

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
2002 Biennial Regulatory Review – Review)	
of the Commission’s Broadcast Ownership)	MB Docket No. 02-277
Rules and Other Rules Adopted Pursuant to)	
Section 202 of the Telecommunications Act)	
of 1996)	
)	
Cross-Ownership of Broadcast Stations)	MM Docket No. 01-235
and Newspapers)	
)	
Rules and Policies Concerning Multiple)	
Ownership of Radio Broadcast Station in)	MM Docket No. 01-317
Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244
)	

To: The Commission

COMMENTS

Buckley Broadcasting Corporation (“Buckley”) hereby submits the instant comments in response to the Commission’s Notice of Proposed Rule Making (“NPRM”) in the above-captioned proceeding.¹ In reformulating its multiple ownership and radio/TV cross-ownership rules, the Commission should review the consolidation of radio and television stations in markets across the country and in particular consider the effect that allowing cross-media combinations between dominant players in different media will have on competition, especially in smaller markets. Buckley has expressed these concerns to the Commission in the context of one specific

¹ In the Matter of 2002 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, Notice of Proposed Rule Making, FCC 02-249 (released September 23, 2002).

case, and believes that any rule changes should take into account the harm that can develop if dominant players in different media are allowed to combine. The FCC's current radio/TV cross-ownership proscriptions have been in place for barely three years, and thus have not really had the chance to be fully evaluated.² Buckley urges that the Commission go slow in allowing further cross-media combinations, as such combinations can adversely affect the media marketplace, particularly in smaller markets.

DISCUSSION

In a recent decision, the Commission approved the transfer of control of Ackerley Media Group, Inc. ("Ackerley") to Clear Channel Communications, Inc. ("Clear Channel").³ One of the results of this decision was the approval of a transfer of control of television station KION(TV), Monterey, California, as well as the transfer of an LMA with station KCBA(TV), Salinas, California, to Clear Channel, which already owned six radio stations in the small Monterey-Salinas, California market. In that case, the Commission failed to consider the effect of the combination of the dominant radio and television broadcaster in the same market, each enjoying nearly a 50% market share of the advertising revenue in its service.⁴ As set forth

² The Commission adopted its current multiple ownership and radio/TV cross-ownership rules in 1999, and further clarified these rules on reconsideration in 2001. *See Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules*, MM Docket No. 91-221, Report and Order, 14 FCC Rcd 12903 (1999); *recon. granted in part*, Memorandum Opinion and Second Order on Reconsideration, 16 FCC Rcd 1067 (2001). Given the limited period of time in which the rules have been in place, there have only been a handful of cases involving these rules, making it difficult to assess whether the current limits imposed by the Commission are proper, or sufficient to protect competition in media markets.

³ *In the Matter of Shareholders of the Ackerley Group, Inc., and Clear Channel Communications, inc., for Transfer of Control of the Ackerley Group, Inc.*, Memorandum Opinion and Order, FCC 02-159 (released May 29, 2002) (hereinafter "*Decision*.")

⁴ See *Reply to Oppositions to Petition to Deny*, submitted by Buckley Broadcasting of Monterey in the Ackerley case, December 17, 2001 at p. 2 and Declaration.

below, such combinations can be anti-competitive, particularly in smaller markets. In conducting its comprehensive review of the multiple and radio/TV cross-ownership rules, the Commission must ensure that it serves the public interest by creating a regulatory scheme that is capable of preserving competition in all markets.

I. Radio and Television Stations Are Often Part of the Same Advertising Market

In its NPRM, the Commission has requested comment on advertising markets in order to assist it in analyzing the relationship of the radio/TV cross-ownership rule and competition.⁵ As detailed below, competition often exists for advertising between radio and television stations in smaller markets. For instance, in the Monterey-Salinas market where Buckley operates two radio stations, radio and television advertising time during many dayparts sells at approximately the same rates. Thus, radio and TV advertising is interchangeable to advertisers, meaning that these different media are direct competitors for advertising dollars. The strong substitutability between radio and television advertising in smaller markets supports the continued limitation on radio/TV cross ownership. As the Commission states in its NPRM, “the stronger the competition between these two outlets, the more relevant a cross-ownership limit may be.”⁶

In the recent Ackerley case in which Buckley was involved, although the Commission agreed that the operation of two television stations in the market was prohibited under its rules, and ordered remedial actions, it rejected the argument that common operation of two television stations and six radio stations in this market was contrary to the public interest. The Commission concluded that it would not look at cross-service competitive concerns until it had completed its review of the pending proceedings examining various aspects of the multiple ownership rules.⁷

⁵ NPRM at ¶ 106.

⁶ NPRM at ¶ 104.

⁷ Decision at ¶ 37.

Buckley hereby reiterates the assertions it made in the context of that proceeding regarding the competition that exists for advertising between smaller market radio and TV stations. In the past, it seems that the only basis for the determination that radio and television stations are part of separate product markets is that the Department of Justice (“DOJ”), in its antitrust reviews of certain radio acquisitions, has made that determination. Given the cross-service economic competition between radio and television stations that exists in smaller markets, including the Monterey-Salinas market where Buckley operates, the Commission must reexamine its previous conclusions about the substitutability of radio and television advertising.

Completely overlooked by the Commission in the Ackerley case was the fact that Buckley provided a sworn declaration stating that advertising time on radio and television stations in the Monterey market was interchangeable, as it sold for comparable rates in certain dayparts.⁸ Thus, in cases such as Ackerley, radio and television advertising should be considered part of the same product market and analyzed for competitive impact. The Commission should not allow two players, with significant market shares in different media, to combine their media holdings so as to become a single, dominant player in the advertising market in a given area.

Although the Commission has held that radio and television advertising constitute separate product markets, it has given no reasoned basis for such a determination. The very existence of these proposed cross-media combinations shows the likelihood of their anti-competitive impact. Much is made by the proponents of such combinations of the synergies involved. What are these synergies other than the ability to combine the sale and promotion of different media so as to garner a larger share of the advertising pie at the expense of other, non-

⁸ See Declaration of Kathy Baker submitted with Buckley Broadcasting of Monterey Reply to Oppositions to Petition to Deny, December 17, 2001, stating, “[r]adio and television stations compete in the Monterey-Salinas market for advertising revenue. In addition the advertising rates for radio and television stations in the market are competitive.”

consolidated owners? And where, as in the TV marketplace, spectrum scarcity still limits the number of possible allocations, it is impossible for all of the radio operators in a given market to enter into such combinations. Thus, the anti-competitive nature of the combination is evident. The Commission itself has previously confirmed that the radio/TV cross-ownership rules perform an important prophylactic function to prevent excess concentration in media voices in a market and against anticompetitive conduct in advertising markets.⁹ In reviewing its radio-television cross-ownership rules, the Commission must ensure that the preservation of competition in a given market is central to its assessment of a proposed merger. The Commission must examine the circumstances presented by the facts in a given marketplace, and reject an application that seeks to combine the dominant players in different media in the same market.

II. The Commission Should Consider a Case-by-Case Approach in Reviewing Proposed Consolidations of Competing Media Outlets

Given the difficulty of creating a single, one-size-fits-all approach to multiple ownership and radio/TV cross ownership, Buckley suggests that the Commission conduct its review of a proposed merger in a particular market on a case-by-case basis, similar to the approach taken by the DOJ. In this manner, the Commission can analyze the impact that a proposed transfer or assignment will have on a particular market, rather than simply blindly adhering to a voices test, which may not adequately reflect the true nature of a market. As was clearly demonstrated by the Ackerley case, although the proposed transfer of control appeared to comply with the numerical terms of the Commission's rules, the actual operation of the combined stations formed

⁹ Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules, MM Docket No. 91-221, Report and Order, 14 FCC Rcd 12903 (1999) at ¶¶ 102-110; *recon. granted in part*, Memorandum Opinion and Second Order on Reconsideration, 16 FCC Rcd 1067 (2001).

a media behemoth able to dominate a small market such as the Monterey-Salinas market. Furthermore, given the competition for advertising dollars that exists between radio and television stations, the negative effect of combining six radio stations and two television stations in the Monterey-Salinas market was more profound than perhaps it would have been in another market.

Respectfully submitted,

BUCKLEY BROADCASTING CORPORATION

By: /s/ Richard D. Buckley, Jr.

Richard D. Buckley, Jr.
President

Buckley Broadcasting Corporation
166 West Putnam Avenue
Greenwich, CT 06830

Dated: January 2, 2003