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

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In the Matter of	)	
	)	
1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MM Docket No. 98-35

ORDER

Adopted: January 31,2003 Released: February 26,2003

By the Commission: Commissioner Copps issuing a separate statement.

1. As part of the 1998 Biennial Regulatory Review mandated by Section 202(h) of the Telecommunications Act of 1996,' the Commission reexamined the cablehroadcast cross-ownership rule and determined that the rule should be retained.* In *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. Feb. 19, 2002), the United States Court of Appeals for the District of Columbia Circuit found that the Commission's decision to retain the cablehroadcast cross-ownership rule was arbitrary and capricious and contrary to Section 202(h).[3] The court vacated the cablehroadcast cross-ownership rule, and directed the Commission to repeal the rule.'

2. Accordingly, we hereby repeal Section 76.501(a) of our rules.[5] We also repeal as no longer applicable Section 76.501 (c) of *our* rules, which established the effective date of the rule.[6]

3. Accordingly, IT IS ORDERED that subsections (a) and (c) of Section 76.501 of the Commission's rules, 47 C.F.R. §§ 76.501(a), and 76.501(c) ARE REPEALED, effective upon the adoption of this *Order.*

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[1] 47 U.S.C. § 161

[2] *In the Matter of 1998 Biennial Regulatory Review – Review of the Commission's* Broadcasl *Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Acl of 1996,* MM Docket No. *98-35, Biennial Review* Report, 15 FCC Rcd. 11058 (2000).

[3] *Fox,* 280 F.3d at 1033, 1049.

[4] *Id.* at 1054. *The court's mandate issued on* August 7,2002

[5] 47 C.F.R. § 76.501(a).

[6] 47 C.F.R. § 76.501(c).

4. IT IS FURTHER ORDERED that the Commission's rules **ARE** AMENDED as set forth in Appendix **A.**

5. This action is taken pursuant to sections 4(i), 4(j), and **303** of the Communications Act of **1934,** as amended, **47** U.S.C. §§ 154(i), 154(j), and **303,** and section 202(h) of the Telecommunications Act **of 1996, 47** U.S.C. § **161.** The Commission finds that notice and comment are unnecessary under 5 U.S.C. sec. 553(b) because this is a ministerial order issued at the direction of the United States Court of Appeals for the District of Columbia Circuit.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

SEPARATE STATEMENT OF
COMMISSIONER **MICHAEL J. COPPS**

Re: *In* ***the Matter of 1998 Biennial Regulatory Review – Review of the*** *Commission's* ***Broadcast Ownership Rules and Other Rules Adopted Pursuant*** *to* ***Section 202 of the Telecommunications Act of*** *1996, MM* ***Docker No.*** *98-35*

I reluctantly support this ***Order*** because the decision **of** the **D.C.** Circuit in ***Fox Television*** left us no option: it required us to repeal the cable-broadcast cross-ownership rule. The court concluded that the Commission had not supplied an adequate record or explanation for retention of the rule.

It is important to understand that, although the court vacated the rule, it suggested we could re-promulgate it. Yet the Commission did not even ask questions about this rule or the need for a similar rule in the ongoing ***2002 Biennial Review*** proceeding analyzing our media ownership rules. **The** issues remain important. The court did not say there were no problems involved in cable-broadcast cross-ownership, nor did it say that there was no other way than this particular rule to address any such problems. In the context of the ***Biennial Review,*** we should be compiling input on how to address cable-broadcast consolidation instead of just pretending the problem no longer exists.

I don't know of any issue before the Commission that is more fraught with serious consequences for the American people than the media ownership rules. There is the potential in the ultimate disposition of this issue to remake our entire media landscape, for **better** or for **worse. As** we review our other local broadcast multiple ownership rules, **I** believe it would have been appropriate to consider whether the objectives of the vacated broadcast/cable cross-ownership rule are already being met by other rules, or whether we should seek to achieve those objectives through other rules. I firmly believe that the courts are still amenable to keeping most of our rules, and also to add new rules, ***if*** we provide appropriate justification and evidence to support them. But we have made no attempt to determine whether such evidence was available orjustification could be made in this instance.