

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC

In the Matter of )  
Status of Children's Television ) MB Docket No. 00-167  
Programming )

To: Office of the Secretary  
Attn.: The Commission

**REPLY COMMENTS OF ION MEDIA NETWORKS, INC.**

ION Media Networks, Inc. ("ION"), by its attorneys, hereby submits these Reply Comments in order to respond to certain statements made by the Children's Media Policy Coalition (the "CMPC") in this proceeding.<sup>1</sup> ION, no less than CMPC, is vitally interested in improving children's programming, and it has participated in the creation of and currently broadcasts the **qubo** network, the first 24-7 digital over-the-air children's programming channel, to further that aim. As described herein, however, the Commission must reject CMPC's new and novel request that it restrict the children's programming that television stations may claim in compliance with Section 73.671 of the Commission's rules based on non-attributable investments in non-commonly owned stations in a market. Far from encouraging diversity and innovation in children's programming, CMPC's proposed "clarification" would have the unfortunate effect of discouraging stations from entering into new children's television ventures that otherwise could hold the promise of unlocking the power of DTV for children.

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<sup>1</sup> Commission Seeks Comment on the Status of Children's Television Programming, *Public Notice*, MM Docket No. 00-167, DA 07-1716 (released April 17, 2007); Extension of Time to File Comments on the Status of Children's Television Programming, *Public Notice*, MM Docket No. 00-167, DA 07-2287 (released May 31, 2007).

ION has demonstrated its strong commitment to increasing the quality, quantity, and diversity of children's programming available to television households nationwide. Last year, ION, NBC Universal ("NBC"), Scholastic, Classic Media, and Corus Entertainment, launched **qubo**, the first ever 24-7, over-the-air, children's television network.<sup>2</sup> The full schedule of **qubo** programming is available as a multicast digital channel on stations in sixty (60) markets across the country.<sup>3</sup> In addition, NBC, Telemundo, and ION stations air three hours of **qubo** programming weekly on their analog and simulcast digital channels. As a further demonstration of its commitment to promoting healthy viewing habits and lifestyles for children, as well as fighting childhood obesity, ION announced that it has instituted a broad ban on junk-food advertisements during **qubo** programming.<sup>4</sup> In addition, ION announced that in selected episodes of new original content, **qubo** will create storylines addressing good eating habits and physical activity.

Today the **qubo** network is available only to over-the-air viewers in markets where the network is being carried who have purchased televisions capable of over-the-air reception. As millions of Americans transition to DTV between now and the transition, the audience for **qubo** will grow exponentially. Moreover, ION has great confidence that cable operators who have so far refused to carry **qubo** will come to see the value of a 24-7 bilingual network that offers only children's programming, most of which satisfies the Commission's definition of educational and information programming for kids.

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<sup>2</sup> See <http://www.qubo.com/qubo247.asp>.

<sup>3</sup> See <http://www.qubo.com/tvschedule.asp>; <http://www.qubo.com/dtvfaq.asp>.

<sup>4</sup> See *Press Release*, ION Media Networks Pledges to Combat Childhood Obesity: New **qubo** and ION Life Programming and Advertising Initiative Aims to Encourage Fitness and Better Nutrition for Kids, released August 27, 2007 (available at <http://www.ionmedia.tv/press/press.cfm?id=61>).

The launch of **qubo** is a great leap forward for children's educational and informational programming, providing a new, dedicated children's programming platform that will continue to grow as the nation transitions to digital television. ION is extremely proud of this effort to bring children's programming into the new DTV age.

It's hard to see how any person or group interested in expanding and improving educational and information programming for kids could oppose the **qubo** model. While the Commission's processing guidelines require stations to offer only three (3) hours per week of qualifying children's programming,<sup>5</sup> **qubo** broadcasts at least twice that amount *every single day*, and on Sundays, **qubo** provides a full 24 hours of qualifying children's educational and informational programming. ION, NBC and Telemundo stations also air three (3) hours of **qubo** programming on their analog and simulcast digital channels. This arrangement increases the exposure of **qubo** programming and in time will likely drive viewers to the **qubo** network, where they will find large quantities of the same type of high quality children's programming available on the ION, NBC, and Telemundo flagship stations. In fact, the ION stations run **qubo** programming on their analog and simulcast digital channels during the afternoon hours on Fridays; at a time when neither the NBC nor Telemundo stations air **qubo** programming.

The **qubo** project demonstrates that ION, NBC and the other participants have been willing to match CMPC's stated interests in the improvement of quality and choice in children's programming with concrete action that actually accomplishes those goals. ION therefore finds it both troubling and puzzling that CMPC is again arguing in this proceeding that ION is not

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<sup>5</sup> 47 C.F.R. § 73.671.

satisfying its children’s programming obligations.<sup>6</sup> CMPC’s argument is doubly confusing because it is framed as a request for “clarification” of a passage in the *2003 Ownership Order* that plainly does not say what CMPC wants it to say and that in any case is not effective because the rules announced in that *Order* were stayed by the Third Circuit Court of Appeals.

Specifically, CMPC argues that ION and NBC stations should not be permitted to satisfy Section 73.671 by airing **qubo** programming because NBC owns a non-attributable interest in ION. In support of this contention, CMPC cites a portion of the *2003 Ownership Order* that forbids duopoly stations from relying on common programming to satisfy the Commission’s rule.<sup>7</sup> This argument but it is entirely meritless for the following reasons.

First, CMPC argues that the Commission should “clarify” that the *2002 Ownership Order* forbids any two stations that share any common ownership from relying on common children’s programming to satisfy the Commission’s rules. The cited passage from the *2002 Ownership Order*, however, applies only to “commonly owned” stations, a phrase the Commission uses to refer to stations that are under the financial and operational control of a single parent entity.<sup>8</sup> Thus, the Commission’s ruling in the *2003 Ownership Order* was designed to apply only to duopoly stations. No ION and NBC stations form a duopoly in any market. NBC holds only a

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<sup>6</sup> See Comments of the Children’s Media Policy Coalition at 21-22 (citing 47 C.F.R. Section 73.671 and 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, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 13620, 13690 (2002) (footnotes omitted) (the “*2003 Ownership Order*”)) (“CMPC Comments”).

<sup>7</sup> See *id.*

<sup>8</sup> See *2003 Ownership Order*, 18 FCC Rcd at 13690 (“We therefore clarify that where two or more stations in a market are **commonly owned** and air the same children’s educational and informational program, only one of the stations may count the program toward the three-hour processing guideline set forth in Section 73.671”) (emphasis added); see also, e.g., 47 C.F.R. §§ 73.3550, .3556, .3580, .3600.

non-attributable, minority stake in ION, which, in turn, has no ownership interest in NBC.<sup>9</sup> The *2003 Ownership Order* therefore permits NBC and ION to each rely on **qubo** programming to satisfy Section 73.671.

Second, CPMC's argues that the application of the *2003 Ownership Order* should be expanded to cover all stations with any common ownership in order to encourage diversity in children's programming. But CMPC's claim that allowing NBC and ION to rely on common programming will lead to a decline in the diversity of children's programming simply does not hold up. ION and the other participants in the **qubo** project have participated in the largest expansion of commercial children's television programming in recent memory through the launch of **qubo**, the first 24-7 digital over-the-air children's programming network; that represents 168 hours of new weekly children's programming space that did not previously exist. The net gain in children's programming quality and diversity is not impaired merely because broadcaster participants may satisfy Section 73.671 by offering three hours of **qubo** weekly network programming. Moreover, the rule CPMC advocates would increase the costs and thereby remove the incentives for stations and networks to enter into future collaborative children's programming ventures like **qubo** that further improve the quantity and quality of available children's programming. The Commission should not risk future innovation by insisting today on the form rather than the substance of diverse children's programming.

Third and finally, CMPC fails to recognize that the *2003 Ownership Order* language on which it hinges its argument is not currently an effective rule. The *2003 Ownership Order* was

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<sup>9</sup> The CMPC concedes the absence of common ownership between ION and NBC. CMPC Comments at 22. Moreover, the Commission examined this issue specifically in 2002 and concluded that no such attributable interest exists. *See* Telemundo Communications Group, Inc.

stayed by the Third Circuit Court of Appeals in September 2003.<sup>10</sup> Though the Court partially lifted the stay on September 3, 2004, it did not address the status of the passage cited by CMPC. Since the *2003 Ownership Order*, the Commission has not separately adopted or mentioned in any context a ban on commonly owned stations airing the same children’s programming, let alone an expansion of that prohibition to include non-commonly owned broadcasters like ION and NBC. The Commission has maintained this silence despite its issuance of a comprehensive order establishing children’s programming obligations for digital broadcasters.<sup>11</sup> Under these circumstances, the Commission could not reasonably rely on the *2003 Ownership Order* as a basis for granting the “clarification” CMPC seeks.

For these reasons, the Commission should reject CPMC’s proposed clarification of a Commission statement whose effectiveness has already been stayed by the Court of Appeals.

Respectfully submitted,

**ION MEDIA NETWORKS, INC.**

/s/

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and TN Acquisition Corp. for Consent to the Transfer of Control of Estrella License Corp., *Memorandum Opinion and Order*, 17 FCC Rcd 6958 (2002).

<sup>10</sup> See *Prometheus Radio Project v. FCC*, No. 03-3388, 2003 WL 22052896 (3d Cir. Sept. 3, 2003).

<sup>11</sup> See *Children’s Television Obligations of Digital Television Broadcasters, Second Order on Reconsideration and Second Report and Order*, 21 FCC Rcd 11065 (2006) (“2006 Order”).