

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

In the Matter of	)	
	)	
Application of Shareholders of	)	
Tribune Company (Transferor) and	)	MB Docket No. 07-119
Samuel Zell (Transferee)	)	
	)	
For Consent to the Transfer of	)	
Control of the Tribune Company	)	
	)	

**PETITION FOR RECONSIDERATION OF THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

The International Brotherhood of Teamsters (the "IBT"), pursuant to Section 1.106 of the Commission's rules,<sup>1</sup> hereby petitions for reconsideration of the Memorandum Opinion and Order ("MO&O") in the above-captioned proceeding.<sup>2</sup>

In the MO&O, the Commission: (1) consented to the transfer of control of the Tribune Company ("Tribune") and Tribune subsidiaries that are the licensees of multiple broadcast stations; and (2) granted various waivers of its newspaper/broadcast cross-ownership rule.<sup>3</sup> The Commission rejected concerns the IBT had raised concerning the transferees' proposed organizational and governing structure. It held that it was precluded from considering these concerns because the IBT

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<sup>1</sup> 47 C.F.R. § 1.106.

<sup>2</sup> *In the Matter of Shareholders of Tribune Company, Transferors, and Sam Zell, et al., Transferees, for Consent to the Transfer of Control of The Tribune Company, and Application for the Renewal of License of LTLA(TV), Los*

had not alleged that the proposed structure “violates any Commission rule or policy or any other statute, rule, or policy.”<sup>4</sup>

The IBT demonstrates below that this holding was in error. The IBT already has shown that the structure proposed for the transferee violated the Commission’s requirements by giving control over Tribune station personnel, programming, and finances to third parties instead of to the owners of the stations. On reconsideration, therefore, the Commission should condition its consent and associated waivers on restoring control to the station owners.

## I. INTRODUCTION

### *IBT Comments*

On June 11, 2007, the IBT filed comments addressing the transfer of control application (the “Application”) that is the subject of the above-captioned proceeding.<sup>5</sup> In its comments, the IBT expressed concern with the fact that under the proposed transfer of control the employees of the Tribune would have no voice in the governance of the Tribune, notwithstanding the fact that the employees would be the nominal owners of the Tribune Employee Stock Ownership Plan (the “Tribune ESOP Plan”) that would own the Tribune. Rather, two of the Tribune’s directors would be designated by

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*Angeles, California, et al.*, Memorandum Opinion and Order, FCC 07-211, MB Docket No. 07-119 (rel. Nov. 30, 2007) (“MOO”).

<sup>3</sup> 47 C.F.R. § 73.3555(d).

<sup>4</sup> MO&O, ¶ 20.

<sup>5</sup> The IBT has a strong interest in this proceeding. Its 1.4 million members include approximately 2,000 persons who work for the Tribune and tens of thousands of members and retirees residing in the affected markets, including the markets for which cross-ownership waivers are being sought. These members’

a trust established by Sam Zell for the benefit of members of his family (the “Zell Trust”), and the remainder would be designated by a Tribune ESOP Plan trustee that has been pre-selected and cannot be removed by the Tribune’s employees.<sup>6</sup> The IBT showed that excluding the Tribune’s employees from governance would have an adverse impact on diversity and localism.

*Joint Opposition*

On June 26, 2007, a joint opposition to the IBT’s comments (the “Joint Opposition”) was filed by Samuel Zell; EGI-TRB, L.L.C., the Zell Trust; and the Tribune ESOP Plan as implemented through the Tribune Employee Stock Ownership Trust. The Joint Opposition was based in part on an interpretation of Section 310(d) of the Communications Act.<sup>7</sup> Section 310(d) states that the Commission, in disposing of applications for the assignment or transfer of control of a construction permit or license, “may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.” In the Joint Opposition, the parties argue that the Commission is prohibited by Section 310(d) from taking into account the diversity and localism concerns raised by the IBT.<sup>8</sup>

*IBT Reply*

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livelihoods, economic well-being, and their access to a diversity of news and opinions on public events depend on the outcome of the proposed venture.

<sup>6</sup> See IBT Comments at 5-6.

<sup>7</sup> 47 U.S.C. § 310(d).

<sup>8</sup> Joint Opposition at 15-17.

On July 9, 2007, the IBT filed a reply responding to the Joint Opposition. The IBT noted in its reply that it had not asked the Commission to evaluate the Application by considering “a person other than the proposed transferee or assignee,” which is what Section 310(d) prohibits. Rather, the IBT had asked the Commission to evaluate the Application by considering the public interest implications of the governance of the transferee that *has* been proposed. The Commission takes such considerations into account all the time, and Section 310(d) has no bearing on them. For example, the Commission frequently considers in the context of assignment and transfer applications the voting rights held – or not held – by limited partners, members of limited liability companies, and shareholders of corporations.<sup>9</sup> Accordingly, the IBT argued, the Commission has ample authority to consider the IBT’s diversity and localism concerns.

*IBT Ex Parte*

On November 15, 2007, the IBT submitted an *ex parte* filing that has further bearing on the Section 310(d) issue.<sup>10</sup> The *ex parte* filing was based on testimony that George Tedeschi, the IBT’s Vice President of the International Brotherhood of Teamsters, had delivered at the Commission’s October 31, 2007, hearing focusing on media ownership and localism hearing. The IBT showed how the transferee’s proposed structure would violate applicable law. In particular:

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<sup>9</sup> See, e.g., instructions to FCC Form 315, p. 6 (describing insulation criteria, including voting criteria, for determining whether a limited partner will be considered a party to a transfer of control application); *id.* p. 7 (describing similar criteria for members of limited liability companies); *id.* p. 7 (stating that “[s]tock subject to stockholder cooperative voting agreements accounting for 5% or more of the votes in a corporate [transfer of control] applicant will be treated as if held by a single entity” and that “any stockholder holding 5% or more of the stock in that block is considered a party to ... [the transfer of control] application”).

- Section 310(d) of the Communications Act forbids a broadcast licensee from giving third parties ultimate control over station personnel, programming, and finances. In other words, the owners of a station must be the ones who have ultimate management responsibility for the station. The Tribune-Zell transaction turns this requirement on its head:
  - The party controlling the Tribune, Sam Zell, would not own the Tribune. Although a trust established for the benefit of Mr. Zell's family would hold notes and warrants and would have the right to designate two of nine members of the Tribune's board, neither Mr. Zell nor his family trust would be owners of Tribune stock.
  - The owners of the Tribune would not control the Tribune. The ostensible owners would be the Tribune's employees, as beneficiaries of the Tribune ESOP Plan that would hold 100 percent of the Tribune's stock, but the employees
    - would have no role in the selection of the Tribune's directors, who establish company policy and appoint the officers who run the company.
    - would have no opportunity or ability to select the Tribune ESOP Plan trustee, who would vote the plan's Tribune stock, or to replace the trustee.

## II. DISCUSSION

In the MO&O, the Commission agreed with the IBT that, in evaluating transfer of control applications, it is appropriate for the Commission to "review the organizational and governing structure of an applicant."<sup>11</sup> The Commission also concurred that this review can be made consistent with Section 310(d), so long as "the question is whether the organizational structure of a proposed licensee complies with ... [the Commission's] rules and policies, not whether it hypothetically could be changed to better serve the

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<sup>10</sup> Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Henry Goldberg, Counsel to the International Brotherhood of Teamsters, MB Docket No. 07-211

<sup>11</sup> MO&O, ¶ 20.

public interest.”<sup>12</sup> “If an applicant’s structure results in a violation of the rules, the structure must be revised or the application will be denied.”<sup>13</sup>

The Commission found that the IBT had not alleged that “the Transferees’ proposed organizational and governing structure violates any Commission rule or policy or any other statute, rule, or policy.”<sup>14</sup> Based on this finding, the Commission rejected the IBT’s arguments addressing the structure of the transferee.

As discussed above, however, the IBT did in fact challenge the lawfulness of the proposed structure: it argued that the structure violates Section 310(d) of the Communications Act. Having been presented with this argument, it was necessary and appropriate for the Commission to “review the organizational and governing structure” of the transferee.

If the Commission had considered the IBT’s argument, it would have had to conclude that the structure of the transferee is unlawful. The structure violates Section 310(d) by giving control over station personnel, programming, and finances to third parties instead of to the owners of the Tribune stations. The Commission repeatedly has found that ceding such control is contrary to its requirements.<sup>15</sup> The Commission, therefore, should have rejected the structure proposed in the Application.

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<sup>12</sup> MO&O, ¶ 20.

<sup>13</sup> MO&O, ¶ 20.

<sup>14</sup> MO&O, ¶ 20.

<sup>15</sup> See, e.g., *In Re Applications of Southwest Texas Public Broadcasting Council For Renewal of Licenses for Noncommercial Educational Television Stations KLRN, San Antonio, Texas (BRET-800401LS) and KLRU, Austin, Texas (BRET-800401LR)*, 85 F.C.C.2d 713 (1981); *In Re Applications of Alabama Educational Television Commission For Renewal of Licenses*, 50 F.C.C.2d 461 (1975).

## CONCLUSION

For the reasons stated herein, on reconsideration the Commission should require, as a condition to its consent to the transfer of control and its associated waivers, that control over Tribune station personnel, programming, and finances be given to the Tribune's owners (*i.e.*, its employees).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Comments was sent by first class mail, this 12th day of December, 2007, to each of the following:

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