

DISSENTING STATEMENT OF COMMISSIONER MICHAEL J. COPPS

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

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

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

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

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

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

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