

error. Accordingly, the Commission should dismiss the Petition and affirm the grant of the Applications.

I. Background

On May 1, 2007, Tribune filed the Applications, which sought authority to transfer control of the Company and its subsidiaries from its then existing shareholders to the Transferees. Under the ownership structure proposed in the Applications and approved in the *Order*, the ESOP holds all of the voting rights in the stock of Tribune.² The ESOP holds this stock in trust for the benefit of Tribune's employees who receive the economic benefits of ownership without any required investment. The trustee of the ESOP has the right to exercise the voting rights associated with the stock held by the plan, and, therefore, has the right to control Tribune and elect a majority of Tribune's directors. The governing documents of the ESOP specifically provide that the trustee's sole fiduciary duty in exercising these rights is to the employee beneficiaries of the ESOP.³

IBT's Comments on the Applications argued that transfer of control of Tribune to a differently structured entity that granted greater control rights to the employee beneficiaries might better advance the public interest. The Comments did not ask the Commission to deny the Applications or suggest that the proposed structure of the Transferees violated any Commission rule or policy. Instead, the Comments simply urged the Commission to "take a close look at the proposed ownership structure of the transferee" speculating that a modified structure might differently serve the Commission's goals of diversity and localism.⁴

² See Exhibit 14 to the Applications. Although Tribune has also issued a subordinated note and warrants for Tribune stock to EGI-TRB, L.L.C., even after exercise of the warrants the ESOP will own over 50 percent of the stock in Tribune

³ See Tribune Employee Stock Ownership Plan at Section 13, submitted as part of Exhibit 6 to the Applications. See also, e.g., Employee Retirement Income Security Act of 1974, as amended ("ERISA"), §§ 403, 404, as codified at 29 U.S.C. §§ 1103, 1104 (2000); Internal Revenue Code, § 409, as codified at 26 U.S.C. § 409 (2000).

⁴ Comments of the IBT in MB Docket No. 07-119 (June 11, 2007) at 7.

In the *Order*, the Commission granted the Applications and found that the proposed structure of the Transferees fully complied with Commission rules and policies and that Section 310(d) of the Communications Act precluded any further hypothesizing about how a differently structured transferee might otherwise serve the public interest.⁵ As the *Order* stated, “[t]o engage in the type of review urged by Teamsters would involve the Commission in endless speculation as to whether the organizational structure of each individual applicant could somehow be improved to generate an additional public interest benefit.”⁶ In its latest filing, IBT has simply reiterated its Commission-rejected claim regarding the supposed public interest benefits of reorganizing the Transferees and added an argument that the Transferees’ structure violates Section 310(d), a new and unfounded contention that, as shown below, is based on a fundamental misunderstanding of the Communications Act and Commission precedent. Given these deficiencies, the Petition should be promptly dismissed.

II. The Commission Must Dismiss the Petition Based on Its Misinterpretation of the Communications Act and Commission Precedent and Reject Its Inappropriate Request That the Transferees’ Organizational Structure Be Reformed

In its Petition, IBT recognizes that, although the Commission may review the organizational structure of a proposed transferee, it may only prohibit a transfer of control based on an applicant’s structure if that structure violates the Communications Act or Commission rules or policies.⁷ Although IBT’s Comments did not demonstrate or even suggest that the proposed structure of the Transferees violated any law, rule, or policy, IBT now alleges that the organization of the Transferees violates Section 310(d) by separating beneficial ownership of

⁵ *Order* at ¶ 20. The Commission noted that Section 310(d) provides that “the Commission may not consider whether the public interest, convenience and necessity may be served by the transfer, on grant, or disposal of the permit or license to a person other than the proposed transferee or assignee.” 47 U.S.C. § 310(d).

⁶ *Order* at ¶ 20.

⁷ Petition at 5-6.

Tribune from control of the company and asks that the structure be reformed to give Tribune employees a greater voice.⁸ IBT's allegation and its request misinterpret the proposed structure of the Transferees, the Communications Act, and Commission precedent.

In the first instance, the Petition misstates the degree of separation between ownership and control of Tribune. As the Applications make clear, the ESOP, which is organized as a trust under Illinois law, at all times will hold a controlling stock interest in Tribune and will have the right to elect a majority of the company's board of directors, giving it the ability to exercise control of the company. In fact, under the proposed structure of Tribune, the employee beneficiaries of the ESOP will exercise greater control than do beneficiaries of many trusts, including trusts that the FCC has approved as licensees.⁹ As set forth in the ESOP's governing documents, the employee beneficiaries will hold pass-through voting rights with respect to allocated shares on specified major matters affecting Tribune, such as any sale of all or substantially all of Tribune's assets, mergers, and recapitalizations.

Moreover, the trustee of the ESOP, which holds legal title to the Tribune stock, is a fiduciary required under federal pension law to vote that stock solely for the benefit of the employee participants.¹⁰ The trustee owes its fiduciary duty solely to the employee participants and not to Tribune's management or Tribune's board of directors.¹¹ The governance rights the Tribune employees receive through the ESOP are entirely consistent with ERISA provisions and other tax-related statutes and regulations as well as other employee stock ownership plans. Under long-standing principles of comity, the Commission in the *Order* properly exercised its

⁸ Petition at 4-6.

⁹ See, e.g., *Citadel Broadcasting Company*, Memorandum Opinion and Order and Notice of Apparent Liability, FCC 07-41 (rel. April 4, 2007) ("*Citadel*").

¹⁰ See Tribune Employee Stock Ownership Plan at Section 13; ERISA §§ 403, 404, *supra*, n. 3.

¹¹ See *id.*

authority in a manner consistent with the public interest goals and policies of these other federal statutes and regulations,¹² a decision it should affirm by denying the Petition.

More importantly, IBT's claims that the Communications Act or Commission policy prohibits placing beneficial equity ownership and control in the hands of separate entities are simply wrong as a matter of law. The Commission has consistently recognized that trusts designed to separate control from beneficial ownership may serve as Commission licensees or licensee holding companies.¹³ In fact, in some situations, the Commission routinely requires that trustees exercise control over licenses for the benefit of owners who are themselves precluded from exercising any control. This requirement has come into play most commonly in a number of large, multi-station transactions in which the Commission has conditioned approval on assignment of certain licenses from the proposed transferee to divestiture trusts.¹⁴ Such trusts are specifically designed to avoid multiple ownership violations by allowing the proposed transferee to receive the economic benefit of the license while control over the stations themselves "rests with, and must be exercised solely by, the designated trustee."¹⁵ The Petition's claim that Section 310(d) somehow precludes a trustee from exercising control while the beneficiaries of the trust receive only economic benefits is inconsistent with not only such Commission precedent but basic concepts of trust administration.

¹² See, e.g. *La Rose v. FCC*, 494 F.2d 1145 (1974) (reconciling Commission's duty to protect the public interest with public interest provisions of bankruptcy law).

¹³ See, e.g., *Applications of Arthur McBride, Jr.*, Memorandum Opinion and Order, 14 FCC Rcd 13551 (Med. Bur. 1999) (granting waiver of one-to-a-market rule to allow transfer of control of licenses from parent to trust established for benefit of his children); see also 47 C.F.R. § 73.3555, Note 2(d) (2002) (recognizing ownership may be separate for control and setting forth standards for attribution of interests held in trust to any individual holding power to vote such interests, sole power to sell the stock held in stock, or power to revoke the trust or replace the trustee at will); *Attribution of Ownership Interests*, 97 FCC 2d 997, 1023-1024 (1984).

¹⁴ See, e.g., *Citadel*, FCC 07-41 at ¶ 60; *Shareholders of AMFM, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 16062, 16072 (2000) ("*AMFM*").

¹⁵ *AMFM*, 15 FCC Rcd. at 16072.

To try to buttress its claim, IBT relies on Commission decisions wholly unrelated to the allegations it seeks to prove. Neither of the two previous Commission decisions IBT cites suggests in any way that a licensee, much less a licensee holding company, may not be structured to allow a trustee, in its fiduciary capacity, to exercise control over voting stock held in trust while beneficiaries of that trust receive the economic benefits of ownership along with limited approval rights.¹⁶ In *Alabama Educational Television Commission*, the first of the two cases IBT cites, the Commission held that a licensee remains responsible for its programming decisions even if it contracts with an unrelated party to manage day-to-day programming matters.¹⁷ In that decision, the Commission said absolutely nothing about the licensee's organizational structure, much less about any limits on the allowable structure of a licensee holding company. *Southwest Texas Public Broadcasting Council*, IBT's second cited case, stands for the proposition that a licensee is in fact *permitted* to delegate day-to-day control over many matters to an unaffiliated third party, but may not enter into a contract by which it relinquishes all control over its stations to an unaffiliated third party without seeking Commission consent.¹⁸ That decision states only that premature transfers of control to parties upon whom the Commission has not passed are prohibited. Here the Commission expressly granted its consent to the transfer to the parties identified in the Applications.

Unlike the parties in the two cited cases, IBT has not alleged that the Transferees have ceded control, or would cede control, to an unidentified third party without Commission consent. Indeed, the Applications on their face made very clear where control of Tribune would lie -- with the ESOP, which is an Illinois trust. The delineation described therein completely addressed the control rights exercised by the ESOP, EGI-TRB, and Mr. Zell. The Petition does not even

¹⁶ Petition at 6, n. 15.

¹⁷ *Alabama Educational Television Commission*, Decision, 50 FCC 2d 461, ¶ 7 (1975).

¹⁸ *Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713 (1981).

suggest that control of Tribune has been or could be exercised by any entity other than those identified in the Applications. Contrary to IBT's claims, the Communications Act's prohibition on unauthorized transfers of control is simply not implicated in this case.

III. Conclusion

IBT's Petition for Reconsideration of the *Order* fails to raise facts or legal arguments demonstrating that the *Order* should be modified in any way. IBT has not shown, nor could it show, that the proposed structure of the Transferees violates licensee control standards or any other aspect of the Communications Act, Commission rules, or Commission policies. To grant IBT's requested relief, the Commission would be required to completely reform the private contracts negotiated and entered into by the proposed Transferees, an endeavor entirely outside of the Commission's expertise and authority and one in no way justified by the unsupported claims IBT has advanced. The Commission, as it has recognized, is precluded from considering any other potential transferees or hypothetical modified structure for the Transferees.

Accordingly, the Commission should act promptly to dismiss the Petition and affirm its decision in the *Order* granting the Applications.

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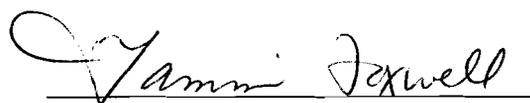
CERTIFICATE OF SERVICE

I, Tammi Foxwell, a secretary at the law firm of Dow Lohnes PLLC, hereby certify that on this 28th day of December 2007, I caused a copy of the foregoing "Opposition to Petition for Reconsideration" to be served via first-class mail, postage prepaid, upon the following:

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