

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**REPLY COMMENTS OF HUBBARD BROADCASTING, INC.**

Hubbard Broadcasting, Inc. (“HBI”), by its attorneys, hereby submits its reply comments, in the above-captioned proceeding,<sup>1</sup> concerning the Commission’s local television ownership rule. HBI, a family-owned company, is the parent company of the licensees of thirteen full-power television stations, and has been in broadcasting for more than three generations.

In its Comments, HBI asked the Commission to use this proceeding to provide much-needed clarity to the television “duopoly” rule under §73.3555(b) of the Commission’s rules.<sup>2</sup> HBI believes that the current duopoly rule has served the public interest well and that further relaxation of it may be warranted. Certainly, a number of broadcasters provide significant evidence that relaxation or elimination of the television duopoly rule would serve the public interest in localism.<sup>3</sup> HBI supports the Commission’s efforts to develop a complete record of evidence on this important subject and to reach a legally rational and sustainable decision.

As HBI pointed out in its Comments, inaction by past FCC administrations over many years has led to uncertainty and inequity concerning the Commission’s application of the

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<sup>1</sup> *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 No. 09-182, FCC 10-92 (May 25, 2010) (“*NOI*”). HBI filed its Comments of Hubbard Broadcasting, Inc. on Local Television Ownership Rule on July 12, 2010.  
<sup>2</sup> 47 C.F.R. §73.3555(b).

<sup>3</sup> *See, e.g.*, Comments of: National Association of Broadcasters, pp. 78-86; Belo Corp., pp. 6-9; LIN Television Corporation, pp. 2-4; Coalition of Smaller Market Television Stations, pp. 8-10.

duopoly rule in smaller television markets. As a number of commenters indicate, “virtual duopolies” have been formed under contractual arrangements in various television markets in which common ownership or control of two or more television stations is prohibited by the duopoly rule. Those arrangements typically rest upon “shared services” and other, related agreements. The result of some of those agreements has been the substantial common control of television station assets, personnel, and programming when legal common ownership is prohibited by the Commission’s rule.

The legal basis of virtual duopolies has been before the full Commission under applications for review since at least January 2005.<sup>4</sup> To the best of HBI’s knowledge, the full Commission has never reviewed the circumstances of virtual duopolies and provided guidance on them. Instead, a series of Bureau decisions have been issued that rely on one or more non-final Bureau decisions.<sup>5</sup> This lack of Commission guidance is contrary to the public interest, and

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<sup>4</sup> See *Malara Broadcast Group of Duluth Licensee, LLC*, 19 FCC Rcd 24070 (Video Division 2004) (HBI application for review pending since January 13, 2005) (consolidation of the NBC and CBS affiliates in DMA 135, a market with four commercial television stations); *SagamoreHill of Minnesota Licenses, LLC*, File No. BALCT-20040609AAL (Video Division, Mar. 11, 2005) (HBI application for review pending since April 11, 2005) (consolidation of the NBC and Fox affiliates in DMA 153, a market with four commercial television stations). As part of its “Reboot” initiative, the Commission has stated: *At the FCC we place a high priority on reforming our rules and practices to improve openness and efficiency. We believe that better procedures will improve the quality of agency decision-making, reduce backlogs, and enhance the public’s ability to understand and participate in Commission proceedings.* (<http://reboot.fcc.gov/reform/rules-processes>) Bringing closure to these long-standing legal issues would be consistent with current FCC reform efforts.

<sup>5</sup> Challenges to the legality of various virtual duopolies have been decided only by the Media Bureau and not the full Commission. See *Malara Broadcast Group of Duluth Licensee, LLC*, 19 FCC Rcd 24070 (Video Division 2004) (application for review pending); *CFM Communications, LLC*, 20 FCC Rcd 9738 (Video Division 2007) (relying on *Malara Broadcast Group, supra.*, which is not final); *Chelsey Broadcasting Company of Youngstown, LLC*, 22 FCC Rcd 13903 (Video Division 2007) (relying on *Malara Broadcast Group, supra.*, which is not final); *Piedmont Television of Springfield License LLC*, 22 FCC Rcd 13910 (Video Division 2007) (application for review pending) (relying on *Malara Broadcast Group, supra.*, which is not final); *SagamoreHill of Corpus Christi Licenses, LLC*, 49 CR 1096, DA 10-495 (Media Bureau,

has fostered uncertainty within the industry, including concern among broadcasters and public interest groups alike.<sup>6</sup>

As it has for more than five years, HBI urges the Commission to reach a sustainable position on the subject of local-market television station common ownership. Clarity and guidance directed toward ownership and control of television stations would advance the public interest, and the instant proceeding is an excellent vehicle to reach conclusions. Concurrently, regardless of whether or not the Commission revises its television duopoly rule, it must address past, contested ownership arrangements, and unwind any such arrangement found to be improper under the ownership rules as they existed at the time. The Commission should not grandfather improper ownership structures. Such an outcome would be inequitable because it would benefit past violators at the expense of licensees that abided by Commission rules and procedures, and that sought Commission determinations on the arrangements at issue, which to date the Commission has ignored.

If the Commission finds that modification of the duopoly rule would serve the public interest, it should not do so retroactively by sanctioning past improper conduct. Parties that have been in violation of the current rule should not be permitted to profit from behavior that was inconsistent with the letter and spirit of the duopoly rule or benefit from the lack of decision-making under past administrations. Past violations of the duopoly rule should be declared improper by the Commission and unwound.

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Mar. 26, 2010) (relying on *Malara Broadcast Group, supra.*, and *Piedmont Television, supra.*, neither of which is final).

<sup>6</sup> See, e.g., Comments of Sainte Sepulveda, Inc., pp. 5-6; Comments of Gray Television, Inc., p. 13; Comments of Free Press, pp. 9-10; Comments of Office of United Church of Christ, Inc. and Prometheus Radio Project, p. 8; see also *Media Access Project*, 22 FCC Rcd 21532 (Video Division 2007) (denying Media Access Project's informal objection to license renewal application of Malara Broadcast Group of Duluth Licensee, LLC).

