

individual users can select and move between competing outlets, and search them, instantly.

Second, Petitioners have ignored the host of national and local websites identified by Tribune in each market, which include local, independent websites.¹⁵⁹ The Petitioners also have ignored the local “blog” sites that today readily provide news, information and analysis, or at least are available to do so.

Instead, the Petitioners rely on their characterization of a visit to the first page of the local Yahoo! website in each market to demonstrate that the Internet is only “old media.” This is a vast oversimplification of the options for news and information on the Internet, as well as the manner in which one might search for information of local interest. In addition to the websites and blogs identified by Tribune for each market, all the Petitioners need to do is to learn how to search the Internet. For example, within the last year Tribune demonstrated that the Internet hosts numerous traditional and non-traditional websites that discuss issues the *LA Times* has been accused of dominating. Six months ago, a simple online search for stories related to the King/Drew Medical Center in Los Angeles, using a search engine like Google or Yahoo, made clear that even two years later, there were dozens of other sources of information about the Medical Center, including information on the reforms the Medical Center had undergone since an *LA Times* series in 2004. These sources included (1) The Los Angeles County Department of Health Services that administers the hospital;¹⁶⁰ (2) alternative online newspapers like People’s Weekly World, BlackPressUSA.com, New America Media, LA Voice.org, the Daily Trojan, the Compton Bulletin, Los Angeles City Beat, the Claremont Institute, National Review Online, the

¹⁵⁹ See, e.g., Hartford Cross-Ownership Waiver Request at 33-37.

¹⁶⁰ www.ladhs.org/mlk/ (containing releases “King/Drew officials detail improvements, look forward to future;” “2005 King/Drew Organizational Improvement Plan;” “Recommendation for the Future of King/Drew Medical Center”).

Los Angeles Sentinel, and NPR;¹⁶¹ (3) health coverage organizations and associations like LA Health Action, Hospital Association of California, California Healthline, and the California Medical Association;¹⁶² (4) associations that provide opinion pieces, articles and blogs, like LAMom, National Society for Hispanic Professionals, and the Progressive Jewish Alliance;¹⁶³ and (5) websites of governmental organizations and representatives, including Congresswoman Maxine Waters.¹⁶⁴ The abundance of traditional *and non-traditional* media available on the Internet demonstrates that the numerous and growing alternative sources of information and analysis contribute to the public discourse. In any event, even if the Commission omits the impact of the Internet on diversity here, leaving that analysis for its decision on the 2006 *FNPRM*, Tribune's cross-ownership markets are more than sufficiently diverse in terms of traditional media to warrant grant of the requested interim relief.

¹⁶¹ www.pww.org/article/view/7530/1/28 ("Future cuts proposed for King/Drew Hospital); www.blackpressusa.com/news/Article.asp?SID+3&Title=National=News&NewsID=3454 ("King/Drew May Lose Its Accreditation"); http://news.newamericanmedia.org/news/view_article.html?article_id ("Awaiting Word On King/Drew's Fate"); <http://lavoices.org/article2231.html> ("14 out of 23 Ain't Bad; King/Drew Blows It Again"); www.dailytrojan.com/media/storage/papers679/news/2005/02/10/News (covering issues over loss of accredited status"); www.thecomptonbulletin.com/news03_110806/index.html ("A Financial Stay of Sorts for King/Drew"); www.lacitybeat.com/article.php?id=1418&IssueNum=77 ("Trauma Drama- county supervisors close the King/Drew trauma unit despite community outcry"); www.claremont.org/blogs/blogid.2091/blog_detail.asp ("The King/Drew Scandal and Clarence Thomas: Preposterous Patt Morrison"); www.nationalreviewonline.com/dunphy/dunphy2004 ("Life and Death in South LA").

¹⁶² <http://lahealthaction.org/index.php/library> (articles on LA healthcare, including "Who Will Care For South Central LA?"); www.hasc.org/lott.cfm?ID=83129 ("What to do about King-Drew Medical Center?"); www.californiahealthline.org/index.cfm?Action=dspItem&itemID=1235382&ClassCD=CL115 ("Future of King/Drew Medical Center Considered"); www.cmanet.org/publicdoc.cfm?article_id=370 (LACMA and CMA Statement on King/Drew Medical Center and the threat to LA County Health Care).

¹⁶³ http://lamom.blogs.com/lamom/2005/02/kingdrew_medica.html (former Medical Center nurse comments on practices at hospital); www.nshp.org/health/ (search for stories on King/Drew Medical Center); www.pjalliance.org/article.asp?ID=328&CID=20 ("King/Drew Closing spotlights crisis in healthcare").

¹⁶⁴ http://www.house.gov/apps/list/press/ca35_waters/PR061004_kingdrew.html (Congresswoman Waters' Press Statement on King/Drew).

VII. The Five Cross-Ownership Markets Are Diverse And Competitive And Are Not Harmed, But Best Served, By The Grant Of Temporary Relief.

As Tribune has demonstrated extensively above and in its initial waiver requests, *the requested temporary waivers pending final Commission action on the 2006 FNPRM* are justified based on the state of the rulemaking proceeding, the past findings of the Commission in the *June 2003 Order* that were upheld by the Third Circuit in *Prometheus*, and the fact that all of Tribune's cross-ownerships fall within the scope of the last iteration of the Rule adopted by the Commission.¹⁶⁵ In addition, as Tribune also has demonstrated, numerous public interest benefits result from the cross-ownerships in each market, and a review of traditional media outlets in each market demonstrates that diversity will not be harmed by the continuation of Tribune's current cross-ownerships pending the resolution of the *2006 FNPRM*.

A. New York

In order to avoid the inescapable conclusion that the combination of WPIX and *Newsday* face a diverse market in the nation's top television market, Petitioners attempt to turn the market into the "Long Island" market, ignore every television station and most radio stations in the market, and make the FCC into the Federal Newspaper Commission. But the inescapable conclusion is this: WPIX and *Newsday* compete in the largest market in the country – the greater New York City metropolitan area, with over seven million television households – with WPIX being no better than the fifth-ranked television station and *Newsday* the lowest circulated of at least four major dailies that are published in the New York City area.¹⁶⁶

Notably, Petitioners never mention the number of television stations that serve the New York market, despite Tribune's showing that there are 23 full-service television stations

¹⁶⁵ See *supra* at 12-24.

¹⁶⁶ See *supra* Section V.

licensed to the New York DMA with 17 different owners.¹⁶⁷ At least 13 commercial television stations licensed to the New York DMA have Grade B contours that cover part of Long Island, as do several non-commercial television stations. Even adopting Petitioners' artificially narrow definition of the relevant market for a diversity analysis, which Tribune already has demonstrated is not appropriate,¹⁶⁸ each of these television stations offers an independent "voice" to the area of overlap between WPIX and *Newsday*. Furthermore, with cable and satellite services' penetration rates exceeding 95 percent of the market's households, all of these programming choices are available market-wide. Cable channels contribute to the diversity of the market, providing several additional local news, information, sports and weather stations, and a myriad of entertainment formats.¹⁶⁹

Petitioners' effort to limit the radio stations that are counted in the diversity analysis to those in Nassau and Suffolk counties is illogical, given that WPIX's community of license is outside of those counties. As Tribune has demonstrated through unrefuted expert testimony, there is a plethora of radio voices throughout the New York metropolitan area.¹⁷⁰

¹⁶⁷ New York Waiver Request at 19. There are also 41 low-power television stations that contribute to the diversity of voices in the market, which are similarly completely ignored by the Petitioners. *Id.* at 23, n. 62 & Appendix 1.

¹⁶⁸ *See supra* at 35-40. As further confirmation that the Petitioners' contortions in New York cannot be credited, Tribune notes that Petitioners are incorrect when they assert that *Newsday* is the only newspaper that covers Long Island. Petition at 48. To the contrary, the *New York Times* has a daily circulation of approximately 100,000 in Long Island, the *New York Post* has a daily circulation of approximately 112,000 in Long Island, and the *New York Daily News* has a daily circulation of approximately 147,000 in Long Island. Petitioners are also incorrect when they assert that *Newsday* is exclusively a Long Island newspaper. Petition at 48 & n.55. To the contrary, *Newsday* has a daily circulation of 50,000 and a Sunday circulation of 64,000 outside of Long Island.

¹⁶⁹ *See* New York Waiver Request at 24.

¹⁷⁰ *See* New York Waiver Request, Fratrick Decl. at 7.

Even limiting consideration to the radio stations in the FCC's newly-defined radio market, there are 149 stations with 84 separate owners in the DMA.¹⁷¹

As Tribune's expert, Dr. Mark Fratrick, has shown, the traditional media market in New York is well within the "unconcentrated" range, with an HHI of 772.¹⁷² The market shares of these traditional media are spread among a wide range of well-funded participants, with nine different owners with at least a five percent share of the traditional media market.¹⁷³ Indeed, both the HHI and Tribune's share of the market have decreased during the period of Tribune's common ownership,¹⁷⁴ demonstrating that Tribune's common ownership has not harmed either diversity or competition in the New York market. This absence of concentration does not even account for the additional voices from weekly newspapers, cable channels, or Internet websites.

The Commission has already concluded that the New York market is diverse and competitive.¹⁷⁵ In fact, the Commission has previously held that a *permanent* waiver in this market "is unlikely to have a significant impact on our diversity and competition concerns underlying the cross-ownership rule."¹⁷⁶ The Petitioners' claims to the contrary only highlight the lack of credibility of their arguments.

With regard to *The Advocate* and *Greenwich Time*, both Tribune-owned newspapers published in Connecticut within WPIX's Grade B contour, Tribune has amended its application to reflect that its attempt to sell these newspapers to Gannett Co. has been terminated.

¹⁷¹ The Commission previously has found the New York radio market to be diverse. *Stockholders of CBS*, 11 FCC Rcd. at 3772.

¹⁷² See New York Waiver Request, Fratrick Decl. at 12-14.

¹⁷³ *Id.* at 8.

¹⁷⁴ *Id.* at 10, 14.

¹⁷⁵ *Fox Television Stations, Inc.*, 8 FCC Rcd. 5341 (1993)

¹⁷⁶ *Id.* at 5351.

While Tribune had contracted with Gannett to sell the newspapers, a court held that Gannett would be required to assume a current union contract. Gannett has elected not to assume the union contract, and therefore has terminated the sales contract for the newspapers. Tribune is making efforts to sell these newspapers again, and has requested temporary relief pending the rulemaking to permit it to continue these efforts. Both *The Advocate* and *Greenwich Time* are on the fringe of WPIX's service area, and their communities receive a multitude of voices. Given the showing above and in the New York Waiver Request, a temporary waiver pending final Commission action on the 2006 FNPRM is warranted.

B. Los Angeles

The Petitioners engage in a half-hearted attempt to claim that the Los Angeles market is not sufficiently diverse. They are forced, however, to acknowledge the existence of 21 separate television broadcasters, six of which independently present a "significant amount of regularly scheduled local news programming."¹⁷⁷ The fact that 19 of the 26 television stations have less than one percent market share is only further evidence that no one station – including KTLA – has a competitive advantage, and in fact is a testament to the number and diversity of sources from which individuals in the Los Angeles community can choose.¹⁷⁸

Furthermore, in another attempt to turn the FCC into the Federal Newspaper Commission, the Petitioners make the bizarre assertion that only four newspapers other than the *LA Times* should be considered in the diversity analysis, because only those four newspapers

¹⁷⁷ Petition at 55.

¹⁷⁸ The Commission previously has found the Los Angeles market to be diverse and competitive. *Application of Fouce Amusement Enterprises*, 12 FCC Rcd. 22009, 22013 (1997); *Stockholders of CBS*, 11 FCC Rcd. at 3772.

“serve the same multi-county geographic area as the *LA Times*.”¹⁷⁹ There is no support for this narrow definition, which admittedly ignores newspapers that serve significant portions of greater Los Angeles, or other communities served by KTLA or the *LA Times*.¹⁸⁰ The Petitioners also ignore the radio stations in Los Angeles, most likely recognizing that they cannot dispute Tribune’s expert testimony that the Los Angeles radio market is one of the most vibrant and competitive in the nation.¹⁸¹

As Dr. Fratrick has shown, traditional media in Los Angeles were approaching the unconcentrated level in 2005, with an HHI of 1003.¹⁸² This number has decreased consistently in the years of Tribune’s common ownership, and is now 946, well within the unconcentrated range of 1000 or below.¹⁸³ Furthermore, as Dr. Fratrick demonstrated, the market shares of these traditional media are spread among a wide range of well-funded participants, with nine separate owners with at least five percent of the advertising revenues in the market.¹⁸⁴ Tribune’s share of revenue in the market has decreased steadily through its years of common ownership, demonstrating a distinct lack of competitive advantage in Los Angeles.¹⁸⁵ And, as mentioned above, none of this analysis even takes into account advertising revenues that are increasingly diverted to non-traditional media sources, including cable channels, satellite radio stations, and the Internet.

¹⁷⁹ Petition at 54.

¹⁸⁰ *Id.* n.61.

¹⁸¹ Los Angeles Waiver Request, Fratrick Decl. at 7. In fact, the Commission previously has found the Los Angeles radio market to be diverse. *Stockholders of CBS*, 11 FCC Rcd. at 3772.

¹⁸² Los Angeles Waiver Request, Fratrick Decl. at 12.

¹⁸³ See Supplemental Declaration of Mark Fratrick, ¶ 4.

¹⁸⁴ Los Angeles Waiver Request, Fratrick Decl. at 8.

¹⁸⁵ *Id.* at 10.

C. Chicago

Tribune has commonly owned the *Chicago Tribune*, WGN-TV, and WGN(AM) since 1948. These media properties are institutions in the Chicagoland area, well known for their provision of quality news and public service to the Chicago community. In the almost 60 years of Tribune's common ownership in the third largest market in the country, the number and variety of outlets from which the public can choose have grown exponentially, growth that has been in no way harmed or stifled as a result of Tribune's common ownership. The Petitioners' efforts to force divestiture of one of the oldest local news and information institutions in the nation prior to the Commission's resolution of the 2006 FNPRM is not only contrary to the standard for waivers articulated by the Commission, but is contrary to the public interest.

The Petitioners attempt to claim that "the number of independent sources of local news is relatively limited."¹⁸⁶ At the same time, however, the Petitioners are compelled to recognize that there are at least 10 independent television broadcasters that earn a 1 share or better, and nine independent voices providing local news.¹⁸⁷ This is in addition to the six television stations the Petitioners incorrectly ignore that provide a voice in the market.¹⁸⁸ Similarly, the Petitioners concede that even under their limited view of the relevant market, there are 125 radio stations serving the community, with at least 15 providing news.¹⁸⁹ This is in

¹⁸⁶ Petition at 31.

¹⁸⁷ *Id.* at 26.

¹⁸⁸ Tribune does not claim that only stations with a 1 share or greater are relevant to a diversity analysis when it includes only those stations in an illustrative chart in its waiver request. See Petition at 26. To the contrary, as Tribune states in its Chicago Waiver Request, there are 16 television stations in the market, 14 of which are independently owned, all of which are voices for purposes of a diversity analysis. See Chicago Request for Waiver at 18-19.

¹⁸⁹ Petition at 27-28. The Petitioners' speculative comments in this regard about what type of a news station is "likely" to broadcast or what type of news is "oftentimes" covered should be dismissed as speculative and unsupported. See 47 U.S.C. § 309(d)(1). Such an approach raises serious First Amendment concerns that have never before been supported by judicial opinion.

addition to the 42 other radio stations that serve the Chicagoland area that the Petitioners ignore based on their incorrect market definition.¹⁹⁰

The Petitioners also are forced to recognize that “there are... 5 independent daily newspaper voices in the Chicago market,” although they would replace the ellipsis with the word “only.”¹⁹¹ Here, too, the Petitioners unjustifiably discount nine newspapers that concededly serve areas of the market served by WGN-TV and WGN(AM).¹⁹² And the Petitioners’ attempt to claim that a waiver is not warranted because the *Chicago Tribune* has a circulation that is more than that of the *Chicago Sun-Times* and the *Arlington Heights/Daily Herald* combined ignores the legendary competitive rivalry between the *Tribune* and the *Sun-Times*, as well as numerous other daily publications that are voices in the Chicago market.

The Commission has already concluded that the Chicago market was sufficiently diverse to justify a permanent waiver of the Rule.¹⁹³ Specifically, in that case, the Commission considered that granting the waiver “maintain[ed] a continuity of ownership and [brought] total local ownership to Chicago.”¹⁹⁴ The Commission should grant the requested waiver with respect to WGN-TV, WGN(AM), and the *Chicago Tribune* to permit the continuation of a long-standing local media institution in Chicago.

D. Miami

In order to avoid the inescapable conclusion that the combination of WSFL and the *South Florida Sun-Sentinel* does not present any threat to diversity, the Petitioners ignore

¹⁹⁰ Chicago Waiver Request at 25. The Commission previously has found Chicago to have a diverse radio market. *Stockholders of CBS*, 11 FCC Rcd. at 3772.

¹⁹¹ Petition at 29.

¹⁹² *Id.*

¹⁹³ *Field Communications Corporation*, 65 F.C.C.2d 959 (1977).

¹⁹⁴ *Id.* at 961.

both WSFL's community of license, Miami, as well as Dade County, where more than two-thirds of WSFL's viewers are located.¹⁹⁵ Instead, the Petitioners focus on Broward County and a "small portion of Palm Beach County."¹⁹⁶

But as Tribune has shown, the Petitioners' contorted attempt to alter geographic market realities must fail.¹⁹⁷ And when the actual South Florida media market is reviewed, the inescapable conclusion is clear. Considering just the Miami DMA, WSFL is the seventh-ranked television station competing in a market with at least 18 other television stations, 11 separate owners, and nine significant television news operations. Even according to the Petitioners, the *Sun-Sentinel* competes with daily newspapers published by two different entities; these two daily newspaper publishers include one that the Petitioners conspicuously avoid mentioning outside of footnotes – the dominant *Miami Herald*.¹⁹⁸

If the Petitioners' argument proves anything, it is that the South Florida media market does interweave the Miami and West Palm Beach DMAs, and that WSFL and the *Sun-Sentinel* arguably operate in different competitive markets. Indeed, as Tribune has demonstrated, less than one percent of the *Sun-Sentinel*'s circulation enters Dade County, the home of WSFL and almost 70 percent of its viewers.¹⁹⁹

The Petitioners' effort to eliminate radio stations licensed to communities in Dade County from consideration in the diversity analysis is ludicrous, given that WSFL's community

¹⁹⁵ Petition at 33.

¹⁹⁶ *Id.*

¹⁹⁷ *See supra* Section V.

¹⁹⁸ The fact that Petitioners harp on the dominance of Tribune newspapers such as the *LA Times* or the *Chicago Tribune* when it suits them, and ignores the dominant newspapers owned by other publishers in markets where it does not suit them, such as in Miami and New York, highlights the disingenuous nature of their argument.

¹⁹⁹ Miami Waiver Request at 24.

of license is in Dade County.²⁰⁰ It is similarly ridiculous to ignore radio stations licensed to the West Palm Beach DMA that reach nearly 60 percent of the population in WSFL's community of license.²⁰¹ Whatever methods Petitioners employ to try to artificially shrink the relevant market, with over 131 radio stations serving South Florida, there is a variety of diverse radio voices from which the public can choose.

Finally, the Commission should remember that it was in the context of this very case of cross-ownership that the Commission suggested the need for a reevaluation of the 1975 Rule (as opposed to a permanent waiver of that Rule).²⁰² As the Mass Media Bureau concluded in 1998, at a much earlier stage in its ongoing review of the Rule, a temporary waiver pending completion of the rulemaking proceeding will not adversely affect the South Florida media market.²⁰³

E. Hartford

The Petitioners mischaracterize the history of Tribune's common ownership in Hartford in several material respects, initially arguing that Tribune has "once again" failed to demonstrate that a temporary waiver is justified.²⁰⁴ In fact, Tribune has justified its request for a temporary waiver in Hartford on several occasions, and in fact has been operating pursuant to such temporary waivers since 2000.²⁰⁵ As demonstrated in the Hartford Cross-Ownership Waiver Request, Tribune is entitled to a temporary waiver pending final action on the

²⁰⁰ Petition at 35.

²⁰¹ Miami Waiver Request at 25.

²⁰² *Stockholders of Renaissance Communications Corporation*, 12 FCC Rcd. 11866 (1998), *aff'd sub. nom. Tribune Co. v. FCC*, 133 F.3d 61 (D.C. Cir. 1998).

²⁰³ *Stockholders of Renaissance Communications Corporation*, 13 FCC Rcd. 4717 (MMB 1998).

²⁰⁴ Petition at 39.

²⁰⁵ *Counterpoint I*, 16 FCC Rcd. 15044 (2001); *Counterpoint II*, 17 FCC Rcd. 3243 (2002); *Counterpoint III*, 20 FCC Rcd. 8582 (2005).

Commission's 2006 FNPRM to continue common ownership of WTIC, WTXX, and the *Hartford Courant*.

The Commission has on several occasions evaluated Tribune's efforts to sell WTXX and to serve the public interest by keeping it on the air in the interim, and found those efforts to be satisfactory such that a continued temporary waiver was justified.²⁰⁶ To this date, Tribune is engaged in such efforts, but has been unable to secure an offer that provides anything near the value of its investment in WTXX or that is not subject to unacceptable conditions that lower the value of the offer, are not in the public interest, and in some cases would not alleviate Tribune's attributable interest in the station.²⁰⁷

As with the other markets, the Petitioners must concede the presence of numerous distinct voices, even using their artificially narrow definition of the relevant market. In Hartford, the Petitioners concede that there are 11 stations with seven different licensees, and six independent voices providing news programming.²⁰⁸ The Petitioners also concede the presence of five daily newspapers published in the *Courant's* circulation area, with three distinct voices.²⁰⁹ Petitioners ignore the 10 other newspapers in the DMA, as well as the numerous other voices in the market as a result of Hartford's proximity to the busy northeast corridor, including stations in New York, Boston and Springfield.²¹⁰

²⁰⁶ *Counterpoint II*, 17 FCC Rcd. 3243 (2002); *Counterpoint III*, 20 FCC Rcd. 8582 (2005).

²⁰⁷ Hartford Cross-Ownership Waiver Request at 49-51; *see also* Hartford Failing Station Waiver Request at 8-15.

²⁰⁸ Petition at 41.

²⁰⁹ *Id.* at 42-43.

²¹⁰ Hartford Cross-Ownership Waiver Request at 23-24.

Tribune seeks here only a temporary waiver under the standard articulated by the Commission in 1998. While Tribune recognizes that Hartford is a smaller market than the other four markets in which it holds cross-ownerships, Tribune's cross-ownership in Hartford complies with the rule adopted in the 2003 Order now on remand for review in the 2006 FNPRM. While Tribune continues to market WTXX and entertain offers for the duopoly, the requested waiver pending the rulemaking is warranted given the public interest benefits Tribune provides by maintaining quality news and public affairs programming on WTIC and WTXX.

VIII. WTXX Is Entitled To A Failing Station Waiver.

The Petitioners make no real effort to refute Tribune's showing that it is entitled to a failing station waiver to permit continued common ownership of WTIC and WTXX in Hartford.²¹¹ As Tribune demonstrated, the Commission employs a four-factor test in evaluating failing station waiver requests: (1) at least one of the merging stations has all-day audience share below four percent; (2) the financial condition of one of the stations is poor; (3) the merger will produce public interest benefits; and (4) the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station.²¹² The Petitioners' argument addresses only the fourth factor, thereby conceding the other showings by Tribune.

A. The Petitioners Do Not Challenge Tribune's Economic or Public Interest Showing.

As demonstrated by Tribune, the current financial condition of WTXX is poor.²¹³ WTXX has incurred over \$4 million in net losses over the last three fiscal years, and has suffered

²¹¹ Petition at 57-58.

²¹² Hartford Failing Station Waiver at 3.

²¹³ *Id.* at 4-5.

negative cash flows from operations each of the last three fiscal years.²¹⁴ Over that same time period, Tribune demonstrated that advertising revenues have been insufficient to cover WTXX's operating costs.²¹⁵ The Petitioners do not challenge this showing.

Similarly, Tribune demonstrated the numerous public interest benefits that have resulted from Tribune's common ownership of WTIC and WTXX.²¹⁶ This has included significant capital expenditures in WTXX's physical plant and build-out of its DTV facility, the addition of a newscast on WTXX, the increase in coverage of issues of importance to the public in Waterbury, WTXX's city of license, and the expansion of news and public affairs specials aired on both stations.²¹⁷ The Petitioners do not challenge this showing.

B. The Petitioners Have Not Adequately Refuted Tribune's Demonstration That There Is No Alternative Buyer For WTXX.

Tribune made an extensive showing in its waiver request regarding its efforts to sell WTXX to another entity.²¹⁸ The Petitioners purport to challenge this showing by incorporating pleadings from another adjudicatory proceeding.²¹⁹ Not only is it inappropriate to do so, but the Petitioners also fail to make clear precisely what they are incorporating from prior pleadings and which of Tribune's illustrations of its efforts to sell to which they object. And to the extent the Petitioners believe that they have demonstrated that there is in fact a reasonably available candidate other than Tribune to operate WTXX, they have not made any such

²¹⁴ *Id.* at 4.

²¹⁵ *Id.*

²¹⁶ *Id.* at 5-8.

²¹⁷ *Id.*

²¹⁸ *Id.* at 8-15.

²¹⁹ Petition at 58.

demonstration, certainly in this proceeding, much less in the proceeding involving the license renewal application of WTXX.

As Tribune has shown, the few offers for WTXX that Tribune has received to date have not approached the value of Tribune's investment in WTXX. Furthermore, these offers have been subject to unacceptable conditions that markedly lower the value of the offer and, in some cases, are simply outside of Tribune's control or contrary to the public interest. For example, requiring a "put" option that would essentially mean that Tribune would have to buy back the station, or requiring Tribune to continue to operate the station pursuant to a marketing agreement, essentially make the offers for WTXX unacceptable.²²⁰ The Petitioners' conclusory statements in this proceeding are not "specific allegations of fact" that present a prima facie case that the buyer is not the only reasonably available candidate willing and able to acquire and operate WTXX.²²¹

IX. A Commission Grant Of The Applications With A Temporary Waiver Requiring Divestiture Is A Denial Of Tribune's Applications.

The Commission must not grant, as urged by the Petitioners, any waiver subject to the use of a divestiture trust.²²² The Petitioners' claims that Tribune has engaged in a "clear pattern of conduct" that warrants the establishment of "strict irrevocable divestiture trusts" is unsupported and contrary to Commission precedent.²²³ Contrary to the Petitioners' baseless allegations, Tribune has followed the policies and procedures set forth in the Communications Act and the FCC's rules and orders in all of its cross-ownership markets, even as its businesses

²²⁰ Hartford Failing Station Waiver Request at 8-15.

²²¹ *Cf.* 47 U.S.C. § 309(d).

²²² Petition at 58-59.

²²³ *Id.* at 58.

have suffered from uncertainty and delay throughout the decade-long effort of the Commission to review and replace the 1975 Rule.²²⁴ In Hartford, where Tribune has made substantial efforts to divest WTXX, the Commission has reviewed Tribune's efforts to sell and found them reasonable.²²⁵ Compounding the outrageousness of their demand, the Petitioners have not even identified which assets should be the subject of such an irrevocable trust. In its transfer of control applications, the Applicants have not asked for temporary waivers for the purpose of divesting cross-owned stations. Accordingly, a grant of the transfer of control applications subject to such a waiver condition would be the same as a denial of the applications.²²⁶

X. Conclusion.

By its waiver requests, Tribune has not asked for extraordinary relief, but simply has sought something to which it is entitled under the standard articulated for "interim" waivers by the Commission: a temporary waiver pending final action on the Commission's 2006 *FNPRM*. Pursuant to these waivers, Tribune will not be creating any new cross-ownership, but instead will be maintaining the *status quo* while the Commission completes a task that it initiated and committed to accomplish many years ago, and which has been central to Tribune's business for much of that period of uncertainty. Under any reasonable view of the media marketplace generally and of Tribune's markets specifically, the public will not be harmed during the time it takes the Commission to complete this task, but instead will be benefited through the continued public service provided by Tribune's programming efforts. Tribune's cross-owned properties are

²²⁴ See *supra* at 6-9 & nn.10-12.

²²⁵ See *supra* at 7 n.12 and Section VIII; *Counterpoint III*, 21 FCC Red. at 8587-88.

²²⁶ Notwithstanding this fact, Tribune has continued its efforts to sell the Connecticut newspapers and has continued to fulfill its commitment in Hartford with respect to WTXX and the WTIC/WTXX duopoly. At this stage in the proceeding, however, Tribune should not be forced to sell these media properties below market value.


award-winning producers of news and public affairs programming. They provide precisely the kind of public service that the Commission seeks to foster in its broadcast licensees.

When the Commission concludes this rulemaking, Tribune, under the control of the transferees, will comply with whatever final rules result, at that time best providing for the future operation of Tribune's media properties and the employees that produce and manage them. The Petitioners have not seriously challenged the public interest benefits inherent in this result, nor could they. Instead, relying on a world view that at best is over three decades old, the Petitioners have provided unsupportable assertions regarding the conduct of Tribune, the nature of the relief it is seeking, the results of the grant of any such relief, the potential outcome of the proceeding, and the very nature of Tribune's markets. In comparing the extensive, fact-laden demonstration of Tribune with the conclusory suppositions of the Petitioners, it should be clear that Tribune is entitled to the requested temporary waivers pending final action on the *2006 FNPRM*.

For the foregoing reasons, Tribune requests that the Petition to Deny be denied,
and that its applications, and the included requests for waiver, be granted.

Respectfully submitted,

TRIBUNE COMPANY

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Date: June 26, 2007

SUPPLEMENTAL DECLARATION OF MARK R. FRATRIK, Ph.D.

1. I am Mark R. Fratrik, Ph.D., Vice President of BIA Financial Network.
2. I submitted a Declaration in support of the application of Tribune Company to transfer control of KTLA Inc., licensee of KTLA(TV), Los Angeles, California, on May 1, 2007 ("Initial Declaration").
3. In my Initial Declaration, I calculated the Herfindahl-Hirschman Index ("HHI") for Los Angeles' traditional media market, including newspapers, radio stations, and television stations, at 1003. In making this calculation, I utilized revenue estimates for Los Angeles' traditional media market from 2005.
4. I have now calculated the HHI for the Los Angeles traditional media market using revenue estimates for 2006. The HHI in Los Angeles' traditional media market is 946 for calendar year 2006.

I declare under penalty of perjury that the foregoing is true and correct.



Date: June 26, 2007

DECLARATION OF CRANE H. KENNEY

I, Crane H. Kenney, Senior Vice President, General Counsel and Secretary of Tribune Company, declare under penalty of perjury that the foregoing Opposition to Petition to Deny is true and correct to the best of my knowledge and belief.

Date: 6/25/07

Crane H. Kenney

CERTIFICATE OF SERVICE

I, Jennifer Tatel, hereby certify that on this 26th day of June, 2007, I caused true and correct copies of the foregoing Opposition to Petition to Deny to be served by First Class

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