

LEGAL STATEMENT REGARDING ADVERSE FININGS

Michael G. Hubbard, the president and sole shareholder of Auburn Network, Inc. (“Auburn Network”) seeks to assign Auburn Network’s FCC licenses to the entity established by Lee Perryman, Auburn Networks, LLC.¹ Mr. Hubbard was adjudicated guilty of certain non-broadcast related, non-FCC misconduct. The purpose of this statement is to provide additional details concerning this matter and to further demonstrate that, despite this adjudication, Auburn Network nevertheless has the requisite character qualifications to assign its stations’ licenses.

This isolated instance of adjudicated misconduct is an aberration in a life of exemplary public and community service. Mr. Hubbard served for more than 18 years as a highly respected member of the Alabama Legislature and as Speaker of the House. For 23 years, since 1997, Mr. Hubbard has owned and operated radio stations. As an FCC licensee, neither Mr. Hubbard nor any of his radio station licensee entities have been cited for violations of the Rules and Regulations of the Commission or the Communications Act.²

The purchase price of the stations will be used in its entirety to satisfy innocent creditors. In addition, the sale of the stations will permit Mr. Hubbard to quickly exit the broadcast business, while permitting the stations’ 13 employees to continue their employment with the assignee and permit the stations to continue their community programming in the public interest. Given these facts, despite the isolated instance of misconduct, the Commission can nevertheless make the requisite public interest finding and expeditiously grant these applications to allow for continuity of employment and programing for the community without disruption. See discussion below on pages 5-7.

FACTS

On June 10, 2016, Mr. Hubbard was adjudicated on 12 felony counts of violation of the Alabama Ethics Law. He appealed to the Court of Criminal Appeals, which affirmed the convictions on 11 counts and reversed the conviction on 1 count. On April 10, 2020, the Supreme Court of Alabama affirmed the judgment of the Court of Criminal Appeals as to Mr. Hubbard's convictions on 6 counts and reversed as to 5 others. Ala. S. Ct. Opinion p. 2. On August 28, 2020 the Supreme Court of Alabama denied Mr. Hubbard’s Petition for rehearing and issued a Certificate of Judgment upholding the conviction of Mr. Hubbard on 6 counts of violation of the Alabama Ethics Law. Mr. Hubbard will be appealing his conviction to the U.S. Supreme Court.

¹ The stations at issue are Station WGZZ(FM), fac. id. 15283, Waverly, Al; Station WANI(AM), fac. id. 63796, Opelika, AL; FM translator Stations W254AY, fac. id .138347, W294AR, fac. id. 141199, W242AX, fac. id. 146140, new CP Amendment application for a translator station construction permit, file no. BNPFT-20180327ABZ, fac. id. 201389, Auburn, AL, and a construction permit (unbuilt) for WHBD-LD, fac. id .185816, Auburn, AL.

² See Declaration of Michael G. Hubbard in Auburn Network Inc.’s Exhibit 8 of the Form 314 Assignment application.

Hubbard was not charged with or convicted of any bribery-type offense. Alabama's Ethics Law contains such offenses.³ However, there was never alleged to have been any quid pro quo in return for official action. Nor was Hubbard convicted of misuse of taxpayer funds or fraud.

Alabama's state legislators are not full-time public servants; they have jobs or professions that provide their livelihood. Hubbard was an entrepreneur and a consultant. The Ethics Law recognizes the need for allowing public officials, such as legislators, to continue their outside economic lives.⁴ In pursuing his private business and consulting, Mr. Hubbard frequently sought oral and written advice from the State Ethics Commission. See Ala. S. Ct. Opinion p. 96 (Sellers, J., dissenting) "Hubbard regularly and routinely contacted the Alabama Ethics Commission to establish and maintain his compliance with the Ethics Code."

The remaining six counts can be divided into two categories.

The Alabama Supreme Court affirmed Mr. Hubbard's convictions on two counts of soliciting or receiving a thing of value from a principal in violation of § 36-25-5.1(a), Ala. Code 1975. These convictions were based on Hubbard's receiving payments under consulting contracts from two companies -- American Pharmacy Cooperative, Inc. ("APCI"), and Edgenuity, Inc. ("Edgenuity"). The Edgenuity and APCI consulting contracts prohibited Hubbard from providing services within the state of Alabama. Ala. S. Ct. Opinion P. 32.⁵ Based on Hubbard's receiving the payments under these consulting contracts, he was convicted of receiving a thing of value. The critical question on appeal was whether Hubbard received "compensation" which is excluded from the definition of "thing of value" -- under a provision of Ala. Code § 36-25-1(34)b.10. That provision excludes, from the definition of "thing of value," "Compensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee."

The Court focused on interpreting that last proviso: "under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee." Hubbard pointed out that the Ethics Commission, in formal written

³ See, e.g. Ala. Code § 36-25-27(b) "No public official or public employee shall solicit or receive anything ... for the purpose of corruptly influencing official action ..."

⁴ Ala. Code § 36-25-2(b) "An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided."

⁵ Thus, for example, on Edgenuity's behalf, Hubbard contacted the speakers of the Houses of Representatives of North Carolina and South Carolina and contacted officials of the National Collegiate Athletic Association.

opinions, had struggled to define the phrase with any clarity. He argued that the phrase should be taken to mean that compensation is unlawful only if it is given in exchange for official actions – because of the official’s “service” not merely somehow being connected in some way to his status. The Court concluded that “compensation must be provided solely for reasons unrelated to the official's or employee's public service, and that unrelatedness must be clear from the circumstances of the compensation,” although the Court recognized that its interpretation “could result in shutting out from the compensation exclusion some forms of private employment or advertising that might otherwise be assumed innocuous.” Ala. S. Ct. Opinion pp. 41-2. The Supreme Court concluded that that Edgenuity's and APCI's payments to Hubbard were provided for reasons related to his public service, because he could provide introductions to politicians outside of Alabama. Ala. S. Ct. Opinion p. 43. Mr. Hubbard argued that the payment for his consulting work could not have been related to his public service as a legislator in Alabama because he was hired to do work outside the state of Alabama. The Alabama Court, however found that “the language of the compensation exclusion does not support a per se distinction between work inside and outside Alabama.” Ala. S. Ct. Opinion pp. 44-5.

The remaining four convictions relate to Mr. Hubbard’s interactions with Robert Abrams, an inventor and business owner and constituent living in Mr. Hubbard’s district. One of his businesses, named Capitol Cups and located in Mr. Hubbard’s legislative district, made insulated drinking cups that could be emblazoned with corporate or sports team logos. In performing his role under the contract, Mr. Hubbard emailed two of his contacts at Publix Super Markets asking if they could arrange a meeting with Capitol Cups. Ala. S. Ct. Opinion p.46. At the bottom of the email his automatic email signature identified himself as “Rep. Mike Hubbard[,] Speaker of the House[,] Alabama House of Representatives.” Id. at p. 47. The Ethics Code subsection under which Hubbard was convicted provides:

No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law.

§ 36-25-5(a), Ala. Code 1975. The Alabama Supreme Court, based on the facts of the case, concluded that Hubbard in arranging a meeting with Publix by identifying himself as a state legislator had used his elected office for personal gain. However, Hubbard did not threaten any government action against Publix and Publix did not purchase any of Capital Cups products. Ala. S. Ct. Dissent p. 90.

The second of the four counts involving Abrams was a conviction on one count of using public property for private benefit in violation of § 36-25-5(c), Ala. Code 1975. This count was based on Hubbard's using his chief of staff's time to assist with speeding up issuance of an already granted patent. In 2013, a company controlled by Abrams, CSP Technologies, Inc. ("CSP") received notice that the United States Patent and Trademark Office had approved a patent. The patent would not be official, however, until it was issued by the Government Printing Office. Abrams asked Hubbard if he knew anyone who could help speed up the issuance of the

patent. Hubbard discovered that a Congressman from Mississippi sat on the Congressional committee with oversight of the Patent Office. Accordingly, Hubbard turned to his chief of staff, who had connections in Mississippi, who contacted the Congressman's staff, who, in turn, put Hubbard's chief of staff in contact with a Patent Office employee. However, they could not speed up the issuance of the patent. Ala. Ct. Opinion p. 54.

The Ethics Code subsection under which Hubbard was convicted provides:

No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, [Ala. Code 1975], which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. ...

§ 36-25-5(c), Ala. Code 1975. The Supreme Court found that the evidence was sufficient to support the jury's conclusion that Hubbard used his chief of staff's time and labor "for [Hubbard's] private benefit" that "would materially affect his ... financial interest." Ala. S. Ct. Opinion p. 58.

Finally, Hubbard was convicted on two counts of representing, for compensation, a business entity before an executive department or agency, in violation of § 36-25-1.1, Ala. Code 1975. These counts were based on Hubbard's obtaining meetings with executive-branch officials for SiO₂ Medical Products, a company Abrams owned. SiO₂ manufactured vials for biotechnological drugs. The vials were required to be manufactured in a sterile environment, which required special employee training. Thus, Abrams began seeking funding from the Alabama government to build a training center. Abrams learned that another company had obtained funding for a training center from a fund controlled by the Governor. Ala. S. Ct. Opinion p. 59. Accordingly, Abrams asked Hubbard to help set up a meeting with the Governor. Hubbard had his legislative executive assistant arrange two meetings for Abrams -- one with the Governor and the other with the Secretary of Commerce.

The Ethics Code section under which Hubbard was convicted provides:

No member of the Legislature, for a fee, reward, or other compensation, in addition to that received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency.

The Court concluded the State had presented evidence sufficient to support the jury's conclusion that Hubbard represented a corporation before an executive department or agency for nonofficial compensation. Ala. S. Ct. Opinion p. 62.

Mr. Hubbard was sentenced to serve a four-year prison term. He began serving that term on September 11, 2020.

Accordingly, Mr. Hubbard sought a buyer for the Auburn Network radio stations, agreeing to sell the stations to at a discount from their fair market value in an effort to leave the broadcast business and to repay innocent creditors.

DISCUSSION

When considering the character qualifications of applicants, the Commission concerns itself with “misconduct which demonstrates the proclivity of an applicant or licensee to deal truthfully with the Commission and to comply with [its] rules and policies.” *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1190-91 (1986) (“1986 Character Policy Statement”), recon. granted in part, 1 FCC Rcd 421 (1986), modified, 5 FCC Rcd 3252 (1990) (“1990 Character Policy Statement”) (subsequent history omitted). Consequently, in addition to misconduct that violates the Communications Act or an FCC rule or policy, the Commission also deems relevant to an applicant's qualifications the following categories of non-FCC misconduct: adjudicated (a) fraudulent misrepresentations to governmental units; (b) criminal misconduct involving false statements or dishonesty, (c) violations of antitrust or anticompetitive laws involving any media of mass communications, as defined in 47 U.S.C. § 309(i); and (d) misconduct constituting a felony. *1986 Character Policy Statement*, 102 FCC 2d at 1195-97, 1200-03; *1990 Character Policy Statement*, 5 FCC Rcd at 3252.

As an initial matter, the parties hereto note that there are no issues involving the character qualifications of the proposed buyer of the stations. Lee Perryman, the 100% owner of the assignee, has an exemplary broadcast record as an independent owner/operator of several radio stations in Alabama. See Declaration of Michael G. Hubbard.

While generally the Commission requires not only the buyer, but also the seller, to be qualified before granting its consent to the transfer of a broadcast license, see *Jefferson Radio Co. v. FCC*, 340 F.2d 781 (D.C. Cir. 1984), if the instant assignment applications are granted, Mr. Hubbard will no longer have an interest in any broadcast stations. Moreover, while Mr. Hubbard has engaged in the type of misconduct that the FCC has traditionally considered to be pertinent to its evaluation of a licensee's character, this fact does not call into question his propensity to deal truthfully with the FCC or to obey its rules. Mr. Hubbard has owned and operated radio stations in Auburn since 1997. Since that time, he has maintained a flawless record of operating the stations in the public interest and has earned numerous awards. For example, Station WANI has received the Alabama Broadcasters Association prestigious *Radio Station of the Year* award twice, in 2009 and again in 2016. See Declaration of Michael G. Hubbard. The misconduct in which he engaged was completely unrelated to the operation of the radio stations and did not involve any other officers or directors of Auburn Network, or employees of the stations. He is an experienced and well-respected radio station owner, and there have been no complaints or citations for rule violations involving the operation of the radio stations. As the FCC has recognized, “[t]he purpose of the character qualifications aspect of the

Commission's licensing process is not, of course, to eliminate licensees from further activity in broadcasting, but, as we have stated, to assure that those granted a license will be truthful in their dealings with the Commission and reliable operators of their stations." *1986 Character Policy Statement*, 102 FCC 2d at 1228. In this case, Mr. Hubbard's consistent record of exemplary broadcast service is more indicative of truthfulness and reliability in his dealings with the FCC, as well as of his overall propensity to obey the law, than an isolated transgression in a field unrelated to his operation of broadcast stations.

The *Jefferson Radio* policy is grounded on the need to deter licensee misconduct. See *Roy M. Speer*, 11 FCC Rcd 14684, ¶ 3 (1996) (citing *1400 Corp.*, 4 FCC 2d 715, 716 (1966), modified, 7 FCC 2d 517 (1967) (Licensees must "be held accountable for their stewardship and will not be permitted to evade the consequences of their misconduct or abuse of a license by selling the station . . ."). Thus, the Commission has made exceptions to the policy to permit licensees whose qualifications are in question to transfer their stations where the public interest would be served by approval of the transfer, and the transfer would not undermine the deterrent impact of the licensing process on the licensee and others. See e.g., *Little Dixie Radio, Inc., and Bottom Line Broadcasting, Inc.*, 25 FCC Rcd 4375 (2010). In the unique circumstances at issue here, no additional sanction is necessary to deter either Mr. Hubbard or other existing or future licensees from engaging in similar behavior. Specifically, Mr. Hubbard has already paid an extremely high price for his misconduct, including a 4-year prison term, resignation from the Alabama House of Representatives after an 18-year legislative career, loss of his consulting business, tarnishing of his heretofore sterling reputation, and the consequent humiliation. In addition, Mr. Hubbard is selling his stations to pay off innocent creditors. In addition to his ownership of WANI(AM) in 2007 Mr. Hubbard purchased WGZZ(FM) for \$1.4 million. As reflected in the Mr. Hubbard's Declaration, the Asset Purchase Agreement and attached schedules, the Purchase Price totaling \$775,000 will be used in its entirety to pay creditors. While major debt is addressed, not all debt will be covered, the largest amount \$730,424.41 will be paid to Auburn Bank for two debts, \$697,652.32 and \$35,672.09. Next, \$41,662.70 to be paid to NMAC for a debt on an Auburn Network stations' automobile. Schedule 3.1 of the Asset Purchase Agreement details certain of Seller's debt to be assumed by Buyer: \$24,787 for necessary broadcast equipment to No. TX Credit Banclease Acceptance/First Foundation Bank, \$27,000 for leases for Fuller Towers as to certain of the Stations, and \$13,195.90 in debt to BBVA Compass for the Stations' promotion vehicle. See Declaration of Michael Hubbard. As Mr. Hubbard states in his Declaration: "It never occurred to me that I would withdraw from ownership and management of the Stations as I now propose in a manner that I and my family are not able to receive a reasonable profit as a reward of my many years of hard work building the Stations to their recent heights in programming and service, but at least, with the foregoing Purchase Price, I can take care of creditors who had faith in me and make them whole." In the past when agreeing to an exception to the *Jefferson Radio* policy, The FCC has required that no profit be realized on the assignment of license.⁶ In this case, that test has been met and, in these

⁶ See *Northwestern Indiana Broadcasting Corp.*, 65 FCC 2d 66, 70 (1977) (listing four factors relevant to determining whether the Commission should exercise its equitable discretion to except an application from *Jefferson Radio*, including that "no profit would be realized on the assignment of license"); *Walton Broadcasting Co.*, 38 FCC 2d at 207, P 5 (where a portion of

circumstances, no additional sanction by the Commission is necessary to deter misconduct such as that of Mr. Hubbard.

The Commission has also made exceptions to *Jefferson Radio* to permit licensees whose qualifications are in question to transfer their stations where it finds other compelling, equitable reasons for doing so. Auburn Network employs 13 employees. In this time of the Covid-19 pandemic jobs, especially jobs at radio stations, are scarce. If the FCC permits the assignment of the stations, Mr. Perryman will hire all 13 Auburn Network's employees. If the assignment is not granted and the stations do not continue operating, these employees will be out of work with their families suffering the consequences. The stations' market is small giving the employees no real employment alternatives.

Finally, the unique mitigating circumstances of this case counsel against further sanction of Mr. Hubbard or Auburn Network. Where an applicant has engaged in relevant misconduct, the Commission entertains and weighs a showing of mitigating circumstances, including, the willfulness, frequency, currency and seriousness of the misconduct; the nature of participation of managers and owners; efforts made to remedy the wrong; the applicant's overall record of compliance with the Commission's rules and policies; and rehabilitation. *1986 Character Policy Statement*, 102 FCC 2d at 1227-29; *1990 Character Policy Statement*, 5 FCC Rcd at 3254. The isolated and uncharacteristic nature of the incident when considered in the context of Mr. Hubbard's extraordinary record of public service, and civic leadership, his efforts to make his creditors whole and to preserve the jobs of his employees, and the lack of relation of the misconduct to the operation of the radio stations are especially relevant here.

In sum, the record demonstrates that Mr. Hubbard's misconduct was an uncharacteristic aberration in a lifetime of honesty and public service. He is seeking to assign his stations at a price that will make his creditors whole without any profit to Mr. Hubbard. In these circumstances, further action by the FCC with respect to these matters would serve no purpose. Mr. Hubbard has been punished for his legal transgressions – matters having nothing to do with his more than 23 years of operating radio stations in the public interest. Allowing him to exit the business, by approving the pending transactions, serves the public interest. For these reasons, grant of the instant assignment applications is respectfully requested.

proceeds were to be placed in irrevocable trust for the care and maintenance of licensee, proposed sale "violates our stricture against sanctioning a license assignment which will result in a significant benefit to a putative wrongdoer"); *Tinker, Inc.*, 8 FCC 2d 22 at P 4 (1967); *Martin R. Karig*, 3 RR 2d 669, at P 4 (1964). See also *Harry O'Connor*, 2 FCC 2d 45 (1965) (excepting an application from *Jefferson Radio* on grounds that seller would receive from sale substantially less than he paid for his interest in licensee and buyer would return station to air promptly); *Letter to Charles R. Naftalin, Esq.*, 20 FCC Rcd 19373 (2005) (approving assignment of radio station licenses from convicted pedophile where no direct or indirect payment made to any seller shareholder from sale proceeds).