthermore, as NBC notes, each of the three television stations that it will control during the temporary period of common ownership have distinct programming and a different audience. The Telemundo stations each have a different set of programming designed for Spanish-language viewers and are among twenty-two different radio and television broadcast stations that are programmed towards the Hispanic audience in

³⁷ See Review of the Commission's Regulations Governing Television Broadcasting, *Report and Order*, 14 FCC Rcd 12903, 12930 (1999)(*Local Ownership R&O*).

³⁸ *Id.* at 12931.

³⁹ See *LINT Co.*, 15 FCC Rcd 18130 (2000); *Shareholders of CBS Corporation*, *supra*.

the Los Angeles market. On the other hand, KNBC broadcasts to a wider audience exclusively in English. As a result, we do not believe that temporary common ownership of three television stations in this market by a single entity will have an adverse impact on diversity. We conclude that temporary, common ownership of the three television stations here at issue will not likely have an undue adverse effect on diversity in the Los Angeles market.

49. For similar reasons, we conclude that the proposed temporary common ownership of three stations will not have a substantial adverse impact on competition in the Los Angeles market. Once again, the Los Angeles market has the largest number of independently-owned television stations and the Telemundo stations rank only eighth and ninth in the Nielsen ratings and are not dominant in the Spanish-language programming niche. The more dominant player providing Spanish-language programming is Univision, which owns KMEX-TV, the number three rated station in the market. Furthermore, Telemundo's stations lack dominant economic power in the market, as their combined share of advertising revenue for the year 2000 was only 3.18 percent of the top ten television stations in the market. By contrast, Univision's single station had 8.97 percent of the revenues. Even if KNBC's revenues are combined with that of the Telemundo Stations, we note that this percentage is less than that of the two television stations for which ABC-Disney sought a temporary duopoly waiver in 1996.⁴⁰

50. Finally, NBC pledges to operate KWHY-TV separately during the period of temporary common ownership. NBC has promised to maintain the stations' separate programming and to refrain from engaging in joint sales. We found a similar pledge in the ABC-Disney proceeding weighed in favor of a grant of a waiver.⁴¹ In this case, the fact that the third station will be operated separately helps to ensure that any anti-competitive effects of the temporary three-station combination will be diminished. Therefore, we find that NBC has adequately demonstrated that it should be permitted to have temporary common ownership of three stations in the Los Angeles market.

51. *Length of Period of Temporary Common Ownership.* The remaining question is what length of time we should permit NBC to have common ownership of the three television stations in Los Angeles while it takes steps to come into compliance with the television duopoly rule. We have traditionally permitted parties six months to come into compliance with our television duopoly rule to accommodate transactional needs.⁴² We believe this case presents public interest benefits that warrant a longer period. In the past, we have granted temporary waivers of our multiple ownership rules to facilitate multi-station transactions. We have found that multi-station transactions are "a compelling circumstance weighing in favor of a temporary waiver."⁴³ This is because we have found that, in multiple-station transactions, the overall benefits of allowing time for an orderly divestiture will outweigh any temporary impact on diversity and competition from common ownership.⁴⁴ Even under normal

⁴⁰ See *Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841 (1996).

⁴¹ *Id.* at 5872.

⁴² See, e.g., *UTV of San Francisco, Inc.*, *supra*; *LINT Co.*, *supra*.

⁴³ See, e.g., *Guy Gannett Communications*, 14 FCC Rcd 6204 (1999).

⁴⁴ *UTV of San Francisco, Inc.*, *supra*.

market conditions, we disfavor forced sales because they restrict the value of the station(s) to be divested and artificially limit the range of potential buyers. Given the size of the proposed transaction here and the proposed difficulties of divesting the necessary station, we find that the advantages of permitting a period of temporary common ownership will outweigh any temporary impact on diversity and competition and is in the public interest. While we find that NBC's ability to find a potential buyer for one of the Telemundo stations is likely to be less of a problem in this case, given the location of the Telemundo stations in the number two television market, we are nevertheless committed to permitting NBC a reasonable period of time to find a qualified buyer to encourage continued diversity of the media in Los Angeles. A shorter period may limit the range of potential buyers, possibly excluding those for whom financing could be more difficult to arrange.

52. In the ABC-Disney case, the parties sought an eighteen-month period of time to come into compliance with the television duopoly rule in the Los Angeles market. We denied that request and allowed only a six-month period of time. We find that the circumstances of this case warrant a longer period of time. At the time of the ABC-Disney decision, our television duopoly rule did not permit common ownership of two television stations with overlapping Grade B contours. In granting only a six-month waiver to ABC-Disney, we were concerned with the fact that ABC-Disney would own two of the seven VHF stations in the market. Those two stations accounted for 25 percent of the advertising revenue in Los Angeles. Since that time, we subsequently amended our duopoly rule to permit common ownership of two television stations, even if they are both VHF stations, in markets like Los Angeles where there are sufficient number of independent television stations. While NBC seeks permission to temporarily own three television stations, only one of these is a VHF station – KNBC. Furthermore, the combined share of advertising of the three stations (20.95 percent) is less than that of the two VHF stations for which ABC-Disney sought temporary ownership in 1996. Finally, we are not as concerned in this case that the competition for advertising dollars will be diminished because the Spanish-language format of the Telemundo stations means that they do not compete directly with NBC's station. Even the two Telemundo stations have different Spanish-language programming and they attract a different type of advertising with one station a Telemundo affiliate and the other an independent Spanish-language station. Further, we believe that current economic conditions and the Spanish-language character of the station to be sold both suggest that a somewhat longer compliance period than granted in ABC-Disney is appropriate here.

53. Therefore, we find that NBC has adequately demonstrated that allowing it a period of twelve months to divest one of the two Telemundo television stations in Los Angeles is justified. We expect NBC to use its best efforts to promptly achieve compliance with our multiple ownership rules. To that end, NBC is directed to report to the Commission every ninety (90) days, beginning ninety (90) days from the release date of this Memorandum Opinion and Order, as to the progress of its efforts.

V. CONCLUSION

54. We have reviewed the proposed merger and find that the applicants are fully qualified and that grant of the transfer of control applications will serve the public interest, convenience, and necessity.

55. Accordingly, IT IS ORDERED, That the Petition to Deny filed by the Hispanic Groups IS

DENIED.

56. IT IS FURTHER ORDERED, That the Petition to Deny filed by Paxson Communications Corporation IS DENIED, and That the Request for Declaratory Ruling, filed by Paxson Communications Corporation, IS GRANTED to the extent indicated herein and DENIED in all other respects.

57. IT IS FURTHER ORDERED, That the request for 12 months to come into compliance with the television duopoly rule, Section 73.3555(b), in the Los Angeles market IS GRANTED, and THAT within 12 months of the release date of this order, NBC is directed to file the application necessary to bring it into compliance. In addition, beginning ninety (90) days from the release date of this Memorandum Opinion and Order and every ninety days (90) thereafter until such application is filed, NBC is directed to submit a report detailing the progress of its efforts.

58. IT IS FURTHER ORDERED, That the applications for consent to transfer of control of the Telemundo Stations (File Nos. BTCCT-20011101ABK, ABT, ABW, ABY, ACA-ACC, ACE, ACI, ACN and ACP; BTCTTL-20011101-ABM-S, ABX, ACF-ACH, ACO, and ADK; BTCTTA-20011101ABL; BTCTTV-20011101ACJ; and BTCTT-20011101ACK-L) ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

STATEMENT OF COMMISSIONER MICHAEL J. COPPS
APPROVING IN PART, DISSENTING IN PART

IN THE MATTER OF: VARIOUS APPLICATIONS FOR TRANSFER OF CONTROL OF
TELEMUNDO COMMUNICATIONS GROUP, INC. TO NBC BROADCASTING CO., INC.

There are positive aspects to the proposed acquisition of the Telemundo stations by NBC. I am particularly encouraged by NBC's pledge to continue the Spanish-language programming at the Telemundo stations. The transaction could therefore put the resources and experience of one of the nation's oldest broadcasting companies behind a station group programming for the Hispanic community. This acquisition should also ease the very serious financial pressures being experienced by Telemundo.

Notwithstanding the positive aspects of this transaction, I cannot support the transfer of stations in Los Angeles that would result in the first common ownership of three television stations by the same owner. Admittedly, this transaction seeks to limit the harm from such a concentration of voices in a single market. NBC has indicated that it will operate one of the stations on an independent basis. In addition, the majority requires regular reporting on efforts to divest this station within twelve months. Nevertheless, I cannot support this level of concentration by a single owner absent compelling public interest circumstances. In this instance, I do not find such a level of public interest benefit. Importantly, members of the community served by the Spanish-language programming argue that NBC has failed to demonstrate adequately its commitment of resources to the Telemundo stations to ensure that they continue to serve the needs of this community. I therefore dissent in part from the grant of this application.