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

In the matter of	)	
	)	
Shareholders of Tribune Company,	)	MB Docket No. 07-119
Transferors	)	
	)	
and	)	
	)	
The Tribune Employee Stock Ownership Plan,	)	
Sam Zell and EGI-TRB, L.L.C.,	)	
Transferees	)	
	)	
For Consent to the Transfer of Control of	)	
The Tribune Company	)	
	)	
and	)	
	)	
Applications for the Renewal of Licenses	)	File Nos. BRCT-20060811ASH, <i>et al.</i>

FILED/ACCEPTED

JAN 15 2008

Federal Communications Commission  
Office of the Secretary

TRIBUNE COMPANY'S  
OPPOSITION TO PETITION FOR RECONSIDERATION

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## SUMMARY

The Petitioners The Office of Communication of the United Church of Christ, Inc., Media Alliance and Charles Benton have sought reconsideration of portions of the Commission's decision to grant several transfer of control and license renewal applications filed by Tribune Company ("Tribune"). The Petitioners allege that the Commission incorrectly denied them standing with regard to the applications for Tribune's markets where the Petitioners did not proffer affidavits from its members who reside in those markets. The Petitioners also allege that the Commission inappropriately granted Tribune a permanent waiver of the newspaper/broadcast cross-ownership rule ("NBCO Rule") to permit continued common ownership of WGN-TV, WGN(AM), and the *Chicago Tribune* in the Chicago DMA.

As Tribune demonstrates, the Commission correctly found that the Petitioners lacked standing to challenge broadcast applications in markets for which no affidavit from a resident and viewer of Tribune's stations was provided. Regardless of this finding, however, the Commission's holding on standing provides no basis for reconsideration of the order, as the Commission considered and rejected all of the Petitioners' arguments, despite their lack of standing. Furthermore, the Commission appropriately granted Tribune a permanent waiver of the NBCO Rule with respect to Tribune's media properties in Chicago. The Commission clearly has the authority to grant waivers *sua sponte*, and must grant permanent waivers of the NBCO Rule in appropriate circumstances under the fourth criterion of the waiver standard articulated at the adoption of the NBCO Rule. Under this criterion, the Commission appropriately granted Tribune a permanent waiver to permit its continued common ownership of flagship media properties in the diverse and competitive Chicago media marketplace.

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**TRIBUNE COMPANY'S  
OPPOSITION TO PETITION FOR RECONSIDERATION**

Tribune Company ("Tribune"), by its counsel and pursuant to Section 1.106(g) of the Commission's rules, 47 C.F.R. § 1.106(g), hereby opposes the Petition for Reconsideration filed by the Office of Communication of the United Church of Christ ("UCC"), Media Alliance ("MA") and Charles Benton (collectively "Petitioners"). The Petitioners request that the Federal Communications Commission ("FCC" or "Commission") reconsider its Memorandum Opinion and Order, *Tribune Company*, FCC 07-211, released November 30, 2007 (the "MO&O"), granting the above-referenced transfer of control and renewal applications (the "Applications"), as well as partial relief from the requirements of Section 73.3555(d) of its rules, the newspaper-broadcast cross-ownership rule adopted in 1975 (the "NBCO Rule").

In the *MO&O*, the Commission granted UCC and MA limited standing, and after considering the allegations and arguments made in their various petitions to deny and informal objections, denied their petitions.<sup>1</sup> The Commission simultaneously denied Tribune the relief that it had requested from the NBCO Rule, but granted Tribune limited waivers of that rule in four markets (New York, Los Angeles, Miami and Hartford) and permanent relief from the rule's prohibition in Chicago.<sup>2</sup> UCC and MA challenge the Commission's conclusion that they lacked standing in various of these markets to file a petition to deny the transfer of control applications. The Petitioners then seek reconsideration of the Commission's grant to Tribune of a permanent waiver of the NBCO Rule for the Chicago market.<sup>3</sup> Nothing in the Petition warrants reconsideration of the Commission's action, and accordingly, the Commission should deny the Petition and affirm its action on Tribune's applications in the *MO&O*.

## INTRODUCTION

On May 1, 2007, Tribune filed applications seeking authority to transfer control of the company from the existing shareholders to The Tribune Employee Stock Ownership Plan (the "ESOP"), EGI-TRB, L.L.C. ("EGI"), and Sam Zell (collectively, the "Transferees"). In the Applications, citing the standard enunciated by the Commission in the Notice of Inquiry that initiated the FCC's inaugural Biennial Review,<sup>4</sup> the Transferees and Tribune sought temporary

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<sup>1</sup> *MO&O*, ¶¶ 4-9, 30, 56, 61.

<sup>2</sup> *Id.* ¶¶ 31, 34, 35-36, 58-60, 64-65.

<sup>3</sup> The Petitioners summarily, without any support or argument, also assert that they seek reconsideration of the Commission's grant of temporary waivers of the NBCO Rule to Tribune, and the grant of Tribune's renewal applications in Los Angeles, New York and Hartford. Petition at 2.

<sup>4</sup> See 1998 Biennial Regulatory Review, Notice of Inquiry, 13 FCC Rcd. 11276, 11294 (1998) ("Notice of Inquiry").

or “interim” waivers pending the outcome of the rulemaking on the NBCO Rule in MM Docket 01-235 (the “NBCO rulemaking”) in each of the five cross-ownership markets. In showing it had met the standard for an “interim” waiver, Tribune set forth an extensive showing regarding the status of the NBCO rulemaking and the specific facts present in each cross-ownership market, including the diversity of the media in these markets and the benefits flowing from each of Tribune’s existing media combinations.<sup>5</sup>

UCC and MA, but not Benton, petitioned to deny the Applications, submitting declarations from viewers in some, but not all, of the five cross-ownership markets.<sup>6</sup> On November 13, 2007, Chairman Martin announced his proposal to resolve the pending rulemaking proceeding by adopting a modified NBCO Rule governing newspaper-broadcast cross-ownership, and publicly committed to calling for a vote to resolve the proceeding with the adoption of a new NBCO Rule on December 18, 2007.<sup>7</sup> In the *MO&O* released seventeen days later, the Commission denied Tribune’s request for temporary or “interim” waivers, but granted Tribune conditional two-year waivers that will not expire until six months after litigation over the *MO&O* or the December adoption of a new NBCO Rule had concluded.<sup>8</sup> Additionally, the Commission *sua sponte* granted Tribune a permanent waiver permitting the common ownership

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<sup>5</sup> Tribune had made similar showings for the New York, Los Angeles and Hartford combinations in the renewal applications previously filed for WPIX (New York), KTLA (Los Angeles) and WTIC-TV and WTXX (Hartford), where Tribune had requested similar waivers, if not permanent waivers, justified under the fourth criterion of the Commission’s traditional waiver standard adopted in 1975 with the NBCO Rule.

<sup>6</sup> UCC and MA similarly had filed petitions to deny the renewal applications of WPIX in New York, KTLA in Los Angeles, and WTIC-TV and WTXX in Hartford.

<sup>7</sup> See News Release, “Chairman Kevin J. Martin Proposes Revision to the Newspaper/Broadcast Cross-Ownership Rule,” November 13, 2007.

<sup>8</sup> See *MO&O*, ¶¶ 35-36, 59-60.

of WGN(AM), WGN-TV and the *Chicago Tribune*.<sup>9</sup> The Commission concluded that under the fourth criterion of its traditional waiver analysis, the permanent waiver in Chicago was warranted given the “nature of the market involved” and the “uniquely long-term symbiotic relationship between the broadcast stations and the newspaper” that had produced “myriad public interest benefits” over the 60 years of common ownership.

**I. The Commission Correctly Assessed Petitioners’ Standing.**

In the *MO&O*, the Commission properly found that UCC and MA had failed to demonstrate that they had standing to challenge some or all of the pending transfer of control and renewal of license applications based on the inadequacy or absence of affidavits in support of their Petition.<sup>10</sup> Not only was the Commission correct on the standing of UCC and MA, but that issue presents no ground for reconsideration of the *MO&O*, as the Commission considered and rejected all of UCC’s and MA’s arguments in opposition to the pending applications.

As the Commission stated, section 309(d) of the Communications Act is “unambiguous” in its requirement that a Petition to Deny be accompanied by an affidavit of an individual with personal knowledge of the facts contained in the petition, including that the “petitioner is a resident of the station’s service area and a regular viewer of the station.”<sup>11</sup> Associations may assert standing on behalf of their members, but only if the association demonstrates that “at least one of its members would have standing to sue in his own right.”<sup>12</sup>

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<sup>9</sup> *Id.* ¶¶ 34, 64.

<sup>10</sup> See *MO&O* ¶¶ 4-9.

<sup>11</sup> See *MO&O* ¶ 7; 47 U.S.C. § 309(d)(1).

<sup>12</sup> *Rainbow/PUSH Coalition v. FCC*, 396 F.3d 1235, 1239-40 (D.C. Cir. 2005) (quoting *Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539, 542 (D.C. Cir. 2003) and *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977)).

Thus, the Commission has consistently held that "public interest" groups, such as UCC and MA, can assert standing only when they offer the statement of a member of their organization that resides in the station's service area and is a regular viewer of the relevant station.<sup>13</sup>

The Petitioners' proffered affidavits did not meet these requirements. As they concede, in connection with the transfer of control applications, Petitioner UCC offered affidavits only from residents of Tribune's media markets in New York and Miami, while Petitioner MA failed to provide any affidavits from its members who reside in Tribune's markets.<sup>14</sup> Thus the Commission correctly found that UCC had established standing only with regard to Tribune's New York and Miami applications. Furthermore, the affidavits from the executive directors of the Petitioners' organizations – neither of whom claimed to reside in any of Tribune's markets nor to view regularly Tribune's stations – are insufficient to confer standing on the respective associations. To the contrary, the Commission properly applied its precedent, requiring associations to submit more than just the self-serving statements of their executives before conferring standing.<sup>15</sup>

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<sup>13</sup> See, e.g., *Friends of the Earth, Inc. and Forest Conservation Council, Inc.*, 18 FCC Rcd. 23622, 23623 (2003) ("The Commission requires that associations submit affidavits from local residents or competitors to meet the party in interest threshold to establish standing."); *Application of KGET(TV), Inc.*, 11 FCC Rcd. 4168 (1996) (accepting a Petition to Deny filed by the NAACP supported by an affidavit by a member in the station's service area and rejecting a Petition to Deny filed by the League of United Latin American Citizens that was not accompanied by such affidavit); *Applications of Certain Broadcast Stations Serving Communities in the Miami, Florida Area*, 5 FCC Rcd. 4893 (1990) ("To establish associational standing, an organization must submit the statement of one of its members who would otherwise have standing to sue in his or her individual capacity.").

<sup>14</sup> See Petition at 5-6.

<sup>15</sup> See *Applications of Eagle Radio, Inc.*, 9 FCC Rcd. 836 (1994) (treating a Petition to Deny as an informal objection when the National Black Media Coalition submitted only an affidavit from its Chairman, and not a local resident "as is required for an organization seeking standing as a party in interest").

Furthermore, the Petitioners do not cure their standing problems with regard to Tribune's Chicago media properties by proffering Mr. Charles Benton on reconsideration, when Mr. Benton could have participated in the initial proceeding.<sup>16</sup> The Commission permits persons not participating in the initial proceeding to file for reconsideration, but only upon a showing of "good reason why it was not possible for him to participate in the earlier stages of the proceeding."<sup>17</sup> Such "good reason" is absent from the Petition. There is no claim that Mr. Benton was not "aware of the proceeding from its outset," nor that he was "[un]familiar with the issues raised."<sup>18</sup> Indeed, as an alleged long-time viewer, listener and reader of Tribune's media properties in Chicago, Mr. Benton was no doubt aware of the proceedings ongoing at the Commission with regard to Tribune, and simply chose not to participate until this stage of the proceeding. Since May 1, 2007, potential petitioners have been aware that Tribune was seeking an extended waiver of the NBCO Rule in Chicago with the intention of permanently retaining the common ownership, and the Commission's *sua sponte* grant of a permanent waiver instead of an "indefinite" waiver is not sufficient "good reason" to permit the participation of additional parties on reconsideration.<sup>19</sup>

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<sup>16</sup> See Petition at 1 n.1 & Attachment A. The Petitioners similarly do not revive their standing based on submission of the required affidavits from members who reside in Tribune's other markets in connection with their Petition for Reconsideration, when such affidavits clearly could have been produced in connection with the Petition for Deny. See 47 C.F.R. § 1.106(c).

<sup>17</sup> 47 C.F.R. § 1.106(b)(1).

<sup>18</sup> *Request for Fleet Call, Inc. for Waiver*, 6 FCC Rcd. 6989 (1991).

<sup>19</sup> See *Applications of Arizona Mobile Telephone Company, Grand Canyon, Arizona*, 80 F.C.C.2d 87, 89-90 (Review Board 1980) (declining to find standing to lodge a petition for reconsideration to non-parties that, *inter alia*, failed to "show[] a good reason why they could not have participated earlier in the proceeding").

Regardless of the Commission's holding on standing in the *MO&O*, however, this does not provide any grounds for reconsideration of the actions on Tribune's applications in the *MO&O*. Despite finding shortcomings with respect to the Petitioners' standing, the Commission explicitly considered and rejected all of the Petitioners' arguments.<sup>20</sup> Thus, the Petitioners have not been prejudiced in connection with the underlying transaction by the Commission's decision on their standing in the *MO&O*,<sup>21</sup> and the Commission need not reconsider its action.

**II. The Commission's Grant of A Permanent Waiver In Chicago Should Not Be Reconsidered Because It Was A Reasonable Exercise of Agency Discretion.**

In challenging the Commission's grant to Tribune of a permanent waiver for the ownership of WGN(AM), WGN-TV and the *Chicago Tribune*, the Petitioners take issue with the *sua sponte* action of the Commission, arguing that it is not based on any standard enunciated by the Commission or justified by any detailed findings of fact.<sup>22</sup> Citing extensively from an adjudication issued over a decade ago, the Petitioners argue that the Commission's grant of a waiver can only be based upon a showing of financial distress, and thus the grant to Tribune is inconsistent with prior Commission precedent.<sup>23</sup> The Petitioners allege that the FCC's action granting Tribune a permanent waiver in Chicago effectively overrules the Commission's Second Report and Order that adopted the NBCO Rule, and would require permanent waivers for all

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<sup>20</sup> See *MO&O* ¶ 8 ("In light of the serious policy issues raised by UCC/MA, to the extent that they have not demonstrated standing to file petitions to deny against some or all of the applications, we will consider their pleadings as informal objections.").

<sup>21</sup> *Emmis Television License, LLC*, 22 FCC Rcd. 7702 (2007) ("Our findings regarding BCA's claim of standing are moot. Although we found that BCA had failed to demonstrate standing, we went on to consider its claims on the merits.").

<sup>22</sup> Petition at 13-14.

<sup>23</sup> *Id.* at 13-17.

grandfathered common ownership.<sup>24</sup> The Petitioners, however, have ignored the Commission's analysis and conclusions in the *MO&O*, and elsewhere, and greatly exaggerated the precedential scope of the Commission's action. The Commission therefore must reject the Petitioners' request for reconsideration, and reaffirm its decision to permit the continued ownership of the *Chicago Tribune*, WGN(AM) and WGN-TV notwithstanding the transfer of control of Tribune from its public shareholders to Tribune's ESOP, EGI and Zell.

**A. The Commission Has The Authority to Grant Waivers *Sua Sponte*.**

Despite the absence of a specific request for a permanent waiver in Chicago, the Commission had wide discretion to grant Tribune such a waiver *sua sponte*. Even where parties have not requested specific and permanent relief from a rule, the Commission has discretion to issue such waivers.<sup>25</sup> Indeed, as the Supreme Court recognized when it reviewed the adoption of the NBCO Rule, the Commission granted *sua sponte* several permanent waivers when it adopted the NBCO Rule in 1975.<sup>26</sup> While the Commission must articulate a reasoned basis for such a waiver and have a record sufficient to justify the waiver, the Commission's action granting Tribune a permanent waiver in Chicago was reasonably articulated in the *MO&O* and overwhelmingly supported by the record in this proceeding. This is not surprising, because as part of its request for an "interim" waiver pending the conclusion of the NBCO rulemaking,

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<sup>24</sup> *Id.* at 15, 17-18.

<sup>25</sup> See *Springfield Television of Utah, Inc. v. FCC*, 710 F.2d 620, 630 (D.C. Cir. 1983) (granting permanent waiver of short spacing requirements in the FCC's rules) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)).

<sup>26</sup> See *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 788 (1978) ("Waivers of the divestiture requirement were granted *sua sponte* to 1 television and 1 radio combination, leaving a total of 16 stations subject to divestiture.") ("*FCC v. NCCB*").

Tribune had set forth, among other things, the very same facts and legal argument that are required to justify a permanent waiver of the NBCO Rule.

**B. The Commission Can and Must Grant Permanent Waivers Where Appropriate Under the Fourth Criterion of the 1975 Waiver Standard.**

The Petitioners erroneously maintain that the Commission did not articulate a standard for the granting of a permanent waiver to Tribune in Chicago. To the contrary, the Commission recognized that it could grant permanent waivers of the NBCO Rule under the fourth criterion of the waiver standard promulgated in 1975,<sup>27</sup> and did so in the *MO&O*. Contrary to the claims of the Petitioners, the Commission contemplated granting such waivers, even in situations not involving economically distressed media properties, where “for whatever reason” the “purposes of the rule would be disserved by divestitures” because the Rule “would be better served by continuation of the current ownership pattern.”<sup>28</sup> As Tribune demonstrated in its renewal applications for KTLA, WPIX, WTIC-TV and WTXN, this fourth criterion independently establishes a basis for permanent waivers even in situations where, unlike the first three criteria, neither the broadcast station nor the newspaper is in financial distress.

As Tribune has shown, the fourth criterion for a permanent waiver of the NBCO Rule must do more than simply serve as a basis for a permanent waiver under the circumstances identical or similar to the first three criteria (financial hardship or survival) in large markets like Chicago. Otherwise, the Commission would have expressed that the duration of the waiver was the only difference, and not described it as a separate criterion where, “*for whatever reason*, the

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<sup>27</sup> See *MO&O* ¶ 23.

<sup>28</sup> See *supra* at 6; *1975 Order*, 50 F.C.C.2d at 1085.

purposes of the rule would be disserved.”<sup>29</sup> The Commission clearly intended to grant waivers under this fourth criterion in precisely the kind of situation found here: where the waiver fosters diversity of viewpoints and programming because the combination has a significant history of providing enhanced news and public interest programming and the media marketplace already is vibrant and diverse. Under this view of the fourth criterion, the Commission correctly *sua sponte* granted Tribune a permanent waiver of the NBCO Rule because the combination does not measurably alter the diversity or competitive nature of the market, but provides the market with substantial news and public affairs programming benefits.<sup>30</sup>

For this reason, the Petitioners clearly err when they extensively rely on decade-old quotes from the decision in *Capital Cities/ABC, Inc.*, where, prior even to undertaking the Commission’s first Biennial Review, the FCC refused to grant a permanent waiver for two combinations that were being newly-formed in smaller markets than Chicago.<sup>31</sup> The Petitioners rely heavily on this decision for the proposition that the Commission already has concluded that divestiture at the time of a sale fosters diversity and that this proposition cannot be relitigated in an adjudication. As a review of *Capital Cities/ABC* indicates, the Commission there was not addressing a grandfathered combination, but instead was addressing newly-formed combinations in the proposed transaction.

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<sup>29</sup> *Newspaper-Broadcast NPRM*, 16 FCC Rcd. at 17285 (emphasis added).

<sup>30</sup> Indeed, the Commission has recognized that the Supreme Court, in upholding the NBCO Rule, specifically noted the availability of waivers of the rule to underscore the reasonableness of the rule. *Newspaper/Radio Cross-Ownership Waiver Policy*, 11 FCC Rcd. 13003, 13006 (1996) (citing *FCC v. NCCB*, 436 U.S. at 802 n.20). While the Supreme Court noted these waivers underscored the reasonableness of the NBCO Rule “particularly” where the station and newspaper could not survive under separate ownership, they did so recognizing that such situations were not the only situations where a waiver would be justified.

<sup>31</sup> 11 FCC Rcd. 5841 (1995). The Commission, however, did grant Disney sufficient time to await the result of a promised rulemaking.

Moreover, the Commission already has reviewed the propositions that served as the basis for the NBCO Rule and the divestiture policy, and altered its own conclusions, making reliance on these proclamations in *Capital Cities/ABC* specious at best.<sup>32</sup> Subsequent to *Capital Cities/Disney*, the Commission recognized that newspaper-broadcast combinations (1) do not adversely affect competition in the market, (2) promote the public interest by delivering more and better local coverage of news and public affairs, and (3) do not pose a widespread threat to diversity of viewpoint or programming.<sup>33</sup> Given these conclusions, and their abject confirmation by the facts described below with the respect to Tribune's common ownership of the *Chicago Times* and WGN-TV and WGN(AM), Tribune was entitled to a grant of a permanent waiver, notwithstanding any refusal to grant such a waiver in *Capital Cities/ABC*.

**C. The Commission's Grant of a Permanent Waiver in Chicago Was Reasonable, and Should Not be Altered on Reconsideration.**

In an exaggerated effort to claim that the sky has fallen, the Petitioners assert that the Commission must reconsider its grant of a permanent waiver to Tribune in Chicago because the grant "effectively overrules" the Commission's adoption of the NBCO Rule and its collateral

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<sup>32</sup> As the Petitioners are well aware, the United States Court of Appeals for the Third Circuit already has upheld the reasonableness of these Commission's findings. Despite their efforts to confuse the issue, the Petitioners have been unable to convince a majority of the Commission that these conclusions should be reversed.

<sup>33</sup> See 2003 Order, 18 FCC Rcd. at 13748-49, 13752-54, 13756-57, 13759-60, 13767. The Commission concluded that newspaper-broadcast combinations generally "cannot adversely affect competition in any relevant product market," thus making the Rule no longer necessary to protect competition. *Id.* at 13748-49, 13752-53, 13767. The Commission also held that newspaper-broadcast combinations promote the public interest by delivering more and better local coverage of news and public affairs, and that the Rule actually inhibits such programming and benefits. *Id.* at 13753-54, 13756-57, 13759-60. Finally, the Commission found that the record in the proceeding did not support the conclusion that "common ownership of broadcast stations and daily newspapers in the same community poses a widespread threat to diversity of viewpoint or programming." *Id.* at 13767. The Third Circuit upheld the reasonableness of these Commission conclusions.

requirement for divestiture upon the transfer of grandfathered cross-ownerships.<sup>34</sup> The FCC's action, however, clearly was based on the specifics of Tribune's showing concerning the operation of WGN(AM), WGN-TV and the *Chicago Tribune*, and poses no such threat.<sup>35</sup>

In granting Tribune its permanent waiver, the Commission clearly reviewed the specific factual record with respect to the nature of the Chicago media marketplace, and Tribune's operation in that market, and concluded that on balance, the public in Chicago was best served by the continued common ownership and operation of the *Chicago Tribune*, WGN(AM) and WGN-TV. The Commission recognized that Tribune, and specifically its Chicago media properties, were "one of the nation's oldest media pioneers."<sup>36</sup> The record not only supported this conclusion, but provided evidence that Tribune was a pioneer in providing news and public affairs programming.<sup>37</sup> After a thorough review of the record, the Commission was able to determine that on balance, "the nature of the market" in Chicago combined with the public interest benefits that flowed from the "uniquely long-term symbiotic relationship between the broadcast stations and the newspaper" warranted a permanent waiver.<sup>38</sup> As the Commission held, its "examination of the record" confirmed "the myriad public interest benefits that have resulted over the almost 60 years of Tribune's common ownership of WGN-TV, WGN(AM) and

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<sup>34</sup> Petition at 17-18.

<sup>35</sup> Of course, the Commission might be well served by eliminating the divestiture requirement established more than three decades ago. To the extent that it has recently brought its application of the NBCO Rule closer to the modern century and today's media marketplace, it could not help but treat Tribune's Chicago properties in a similar manner, as well as Tribune's properties in the other four cross-ownership markets.

<sup>36</sup> *MO&O*, ¶ 34.

<sup>37</sup> See Application, Narrative Description, at 2-3.

<sup>38</sup> *MO&O*, ¶ 34.

the *Chicago Tribune*" in Chicago.<sup>39</sup> The Commission was well within its discretion in concluding that in "the unique circumstances present here, forced separation" of the Tribune Chicago media properties "would diminish the strength of important sources of quality news and public affairs programming in the Chicago market and that any detriment to diversity caused by the common ownership is negligible given the nature of the market."<sup>40</sup> Under the fourth criterion of the waiver standard that was adopted in 1975, the Commission correctly concluded that "the purposes of the rule would not be served by divestiture."<sup>41</sup>

The Commission's conclusions regarding Tribune's operation and the Chicago market do not eviscerate the NBCO Rule, and do not require reconsideration. The record firmly establishes the reasonable nature of the Commission's conclusion concerning the unique and historic nature of the operation of WGN(AM), WGN-TV and the *Chicago Tribune* in the public interest. As the record reflects, these media properties are institutions in the Chicagoland area, well known for their provision of quality news and public service to the Chicago community, with benefits that no television station or radio station on its own could otherwise offer.<sup>42</sup>

Among other things, the record in the proceeding reflects that:

\* During the period of Tribune's common ownership, WGN-TV has expanded its regularly-scheduled local news programming to 31.5 hours per week, the most of any station in the Chicago DMA. Tribune has developed this news operation notwithstanding the fact that WGN-TV is not affiliated with one of the top-4 networks.<sup>43</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Application, Chicago Waiver Request, at 29-32. Tribune also reasonably established that these benefits would have been difficult to attain absent common ownership and Tribune's firm commitment to bringing news and public affairs programming benefits to the public.

<sup>43</sup> *Id.* at 29-30.

\* WGN-TV and WGN(AM) have drawn on the rich and deep resources of the *Chicago Tribune* to enrich and expand local and regional news and public affairs coverage.<sup>44</sup> *Tribune's shared resources have enhanced the ability of the public to receive coverage of issues of local importance.*<sup>45</sup>

\* WGN-TV and WGN(AM) also have been able to enhance their coverage of the major national and international events through access to *Chicago Tribune* newspaper reporters, staff and resources.<sup>46</sup>

\* WGN-TV, WGN(AM) and the *Chicago Tribune* also work together on certain public affairs specials and programs.<sup>47</sup>

As these examples illustrate, the Commission correctly recognized that in the 60 years that *Tribune* has operated WGN-TV, WGN(AM) and the *Chicago Tribune*, all three properties have succeeded in uniquely providing the local public with enhanced news specials, news coverage,

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<sup>44</sup> *Id.* at 30. News staff at all three media properties collaborate on a twice-daily basis on stories each are covering that are of interest to the local community, and WGN-TV and WGN(AM) reporters have access to a daily schedule provided by the *Chicago Tribune* editorial staff of planned events of local interest each day.

<sup>45</sup> *Id.* at 30-31. For example, local leaders are made available to WGN(AM) and WGN-TV reporters for interviews after their meetings with the *Chicago Tribune* editorial board. When Senator Barack Obama announced his candidacy for President in Springfield, Illinois, the *Chicago Tribune* video coverage of the event was provided to WGN-TV to be included in its local news. As yet another example, WGN-TV, WGN(AM) and the *Chicago Tribune* also collaborated on a significant event of importance to the large Polish community in Chicago on the occasion of the 25th anniversary of Pope John Paul II's elevation to Pope. Both the *Chicago Tribune* and WGN-TV ran a series of stories on the event, utilizing video from both sources and a WGN(AM) radio personality narrated a CD that was produced to commemorate the event.

<sup>46</sup> *Id.* at 31-32. For example, the television station and the radio station could not afford to dedicate their limited staffs to coverage of the wars in Iraq and Afghanistan, but through access to *Chicago Tribune* reporters that are dedicated to such coverage, not only can present expert coverage, but coverage with a local focus. On numerous occasions throughout these international conflicts, both WGN-TV and WGN(AM) have been able to access *Chicago Tribune* reporters on the ground for live, videotaped or satellite-phone interviews. Absent access to these resources of the *Chicago Tribune*, WGN-TV and WGN(AM) would not be able to cover these and other significant international events as well.

<sup>47</sup> *Id.* at 32. These have included, for example, several political campaign debates, including the 2002 gubernatorial campaign debate. The stations and the newspaper also collaborate on coverage of the Republican and Democratic party conventions, as well as polling research during elections.

public affairs programs, and public interest projects. Given this record of Tribune's achievement, the Commission's grant of a waiver of the NBCO Rule to permit continued common ownership not only permits Tribune to continue to develop quality news and public affairs programs for the greater Chicago area, but does so without lowering any standard for a waiver of the NBCO Rule, much less eviscerating that rule.

Moreover, the record also establishes the reasonable nature of the FCC's specific finding that the Chicago media marketplace is sufficiently competitive and diverse to overcome any alleged harm to diversity from the combination of the Tribune properties. Chicago is the third-largest DMA in the country, with more than 3.35 million television homes served by 14 independently-owned television stations, 97 independently-owned commercial and non-commercial radio stations and 24 daily newspapers published by 13 different publishers.<sup>48</sup> Even after the traditional quibbling from Petitioners, it is uncontroverted that:

\* 10 independent television broadcasters in Chicago earn a 1 share or better, and 9 independent stations provide local news.<sup>49</sup> The Petitioners incorrectly ignored 6 other television stations that provide a voice in the market, and that WGN-TV is neither a traditional network affiliate or traditional top-four station.

\* 125 radio stations serve the community, and at least 15 provide news.<sup>50</sup>

\* "[T]here are ... 5 independent daily newspaper voices in the Chicago market" (the Petitioners would replace the ellipsis with the word "only").<sup>51</sup>

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<sup>48</sup> Chicago Waiver Request, at 17. As recognized in its application, Tribune's television reach in the market was only fifth among its strong group of competitors, its newspaper faced strong and legendary competition from the *Chicago Sun-Times*, and it owned only one radio station in the market.

<sup>49</sup> Chicago Waiver Request at 26.

<sup>50</sup> Petition to Deny at 27-28. There are an additional 42 radio stations that serve the Chicago area that the Petitioners ignored based on their own limited definition of the relevant market.

<sup>51</sup> Petition at 29. The Petitioners unjustifiably discounted nine newspapers that serve areas of the Chicago market.

Given these facts, as well as the numerous other factors contained in Tribune's market analysis for Chicago, the Commission was well supported in concluding that "any detriment to diversity caused by the common ownership is negligible given the nature of the market," and that a permanent waiver was warranted because "the purposes of the [NBCO Rule] would not be served by divestiture."<sup>52</sup>

In the *MO&O*, the Commission cited with approval decisions in *Fox Stations* and *Field* to emphasize its conclusion regarding the comparatively rare nature of the Chicago media marketplace.<sup>53</sup> Contrary to the claims of the Petitioners, the Commission's reliance on its decisions in *Fox Stations* and *Field* demonstrated that the findings about the specific Chicago market supported the conclusion that those two waivers, and the permanent waiver granted to Tribune, involved "large, competitive, and diverse TV markets."<sup>54</sup> These references serve to underscore the high degree of diversity in the markets at issue, and serve to justify and distinguish the FCC's grant to of a permanent waiver in Chicago to Tribune, rather than identify it as an abdication of the NBCO Rule or the waiver standard adopted in 1975.<sup>55</sup>

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<sup>52</sup> *MO&O*, ¶ 34.

<sup>53</sup> *Id.* ¶ 34 n.68.

<sup>54</sup> *Id.*

<sup>55</sup> The Petitioners summarily, without any support or argument, also assert that they seek reconsideration of the Commission's grant of temporary waivers of the NBCO Rule to Tribune, and the grant of Tribune's renewal applications in Los Angeles, New York and Hartford. Petition at 2. Because the Petitioners have provided no grounds for such reconsideration, much less any argument, it must be summarily denied. See 47 C.F.R. 1.106(d)(1): *ALEGRIA I, INC. Marina, California*, 2 FCC Rcd. 1762 (Review Board 1987) (dismissing a "summary and conclusory" petition for reconsideration that lacked any justification). In the extremely unlikely event that the Commission were to reconsider its action granting such temporary waivers to Tribune in the four other cross-ownership markets and the renewals in Los Angeles, New York and Hartford, see *MO&O* at ¶ 36 n.72 ("any further reconsideration or hearing would be futile"), the Commission would need to consider granting Tribune the relief it had sought in its waiver requests, especially, given the actions of the Commission on the NBCO Rule in December.

## CONCLUSION

The Petitioners' efforts to deny the public the benefits of enhanced and additional news and public affairs coverage, as well as to delay final action on Tribune's reorganization as an employee-owned company. With respect to the *MO&O*, the Petitioners have not shown any reason why the Commission's action granting them limited standing was in error, much less an error that requires reconsideration. Furthermore, the Petitioners have not shown that the Commission's action granting Tribune a permanent waiver in Chicago was unreasonable and not supported by the record and applicable law. Tribune therefore requests that the Commission deny the Petition for Reconsideration.

Respectfully submitted,

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Dated: January 15, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of January, 2008, I caused true and correct copies of the foregoing Opposition to Petition for Reconsideration to be served by first-class mail, postage prepaid, upon the following:

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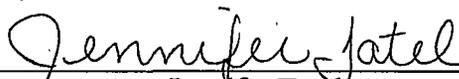
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