

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of)	
)	
Shareholders of Tribune Company,)	MB Docket No. 07-119
Transferors)	
)	
and)	
)	
Sam Zell, <i>et al.</i>)	
Transferees)	
)	
For Consent to the Transfer of Control of)	
The Tribune Company)	
)	
and)	
)	
Applications for the Renewal of Licenses of))	File Nos. BRCT-20060811ASH, <i>et al.</i>
KTLA(TV), Los Angeles, California, <i>et al.</i>))	
)	

OPPOSITION TO PETITION FOR RECONSIDERATION

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SUMMARY

In asking the Commission to reconsider its recent approval of the transfer of control of Tribune Company, Petitioners allege that the FCC erred in finding that UCC and MA had failed to demonstrate standing to challenge applications regarding markets in which they had not provided declarations from local residents claiming harm from the proposed transaction. Petitioners further allege that the Commission's grant to Transferees of a permanent waiver of the newspaper/broadcast cross-ownership rule in the Chicago market was arbitrary and capricious. As demonstrated in this opposition, however, the Commission's decisions were in no way erroneous, and nothing in the Petition requires or supports reconsideration of any part of the Commission's order granting consent to the transfer of control of Tribune Company.

In evaluating UCC's and MA's standing, the Commission acted in accordance with long-standing and "unambiguous" precedent that holds that, for an organization to establish standing on behalf of its members, the entity must submit declarations from members who are viewers of or listeners to the broadcast stations that are the subject of the challenged applications. Despite Petitioners' standing deficiencies, however, the Commission addressed and ruled upon the substance of their claims, and any alleged error in the FCC's determination on standing issues therefore cannot support reconsideration.

The Commission's grant to Transferees of a permanent waiver of the newspaper/broadcast cross-ownership rule in the Chicago market was justified by the unique facts presented in the record, which demonstrated that Tribune's combined ownership of WGN-TV, WGN(AM), and the *Chicago Tribune* has resulted in exceptional public interest benefits and that the Chicago media market is extremely diverse. As the FCC's decision indicates, both factors warrant continuation of the cross-ownership on a permanent basis. The FCC's decision on this point was in accord with its previously articulated grounds for waivers of

the newspaper/broadcast cross-ownership rule, was fully within the Commission's discretion, and does not in any way require reconsideration.

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OPPOSITION TO PETITION FOR RECONSIDERATION

Samuel Zell, the Tribune Employee Stock Ownership Plan as implemented through the Tribune Employee Stock Ownership Trust (the “ESOP”), and EGI-TRB, L.L.C. (collectively, the “Transferees”), by their attorneys, hereby oppose the Petition for Reconsideration (the “Petition”) filed by the Office of Communication of the United Church of Christ, Inc. (“UCC”), Media Alliance (“MA”), and Charles Benton (collectively, “Petitioners”) of the decision of the Federal Communications Commission (the “Commission”) that granted the applications for transfer of control of the Tribune Company (“Tribune”) from its previous shareholders

(“Transferor”) to the Transferees (the “Transfer Applications”) and the applications for renewal of license for Tribune television stations in several cross-owned markets.¹

The *Order* properly denied petitions to deny filed by UCC and MA opposing waivers of the newspaper/broadcast cross-ownership rule sought by Transferees in the five markets where Tribune holds cross-owned properties -- Chicago, New York, Miami, Los Angeles, and Hartford. The *Order* also properly rejected petitions to deny the license renewal applications for television stations in three of these five markets -- WPIX(TV), New York, New York; KTLA(TV), Los Angeles, California; WTIC-TV, Hartford, Connecticut; and WTXN(TV), Waterbury, Connecticut (the “Renewal Applications”). Petitioners now allege, based on a highly selective and inaccurate reading of the *Order* and Commission precedent, that the Commission acted arbitrarily and capriciously in finding that Petitioners lacked standing to challenge the majority of the Transfer Applications and in determining that a permanent waiver of the newspaper/broadcast cross-ownership rule in the Chicago market would serve the public interest. When accurately read and analyzed in light of relevant precedent and the record in this case, the Commission’s decisions on these points were fully supported and constituted no error. Moreover, the Commission, despite its determination that UCC and MA lacked standing, nevertheless considered and addressed their substantive arguments, so that the standing determination is not prejudicial to Petitioners. Accordingly, the Commission should dismiss the Petition and affirm the grant of the Transfer Applications and the Renewal Applications as set forth in the *Order*.

¹ See *Shareholders of Tribune Company*, Memorandum Opinion and Order in MB Docket No. 07-119 (rel. Nov. 30, 2007) (the “*Order*”). On December 20, 2007, the parties consummated the transactions approved by the Commission in the *Order*.

I. Background

On May 1, 2007, Tribune filed the Transfer Applications, which sought authority to transfer control of the Company and its subsidiaries from Tribune's then existing shareholders to the Transferees. As part of the Transfer Applications, Transferees sought waiver of the Commission's ban on newspaper/broadcast cross-ownership in the Hartford, Los Angeles, Chicago, Miami, and New York markets.² UCC and MA jointly filed a petition to deny the Transfer Applications in which they opposed grant of any waivers of the NBCO Rule. The petition to deny did not oppose grant of the Transfer Applications for any of the other Tribune stations in non-cross-owned markets.

Between August 2006 and February 2007, Tribune had already filed the Renewal Applications. UCC had filed petitions to deny the license renewal applications of WTIC-TV and WTXN(TV) in the Hartford DMA, and WPIX(TV) in the New York DMA. MA had filed a petition to deny the license renewal application of KTLA(TV) in Los Angeles. The Commission consolidated its consideration of the Transfer Applications with the Renewal Applications and the objections filed by UCC and MA.

In the *Order*, the Commission found, as Transferees had urged, that MA had not demonstrated standing to challenge the Transfer Applications in any markets, given its failure to include an affidavit from a resident in any of the five Tribune cross-owned markets, and that UCC similarly had failed to demonstrate standing to challenge the Transfer Applications in any markets except New York and Miami, the only two locations for which it supplied affidavits from local residents.³ The Commission determined that, despite UCC's and MA's standing

² See 47 C.F.R. § 73.3555(d) (2002) (the "NBCO Rule").

³ *Order* at ¶ 7. The Commission disagreed with Tribune's argument, raised in defending the Renewal Applications, that UCC had failed to allege any particularized harms that would result to it from grant of the Hartford and New York license renewal applications and found that residents of those markets could demonstrate standing to challenge those applications. *Id.* at ¶ 9.

deficiencies, it would still review the substantive allegations made in the various opposition pleadings against the Transfer Applications and the Renewal Applications.⁴

After due consideration of these issues, the Commission properly denied the challenges filed against the Transfer Applications and the Renewal Applications.⁵ The Commission granted the Renewal Applications and the Transfer Applications subject to the condition that Tribune come into compliance with the NBCO Rule in all markets except Chicago within six months of January 1, 2008;⁶ in Chicago, the FCC granted the Transferees a permanent waiver of the NBCO Rule.⁷ The *Order* further provided that the temporary six-month waiver granted in the four markets would be extended until six months after the conclusion of any court challenge to the *Order's* denial of Tribune's requests for NBCO Rule waivers.⁸ Finally, the *Order* provided that if the Commission adopted a revised NBCO Rule before January 1, 2008, Transferees would receive a two-year waiver of that new NBCO Rule, if necessary, in the New York, Los Angeles, Miami, and Hartford markets.⁹

UCC, MA and Charles Benton have now filed the Petition asserting two bases for reconsideration of the *Order*.¹⁰ First, the Petition alleges that the Commission erred in finding

⁴ *Id.* at ¶¶ 8-9.

⁵ *Id.* at ¶¶ 56, 61.

⁶ *Id.* at ¶¶ 34-35, 58, 65.

⁷ *Id.* at ¶¶ 34, 64.

⁸ *Order* at ¶ 36. On December 3, 2007, Transferees filed a Notice of Appeal in the United States Circuit Court of Appeals for the District of Columbia Circuit seeking review of the Commission's denial of their NBCO waiver requests for the New York, Los Angeles, Miami, and Hartford markets. Tribune filed a separate appeal, and the two cases have been consolidated by the court. *Order*, United States Court of Appeals for the District of Columbia Circuit, Nos. 07-1488 and 07-1489 (Dec. 6, 2007), *consolidating cases*.

⁹ *Order* at ¶ 35.

¹⁰ Charles Benton has not previously challenged any aspect of the Transfer Applications or the Renewal Applications, and he should be dismissed as a Petitioner for failure to satisfy Section 1.106(b)(1) of the FCC's rules. 47 C.F.R. § 1.106(b)(1) (2006). That provision requires that a challenger on reconsideration who has not previously been a party to a proceeding "state with particularity the manner in which the person's interests are adversely affected [and] show good

that UCC and MA had failed to demonstrate standing in many of the markets at issue because of their failure to provide declarations from local residents.¹¹ Petitioners' claims, however, that an organization need not submit such declarations contradict long-standing Commission precedent. More importantly, Petitioners' arguments on reconsideration wholly ignore that, despite its adverse determination on their standing, the FCC thoroughly considered and discussed all of Petitioners' substantive objections before denying their pleadings in the *Order*.

Second, the Petition alleges that the Commission's decision to grant a permanent waiver of the NBCO Rule in the Chicago market was arbitrary and capricious.¹² On this point, the Petition selectively misreads the *Order* by alleging only that the waiver was based merely on the duration of the Chicago cross-ownership and the fact that it was created by Tribune prior to the adoption of the NBCO Rule. The Petition ignores that the FCC's decision drew upon the extensive record evidence regarding significant public interest benefits that the cross-ownership has provided, and will continue to provide, as well as on detailed data regarding the already tremendously diverse nature of the Chicago market.¹³ An analysis of all of the bases underlying the Commission's decision in the *Order* clearly demonstrates that the decision to grant

reason why it was not possible for him to participate in the earlier stages of the proceeding.” *Id.* Despite his previous lack of interest, Mr. Benton now argues that he would be harmed by the FCC's grant of the permanent waiver in the Chicago market but offers no good reason why he failed to participate prior to this stage of the proceedings. His newly alleged harm is based only on a speculative claim related to his supposed lost opportunity for additional diversity, but this purely speculative harm would have arisen from a waiver of any duration, such as the temporary waivers Transferees requested in the Transfer Applications and the FCC granted in the other four cross-ownership markets, or from continued cross-ownership of the Chicago properties pursuant to any form of grandfathering. In short, Mr. Benton has not satisfied Section 1.106(b)(1)'s requirement that he specifically plead his alleged harm and provide “good reason” why he did not previously participate.

¹¹ Petition at 5.

¹² *Id.* at 13.

¹³ *Order* at ¶ 34.

Transferees a permanent NBCO Rule waiver in Chicago was justified and does not require reconsideration.

Finally, the Petition, in only two sentences in the introduction that are never developed or supported in the remainder of the pleading, requests reconsideration of the Commission's decisions to grant the Renewal Applications and to confer what the Petition terms as "indefinite" waivers of the NBCO Rule in Hartford, Miami, New York, and Los Angeles.¹⁴ The failure to address these arguments at all after the Petition's introduction and to provide any further support leaves the FCC with absolutely no indication as to the substance of Petitioners' concerns. The Petition claims that grant of the Renewal Applications was "unexplained" but itself provides absolutely no indication what this contention could possibly mean. Contrary to the Petition's equally terse and undeveloped contention regarding the temporary waivers of the NBCO Rule, these waivers were not "indefinite" but were conferred for, at most, a period of two years or six months after conclusion of any legal challenge to the decision.¹⁵ The Petitioners' asides on these points are wholly unexplained and warrant no further review.¹⁶

II. The Commission Correctly Found That UCC and MA Failed To Demonstrate Standing To Challenge the Majority of the Transfer Applications.

In the *Order*, the Commission found that MA lacked standing to challenge any of the Transfer Applications, as it had not submitted declarations from any of its members who resided in the viewing areas of the television stations in question.¹⁷ Similarly, the Commission found that UCC had only demonstrated standing through the submission of the required declarations in

¹⁴ Petition at 2.

¹⁵ *Order* at ¶¶ 58, 65.

¹⁶ Given that the Petition never develops or addresses these two contentions in any detail whatsoever, no further response is needed here, although Transferees reserve the right to respond should the Petitioners attempt to offer a tardy explanation in their reply.

¹⁷ *Id.* at ¶ 7.

the New York and Miami markets and had not achieved standing in the three other markets of Chicago, Hartford, and Los Angeles where it challenged Tribune's cross-ownerships.¹⁸

A. Unambiguous Commission precedent clearly holds that, for an organization to establish standing to challenge broadcast applications on behalf of its members, it must submit declarations from members who are viewers of or listeners to the stations.

Petitioners argue that the Commission should grant them standing based on the fact that they alleged that they have members in each of the cross-owned markets at issue in the Transfer Applications, despite their failure to submit a full set of declarations from members in each locale asserting that they would be harmed by the approval of the transaction.¹⁹ This argument is entirely unfounded and would be, as the Commission indicated in the *Order*, contrary to “unambiguous” precedent.²⁰

The Commission has long held that, for an organization to establish standing, it must submit declarations or affidavits from members who themselves would have standing.²¹ In *WDOD*, for example, the Commission stated that “[t]he licensee challenges the standing of [National] Rainbow [Coalition] to petition the instant renewal applications because it failed to submit an affidavit from any member who listens to WDOD(AM) or WDOD-FM. We agree and find that Rainbow has failed to establish petitioner status.”²²

¹⁸ *Id.*

¹⁹ *See* Petition at 5.

²⁰ *Order* at ¶ 7.

²¹ *E.g.*, *WDOD of Chattanooga*, 12 FCC Rcd 6399, 6400 (1997) (“*WDOD*”); *KLUV(FM)*, 10 FCC Rcd 4517, 4518 (1995); *Petition for Rulemaking to Establish Standards for Determining Standing of a Party to Petition to Deny a Broadcast Application*, 82 FCC 2d 89, 99 (1980) (“*1980 MO&O*”).

²² *WDOD*, 12 FCC Rcd at 6400.

Petitioners' claim that "all" precedent suggests declarations of members are not required to establish organizational standing is particularly perplexing in light of the fact that this requirement is stated explicitly even in much of the authority Petitioners cite in their pleading. For instance, Petitioners claim their case is supported by a 1980 *MO&O* in which the Commission addressed a petition for rulemaking from the National Association of Broadcasters requesting that the Commission require organizations seeking standing to provide detailed background information on facts such as the group's size, officers, location, and funding.²³ The Commission ruled there that it would not require such information and clarified its policies on how organizations could establish standing to represent their members who were local residents of a station's service area.²⁴ In so doing, the Commission held that "[a]n organization may establish standing to represent the interests of local listeners or viewers [but that t]o do so, it must provide the affidavit of one or more individuals entitled to standing."²⁵ This is precisely what MA failed completely to do in this case and what UCC failed to do in any markets but New York and Miami. In challenging the Transfer Applications, MA did not submit a single affidavit from anyone claiming to be a resident of a Tribune cross-owned market, and UCC submitted declarations only from individuals claiming to be viewers of Tribune's New York and Miami stations.

Other authority Petitioners cite falls equally short of supporting their arguments. For instance, in *Hispanic Broadcasting Corporation*, upon which Petitioners rely, the petitioner accorded standing had challenged the ownership structure of the proposed owner and the proposed transactions.²⁶ Contrary to the core of Petitioners' argument, the challenge in that case

²³ 1980 *MO&O*, 82 FCC 2d at 91.

²⁴ *Id.* at 98-101.

²⁵ *Id.* at 99.

²⁶ *Shareholders of Hispanic Broadcasting Corporation*, 18 FCC Rcd 18834, 18835 n.4 (2003).

did include a declaration from a local resident.²⁷ In *Telemundo Communications Group*, another one of Petitioners' cited cases, the challengers alleged that after the transaction the proposed assignee would fail to maintain Telemundo as a network competitor for Spanish-language programming, and its proposed operational plans would have an adverse effect on Hispanic employment.²⁸ Again, in that case, the petitioners did in fact submit a declaration from a local resident from an affected market.²⁹

In 1980, in clarifying its broadcast listener standing principles, the FCC admitted that its cases often discussed the issue in a "rather summary fashion" and that, as a result, its cases sometimes exhibit differences in the exact language used or the approach taken on each occasion.³⁰ In the same decision it emphasized, however, that "the *sine qua non* of every ruling is the presence of local residents who support the petition. The group's local members thus supply the predicate for injury in fact and redressability."³¹ The Commission committed no error in following this "unambiguous" precedent.

B. Petitioners must rely on declarations alleging harm from the challenged transaction and may not rely on declarations submitted in separate proceedings to establish standing.

Petitioners also claim that the Commission's decision to grant standing to UCC to challenge the license renewal applications of the Hartford television stations and to MA to challenge the license renewal application of Tribune's Los Angeles television station somehow provided the necessary demonstration of standing to challenge the Transfer Applications.³² This claim is wrong as a matter of law and cannot serve as a basis for reconsideration of the *Order*.

²⁷ *Id.*

²⁸ *Telemundo Communications Group, Inc.*, 17 FCC Rcd 6958, 6963-64 (2002).

²⁹ *Id.* at 6964-65 & n.18.

³⁰ *1980 MO&O*, 82 FCC 2d at 98 (footnotes omitted).

³¹ *Id.* at 101.

³² *See* Petition at 7-8.

Simply put, the declarations submitted with those license renewal applications, filed as they were against applications pending months before the Transfer Applications, could not have established standing in the context of the Transfer Applications. Those declarants asserted no concerns about the transaction, much less any concept as to how it would harm them. Moreover, because the submissions filed with the petitions to deny the Hartford and Los Angeles renewal applications only alleged harms arising from cross-ownerships in those markets, these submissions could not in any event establish standing in other markets.

Uncontested authority holds that, to establish standing to challenge an application, a party must establish that grant of that application would cause injury or harm to that party.³³ The declarations attached to the renewal applications upon which Petitioners now seek to rely alleged that grant of the Renewal Applications would cause harm to those attesting members of UCC and MA. They made no allegations, however, suggesting that the specific transactions contemplated by the Transfer Applications would cause them any harm.

The legal authority on which Petitioners attempt to rely to support their claim that declarations filed in one proceeding can support standing in another fails entirely to make their case. In *Hispanic Broadcasting*, the Commission held only that an entity, the very legal existence of which had been challenged, could rely on its demonstration in a previous proceeding, accepted by the Commission, that it did in fact exist.³⁴ In this case, no party disputes the existence of UCC and MA; the relevant question is rather whether they have demonstrated, through the submission of declarations from individual members in the affected markets, that those members would be harmed by a grant of the Transfer Applications. In *Chronicle*, the Commission determined that a petitioner had standing to challenge an application

³³ *E.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

³⁴ *Shareholders of Hispanic Broadcasting*, 18 FCC Rcd at 18835, n. 4.

for assignment of the license of a single San Francisco area station.³⁵ Although the Commission noted in a footnote that the petitioner had established standing as a resident of the station's viewing area in a previous proceeding, the Commission did not suggest that it was relying exclusively on that previous demonstration of standing or that anything had changed so as to require reliance on that previous determination of standing.³⁶ Moreover, the petitioner's standing in the *Chronicle* proceeding was never challenged.³⁷ In *KSAY*, the Commission relied on submissions made by the petitioners in earlier proceedings to establish certain factual matters related to the petitioner's organization, such as where it was formed, what type of organization it was, and what its primary purpose was.³⁸ In finding that petitioners had standing, the Commission did not, however, suggest that it was relying on allegations made in separate proceedings to support petitioners' claims of harm from the challenged applications.

In this case, any demonstration of alleged harm that might result from grant of any of the Renewal Applications is simply irrelevant to the question of whether Petitioners have provided the requisite demonstration that their members would suffer particularized harm as a result of grant of the Transfer Applications. Moreover, the declarations submitted with the petitions to deny the Renewal Applications do not even indicate that the members of UCC and MA signing those declarations had any knowledge of the Transfer Applications or their contents, a fundamental requirement of any declaration supporting standing to challenge an application.³⁹

³⁵ *Chronicle Broadcasting Co.*, 59 FCC 2d 335, 335 (1976).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *KSAY Broadcasting Co.*, 45 FCC 2d 348, 349 (1974). At the time of the Commission's decision in *KSAY*, petitioners were required to provide detailed information regarding their organizations to establish standing, requirements which have since been modified.

³⁹ See *KLUV(FM)*, 10 FCC Rcd at 4518.

C. The Commission's decision to deny standing is not inconsistent with the goal of encouraging public participation.

The Petitioners are also simply incorrect to suggest that the Commission's determination that they failed to demonstrate standing constitutes an "about face" that runs counter to the Commission's goal of encouraging public participation.⁴⁰ As detailed above, the Commission's determination is in no way an "about face" but is in fact consistent with long-standing precedent. Moreover, for as long as the Commission has recognized the concept of "listener or viewer standing," this recognition has been premised on the concept that those individuals are the most qualified to evaluate stations' programming and service to their communities.⁴¹ Accordingly, the Commission has long held that organizations may have standing only as representatives of their members and may demonstrate "audience standing" only if those members themselves are entitled to such standing.⁴² Even in the Commission's 2005 Notice of Proposed Rulemaking concerning local public notice requirements, which Petitioners cite, the Commission made clear that the proposed provisions were designed to encourage participation only by "listeners and viewers."⁴³

Balanced against the FCC's desire to encourage legitimate participation by audience members is its recognition that the filing of petitions by entities that do not qualify as parties in interest under Commission standards can cause substantial delay and harm in themselves.⁴⁴ The Commission's well-supported decision to require organizations representing viewers or listeners to submit declarations from those members that demonstrate that they themselves are entitled to

⁴⁰ Petition at 11.

⁴¹ *1980 MO&O*, 82 FCC 2d at 97, citing *United Church of Christ v. FCC*, 359 F.2d 994, 1002 (D.C. Cir 1966).

⁴² *1980 MO&O*, 82 FCC 2d at 101.

⁴³ *Revision of the Public Notice Requirements of Section 73.3580*, Notice of Proposed Rulemaking, 20 FCC Rcd 5420, 5421 (2005).

⁴⁴ See *1980 MO&O*, 82 FCC 2d at 94-95.

such standing represents a reasonable balancing of these goals and imposes no undue burden on petitioners. Indeed, to satisfy this standard in the instant case, UCC and MA each would have been required to submit declarations from at most only five members of their organizations. In any event, Petitioners cannot claim that their participation in this proceeding was foreclosed or that their concerns went unheard by the Commission. Despite finding that MA had failed completely to demonstrate standing and that UCC had done so only in two markets, the Commission proceeded to address and evaluate the substantive concerns they raised in their pleadings.⁴⁵

III. The Commission's Decision To Grant Transferees a Permanent Waiver of the NBCO Rule in the Chicago Market Was Fully Justified and Supported By the Record in this Proceeding.

In the *Order*, the Commission found, based on the extensive information submitted as part of Tribune's request for waiver of the NBCO Rule in the Chicago market, that the purposes of that rule would best be served by a grant of a permanent waiver allowing Tribune to continue to own and operate WGN-TV, WGN(AM), and the *Chicago Tribune* as it has for more than 60 years. Petitioners now claim, based on a selective and inaccurate interpretation of the Commission's stated reasons, that this decision was arbitrary and capricious. The actual reasons for the decision demonstrate, however, that it was in no way arbitrary or capricious but was fully supported by the record and consistent with Commission standards for NBCO Rule waivers.

A. The Petition's allegations are based on a mistakenly narrow reading of the Commission's stated grounds for its decision.

The Petition alleges that the Commission based its decision to permanently waive the NBCO Rule for WGN-TV, WGN(AM), and the *Chicago Tribune* solely on two findings: the duration of Tribune's existing Chicago cross-ownership and the fact that Tribune did not, at the

⁴⁵ *Order* at ¶ 8.

time it created the cross-ownership, know that divestiture might someday be required.⁴⁶ This allegation completely ignores the Commission’s other stated bases for its decision, the unique facts presented by the significant public interest benefits delivered as a result of the long-standing cross-ownership of WGN-TV, WGN(AM) and the *Chicago Tribune* and the overwhelming diversity in the Chicago market.⁴⁷

Despite Petitioner’s allegations, the duration of the existing cross-ownership of WGN-TV, WGN(AM), and the *Chicago Tribune* was not determinative in the Commission’s decision.⁴⁸ The Commission noted this duration only in passing as it acknowledged that the long-term “symbiotic relationship” among the properties had allowed them to deliver public interest benefits that would not have been possible absent that cross-ownership.⁴⁹ Tribune’s very detailed 65-page request for waiver of the NBCO rule in the Chicago market, filed as part of the Transfer Applications, set forth and described a number of these benefits.⁵⁰ The record showed, for example, that cross-ownership has helped allow WGN-TV, a television station not affiliated with any of the top-4 broadcast networks, to deliver 31.5 hours of local news each week.⁵¹ The record also demonstrated that cross-ownership has not just allowed WGN-TV to deliver more local news but has brought increased depth and breadth to Tribune’s broadcast coverage of issues important to Chicago area residents. Access to the *Chicago Tribune*’s international reporters, for example, has allowed WGN(AM) and WGN-TV to present the local impact of foreign events, such as the wars in Afghanistan and Iraq, in a manner that a local television or radio station

⁴⁶ Petition at 17-18.

⁴⁷ *Order* at ¶ 34.

⁴⁸ *See* Petition at 17-18.

⁴⁹ *Order* at ¶ 34.

⁵⁰ *See* Exhibit 18 to the Application for Transfer of Control of WGN Continental Broadcasting Company, FCC File No. BTCCT-20070501AGE (“Waiver Request”).

⁵¹ Waiver Request at 32.

acting alone could not achieve.⁵² The record further demonstrated that, when local and national elections occur, the combined resources of WGN-TV, WGN(AM), and the *Chicago Tribune* allow provision of up-to-the-minute results from more locations than a single property alone could present.⁵³ Not only does the Petition ignore that such benefits provided the basis for the Commission's decision, but it also completely overlooks the Commission's finding, again supported by extensive record evidence, that continued cross-ownership in Chicago would have at most a negligible effect on diversity.⁵⁴

The Petitioners' equally misguided assertions that the Commission's conclusions could be drawn for every existing grandfathered cross-ownership ignore the unique benefits delivered by WGN-TV, WGN(AM), and the *Chicago Tribune* and the overwhelming diversity of the Chicago market.⁵⁵ Although Transferees believe that many newspaper/broadcast cross-ownerships have delivered significantly improved public service, the Commission in granting other waivers of the NBCO Rule will still be required to determine whether, based on the specific facts and record presented in those cases, the purposes of the NBCO Rule will be served by a waiver.

B. The exceptional circumstances demonstrated in this case fully support grant of a permanent waiver of the NBCO Rule.

Not only does the detailed record submitted in this case undermine Petitioners' fears that the standard set forth in the *Order* necessarily would require waiver for any other grandfathered cross-ownership, it also disproves Petitioners' claims that Tribune did not present a sufficiently compelling case to justify a permanent waiver of the NBCO Rule in the Chicago market. In arguing that the Commission's decision to grant Tribune a permanent waiver in the Chicago

⁵² *Id.* at 31.

⁵³ *Id.* at 32.

⁵⁴ *Order* at ¶ 34; Waiver Request at 17-30.

⁵⁵ *See* Petition at 15, 18.

market was in error, Petitioners focus heavily on the Commission's failure to find that WGN-TV, WGN(AM), or the *Chicago Tribune* was facing economic distress or financial hardship. To accept Petitioners' arguments and find that economic distress was required for waiver of the NBCO Rule would effectively eviscerate the FCC's previously stated fourth ground for cross-ownership waivers, which provides that even absent financial difficulties, if "for whatever reason . . . the rule . . . would be better served by continuation of the current ownership pattern, then waiver would be warranted."⁵⁶

As all parties agree, Tribune has sought waiver under this fourth ground of the FCC's waiver standard. As a result, Petitioners' extensive efforts to distinguish this case from previous decisions in which the Commission relied on demonstrations of financial distress are misplaced. Although those previous cases were decided in part under the fourth ground because additional facts also justified the waivers, they clearly involved financially distressed properties. If the Commission had always intended to require a demonstration of financial difficulty, however, it would not have espoused the fourth public interest basis in the first place. The absence of economic distress in this case does not foreclose the FCC's options for issuing a waiver.

Neither does the decision in the *Order* to grant a waiver to Tribune in Chicago, as Petitioners allege, undermine the central policies of the Commission's *1975 Order*.⁵⁷ In that decision, the Commission recognized that in certain exceptional circumstances, the policies embodied by the NBCO Rule might be better served by waiver of the rule, allowing cross-ownerships to continue, than they would be by the forced dissolution of combinations delivering

⁵⁶ *Amendment of Section 73.34 [sic], 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, Second Report and Order, 50 FCC2d 1046, 1085, *recon.* 53 FCC 2d 589 (1975) ("*1975 Order*"), *modified by Nat'l Citizen's Committee for Broad. v. FCC*, 555 F.2d 938 (D.C. Cir. 1977), *aff'd in part and rev'd in part, FCC v. Nat'l Citizens Committee for Broad.*, 436 U.S. 775 (1978) ("*NCCB*").

⁵⁷ See Petition at 15.

significant public interest benefits.⁵⁸ Indeed, the Supreme Court specifically noted the existence of these waiver provisions in affirming the NBCO Rule in 1978.⁵⁹ The extensive record in this case clearly demonstrates that the combined ownership of WGN-TV, WGN(AM), and the *Chicago Tribune* and the resulting public interest benefits represent such an exceptional circumstance and fully support the Commission's decision to grant a permanent waiver of the NBCO Rule consistent with the waiver grounds enunciated in 1975.⁶⁰

In a final attempt to divert attention from the record supporting the Commission's true justifications for grant of a permanent waiver in Chicago, Petitioners assert that this waiver is foreclosed by precedent that requires exceptional circumstances to justify grant of such a waiver and by the Commission's statement in the *1975 Order* that it would not "re-litigate" arguments considered and rejected in that order in evaluating waivers.⁶¹ This discussion simply does not change the fact that the Commission in granting Tribune a permanent waiver did, in fact, rely on exceptional circumstances, namely the unique record of service delivered over the many years of combined ownership, service that would not continue if divestiture were required, as well as on the level of diversity in the Chicago market, a level immensely greater than that present in 1975.

The Petition's extensive reliance on the Commission's decision in *Capital Cities/ABC* in support of its claim that no waiver is justified in the instant case is also misplaced.⁶² Petitioners

⁵⁸ *1975 Order*, 50 FCC 2d at 1084-1085.

⁵⁹ *NCCB*, 436 US at 786, n.9.

⁶⁰ Even if Petitioners could demonstrate that the Commission departed from previous approaches to waivers of the NBCO Rule, any such a departure is clearly within the Commission's authority, particularly in a "fact-intensive" case such as this one. *Busse Broadcasting Corp. and Pappas Telecasting of the Midlands v. FCC*, 87 F.3d 1456, 1463-1464 (D.C. Cir. 1996) ("Given the fact-intensive nature of the Commission's role in these proceedings, it is surely within the agency's authority to proceed on a case-by-case basis rather than by rulemaking."). See also, *SEC v. Chenery Corp.*, 322 U.S. 194 (1947) (establishing that the FCC has wide discretion to choose to establish policy by adjudication or rulemaking).

⁶¹ Petition at 15-17.

⁶² *Id.*, citing *Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841 (1995).

contend that the case put forth by the applicants in *Capital Cities/ABC* was “far more compelling” than that presented by Tribune.⁶³ The only support provided for this assertion, however, is that the cross-ownerships in that case involved radio stations and “non-dominant” newspapers.⁶⁴ As noted above and demonstrated by the record in this proceeding, the service delivered by Tribune in the Chicago market as a result of cross-ownership and the diversity of sources available in that market are indeed exceptional. Waiver of the NBCO Rule in the Chicago market, therefore, was fully supported by the record, within the FCC’s discretion to confer, and not arbitrary and capricious.

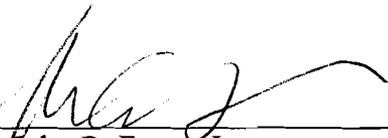
⁶³ *Id.*

⁶⁴ *Id.* at 15, n. 17. The Petition fails to explain what constitutes a “dominant” newspaper. The status of the *Chicago Tribune* as “dominant” is not necessarily the case today. The *Chicago Tribune* faces stiff competition from the *Chicago Sun-Times* and in fact trails the *Chicago Sun-Times* in circulation in some of the central parts of the market, including the Chicago “City Zone.” See *SRDS Circulation 2008* at 374-375.

IV. Conclusion

The Commission's decisions in the *Order* finding that UCC and MA had failed to demonstrate standing to challenge the Transfer Applications in most markets, including Chicago, and granting Transferees a waiver of the NBCO Rule in the Chicago market were fully supported by the record in this case and by relevant precedent. Petitioners' claims that these decisions were somehow in error are based on a misunderstanding of the Commission's stated grounds for those decisions and of Commission precedent. In any event, the FCC's evaluation of all of UCC's and MA's contentions, despite their lack of standing, confirms that reconsideration is not required. Accordingly, the Commission should act promptly to dismiss the Petition and affirm its decision in the *Order* granting the Transfer Applications.

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January 15, 2008

CERTIFICATE OF SERVICE

I, Tammi Foxwell, a secretary at the law firm of Dow Lohnes PLLC, hereby certify that on this 15th day of January 2008, I caused a copy of the foregoing "Opposition to Petition for Reconsideration" to be served via first-class mail, postage prepaid, upon the following:

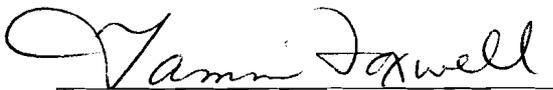
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