

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

| | | |
|---------------------------------|---|------------------|
| In the Matter of |) | |
| |) | |
| Applications for Consent to the |) | MB Docket 07-119 |
| Transfer of Control of Tribune |) | |
| Company from Shareholders of |) | |
| Tribune Company to Samuel Zell |) | |

EMERGENCY MOTION TO SUSPEND PROCESSING OF APPLICATIONS

Office of Communication of the United Church of Christ, Inc. and Media Alliance (“Petitioners”) by their attorneys, Media Access Project and the Institute of Public Representation, respectfully submit this emergency motion to suspend processing of the above-captioned applications for transfer of control of the Tribune Company.

As described below, Shareholders of Tribune Company and Samuel Zell (“Applicants”) have twice violated the Commission’s *ex parte* rules and the instructions issued by a Commission *Public Notice*. In light of these violations, Petitioners ask that the Commission suspend action until one week after the Applicants cure their violations by providing full notice in compliance with 47 CFR §1.1206(b)(2). This will afford Petitioners the opportunity to know the contents of presentations made to the Commission’s staff and to request and attend meetings with the affected decisionmaking personnel.

THE EX PARTE RULES.

47 CFR §1.1206(b)(2) governs the submission of memoranda describing the contents of oral *ex parte* presentations. It provides that such memoranda must be filed within one day after the presentation, and that “The memorandum...shall clearly identify the proceeding..., *including the docket number*, if any,...” (Emphasis supplied.) As to the substance of those memoranda, it states that

Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. *More than a one or two sentence description of the views and arguments presented is generally required.*

Id. (Emphasis supplied.)

47 CFR §1.1206(b)(4) directs the Commission's Secretary to "place in the public file or record of the proceeding...memoranda reflecting oral *ex parte* presentations."

BACKGROUND

By *Public Notice* dated May 10, 2007 (DA 07-1947), the Media Bureau afforded "permit-but-disclose" status to this proceeding, invoking thereby the *ex parte* provisions set forth in Section 1.1206 of the Commission's rules.

By *Public Notice* dated June 7, 2007 (DA 07-2387), the Media Bureau assigned Docket Number 07-119 to this proceeding. The *Public Notice* directed that "All parties filing pleadings or other documents in this proceeding must reference this docket number in their submissions...."

On November 6, 2007, Petitioners sent a letter to the Chairman and each Commissioner inquiring about reports that the Applicants had communicated certain information to the Commission and noting the absence in the docket of notices of any such communications in light of the requirements of the Commission's *ex parte* rules. (See Attachment A).

On or about November 8, 2007, there appeared on the Commission electronic docket two notices of oral *ex parte* presentations, which evidently had been filed non-electronically with the Secretary on or about September 18, 2007 and October 11, 2007. The notices disclose that on September 17, counsel and a representative of Tribune Company met with the Chairman's Senior Legal Advisor and on October 10, the same individuals met with Commissioner Copps' Senior Legal Advisor. (Copies of the letters are contained in Attachment B.) Significantly, the two notices did not show the relevant docket number (Docket 07-119).

The September 18, 2007 notice reads in its entirety as follows:

This is to advise you, in accordance with Section 1.1206 of the FCC's Rules

and the Commission's Public Notice, No. DA 07-1947 (released May 10, 2007), that on September 17, 2006, Shaun Sheehan of Tribune Company, Clark Wadlow of Sidley Austin LLP and the undersigned [John Feore] met with Michelle Carey, Senior Legal Advisor to FCC Chairman Martin, to review the status of the applications seeking consent for the transfer of control of Tribune Company. We discussed the pending temporary waiver requests, the timing of Commission processing of the applications and the importance of prompt Commission action in light of the current competitive environment.

The October 11, 2007 notice was identical, except that it referred to a different meeting with a different member of the Commission staff.

Not surprisingly, because the two notices did not properly identify themselves as relating to Docket 07-119, the Office of the Secretary did not file them in the record of this case on the Commission's Electronic Comment Filing System. Thus, even diligent parties routinely examining the electronic docket remained unaware of the existence of these two notices.

DISCUSSION

The Commission's *ex parte* rules are a vital protection for the public, especially those without resources to have numerous attorneys and paralegals monitor Commission proceedings. They assure transparency by giving notice to the public of what has been said to Commission decisionmakers and, hence, the opportunity to make rebuttal arguments in a timely fashion.

The violations which have been committed here are neither complicated nor ambiguous. The net effect of these transgressions was that Petitioners were left in the dark as to the existence and substance of two potentially significant meetings during which the Applicants made presentations going to the merits of this case. Petitioners have been harmed by the lack of adequate notice because it leaves them unable to address whatever arguments may have been made with respect to the merits of the applications as well as the timing of the Commission's action thereupon. Knowing what was said about the timing of Commission action is especially important in light of the fact that there has been a great deal of public discussion about the relationship of the pendency of these applications to the Commission's consideration of larger media ownership policy issues.

First, although the Commission directed that the Docket Number for this proceeding be placed on all submissions, the Applicants failed to do so on two occasions. While this omission may seem hypertechnical to a casual observer, it was actually quite significant. The absence of a Docket Number left the Office of the Secretary unable to identify the proceeding to which the notices applied and had the effect of precluding their placement in the Commission's Electronic Comment Filing System, the means by which Petitioners and others are able to learn of the such filings.

Second, the Applicants' two notices plainly fail to comply with the requirement that they contain more than "merely a listing of the subjects discussed" and that "More than a one or two sentence description of the views and arguments presented is generally required." See 47 CFR §1.1206(b)(2). Each notice contains one sentence which consists *only* of "a listing of the subjects discussed...." Neither discloses what was said about the Applicants' waiver requests. Neither discloses what was said about "the timing of the Commission processing" or about the "importance of prompt Commission action...." Without such information, Petitioners are left completely unable to respond to Applicants, much less rebut, whatever may have been said.

RELIEF REQUESTED

The violations are clear, and the harm is evident. So is the remedy. Accordingly, Petitioners ask that the Commission suspend processing of the pending applications in this docket until such time as the Applicants file notices which comply with 47 CFR §1.11206(b)(2) by providing parties and the public a meaningful and complete summary of the matters discussed in the Applicants' presentations to the Commission staff, *i.e.*, "[m]ore than a one or two sentence description of the views and arguments presented...." 47 CFR §1.1206(b)(2). Once those memoranda are filed, Petitioners and other parties should be afforded one week to request meetings with the same Commission staff members to respond and rebut to the arguments which were made during the Applicants' two presentations.

CONCLUSION

WHEREFORE, Petitioners ask that the Commission suspend processing of the pending Applications until the Applicants come into full compliance with the Commission's rules and afford Petitioners and other parties one week within which to meet with Commission staff to respond and rebut such arguments as were made in the Applicants' presentations to the Commission staff, and afford all such other relief as may be just and proper.

Respectfully submitted,

/s/

Andrew Jay Schwartzman

/s/

Parul Desai

Media Access Project
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/s/

Angela J. Campbell

/s/

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Counsel for UCC and Media Alliance

November 9, 2007

Attachment A

November 6, 2007



Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Docket 07-119
Samuel Zell/Tribune Company

Dear Mr. Chairman and Commissioners:

I write to seek confirmation that no member of the Commission or its staff has received any oral or written *ex parte* communications from the applicants in the above-captioned case pertaining to the need for Commission action by a date certain.

The attached article from the November 3, 2007 issue of the *Financial Times* is but one of several similar reports in the mass media. It states that "Tribune has warned the FCC that the take-over is at risk of collapsing if it does not receive regulatory clearance in the next two weeks."

However, if such communications did take place, they should have been disclosed. However, there is no notice or other written filing on the record in this proceeding indicating that any such communication has taken place. Other than these press reports, my clients have no reason to believe that the applicants have communicated such information to any decisionmaking personnel at the Commission.

I note that the transaction in question has been treated by the Commission as a "permit but disclose" proceeding. Thus, pursuant to 47 CFR §1.1206, any communications of the kind described in these reports would be subject to disclosure. See 47 CFR §1.1202(a) (defining *ex parte* presentations as including those "which state[] why timing is important to a particular party or indicates a view as to the date by which a proceeding should be resolved,...")

Because of the uncertainty created by these press reports and the importance of the matter, I do wish to seek confirmation from you and the Commission staff as to whether such information has in fact been transmitted to the Commission.

Respectfully submitted,

Andrew Jay Schwartzman
Counsel to Petitioners UCC and Media Alliance

cc. via email Media Bureau Chief Monica Desai
General Counsel Sam Feder
Deputy General Counsel Matthew Berry
R. Clark Wadlow

Stand-off threatens Tribune deal

By Stephanie Kirchgaessner in Washington

Financial Times

updated 5:43 a.m. ET, Sat., Nov. 3, 2007

Tribune Company and the chairman of the Federal Communications Commission are locking horns over the proposed \$8.2bn buy-out of the media group by Sam Zell, the real estate entrepreneur, in a stand-off that threatens to derail the deal.

Tribune has warned the FCC that the takeover is at risk of collapsing if it does not receive regulatory clearance in the next two weeks.

But Kevin Martin, the Republican chairman of the commission, in private conversations, has said he is unwilling to address the matter before December 18, the date he has set for a vote on industry-wide changes to media ownership rules.

If the buy-out fails to close by the end of the year, the newspaper publisher's new owners will not be able to register the company for tax-exempt status next year, a crucial element of the deal.

The price of the \$34-a-share offer will also increase because of additional payments based on an 8 per cent interest rate, which would take effect after January 1.

Tribune says it needs at least 20 days between receiving FCC approval and closing the deal. But Mr Martin is sceptical about Tribune's assertions.

Shaun Sheehan, Tribune's vice-president and a lobbyist in Washington, says: "We're hopeful but we're running out of time."

In order to close the transaction in time, Tribune, publisher of the Los Angeles Times, needs the commission to grant its new owner temporary waivers that will allow it to bypass media ownership restrictions.

Without the waivers, the new owners would be in violation of rules that forbid any single company from owning both a newspaper and broadcaster in the same market. Mr Martin has so far refused to bring the deal up for a vote although he has the necessary support of his two Republican colleagues.

Instead, in a move that some say reflects Mr Martin's reputation for being a calculating political operator, the commission chairman is pressing forward the broader media ownership overhaul.

People close to the FCC say they believe Mr Martin is holding up the Tribune deal for political reasons.

The transaction has won the backing of a handful of Democrats and they say Mr Martin believes delaying the deal will divide the Democrats and prevent them mobilising against the December 18 vote on media ownership, which would negate the need for a separate Tribune waiver.

Mr Sheehan said: "The Democratic majority is butting up against the regulatory objectives of the Republican chairman of the FCC. My very real concern is [Tribune] being thrown overboard in that very macho stare-down."

Mr Martin's office declined to comment.

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URL: <http://www.msnbc.msn.com/id/21603440/>

Attachment B

September 18, 2007

VIA HAND DELIVERY

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

STAMP & RETURN

Re: Notification of Ex Parte Communication
FCC Public Notice No. DA 07-1947

FILED/ACCEPTED

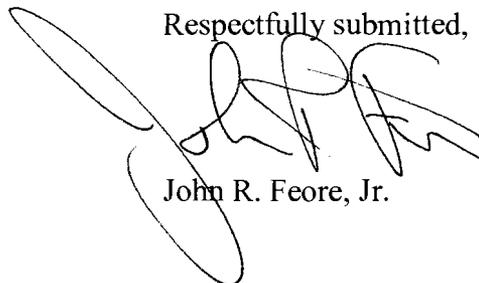
SEP 18 2007

Federal Communications Commission
Office of the Secretary

Dear Ms. Dortch

This is to advise you, in accordance with Section 1.1206 of the FCC's Rules and the Commission's Public Notice, No. DA 07-1947 (released May 10, 2007), that on September 17, 2006, Shaun Sheehan of Tribune Company, Clark Wadlow of Sidley Austin LLP and the undersigned met with Michelle Carey, Senior Legal Advisor to FCC Chairman Martin, to review the status of the applications seeking consent for the transfer of control of Tribune Company. We discussed the pending temporary waiver requests, the timing of Commission processing of the applications and the importance of prompt Commission action in light of the current competitive environment.

Respectfully submitted,



John R. Feore, Jr.

JRF/lswl

cc: Michelle Carey, Esq.
David Roberts, Esq.
Best Copy and Printing, Inc.

October 11, 2007

VIA HAND DELIVERY

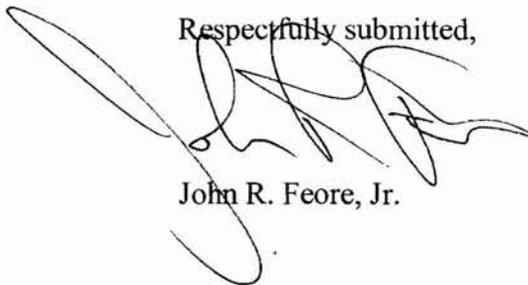
Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notification of Ex Parte Communications
FCC Public Notice No. DA 07-1947

Dear Ms. Dortch:

This is to advise you, in accordance with Section 1.1206 of the FCC's Rules and the Commission's Public Notice, No. DA 07-1947 (released May 10, 2007), that on October 10, 2007, Shaun Sheehan of Tribune Company, Clark Wadlow of Sidley Austin LLP and the undersigned met with Rick Chessen, Senior Legal Advisor to Commissioner Michael Copps, to review the status of the applications seeking consent for the transfer of control of Tribune Company. We discussed the request for temporary waivers of the cross-ownership rule, the timing of Commission processing of the applications and the extreme importance for prompt Commission action in light of the current competitive environment.

Respectfully submitted,



John R. Feore, Jr.

JRF/lswl

cc: Rick Chessen, Esq.
David Roberts, Esq.
Best Copy and Printing, Inc.

STAMP & RETURN

FILED/ACCEPTED

OCT 11 2007

Federal Communications Commission
Office of the Secretary

Certificate of Service

I, Andrew Jay Schwartzman, hereby certify that on this 9th day of November, a copy of the foregoing *Emergency Motion to Suspend Processing of Applications* was served by first-class mail, postage prepaid, upon the following:

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/s/

Andrew Jay Schwartzman