

STATEMENT SUBMITTED BY  
LOWELL "BUD" PAXSON,  
CHAIRMAN OF PAXSON COMMUNICATIONS CORPORATION,  
FOR THE RECORD TO THE  
SENATE COMMERCE, SCIENCE & TRANSPORTATION COMMITTEE HEARING ON BROADCAST  
OWNERSHIP  
July 17, 2001

Paxson Communications Corporation is the largest television station owner in the country and the creator of the newest over-the-air television network. We would request that the following statement be submitted for the record of the July 17, 2001 Senate Commerce, Science & Transportation Committee hearing on broadcast ownership.

This statement sets forth our position on the current national television ownership cap. Our position is simply stated and, we believe, legally compelling. The FCC's current 35% television cap should be completely eliminated and the issue of television concentration on a national level should be left to federal antitrust authorities.

The 35% television cap is a totally arbitrary number bearing no relation to any antitrust or even public policy concern, it was adopted without record support and it fails to accurately measure the viewership reach of any television group owner. For these reasons, it cannot and will not survive review by the Court of Appeals in Washington, D. C. But, neither this Congress nor the FCC should wait for such an adverse decision. The time is now for the repeal of this antiquated rule.

First, a brief history of the 35% rule. During the deliberations leading to the 1996 Telecommunications Act, a group of television broadcasters, including Paxson, formed the Local Station Ownership Coalition which lobbied for television duopoly and local marketing agreements, i.e. LMAs. The Coalition supported H. R. 1555 (entitled "The Communications Act of 1995") which was voted out of the House Commerce Committee by a 38 - 5 vote. This Bill raised the television audience cap to 35% for one year and then to 50% thereafter.

However, when the Bill went to the House floor, the Coalition became aware of efforts to amend the bill to set the television ownership cap at 35%. The Coalition members convened by telephone conference and agreed to accept the reduction in the television cap in return for keeping the support of the House members for H. R. 1555. The Coalition's views were then communicated to key representatives on the House Commerce Committee who were sponsoring the local television ownership changes. The Coalition's position on this issue was dictated by the intense desire for local television and LMA rule relaxation and not by any analysis of the consequences of a 35% vs. a 50% audience cap. In short, the 35% number was "plucked out of thin air" as the Court of Appeals noted recently in striking down the cable ownership rule.

The second point worth noting is that the 35% audience cap does not actually provide a meaningful measurement of anything. As NBC's

President, Bob Wright, has explained in testimony before Congress, although NBC's 13 owned television stations reach about 25% of the country's television households (as measured by the current FCC rule), only

2% - 3% of those homes are actually watching NBC on average, so that NBC's owned stations garner about 6% of television viewers nationwide.

The 35% rule is simply arbitrary and capricious and it fundamentally restricts the right of television owners to speak to their viewers. Local television markets are very competitive nowadays and we face competition from many sources including other television stations, cable, cable networks, Microsoft's Web TV, TIVO, Ultimate TV, radio, newspapers, DBS, magazines, billboards, the Internet, direct mailings, etc. Notwithstanding this intense competition, a television owner at the 35% cap cannot buy a television station in a new market simply because of its ownership somewhere else. There is no logic to this and it is violative of that owner's First Amendment free speech rights. And let's be honest, the issue is not local ownership vs. out-of-market ownership. First there is no legally justifiable reason for favoring local ownership of broadcast stations and most stations are owned by group owners, not individual local owners. The issue is how the station is operated and how responsive it is to its obligations as a licensee. Second, most viewers do not know, or care, whether a television station is owned by a local group, a national network or a newspaper group from another state. It is simply irrelevant.

In summary, Paxson Communications urges Congress not to wait until further Court rulings striking down the 35% cap and other ownership restrictions but to take the lead and eliminate these antiquated, useless, and constitutionally infirm rules now so that our television industry can meet the new competitive challenges. All existing anti-trust laws are fully capable of protecting the consumer and preventing anti-competitive conduct.