Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	MB Docket No. 09-182
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

To: The Commission, Office of the Secretary

COMMENTS OF MONTEREY LICENSES, LLC

Monterey Licenses, LLC ("Monterey") hereby submits comments in response to the Notice of Inquiry released in the above-referenced proceeding (the "NOI").[1] By these comments, Monterey raises issues for the Commission's consideration as it undertakes its quadrennial review and revision of the broadcast multiple ownership and cross-ownership rules. Specifically, in reviewing its local radio ownership rules, the Commission should take into account today's realities of the market for audio entertainment in which companies such as Monterey must compete. In a world where there are audio competitors available in the home or the car where a single company can put hundreds, or even thousands of channels into any radio market, the rules governing the number of stations owned in a market by a company simply no longer make sense.

In particular, rules prohibiting the sale as a single unit to any third-party buyer of grandfathered radio station clusters, which were compliant with the local ownership rules when created but which became noncompliant when the rules were changed in 2003, no longer make

[1] *2010 Quadrennial 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 Inquiry, MB Docket 09-182, FCC 10-92 (May 25, 2010) ("NOI").

sense. In addition, the rules limiting the "subcaps" within the ownership rules, which limit an owner to a particular number of AM or FM stations in a market, do not comport with today's marketplace realities where audio service is simply audio service. Even within the broadcast services themselves, the distinctions are not clear. AM stations can be rebroadcast on FM translators, carried on the Internet, broadcast digitally, and even carried on FM HD-2 channels. Channel 6 LPTV stations can stream audio that is received as an FM signal. And, through the use of an FM converter, all sorts of digital signals can be received on any radio. In this world, the subcaps are no longer relevant. Especially given today's audio marketplace, even if an owner acquired the maximum number of stations allowed in any market, and even if they were all high-powered FM stations, that owner's potential audience reach, and the diversity of programming that it could offer, would still be dwarfed by the choices available through other services such as Sirius XM or Internet radio. Thus, in assessing the matters to be considered going forward in this proceeding, the Commission must reexamine the current application of the radio ownership rules.

Monterey is the license-holding subsidiary of Triad Broadcasting LLC. It holds the licenses to 32 radio stations in radio markets including Fargo, ND-Morehead, MN; Bluefield, VA and WV; Peoria, IL; Hilton Head, SC; Biloxi, MS; and Savannah, GA. The company is headed by an individual with over three decades of radio ownership experience. From that experience, it is clear that the radio marketplace is vastly different today than it was even in 1996, when the local radio ownership caps in place today were adopted. The vast changes in competition in the radio marketplace – in particular the loss of the dominance that radio once had over audio listening in the car and the office – makes for a marketplace where the rules on local concentration simply are not as relevant as they were when they were adopted. And this change is not slowing – if anything the increase in new sources of competition is growing.[2]

Given this background, the rules adopted in 1996, as modified by the Commission's 2003 Report and Order,[3] set ownership limits that are unnecessary and irrelevant. And many of the particular aspects of those rules as in force today are particularly without justification. In 2003, the Commission announced a change in the methodology of computing how many stations are in a radio market, switching from the methodology of defining radio markets by the contour overlap method to counting stations in Arbitron-rated markets, as interpreted by a private company, BIA.[4] In that transition, the number of stations in some markets changed, causing some then-compliant combinations to be in violation of the new rules. To avoid penalizing owners that had acquired stations under the preexisting local ownership rules, the Commission grandfathered existing station combinations that complied with the applicable ownership caps under the earlier contour overlap method, but which exceeded the limits under the new Arbitron method.[5] Fundamental to this decision was the Commission's understanding that forced divestiture would result in adverse public interest consequences. Under the Commission's rules, however, should a licensee seek to sell a grandfathered radio cluster, the proposed buyer must

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[2] See, e.g., the announcement of a new audio service that will offer 50 channels of audio service through a technology using the available digital bits made possible by the recent digital television transition. http://ludwigent.com/. This service will be advertising supported and, as it is broadcast through local television stations, it will be localizable – a direct competitor to radio.

[3] *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*, Report and Order, 18 FCC Rcd 13620 (Aug. 5, 2003) ("*2003 R & O*").

[4] *2003 R & O* at 13724-13728.

[5] *2003 R & O* at 13807-13809.

comply with the applicable ownership cap based on the now-operative Arbitron radio market definition, meaning that some stations must be divested.

Presently, the assignment of a grandfathered (and thus non-compliant) cluster of radio stations is permitted to an eligible entity or if the applicant certifies that it will come in compliance by divesting the necessary station or stations within 12 months of the consummation of the transaction by transferring the extraneous station or stations to an eligible entity or to an irrevocable trust that in turn will assign the station or stations to an eligible entity.[6] Thus, while the Commission's Rules ostensibly provide for the sale of a grandfathered cluster, in most cases the transfer of the grandfathered cluster is short lived, existing only so long as held by an eligible entity, which cannot then itself freely sell the cluster. The current allowance for the sale of grandfathered stations to eligible entities is little more than a procedural mechanism to gain time to spin off the offending stations. If there is no qualified entity that is likely to emerge, or if the buyer fears that none will materialize in the year provided by the rules, then the "extra" station must be sold prior to the closing of the sale of the other stations in the cluster.

Practically speaking, this often results in the weakest and least desirable station or stations in the group -- those with the smallest coverage or located the furthest from the population center of the market -- being orphaned in the sale of a grandfathered cluster. Perversely, rather than creating opportunities, the Commission's current rules place these orphaned stations in the unenviable position of having to survive on their own for the first time without the benefit, support and efficiencies gained from a cluster of stations. Accordingly, such

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[6] *2003 R & O* at 13810-13811; *Promoting Diversification of Ownership in the Broadcasting Services,* Report and Order and Third Further Notice of Proposed Rulemaking, MB Docket No. 07-294, et al., 23 FCC Rcd 5944-45 (2008).

divestitures from a grandfathered cluster are doomed to fail, or to exist in a marginal way. Rarely, if ever, do they become a true local voice in a community.

Moreover, this rule prevents a potential buyer from acquiring and maintaining a successful, competitive grandfathered cluster. Instead a potential buyer can obtain only a portion of the stations that form the successful cluster, thereby lowering the overall value of the cluster, as well as hampering any new market entrant faced with the possibility of competing with other incumbent station owners who themselves own grandfathered clusters with more stations than any new entrant is now permitted to own. This rewards incumbent grandfathered licensees and discourages the transfer of station groups, as well as putting potential new entrants at a competitive disadvantage. In today's competitive media marketplace, there simply is no need to maintain the obligation for stations in a grandfathered cluster to be spun off upon sale of the cluster.

Similarly, the FCC's current rules not only place a numerical limit on the total number of stations that a single owner can hold in a particular market, but they also establish "subcaps", setting a lower maximum number of AM and FM stations that can be owned in a market.[7] Those subcaps no longer make any sense, if they ever did. The subcaps seem to assume that somehow AM and FM stations are different, and that this further limitation is somehow necessary to protect the public from too much competition. Some may argue that the subcap preserves AM ownership by forcing larger owners to keep some AM stations, as in most markets, AM stations are by and large assumed to generally have a lower audience. But if that was the purpose of these subcaps, why is there any limit on the number of AM stations that a party can own? If the rules are meant to encourage AM ownership, why not allow the ownership of seven AM stations

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[7] 47 C.F.R. § 73.3555(a) (2009).

in a market with 35 stations, rather than limiting an owner to four stations in that service as mandated by the current subcap?[8] In some ways, allowing one party to own seven AMs in a market might make for stronger AM stations, as these stations could share staffs and, in some cases, programming.

Moreover, these arbitrary distinctions ignore the marketplace realities. While, these days, the FM band generally receives more listening than the AM band, in particular cases, there are very strong AM stations that reach a larger audience than many FM stations in a market. In a hypothetical market of 25 stations, one licensee could own four large FM stations, and two 50 kW AM stations that blanket the market and many adjacent markets, while another licensee would not be able to buy a Class A FM station with limited coverage of the market if it already owned four FMs in that market. Why should one party be able to own two high-powered AM stations, while another would be prohibited from holding fewer stations reaching fewer people, just because they are all on the FM band? How is this justified?

Particularly in today's competitive audio marketplace, localism will be important to all radio operators in order to assure survival against the digital media competition available in every marketplace. Station groups will have to provide local programming, serving local audiences. They cannot simply serve up more music, as there will be hundreds of other sources where that music can be obtained, often with music-choice personalization that the broadcaster cannot offer. Stations that are parts of clusters in markets will best be able to provide local content through increased news gathering and the greater resources needed to compete on the multiple platforms necessary in this new audio marketplace. It is nice to imagine and

[8] 47 C.F.R. § 73.3555(a)(1)(ii)(2009).

hypothesize that a stand-alone, divested station will become a market leader for solving marketplace issues, but in reality, it rarely, if ever, happens.

Today's marketplace is not that of 1996 or even that of 2003. Times and competition have changed dramatically. Requiring divestiture of grandfathered stations in existing clusters no longer makes sense. Nor do rules that distinguish between AM and FM stations. In today's world, it is all audio entertainment, and broadcast stations are competing against competitors with hundreds of channels in every market. Accordingly, in this proceeding, Monterey urges the Commission to eliminate these outmoded rules.

Respectfully submitted,

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