

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

In the Matter of:)	MB Docket No. 07-119
)	
Transfer of Control from)	File Nos. BTCCT-20070501AEY,
Shareholders of Tribune Company to)	BTCCT-20070501AEZ,
Samuel Zell)	BTCCT-20070501AFK,
)	BTCCT-20070501AGB,
)	BTCCT-20070501AGE

COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA IN SUPPORT

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I. INTRODUCTION AND SUMMARY

The Newspaper Association of America (“NAA”) hereby submits comments in support of the above-referenced applications. Specifically, NAA strongly supports each of the Requests for Waiver submitted in connection with the five markets in which Tribune currently owns and operates a newspaper/broadcast combination: (1) New York, NY; (2) Los Angeles, CA; (3) Chicago, IL; (4) Miami-Ft. Lauderdale, FL; and (5) Hartford-New Haven, CT.¹ Each of the requests seeks a temporary waiver of the newspaper/broadcast cross-ownership rule pending completion of the ongoing Federal Communications Commission (“FCC” or “Commission”) rulemaking addressing the cross-ownership ban and several other FCC broadcast ownership rules.

These requests are eminently reasonable. The FCC long has recognized the need to relax its newspaper/broadcast cross-ownership rule and has initiated a series of

¹ The properties involved in each of these combinations are: (1) New York: WPIX(TV) and *Newsday*; (2) Los Angeles: KTLA-TV and the *Los Angeles Times*; (3) Chicago: WGN-TV, WGN(AM), and the *Chicago Tribune*; (4) Miami-Ft. Lauderdale: WSFL(TV) and the *South Florida Sun-Sentinel*; and (5) Hartford-New Haven: WTIC-TV, WTXX(TV), and the *Hartford Courant*.

rulemaking proceedings to accomplish that task. To date, however, none of these efforts has resulted in any actual changes to the rule, which now has been in a state of flux for more than a decade. Although the Court of Appeals upheld the Commission's rejection of the absolute cross-ownership prohibition in 2004, the agency has not yet completed its proceedings on remand. Tribune should not be punished for the long period of time that the cross-ownership rule has remained in limbo, and certainly should not be subject to forced divestitures. In the applications at issue, Tribune is not seeking to create any new media combinations. Rather, the company is asking only to maintain the status quo until the outcome of the media ownership proceeding is decided and Tribune finally will have regulatory certainty as to whether or not its combinations comply with Commission rules.

Moreover, the Tribune combinations are in some of the country's largest and most media-rich markets. None of these markets has experienced a loss in diversity or competition since Tribune began operating the subject combination. In fact, as Tribune has shown, each is served by an abundance of traditional media outlets and has become *less* concentrated in recent years. What is more, each of these combinations unequivocally has benefited its local community by fostering the creation and delivery of more and higher quality local news and informational programming. Indeed, NAA submits, these combinations exemplify the many reasons why the Commission should move forward as quickly as possible to eliminate the newspaper/broadcast rule in its entirety. In the interim, the FCC should grant each of the Tribune waiver requests expeditiously and approve the proposed transfer of control to the employees of Tribune via the Employee Stock Ownership Plan and to Mr. Zell.

II. GIVEN THE CLEARLY ESTABLISHED NEED TO MODIFY THE CROSS-OWNERSHIP BAN AND THE LONG PERIOD DURING WHICH THE FUTURE OF THE RULE HAS REMAINED UNSETTLED, TRIBUNE’S WAIVER REQUESTS ARE MODEST AND APPROPRIATE.

As Tribune explains in detail in its waiver requests, the FCC began the process of modifying its absolute ban on newspaper/broadcast cross-ownership more than a decade ago. It was in 1996, in fact, that the FCC first launched a proceeding to reconsider certain aspects of the rule in response to the apt observations of then-FCC Chairman Reed Hundt that the rule was “impairing” the future prospects of the newspaper industry.² This initial proceeding was followed by a string of others.³ The FCC is now in the midst of its fourth biennial (now quadrennial) review proceeding pursuant to its statutory mandate to eliminate or modify ownership rules that no longer serve the public interest.⁴ None of these proceedings, however, yet has resulted in any actual modification of the rule that was first adopted by the FCC in 1975.

This unresolved state of affairs is not for a lack of recognition by the FCC that changes to the rule are necessary. Throughout its proceedings to reconsider the cross-

² See *Newspaper/Radio Cross-Ownership Waiver Policy*, Notice of Inquiry, 11 FCC Rcd 13,003 (1996); *Capital Cities/ABC, Inc.*, 11 FCC Rcd 5,841, 5,906 (Separate Statement of Chairman Reed Hundt) (1996) (noting that “there is reason to believe that . . . the newspaper-broadcast cross-ownership rule, is right now impairing the future prospects of an important national source of education and information: the newspaper industry”).

³ See, e.g., *1998 Biennial Regulatory Review—Review of the Comm’n’s Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Notice of Inquiry, 13 FCC Rcd 11,276 (1998); *2000 Biennial Regulatory Review*, Staff Report, 15 FCC Rcd 21084 (2000); *Cross-Ownership of Broad. Stations and Newspapers; Newspaper/Radio Cross-Ownership Policy*, Order and Notice of Proposed Rulemaking, 16 FCC Rcd 17,283 (2001); *2002 Biennial Regulatory Review—Review of the Comm’n’s Broad. Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Notice of Proposed Rulemaking, 17 FCC Rcd 18,503 (2002).

⁴ *2006 Quadrennial Regulatory Review—Review of the Comm’n’s Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8,834 (2006) (“2006 Further NPRM”); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, §202(h) (1996) (“1996 Act”).

ownership ban, the agency has recognized repeatedly that the blanket restriction no longer serves the public interest.⁵ Most recently, in its *2003 Omnibus Media Ownership Decision*, the Commission concluded that its decades-old absolute prohibition was not needed to protect either competition or diversity and that the restriction was affirmatively harmful to its localism objectives.⁶ Therefore, the agency concluded, the flat ban no longer serves the public interest.⁷ In reviewing that decision, the U.S. Court of Appeals for the Third Circuit agreed with each of these conclusions, but remanded the specific lines drawn by the Commission in the revised rule it had adopted to replace the absolute ban.⁸ Thus, the Court’s decision confirmed that the FCC was on the right track in its 2003 decision, and that all that remained to be done was to further refine the regulations that will replace the flat restriction.

That directive was issued by the Court of Appeals nearly three years ago. Although the Commission issued a *Further Notice of Proposed Rulemaking* in July 2006⁹ and the comment cycle in that proceeding has been completed, the FCC has yet to issue its remand decision. Accordingly, the future of the cross-ownership rule remains in

⁵ See, e.g., *1998 Biennial Review Report*, 15 FCC Rcd 11,058, 11,102 (¶ 83) (2000) (noting that “there may be circumstances in which the rule may not be necessary to achieve its public interest [objectives]” and committing to “initiate a rulemaking proceeding to consider tailoring the rule accordingly”).

⁶ *2002 Biennial Regulatory Review—Review of the Comm’n’s Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, 18 FCC Rcd 13,620, 13,767 (¶ 368).

⁷ *Id.* at 13,767 (¶ 369).

⁸ *Prometheus Radio Project v. FCC*, 373 F.3d 372, 398 (3d Cir. 2004) (finding that the FCC had provided “reasoned analysis” to support its “determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest”).

⁹ *2006 Further NPRM*, 21 FCC Rcd 8,834.

limbo and, due to a stay issued by the Third Circuit at the time of its remand decision, the now discredited flat ban on cross-ownership remains in place.¹⁰

As NAA has explained throughout its numerous filings in the FCC's media ownership rulemakings,¹¹ it is axiomatic that this uncertain state of affairs has been detrimental to the newspaper and broadcast industries.¹² At the same time that multimedia competitors have been permitted to combine resources and operate in increasingly efficient ways, newspaper publishers and broadcasters remain saddled with a cross-ownership restriction that is patently outdated and has been rejected by both the agency that created it and a reviewing court. As the media industry has continued to evolve, the discriminatory impact of the cross-ownership prohibition has become increasingly pronounced. It is now common knowledge that both traditional newspaper

¹⁰ *Prometheus Radio Project*, 373 F.3d at 382, 435. Even the Media Access Project, an organization that consistently has opposed any relaxation of the cross-ownership rule, has acknowledged that waivers of the flat ban are appropriate in these circumstances. Specifically, in opposing Tribune's 2004 Motion to the Third Circuit requesting a partial lifting of the stay on the new Cross-Media Limits, the Citizen Petitioners (of which Media Access Project was a lead member) noted that "the FCC's waiver process can remediate any . . . harms [Tribune] might face from continued enforcement of the existing rules pending completion of the remand." Opposition of the Citizen Petitioners to Tribune Company's Motion for a Partial Lifting of the Stay, Nos. 03-3388 *et al.* (filed Aug. 13, 2004).

¹¹ See, e.g., Comments of the Newspaper Association of America, MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006) ("*NAA 2006 Media Ownership Comments*"); Reply Comments of the Newspaper Association of America, MB Docket Nos. 06-121, *et al.* (filed Jan. 16, 2007) ("*NAA 2007 Media Ownership Reply Comments*"); Comments of the Newspaper Association of America, MB Docket No. 02-277 (filed Jan. 2, 2003); Reply Comments of the Newspaper Association of America, MB Docket No. 02-277 (filed Feb. 3, 2003); Comments of the Newspaper Association of America, MB Docket No. 01-235 (filed Dec. 3, 2001); Reply Comments of the Newspaper Association of America, MB Docket No. 01-235 (filed Feb. 15, 2002); Comments of the Newspaper Association of America, CC Docket No. 00-175 (filed Oct. 10, 2000); Newspaper Association of America Emergency Petition for Relief, MM Docket Nos. 98-35, 96-197 (filed Aug. 23, 1999); Comments of the Newspaper Association of America, MM Docket No. 98-35 (filed July 21, 1998); Reply Comments of the Newspaper Association of America, MM Docket No. 98-35 (filed Aug. 21, 1998); Comments of the Newspaper Association of America, MM Docket No. 96-197 (filed Feb. 7, 1997); Reply Comments of the Newspaper Association of America, MM Docket No. 96-197 (filed Mar. 21, 1997).

¹² See, e.g., *NAA 2006 Media Ownership Comments*, at Section III; *NAA 2007 Media Ownership Reply Comments*, at Section II.

publishers and broadcasters are facing considerable economic challenges.¹³ Newspapers are experiencing declining advertising revenues and diminishing circulation that are raising red flags about their future profitability.¹⁴ In the face of declining viewership, broadcasters are suffering a similar fate and increasingly have been faced with the prospect of cutting or eliminating costly local news operations.¹⁵

At the same time, the flat ban on cross-ownership remains in place and continues to impede these media from counterbalancing these trends with the efficiencies and content benefits inherent in cross-ownership. Making matters worse, the uncertain status of the rule has left newspaper publishers and broadcasters in doubt for more than 10 years about what types of cross-ownership relationships ultimately will be permissible.

Tribune should not be forced to pay the price for the long period of time in which there has been a lack of regulatory certainty in this area. Viewed from the perspective of the 10-year period during which the rules have been in flux, the agency is now relatively close to issuing final rules in this proceeding. Moreover, Tribune's waiver applications do not involve any newly created newspaper/broadcast combinations. Rather, Tribune is merely asking the agency to maintain the status quo with respect to existing combinations pending the completion of the ownership rulemaking.

¹³ See *NAA 2006 Media Ownership Comments*, at Section III(A)(3); *NAA 2007 Media Ownership Reply Comments*, at Section II(B).

¹⁴ See, e.g., Katharine Q. Seelye, *Drop in Ad Revenue Raises Tough Questions for Newspapers*, N.Y. Times, March 23, 2007, at C2; *NAA 2006 Media Ownership Comments* at Section III(A)(3).

¹⁵ See, e.g., Matea Gold and Thomas S. Mulligan, *TV Takes a Page Out of Newspaper Hardships*, N.Y. Times, Oct. 20, 2006, at A21; Brooks Barnes and Emily Steel, *Lagging Online, TV Stations Get Moving*, Wall St. J., April 11, 2007, at B1 (noting that "TV stations have suffered body blows from the Web" and newscasts "are sinking in the ratings as more viewers go to the Internet [or] cable channels to get weather and sports information"); *NAA 2006 Media Ownership Comments*, at Section III(A)(3).

Further, if these proceedings had been completed in the timeframe originally contemplated by the Commission and by the biennial review mandate of the 1996 Act, Tribune most likely would not need cross-ownership waivers in order to complete the transactions proposed in its applications. As explained in more detail below and in the waiver requests, the newspaper/broadcast combinations at issue here are in some of the nation's largest media markets, and each has resulted in proven public interest benefits in its local community. Given that the FCC is under a judicial mandate to eliminate the existing cross-ownership ban, it is highly probable that most, if not all, of these combinations ultimately will be deemed permissible once the rulemaking is completed.

III. THE TRIBUNE NEWSPAPER/BROADCAST COMBINATIONS ARE NOT ONLY DESERVING OF THE REQUESTED TEMPORARY WAIVERS, BUT ALSO EXEMPLIFY THE REASONS WHY THE FCC SHOULD ELIMINATE THE CROSS-OWNERSHIP BAN IN ITS ENTIRETY.

Throughout the FCC's proceedings to reconsider the newspaper/broadcast ban, NAA repeatedly has demonstrated that the rule is not necessary to protect any of the agency's traditional public interest goals and, in fact, precludes combinations that provide superior services to their local communities.¹⁶ The Tribune combinations at issue in its temporary waiver requests substantiate these showings with real-world evidence and epitomize the reasons why the Commission should eliminate its restrictions on newspaper/broadcast cross-ownership. Granting the modest waivers sought by Tribune will not harm competition or diversity and unquestionably will serve the interests of the consumers in each of the relevant markets.

¹⁶ See *NAA 2006 Media Ownership Comments*, at Section III; *NAA 2007 Media Ownership Reply Comments*, at Sections III-IV.

As shown in detail in the waiver requests, the markets in which Tribune has newspaper/broadcast combinations are hardly suffering from a diversity standpoint. Each of these markets is characterized by dozens of independently owned broadcast and newspaper outlets, and several have more than 100 such outlets.¹⁷ These numbers are conservative, in that they do not even include the profusion of “alternative” media—such as locally oriented web sites, cable channels, and weekly newspapers—available to consumers in each of the markets.

Equally important, the markets at issue here have become *less concentrated* since Tribune began operating a newspaper/broadcast combination. For example, in the six years that Tribune jointly has owned station KTLA(TV) and the *Los Angeles Times*, KTLA’s audience share has decreased from 7 in May 2001 to below 4 in May 2006.¹⁸ Notably, KTLA’s share has decreased by more than 50% since 1975, when the newspaper/broadcast rule was adopted.¹⁹ In addition, a Herfindahl-Hirschman Index (HHI) analysis of newspaper and broadcast media in the Los Angeles market shows that concentration has decreased slightly from a 1,084 in 2002 (which already was close to the HHI threshold of 1,000 that represents an unconcentrated market) to 1,003 in 2005.²⁰

¹⁷ See, e.g., WPIX, Inc. Request for Waiver (“New York Waiver Request”) at 3-4 (New York Designated Market Area (DMA) is served by more than 100 independent broadcasters and daily newspaper publishers); KTLA Inc. Request for Waiver (“Los Angeles Waiver Request”) at 3-4 (noting same for the Los Angeles DMA); WGN Continental Broadcasting Company Request for Waiver (“Chicago Waiver Request”) at 3-4 (noting same for the Chicago DMA); Channel 39 Inc. Request for Waiver (“South Florida Waiver Request”) at 4-5 (noting that the Miami-Ft Lauderdale DMA is served by at least 73 independent broadcasters and daily newspaper publishers); Tribune Television Company Request for Waiver (“Hartford-New Haven Waiver Request”) at 4-5 (noting that the Hartford-New Haven DMA is served by at least 59 independent broadcasters and daily newspaper publishers).

¹⁸ See Los Angeles Waiver Request, at 20.

¹⁹ *Id.*

²⁰ *Id.* at 31.

Similarly, in the Miami-Ft. Lauderdale market, where Tribune has co-owned WSFL(TV) and the *South Florida Sun-Sentinel* for nearly a decade, WSFL is only the seventh-ranked TV station in the market with an audience share that has decreased from 5 to 3.7 over the past five years.²¹ Overall, the HHI in the Miami-Ft. Lauderdale market among traditional media has dropped from 1,351 in 2000 to 1,286 in 2005 (which is 200 points below the national average of 1,495).²²

Accordingly, these combinations provide proof positive that a ban on newspaper/broadcast cross-ownership is not needed to preserve media viewpoint diversity or competition. Given that each of the combinations already has been existence for at least seven years²³ (and one has been in existence for more than 80 years)²⁴ without adverse results, it is hard to imagine any legitimate basis for denying the modest temporary waiver requests sought in the applications.

On the flip side, the waiver requests are strongly supported by evidence of the public interest benefits inherent in cross-ownership. As explained in detail in each of the waiver filings, association with a daily newspaper has enabled the cross-owned broadcast outlets to expand and strengthen their local news and public affairs offerings. For example, several of the television stations significantly increased their weekly hours of

²¹ South Florida Waiver Request, at 20.

²² *Id.* at 26; *see also* New York Waiver Request at 21, 30 (noting that share of cross-owned station WPIX(TV) has decreased from 8 in May 2001 to below 4 in May 2006 and that the HHI among traditional media has declined from 800 in 2000 to 772 in 2005).

²³ *See* New York Waiver Request, at 1 (noting cross-ownership of WPIX(TV) and *Newsday* since March 2000); Los Angeles Waiver Request, at 1 (noting cross-ownership of KTLA(TV) and the *Los Angeles Times* since March 2000); Hartford-New Haven Waiver Request, at 1-2 (noting cross-ownership of WTIC-TV and *Newsday* and the *Hartford Courant* since March 2000).

²⁴ *See* Chicago Waiver Request, at 1-2 (noting cross-ownership of Chicago Tribune and WGN(AM) since 1924).

local newscasts after becoming jointly owned with a co-located daily newspaper;²⁵ one of the stations increased its weekly newscasts by as much as 7.5 hours.²⁶ In Chicago, cross-owned station WGN-TV provides more hours of regularly-scheduled news programming than any other TV station in its DMA, despite the fact that it is not affiliated with a top-four network.²⁷

In addition, access to the journalists and extensive newsgathering resources of the daily newspapers has made it possible for each of the TV and radio stations to offer broader and more in-depth reporting. Collaboration with the daily newspaper has facilitated, among other things, coverage of political debates and other local events,²⁸ public affairs programming,²⁹ investigative news specials,³⁰ and natural disaster reporting.³¹ As Tribune attests, the high caliber of local news and public affairs coverage

²⁵ See, e.g., Hartford-New Haven Waiver Request, at 37 (noting that WTIC and WTXN have expanded their regularly-scheduled newscasts from 10 to 16 hours per week during the period of common ownership with the *Courant*); New York Waiver Request, at 37 (noting that WPIX has expanded regularly-scheduled local newscasts from 24.5 to 27 hours per week during period of cross-ownership with *Newsday*).

²⁶ See Los Angeles Waiver Request, at 37 (noting that KTLA has increased its weekly local newscasts from 24.5 to 32 hours since becoming commonly owned with the *Los Angeles Times*).

²⁷ See Chicago Waiver Request, at 31.

²⁸ See, e.g., New York Waiver Request, at 39 (noting coverage of debate between New York mayoral candidates); Los Angeles Waiver Request, at 39 (noting coverage of 2002 gubernatorial debate); (Chicago Waiver Request, at 32 (noting coverage of 2002 gubernatorial debate); Hartford-New Haven Waiver Request, at 43 (discussing debate coverage and other local events).

²⁹ See, e.g., Hartford-New Haven Waiver Request, at 42, 43 (describing “*Beyond the Headlines*” and “*Student News*” public affairs programs); South Florida Waiver Request, at 31 (describing “*Kids of Character*” program).

³⁰ See, e.g., Los Angeles Waiver Request, at 38 (describing news special on homelessness and gang problems in Los Angeles); South Florida Waiver Request, at 32 (investigation of Project Hope worker’s qualification and crisis counseling grants).

³¹ See, e.g., South Florida Waiver Request, at 31 (describing enhanced hurricane coverage).

offered by each of the stations simply would not have been possible absent cross-ownership.

Given that each of the combinations at issue in the Tribune requests has offered significant and concrete benefits to its local community, it would be affirmatively contrary to the public interest for the Commission to take any action that would require the divestiture of any of these cross-owned properties before the agency concludes its ongoing rulemaking and eliminates the cross-ownership ban.

IV. CONCLUSION

For all of the reasons set forth in its waiver applications, the FCC should grant each of Tribune's requests for waiver pending the outcome of the media ownership rulemaking proceeding. It also should move forward as quickly as possible to complete its media ownership rulemaking and bring much-needed regulatory certainty to newspaper publishers and broadcasters in markets throughout the country.

Respectfully submitted,

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