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SUMMARY

Free Press, Media Alliance, NABET/CWA, National Hispanic Media Coalition, Office of Communication of the United Church of Christ, Inc. and Charles Benton challenge the proposed assignment of licenses now held by the Tribune Company's bankruptcy estate.

Many of the same creditors that contributed to the ill-advised transaction that buried the Tribune Company in debt now seek unprecedented waivers to allow them to complete their looting of the assets of one of the nation's major media companies. Their applications should be dismissed or denied. They subordinate the interests of the public to the private interests of the creditors, and do not come close to meeting the evidentiary standards required for waivers of the Commission's ownership rules. Because these applications are the first to be considered under the Commission's recently-revised cross-ownership rules, public interest groups and the industry will be watching closely to see if the Commission is serious about enforcing its rules.

In order to promote localism, competition and diversity in the marketplace of ideas, Commission policy contemplates that common ownership of newspapers and broadcast stations in the same community should be terminated upon the sale of the broadcast properties to a new owner. Tribune nonetheless seeks permission to assign its newspaper/broadcast combinations in five markets, and to hold two TV stations in Hartford. The circumstances leading to the proposed transaction are self-inflicted wounds. Tribune went bankrupt because of unwise financial decisions. The properties involved are profitable on an operating basis, and salable as free-standing entities.

The proposed transaction seeks even more expansive waivers than those granted by a sharply divided FCC in 2007. Significantly, a meritorious petition for reconsideration and a judicial challenge to that earlier decision remain pending, so the Commission's 2007 waiver decision is non-final and subject to reversal. A fundamental underpinning of the FCC's licensing

policies is that an invalidly granted license cannot be assigned. Before the Commission acts on the new requests for waivers, it should complete its reconsideration of the 2007 decision. This would allow the Commission to ensure that the Tribune cross-ownerships are broken up so as to promote diversity, competition and localism.

The applications for transfer are defective on their face, and cannot be granted on the basis of the information submitted to the Commission. Specifically, as of this time, the ownership interests of the various Tribune creditors in the newly reorganized company have yet to be determined. Although Tribune maintains that changes in the exact identity of the future owners are “immaterial,” the Commission cannot now make the necessary determinations as to how to apply its ownership rules. In particular, the Commission cannot currently ensure that the new ownership complies with the citizenship requirements in Section 310(b). For the same reason, the Commission cannot lawfully grant Tribune’s request for an unprecedented waiver allowing future transfer of the cross-owned properties in “tandem” to yet another new owner. Indeed, the fact that the assignees are already contemplating a future resale of the properties raises serious questions as to their commitment to provide service in the public interest, as opposed to “dressing up” their balance sheets to prepare for the next transaction.

Tribune argues that principles of comity require the Commission to subordinate its policies to those of the Bankruptcy Code. However, the agency’s policy is to coordinate the two bodies of law, not to place the interest of private parties ahead of the public. Sale of the cross-owned Tribune properties as a package is not required to assure comity with the bankruptcy laws; the Commission can require sale of the broadcast stations and the newspapers to different owners without in any way undermining the bankruptcy laws.

A substantial portion of Tribune's waiver requests consists of attacks on the factual, statutory and constitutional underpinnings of the Commission's newspaper/broadcast cross-ownership ("NBCO") rules. These claims are utterly without merit, but the Commission need not consider them at all, since Tribune itself created unequivocal case law that challenges to the validity of the NBCO rule can only be brought in a rulemaking context. Tribune's arguments are not unique to the five markets where Tribune seeks waivers, and it is free to present them (as it has) in pending rulemaking proceedings, and the Third Circuit's pending review of the Commission's 2006 Quadrennial Review decision.

Tribune's request for assignment of its Chicago properties represents the first time the Commission has been asked to apply its new NBCO rules. Tribune's application does not meet the FCC's criteria for presuming that the cross-ownership is in the public interest. Nor has Tribune made a showing sufficient to reverse the presumption. None of the properties are "failed" or "failing" within the meaning of Commission policy. The broadcast stations remain on the air and the *Chicago Tribune* is still in circulation. Tribune's bankruptcy was voluntary, not involuntary. Moreover, WGN-TV's audience share exceeds 4%, and Tribune does not even attempt to claim that the station has ever had a negative cash flow, much less that it has been negative for three years. Finally, and importantly, Tribune has made no attempt to sell its properties to other buyers; it simply asks the Commission "to assume" that the properties cannot be sold except at an artificially depressed price. While the stations may not be salable at the unreasonably high price that the prior ownership team unwisely agreed to pay, the test is not whether the sale is at a loss, but whether the price would be artificially depressed.

Nor has Tribune met the Commission's "substantial news" test. Indeed, inasmuch as this is a transfer of an existing combination, Tribune cannot qualify for a waiver under this standard.

Even if the Commission overlooked that fact, Tribune threatens to reduce, rather than increase, the amount of news it intends to present.

Because Tribune cannot qualify for a presumption in favor of a waiver in Chicago, its request must be considered under the Commission's "four factor" test. It meets none of the factors as it does not propose to increase the amount of local news, the operations of Tribune's cross-owned properties are currently integrated and not independent, the HHI for Chicago is high, and none of the properties are, standing alone, in financial distress.

Similarly, Tribune has not made sufficient showing to obtain waivers of either the NBCO rule or the TV duopoly in Hartford. It would require both waivers to transfer the *Hartford Courant* and the *two* Hartford TV stations in tandem. The only reason that Tribune has all three properties now is that it failed to comply with two prior FCC orders directing it to come into compliance with the NBCO rule within 6 months. Commission action to require compliance with its ownership rules is long overdue.

Tribune has failed to show that WTXX(TV) in Hartford is either a "failed" or "failing" station that would justify a waiver of the TV duopoly rule. WTXX(TV) has not gone dark and is not in involuntary bankruptcy. Nor has Tribune shown any efforts to sell the station to an out-of-market buyer since .2006.

Tribune's effort to rebut the presumption that a waiver of the NBCO rule for Hartford would not serve the public interest is similarly inadequate. It fails to meet the Commission's "four factor" test. First, Tribune has not promised any increase in the amount of local news in the market. In fact, Tribune has significantly degraded newsgathering capacity in Hartford, and does not intend to reverse that practice. Second, as in Chicago, Tribune boasts about the degree to which it has integrated the Hartford newsgathering operations, rather than show that the

newsrooms are operated independently. Third, Tribune's analysis of the market concentration overstates the extent of actual competition, and finally, it makes no showing about the financial condition of either the *Hartford Courant* or WTIC-TV.

Finally, even if the Commission determines to grant any temporary waivers to Tribune, they should not be for the extended duration requested by Tribune. Tribune's request for a waiver of indeterminate length tied to the pendency of litigation should be rejected out hand since it violates clear Commission policy and would amount to a permanent waiver as litigation is continuous. Moreover, even for a waiver of specific length, six months, rather than 18 months, is ample time under Commission precedent to allow for the orderly disposition of media properties.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Voluntary Assignment of Licenses of the Tribune Co. and Licensee Subsidiaries	)	MB Docket No. 10-104
)	
From: TRIBUNE TELEVISION NORTHWEST, INC. DEBTOR-IN-POSSESSION	)	BALCDT - 20100428ACE
)	
To: TRIBUNE TELEVISION NORTHWEST)	
)	
AND)	
)	
From: CHANNEL 40, INC., DEBTOR-IN- POSSESSION	)	BALCDT - 20100428ACL
)	
To: CHANNEL 40, INC.)	
)	
AND)	
)	
From: KIAH INC., DEBTOR-IN- POSSESSION	)	BALCDT - 20100428ACS
)	
To: KIAH INC.)	
)	
AND)	
)	
From: KSWB INC., DEBTOR-IN- POSSESSION	)	BALCDT - 20100428ADD
)	
To: KSWB, INC.)	
)	
AND)	
)	
From: KTLA, INC., DEBTOR-IN- POSSESSION	)	BALCDT - 20100428ADV
)	
To: KTLA, INC.)	
)	
AND)	
)	
From: TRIBUNE TELEVISION HOLDINGS, INC., DEBTOR-IN-POSSESSION	)	BALCDT - 20100428ACM
)	

To: TRIBUNE TELEVISION HOLDINGS, INC.)	
)	
AND)	
)	
From: TRIBUNE TELEVISION COMPANY, DEBTOR-IN-POSSESSION	)	BALCDT - 20100428ADQ
)	
To: TRIBUNE TELEVISION COMPANY)	
)	
AND)	
)	
From: TRIBUNE BROADCAST HOLDINGS INC., DEBTOR-IN-POSSESSION	)	BALCDT - 20100428AED
)	
To: TRIBUNE BROADCAST HOLDINGS INC.)	
)	
AND)	
)	
From: WGN CONTINENTAL BROADCASTING COMPANY, DEBTOR- IN-POSSESSION	)	BALCDT - 20100428AEL
)	
To: WGN CONTINENTAL BROADCASTING COMPANY)	
)	
AND)	
)	
From: CHANNEL 39, INC., DEBTOR-IN- POSSESSION	)	BALCDT - 20100428ADY
)	
To: CHANNEL 39, INC.)	
)	
AND)	
)	
From: KWGN, INC., DEBTOR-IN- POSSESSION	)	BALCDT - 20100428ACD
)	
To: KWGN, INC.)	
)	
AND)	
)	
From: TRIBUNE TELEVISION NEW ORLEANS, INC., DEBTOR-IN-	)	BALCDT - 20100428ACZ
)	

POSSESSION)	
)	
To: TRIBUNE TELEVISION NEW)	
ORLEANS, INC.)	
)	
AND)	
)	
From: WPIX, INC., DEBTOR-IN-	)	BALCDT - 20100428ADP
POSSESSION)	
)	
To: WPIX, INC.)	
)	
AND)	
)	
From: WDCW BROADCASTING, INC.,	)	BALCDT - 20100428ACT
DEBTOR-IN-POSSESSION)	
)	
To: WDCW BROADCASTING, INC.)	
)	
AND)	
)	
From: WTXX, INC., DEBTOR-IN-	)	BALCDT - 20100428ADX
POSSESSION)	
)	
To: WTXX, INC.)	
)	
AND)	
)	
From: KPLR, INC., DEBTOR-IN-	)	BALCDT - 20100428ADH
POSSESSION)	
)	
To: KPLR, INC.)	

PETITION TO DENY

Petitioners Free Press, Media Alliance, NABET/CWA, National Hispanic Media Coalition, Office of Communication of the United Church of Christ, Inc., and Charles Benton (collectively “Public Interest Petitioners”), by their attorneys, the Institute for Public Representation and Media Access Project, pursuant to Sections 309 and 310(d) of the Communications Act, 47 U.S.C. §§ 309, 310(d), and 47 C.F.R. § 73.3584, petition the Federal

Communications Commission (“FCC” or “Commission”) to deny Tribune’s Form 314 applications seeking FCC consent to implement the joint plan of reorganization which it submitted to the Bankruptcy Court and to assign its broadcast licenses including the licenses for WGN-TV and WGN(AM), Chicago, KTLA(TV), Los Angeles, CA, WSFL(TV), Miami, FL., WPIX(TV), New York, NY, and WTIC-TV and WTXN(TV), Hartford, CT, to the reorganized Tribune.

I. THE PETITIONERS

Free Press is a national nonpartisan and nonprofit organization working to increase informed public participation in media policy debates and to generate policies that will produce a more competitive and public interest-oriented media system. Free Press is the largest media reform organization in the United States, with nearly half-a-million activists and members and a full-time staff of more than 30 based in our offices in Washington, D.C., and Florence, Massachusetts.

A core component of Free Press’ organizational mission is to promote diverse and independent media ownership and to deter overly-concentrated and noncompetitive media markets. Free Press has participated extensively in media ownership proceedings at the Federal Communications Commission, including the FCC’s 2002 Biennial Media Ownership Review (MB Docket No. 02-277), the 2006 Quadrennial Media Ownership Review (MB Docket No. 06-121), and is currently involved in litigation concerning the revised news-paper broadcast cross-ownership rule adopted in the latter proceeding. More recently, Free Press staff have spoken on panels hosted by the FCC in conjunction with the Commission’s 2010 Quadrennial Media Ownership Review (MB Docket No. 09-182). As part of its advocacy work, Free Press also conducts grassroots outreach to educate and mobilize popular support for a more competitive,

diverse media system. Free Press filed numerous comments in the FCC's 2006 Quadrennial Review of its ownership rules and is a Petitioner in *Prometheus Radio Project v. FCC*, 3d Cir. No. 08-3078 *et al.*, which challenges the FCC's 2008 Order revising the NBCO rule.

Media Alliance (MA) is a 30 year-old media resource and advocacy center for media workers, non-profit organizations, and social justice activists. Its mission is excellence, ethics, diversity, and accountability in all aspects of the media in the interests of peace, justice, and social responsibility. One of Media Alliance's goals is to prevent concentrated and noncompetitive media markets. Media Alliance filed numerous comments in the FCC's 2002 Biennial Review and 2006 Quadrennial Review of its ownership rules and is a Petitioner in *Prometheus Radio Project v. FCC*, 3d Cir. No. 08-3078 *et al.*, which challenges the FCC's 2008 Order revising the NBCO rule. MA previously filed a petition to deny the license renewal of Tribune's KTLA based on its violation of the NBCO rule and a petition to deny the transfer of Tribune Co. to Zell.

The National Association of Broadcast Employees and Technicians, and The Broadcasting and Cable Television Workers Sector of the Communications Workers of America, (NABET) is a labor union with 10,000 workers employed in the broadcast field, and along with the Communications Workers of America (CWA) represents over 600,000 workers in the public and private sector in the United States. NABET-CWA and CWA Members are employed in telecommunications, printing and news media, public service, and cable television fields, among others. Major employers include the NBC and ABC networks and independent companies in broadcast television across America. A consistent concern of NABET-CWA is to protect the interests and jobs of its members. NABET-CWA has an interest in ensuring the markets in which its members work remain competitive, to ensure its members receive competitive wages,

including collective bargaining with Tribune's direct competitors. CWA is also involved in public communications advocacy, and is at the forefront of legislative initiatives to promote the creation of good-paying high-skill jobs in America. Further, as employees involved in the media and news industries, NABET-CWA members have an especially strong interest in receiving the best news coverage possible.

The National Hispanic Media Coalition (NHMC) is a non-profit, civil rights media advocacy organization created to advance American Latino employment and programming equity throughout the entertainment industry and to advocate for telecommunications policies that benefit the American Latino community. NHMC has participated in proceedings before the FCC to promote a diversity of viewpoints, a greater role for citizens in Commission regulatory proceedings, and more minority involvement in the electronic mass media industries. For example, NHMC filed comments in the FCC's ownership review proceedings and a still pending petition for reconsideration of the *2008 Order*.

Office of Communication of the United Church of Christ, Inc. (UCC) is a not-for-profit corporation of the United Church of Christ working to promote justice in media through legal challenges, policy advocacy, grassroots organizing, and public education. UCC is active in the efforts to ensure diversity of ownership, production, decision-making, and employment in the media. UCC has filed comments in numerous FCC ownership rulemakings, including the 2002 Biennial and 2006 Quadrennial reviews. UCC also filed petitions to deny Tribune's license renewal applications for the stations in Hartford and New York that were held in violation of the NBCO rule and a petition for reconsideration of the FCC's order approving the transfer of control of Tribune to Zell.

Charles Benton is Chairman of the Benton Foundation. The Benton Foundation works to ensure that media and telecommunications serve the public interest. The Benton Foundation has filed comments in the FCC's ownership review proceedings including a still pending petition for reconsideration of the 2008 Order. Charles Benton also filed a petition for reconsideration of the FCC's November 2009 order granting Tribune a permanent waiver of the NBCO rule.

The Public Interest Petitioners are parties in interest within Section 309(d)(1) of the Communications Act.¹ As demonstrated in the attached declarations, each of the organizational petitioners has as part of its mission promoting diversity of viewpoints and ensuring that broadcast stations serve the needs of the public. The organizations have members and constituents that reside in areas served by television stations licensed to Tribune. In addition, Charles Benton, Chairman of the Benton Foundation, resides in Evanston, IL, which is served by Tribune's holdings in Chicago. Grant of the assignments of licenses would harm Petitioners, their members and constituents by causing a permanent loss of diversity in viewpoints available to them and a permanent decrease in competition in coverage of local news. Moreover, Petitioners would be deprived of the opportunity to have an independent licensee make decisions about what programming to air and how to serve the community.

II. BACKGROUND

The Tribune Company ("Tribune") is a national media company based in Chicago, Illinois, that operates daily newspapers, broadcast TV stations, a local cable news channel in Chicago, a nationally available cable TV network, and a Chicago radio station, as well as many

¹ 47 U.S.C. §309(d)(i) See *Llerandi v. FCC*, 863 F.2d 79, 85 (D.C. Cir. 1988); *Office of Communication of the United Church of Christ, Inc. v. FCC*, 359 F.2d 994, 1000-02 (D.C. Cir. 1966).

internet websites.² In 2000, Tribune’s acquisition of The Times Mirror Company added seven daily newspapers to the Tribune portfolio, including three in markets where Tribune already operated TV stations: New York, Los Angeles and Hartford.

Commission policy dictates that a licensee acquiring a co-located newspaper has until its broadcast license comes up for renewal or one year, whichever is longer, to comply with the cross-ownership prohibition.³ Thus, Tribune purchased the Times Mirror properties with knowledge that its common ownership of its broadcast facilities and the newspapers in the same market was impermissible under FCC rules. But, instead of divesting the offending combinations prior to the end of its broadcast license terms, Tribune sought renewal and asked for waivers allowing continued cross-ownership. UCC and MA filed petitions to deny the license renewals of Tribune’s cross-owned broadcast stations in Los Angeles, New York, and Hartford objecting to the grant of any waivers.

A. Transfer of Control to Zell

In April 2007, before the FCC had acted on Tribune’s renewal applications for Los Angeles, New York, and Hartford, Tribune announced a complex transaction that would ultimately result in the company going private and Sam Zell taking control of it.⁴

Although FCC rules prohibit the transfer of cross-owned stations, including those that have been grandfathered, Tribune’s transfer application filed in May 2007 requested *temporary*

² The term “Tribune” is used to refer to the Tribune Co. without regard to whether it is the original public company, the private company controlled by Zell, Tribune Debtor-in-Possession or the Reorganized Tribune or any of its subsidiaries.

³ *Amendment of Sections 73.34, 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 FCC 2d 1046, 1076 n. 25 (1975) (“1975 Order”), *aff’d sub nom. FCC v. Nat’l Citizens Comm. for Broad.*, 436 U.S. 775 (1978).

⁴ Press Release, Tribune, *Tribune to Go Private for \$34 Per Share*, Apr. 2, 2007.

waivers of the NBCO rule for Chicago, New York, Los Angeles, Miami, and Hartford “pending completion of the ongoing Commission rulemaking addressing the rule.”⁵

UCC and MA jointly filed a Petition to Deny the entire transaction, including the five temporary cross-ownership waivers sought in the applications for consent to transfer control of Tribune. *Applications for Consent to the Transfer of Control of Tribune Company from Shareholders of Tribune Company to Samuel Zell, United Church of Christ and Media Alliance* Petition to Deny, MB Dkt. 07-119 (June 11, 2007) (“UCC/MA Petition to Deny”). The petition argued that the application to transfer should be dismissed or denied because it was *prima facie* inconsistent with the NBCO rule and Tribune had not shown that the purpose of the rule, that is promoting diversity and competition, would be better served by waiving the rule.

On November 30, 2007, the Commission voted 3 to 2 to approve the transfer to Zell and deny UCC’s and MA’s joint petition to deny. *Shareholders of Tribune Company and Samuel Zell*, 22 FCC Rcd 21266 (2007), (“*Tribune-Zell Order*”) *appeal pending sub nom., Tribune Co. v. FCC*, D.C. Cir. Nos. 07-1488, 07-1489 (filed Dec. 3, 2007). It also granted the license renewals for New York, Hartford, and Los Angeles and denied the Petitions to Deny renewal filed separately by UCC and MA.

Even though Tribune had not requested any permanent waivers, the Commission granted a permanent waiver allowing Zell to control the Chicago Tribune and stations WGN and WGN-TV. *Id.* at 21286. With respect to the Miami, Hartford, New York and Los Angeles properties, the Commission purported to deny Zell’s request for temporary waivers in the precise form requested, *i.e.*, pending the outcome of the Commission’s review of its broadcast ownership

⁵ See, e.g., Transferee’s Ex. 18 to FCC Form 315, Sec. 4, Question 8(b), at 1. This rulemaking referred to was the 2006 Quadrennial Review, which had been combined with the remand of the 2002 Biennial Review.

rules.⁶ Instead, the Commission ruled that should Tribune seek judicial review of the “denial” of the waiver in the form originally submitted for those four markets, it would be granted a waiver lasting either for two years or six months after conclusion of the litigation, whichever is longer. *Id.* at 21286. On December 3, 2007, Tribune and Zell each filed Notices of Appeal in the D.C. Circuit challenging the Commission’s “denial” of the waivers in the form requested. That litigation remains pending.

The *Tribune-Zell Order* further stated that “should the Commission adopt a revised NBCO rule before January 1, 2008, we grant applicants a two-year waiver of the NBCO rule for the New York, Los Angeles, Miami, and Hartford markets.” The purpose of the temporary waivers was to provide sufficient time to determine whether Tribune would be allowed to continue the cross-ownerships under the new rule. *Id.* at 21286. The Commission further provided that in the event that the applicants were unable to come into compliance within the two year period because the revised rule was stayed by a court, the waiver would extend until six months after the expiration of the stay. *Id.* at 21286.

At its next meeting on December 18, 2007, a divided Commission adopted a revised NBCO rule.⁷ The revised NBCO rule presumes that proposed cross-ownerships that meet certain

⁶ The *Tribune-Zell Order* stated that the “request by the Tribune Company for a permanent or temporary waiver of the newspaper/broadcast cross-ownership rule, 47 C.F.R. § 73.3555(d)(3), to permit the common ownership of KTLA(TV) and *The Los Angeles Times*; WPIX(TV) and *Newsday*; and WTXN(TV), WTIC-TV and *The Hartford Courant* ARE DENIED” and ordered that “Tribune Company shall, within six months of January 1, 2008, come into compliance with the newspaper/broadcast cross-ownership rule in the affected markets by either divesting all of its interests in newspapers in the Los Angeles, California, New York, New York, and Hartford, Connecticut markets or divesting those broadcast station licenses implicating the newspaper/broadcast cross-ownership rule in those markets.” 22 FCC Rcd at 21284.

⁷ *2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order, 23 FCC Rcd 1010 (2008) (*2008 Order*).

tests are presumptively in the public interest, while those that do not meet the tests, are presumed to not be in the public interest.⁸ Although the new rule was initially stayed, the Court lifted the stay on March 23, 2010.

Commissioner Copps and Adelstein issued strong dissents to both the *Tribune-Zell Order* and the *2008 Order* concluding the combined 2002 Biennial Review and 2006 Quadrennial Review. Regarding the *Tribune-Zell Order*, Commissioner Copps stated: “If this Order were a newspaper, the banner headline would read “FCC Majority Uses Legal Subterfuge to Push for Total Elimination of Cross-Ownership Ban.”⁹ He explained that

If the majority simply granted a two-year waiver to Tribune – which would have been the straightforward thing to do – Tribune would have been unable to go to court because a party cannot file an appeal if their waiver request is granted. So what does this Order do? It *denies* the waiver request but offers an automatic (and unprecedented) waiver extension as soon as Tribune runs to the courthouse door, lasting for two years or until the litigation concludes – whichever is *longer*. Presto! Tribune gets at least a two-year waiver plus the ability to go to court immediately and see if they can get the entire rule thrown out.

...

The more I think about this approach, however, the more troubled I become. Publicly, the Chairman claims to want only a “modest” relaxation of the cross-ownership ban. Privately, he enlists Tribune as an accomplice to try and get the ban overturned in court. If the Chairman wants to eliminate the ban, he should stand up and say so. It’s time to end the charade.¹⁰

Commissioner Adelstein noted that under 310(d) of the Communications Act, the fundamental standard of review of a transfer of control by the Commission is whether the proposed transfer will serve the public interest, convenience, and necessity. Faced with any merger, it is our obligation to analyze the record evidence and determine whether the public will be served better by the transaction being approved or being denied, and what conditions, if any, may be necessary to mitigate harms to consumers. The box being checked off by the majority for Today’s order reads “None of the above.” Instead, today’s order is a regulatory hostage taking -- a desperate maneuver to use the Tribune transaction as a human shield, while the Commission marches down the treacherous path toward greater

⁸ *Id.* at 2039-40

⁹ 22 FCC Rcd at 21289 (Copps, dissenting).

¹⁰ *Id.*

media consolidation. Notwithstanding congressional rebuke and widespread public opposition, this Commission is determined to use any conceivable ploy to achieve its misguided goals.

...

While I disagree with the final decision in this case, I am more disappointed with the majority's disregard for Commission precedent and legacy. A simple two-year waiver would have accomplished the goals of the majority and the applicants. But instead, the Order employs certain novel, ill-advised and back-breaking legal gymnastics that will surely leave observers with their heads spinning.¹¹

On December 31, 2007, UCC, MA and Charles Benton timely filed a Petition for Reconsideration of the *Tribune-Zell Order*. That Petition for Reconsideration remains pending and thus, the order granting a permanent waiver for Chicago and the four temporary waivers is not final. Nonetheless, Tribune went ahead with its plan to take the company private, and Zell took over as Chairman of the Board and Chief Executive Officer on December 20, 2007.¹² In May, Zell appointed Randy Michaels as the Chief Operating Officer.

B. Tribune's Voluntary Bankruptcy

Slightly less than a year later, Tribune filed a petition for voluntary bankruptcy under Chapter 11 in US District Court in Delaware.¹³ This led to a *pro forma* transfer of control to Tribune Company, Debtor-in-Possession. Tribune's court filings showed that the company had nearly \$13 billion in debt and about \$7.6 billion in assets. Its largest liability was an \$8.57 billion credit facility from JP Morgan Chase Bank in which Deutsche Bank, Angelo Gordon & Co, KKR Financial, Viking Global, Highland Capital Management and Goldman Sachs all held

¹¹ *Id.* at 21290 (Adelstein, dissenting).

¹² Press Release, Tribune, *Tribune Completes Going-Private Transaction: Sam Zell Named Chairman and CEO*, Dec. 20, 2007.

¹³ Press Release, Tribune, *Tribune Company to Voluntarily Restructure Debt Under Chapter 11*, Dec. 8, 2008.

substantial stakes.¹⁴ Tribune's press release stated that "the company has sufficient cash available to continue operations," and had arranged for additional credit.¹⁵

Reporting on the filing, Crain's Chicago Business noted that

Mr. Zell and his handpicked executive crew will remain in charge during the four-month period that incumbent management has the exclusive right under bankruptcy rules to formulate a reorganization plan. But the rules give creditors veto power over management's plan, and their approval won't come cheap. . . [The creditors] will scrutinize Mr. Zell's every move and may press for more job cuts and asset sales. Tribune already has cut 1,000 jobs, or 7% of its staff, and sold off major holdings, including newspaper Newsday in New York.¹⁶

By August 2009, it appeared that Zell was on his way out. The *Chicago Sun Times* reported that the creditors were "working on an organization plan that elbows Zell aside. The creditors, including investment banks owed \$8.6 billion from Zell's Tribune takeover, would stage a takeover of their own and sell off the company's newspapers and broadcast stations as they see fit."¹⁷ The article quoted William Brandt, Jr., identified as a corporate turnaround expert not involved in the case, saying "This was a textbook case of a leverage buyout gone bad. . . These were imbeciles who had no idea what they were doing."¹⁸

But a few days later, the *Los Angeles Times*, which is owned by Tribune, reported that "Tribune Co. Chief Operating Officer Randy Michaels signaled Thursday that his team wants to lead Tribune's operations when it emerges from Bankruptcy Court."¹⁹ It explained that Michaels told employees in an email that "while the ownership structure of the company is likely to change, current operating management is committed, and intends to remain in place during and

¹⁴ *Mass Media Notes*, Communications Daily, Dec. 9, 2008.

¹⁵ Press Release, Tribune, *Tribune Company to Voluntarily Restructure Debt Under Chapter 11*, Dec. 8, 2008.

¹⁶ Ann Saphir, *It's all about rep now for Zell*, Crain's Chicago Business, Dec. 15, 2008, at 1.

¹⁷ David Roeder, *Trib boss Zell on way out*, Chicago Sun-Times, Aug. 14, 2009.

¹⁸ *Id.*

¹⁹ Michael Oneal, *Sam Zell or no, Tribune wants to remain in place after bankruptcy*, Los Angeles Times, Aug. 21, 2009, available at <http://articles.latimes.com/2009/aug/21/business/ft-tribune21>.

after restructuring.”²⁰ That email also stated that “Our business units, including all of our newspapers, are profitable. It would be absurd to think that this company will be ‘liquidated.’”²¹

On April 8, 2010, Tribune announced that it had reached a settlement with its major creditors.²² Under the agreement supported by J.P. Morgan and Angelo Gordon, “the company’s senior credit facility lenders would receive cash and debt, and stock representing in excess of 91 percent of the equity of the reorganized company. Under the plan, the company would emerge from bankruptcy, significantly deleveraged, with its business units intact and with adequate liquidity for operation and capital needs.”²³

Tribune submitted its Plan of Reorganization to the Bankruptcy Court on April 12. However, not everyone was happy with the plan. As reported by Reuters, “[h]olders of both senior and junior claims made it clear at a bankruptcy court hearing that Tribune faced a legal slog before it exited Chapter 11.”²⁴ It explained

The company has proposed giving broad releases from potential liabilities and, in return, granting a stake in the company worth about \$450 million to senior bondholders. That represents a recovery for those investors of about 35 percent.

Junior bondholders, who would be left empty-handed, say they think the liability claims are worth much more and drafted a letter warning of long court fights if the reorganization plan was not consensual.²⁵

On May 13, the US Department of Labor filed in the Bankruptcy Court alleging that the Tribune Co’s reorganization plan wrongly tries to shut down a lawsuit against Zell. The filing

²⁰ *Id.*

²¹ Jim Romanesko, *Tribune exec: "Ownership structure of the company is likely to change" after reorganization*, Poynter Online, Aug. 20, 2009, <http://www.poynter.org/column.asp?id=45&aid=168764>.

²² Press Release, Tribune, *Tribune Announces Settlement Among Major Creditors*, Apr. 8, 2010.

²³ *Id.*

²⁴ Reuters, *Tribune Facing Legal Battle with Creditors*, N.Y. Times, May 21, 2010, at B4.

²⁵ *Id.*

disclosed that the Labor Department was investigating Tribune for the way Zell used the ESOP to finance the leveraged buyout.²⁶

In addition, a group of bondholders led by Wilmington Trust Co. filed a complaint in the Bankruptcy Court alleging among other things, that “Tribune, Zell and the Lead Banks structured the [Leveraged Buyout] knowing that it would add a tremendous amount of debt to Tribune and render it insolvent.”²⁷ The Bankruptcy Judge appointed UCLA law professor Kenneth Klee to investigate creditor claims alleging fraudulent conveyance against Zell, and others. His report is due July 12.

On May 20, the Bankruptcy Judge ruled that that Tribune’s reorganization plan sent to creditors for a vote would have to include letters warning that approval will lead to protracted legal battles.²⁸ On May 24, Tribune filed a proposed disclosure statement for its amended joint plan of reorganization in District Court. This filing “unveiled plans for a third round of top executive bonuses, nearly \$15 million, bringing to more that \$72 million the amount of pay enhancements the media company handed out while operating under bankruptcy protection.”²⁹ In addition to these supplemental 2009 bonuses,³⁰ Tribune asked judge to approve 2010

²⁶ Tom Hals, *US Labor Dept joins fight over Tribune bankruptcy*, Reuter’s News, May 14, 2010.

²⁷ Amended Complaint for Equitable Subordination and Disallowance of Claims, Damages, and Constructive Trusts, Wilmington Trust Co, v. JP Morgan Chase Bank, N.A. et. al, US Bankruptcy Court for the District of Delaware, Case No. 08-13141 (KJC).

²⁸ Tom Hals, *UPDATE 1-Tribune must wait to seek creditor votes on plan*, Reuters, May 20, 2010.

²⁹ Peg Brickley, *Tribune: Media Company Unveils Plan for More Bonuses*, Wall Street Journal, May 26, 2010.

³⁰ In February 2010, the Court allowed Tribune to pay 43.1 million in bonuses to 670 managers (including the executives in the most senior groups) over the objections of the US Bankruptcy Trustee and the unions. Michael Oneal, *Tribune Co proposes \$14.9 million more in executive bonuses*, Chicago Tribune, May 25, 2010.

incentive bonus plan that could pay out 30.8 to 42.9 million to about 640 managers, including the top 9 executives, who would split approximately 5.7 million.³¹

The Chicago Times reported that these requests “incited a storm of protest from various creditor constituencies and unions” and quoted Bill Salganik of the Washington-Baltimore Newspaper Guild as saying, “This is more than they paid out in most of the good years.”³² In addition to the unions, the US Trustee and Bridge Agent Wells Fargo Bank, NA filed objections to Tribune’s 2010 management incentive plan.³³ The Bankruptcy Court plans to hold a hearing on June 16.

On June 7, the Bankruptcy Court approved Tribune’s amended disclosure statement with certain modifications³⁴ and set July 30, as the deadline for voting.

C. The Applications Pending Before the Commission

In the meantime in April 2010, Tribune filed a series of Form 314 applications seeking FCC consent to implement the joint plan of reorganization which it submitted to the Bankruptcy

³¹ Michael Oneal, *Tribune Co. seeks '10 bonuses*, Chicago Tribune, May 26, 2010.

³² *Id.*; see also Steven Church, *Tribune Seeks \$59 Million in Management Bonuses*, Bloomberg Businessweek, May 27, 2010 (quoting Salganik as stating that “I think it’s an extreme reward for a company whose performance is declining”).

³³ NetNews, *Trustee, Bank Object To Tribune Management Incentive Plan*, AllAccess NetNews, June 11, 2010, <http://www.allaccess.com/net-news/archive/story/76541/trustee-bank-object-to-tribune-management-incentiv>.

³⁴ “The modifications were prompted by a creditor group known as the bridge loan lenders, who wanted more lucid language in the disclosure statement concerning their options. As structured by Tribune, the bridge lenders will recover \$74 million of the original \$1.6 billion loaned, or 4.6 percent. With Wells Fargo as their representative, the bridge loan lenders also sought more disclosure by Tribune concerning top executive pay. Last week Tribune asked Judge Kevin Carey for an additional \$43 million in executive bonuses for 2010, bringing the total requested during the bankruptcy proceedings to \$115 million. The Baltimore-Washington Newspaper Guild previously objected to a \$15 million bonus revealed in Tribune's reorganization plan. Now creditors must vote on whether to back the plan by July 30. After the votes are tallied, a confirmation hearing is scheduled for Aug. 16.” Sean Kelly, *Tribune Cleared to Seek Reorganization Support*, Courthouse News Service, June 8, 2010, *available at* <http://www.courthousenews.com/2010/06/08/27907.htm>.

Court. Comprehensive Ex. at 1. Tribune asked for approval of the assignment of its broadcast licenses, each of which is operating as a debtor-in-possession, to the same licensees as reorganized under Chapter 11. *Id.* It explained that upon emergence from bankruptcy, no single creditor would have a controlling interest, but that three creditors would each have an attributable ownership interests in the reorganized Tribune. *Id.*

Specifically, JPMorgan Chase Bank, N.A., will have an equity share of 11%, Angelo, Gordon & Co., L.P, will hold 9% and Oaktree Tribune, L.P. will hold 10%. *Id.* at 14-15.

Tribune's applications provide very little information about these companies. However, the Chicago Tribune reports that:

Over the past year, stealthy distressed-debt hedge funds like Angelo, Gordon & Co., Alden Global Capital and Oaktree Capital Management have taken major positions in bankrupt newspaper companies such as Tribune Co., owner of the Chicago Tribune, and Philadelphia Newspapers Inc., owner of the Philadelphia Inquirer. They are banks and hedge funds relatively new to broadcasting, and are not expected to stay in the business for the long term.

Their basic strategy: Quietly buy up as much cheap, delinquent debt as possible and then fight it out in bankruptcy court for a lucrative settlement that transforms the debt into a large share of company stock.

Experts say it is unlikely that any single fund has amassed enough of a stake to take outright control of one or more publishers. . . .

But alliances of like-minded funds and big banks like JPMorgan Chase, which have also received significant chunks of equity through restructurings, could give nontraditional investors like Angelo Gordon and Alden unusual clout over a wide swath of the newspaper industry.

Interviews with close observers and people briefed by some of the funds say that they tend to see little remaining upside in cost cutting. They also profess to recognize that quality, branded journalism still draws advertisers and, therefore, is worth preserving.

But because they are opportunistic traders by nature, not long-term owners, their presence is likely to be disruptive. Their objective from Day One will be seeking the most profitable way to turn their investments back into cash. And that will likely mean a restless quest for value-creating exercises like spinoffs, acquisitions,

recapitalizations and other sorts of transactions that will keep the newspaper industry in a state of flux.³⁵

If the bankruptcy reorganization is approved, JP Morgan Chase will become the second largest press owner with a portfolio of 53 newspapers and 31 TV stations.³⁶ Angelo, Gordon & Co., which is known as a “loan-to-own” investor, specializes in buying the debt of distressed companies.³⁷ It has taken control of three other major papers.

Angelo Gordon led new owners of the *Minneapolis StarTribune* in ousting the board and publisher and demanding additional job cuts after the company came out of bankruptcy proceedings in September. At Freedom Communications Inc., which owns the *Orange County Register* in California, it replaced the board.³⁸

Recently it also purchased a stake in both daily newspapers in Philadelphia.³⁹ Oaktree Capital Management also specializes in alternative investments such as high-yield and distressed debt.⁴⁰

Tribune also filed five separate (but substantially similar) waiver requests for its cross-owned broadcast stations in New York, Los Angeles, Chicago, Miami and Hartford. Although Tribune claims that it is merely seeking to retain the *status quo*, in fact, its request goes far

³⁵ Michael Oneal, *New breed of newspaper owners writing a different story*, Chicago Tribune, June 11, 2010, available at http://articles.chicagotribune.com/2010-06-06/business/ct-biz-0606-angelo-gordon--20100606_1_new-owners-newspaper-industry-angelo-gordon.

³⁶ Gannett is the largest US newspaper publisher and JP Morgan Chase recently acquired 10% of that company. Roy Greenslade, *Second largest US press publisher is a bank*, The Guardian, Greenslade Blog, April 22, 2010, <http://www.guardian.co.uk/media/greenslade/2010/apr/22/us-press-publishing-newspapers>.

³⁷ Associated Press, *Tough Times Turn Newspaper Lenders into Owners*, New York Times, November 30, 2009, <http://dealbook.blogs.nytimes.com/2009/11/30/tough-times-turning-newspaper-lenders-into-owners/>.

³⁸ Lynne Marek, *Angelo Gordon angles for influence at Tribune*, Crain's Chicago Business, Apr. 26, 2010, <http://www.chicagobusiness.com/cgi-bin/article.pl?articleId=33300>.

³⁹ Christopher K. Hepp and Harold Brubaker, *Creditors buy papers at auction*, Philly.com, Apr. 29, 2010, http://www.philly.com/philly/news/homepage/20100429_Creditors_buy_papers_at_auction.html

⁴⁰ *Company Overview: Oaktree Capital Management, L.P.*, http://www.hoovers.com/company/Oaktree_Capital_Management_LP/rfctyci-1-1njdap.html (last visited June 14, 2010).

beyond the *status quo*. First, instead of seeking *temporary* waivers as it had in the transfer application to Zell, Tribune now seeks *permanent* waivers, even in the four markets where Tribune operates the cross-owned stations pursuant to temporary waivers.⁴¹ Second, Tribune seeks unprecedented waivers to “permit a subsequent sale” of the cross-owned properties “in tandem.” *See, e.g.*, Chicago Waiver App. at 108-09; Hartford NBCO Waiver App. at 121. Finally, Tribune asks that if the Commission does not grant it the waivers it request, that it grant “at a minimum – a temporary waiver of the NBCO Rule until 18 months after the pending proceedings to revise the NBCO rule become final.” *E.g.*, Hartford NBCO Waiver App. at 113.

III. THE FCC SHOULD GRANT THE PENDING PETITION FOR RECONSIDERATION

As a threshold matter, Public Interest Petitioners point out that the Commission’s earlier decision to transfer control of Tribune to Zell is not final. Although the lack of finality does not preclude companies from consummating transfers, they do so at their own risk. *Improvement Leasing Co.*, 73 FCC 2d 676, 684 (1979), *aff’d sub nom. Washington Association for Television and Children v. FCC*, 665 F.2d 1264 (D.C. Cir. 1981). Petitioners urge the Commission to act on the Petition for Reconsideration filed by UCC, MA, and Charles Benton and reverse the November 2007 decision approving the transfer to Zell. If Zell no longer holds the licenses for the cross-owned stations, then he has no licenses to transfer to Reorganized Tribune. This would allow the Commission to recover the licenses and make them available to others in a manner that would increase diversity, competition and localism.

⁴¹ In the *Tribune-Zell order*, the commission granted only temporary waivers for Los Angeles, New York, Miami and Hartford. Although Tribune subsequently transferred 97% of its equity in New York’s *Newsday*, it nonetheless retained an attributable interest in that property.

IV. THE FCC SHOULD DISMISS THE ASSIGNMENT APPLICATIONS

If an application for assignment is incomplete or proposes transactions in violation of Commission rules, the Commission may dismiss it without a hearing.⁴² Tribune's applications are incomplete because it is not clear, nor can it be unless and until the plan of reorganization is approved, who will actually control the licenses. Although Tribune asserts that the expected changes in the identity of the future stockholders will be "immaterial," Comprehensive Ex. at 6, the FCC should be the one to decide what is material and what is not, and it can only do so when it has all of the facts before it. We note that knowing the identity of all attributable owners is not only necessary for the Commission to ensure that the transaction complies with its ownership limits, but it must also ensure that it is consistent with the foreign ownership restrictions in Section 310(b) of the Communications Act.

For this same reason, even if the Commission grants temporary waivers to permit this transaction, it cannot possibly approve in advance waivers for the subsequent transfer in "tandem" of cross-owned stations to unidentified parties. The FCC has never approved a waiver before an application has even been filed, and Tribune cites no case or authority that would permit the FCC to do so. The fact that it seems that the proposed owners are already contemplating a further sale also raises significant questions about whether they will operate the stations in the public interest.⁴³

⁴² *U.S. v. Storer Broadcasting Co*, 351 U.S. 192, 202 (1965); *Biennial Regulatory Review*, 13 FCC Rcd 21027, 21069 (1998) ("we will generally dismiss defective or incomplete applications").

⁴³ Michael Oneal, *New breed of newspaper owners writing a different story*, Chicago Tribune, June 06, 2010, available at http://articles.chicagotribune.com/2010-06-06/business/ct-biz-0606-angelo-gordon--20100606_1_new-owners-newspaper-industry-angelo-gordon.

In addition, as the proposed assignments of the licenses for Chicago and Hartford stations violate the FCC's ownership rules and are *prima facie* inconsistent with the public interest. While Public Interest Petitioners address Tribune's arguments specific to those markets in the companion petitions in parts V and VI, here, they first address Tribune's arguments that apply to more than one market.

A. Comity with the Bankruptcy Process Does Not Require the Commission to Grant the Assignments

Tribune suggests that approving the transaction, including the cross-ownership waivers, is necessary to afford comity to the bankruptcy process. *E.g.*, Chicago Waiver App. at 105. However, "comity" involves reconciling two bodies of law. Tribune seeks to subordinate the Communications Act to the Bankruptcy Code.

Under longstanding precedent, the Commission independently evaluates license transfers while affording comity to decisions that are properly made by the Bankruptcy Court. In doing so, the Commission retains its authority to protect the public interest in issuing station licenses. So in the event that the Bankruptcy Court approves the plan of reorganization, it does not follow that the FCC must approve the license assignments. In *Second Thursday*, for example, the Commission allowed an unqualified licensee to transfer a license to an otherwise qualified recipient, in order to protect the interests of innocent creditors.⁴⁴ The Commission did not, however, ignore its other public interest obligations or the qualifications of the assignee.⁴⁵ The DC Circuit has affirmed this:

[I]n evaluating the petition for assignment of the license from the receiver to the proposed assignee, the Commission must assess both the assignee's qualifications

⁴⁴ 25 FCC 2d 114-115 (1970).

⁴⁵ *Id.*

and the public interest considerations embodied in *Second Thursday*, which relate to the minimization of profit by the bankrupt parent-licensee"⁴⁶

The Commission again made its own public interest determination when evaluating the license transfers and waiver applications involved in the Telemundo bankruptcy.⁴⁷ There, the applicants requested waivers of the one-to-a-market and duopoly rule.⁴⁸ The Commission granted the requisite request, finding that it could “accommodate those bankruptcy policies here without countervailing harm to the policies supporting our own multiple ownership rules.”⁴⁹ The Commission noted that it was “equally important” that the waivers would advance the Commission’s goal of advancing diversity by increasing minority ownership and that granting waivers would not “disserve the policies of diversity and economic competition which undergird our duopoly rule.”⁵⁰

When granting a declaratory waiver to the cross-ownership rule, the Commission again made a determination under the public interest standard, independent of bankruptcy policy:

Our task at this stage of the bankruptcy proceeding, therefore, is to determine whether Murdoch’s ownership of WNYW and the Post, in the event his plan is approved by the court, would be in the public interest. Accordingly, the fourth category’s “special circumstances” standard, in tandem with an evaluation of the diversity and competitiveness of the New York City market, also clearly implicated by the fourth category, provide an appropriate framework for assessment of the waiver request before us.⁵¹

Once satisfied that “Fox has amply justified its request, comporting with the high burden” required to receive a waiver, the Commission noted that this waiver “accommodates” bankruptcy policies.⁵²

⁴⁶ *La Rose v. FCC*, 494 F.2d 1145, 1148 (DC Cir., 1974).

⁴⁷ *Applications of Telemundo Group, Inc.*, 10 FCC Rcd 1104, 1105, 1108 (1994).

⁴⁸ *Id.* at 1104.

⁴⁹ *Id.* at 1106.

⁵⁰ *Id.*

⁵¹ *Fox Televisions Stations Inc.* 8 FCC Rcd 5341, 5349 (1993).

⁵² *Id.* at 5353.

Here, in contrast, Tribune has not met the “high burden” required to receive waivers of the NBCO and duopoly rules. Thus, approval of the assignment is not in the public interest, regardless of any determinations made by the Bankruptcy Court in administering its separate responsibilities.

B. Tribune’s Other Arguments Challenge the Validity of the NBCO Rule itself and Should Not be Addressed in this Waiver Proceeding

A substantial portion of Tribune’s waiver requests consists of attacks on the factual, statutory, and constitutional underpinnings of the Commission’s NBCO rules. For example, Tribune argues that the “Commission must evaluate the instant request for waiver of the NBCO Rule within the context of...the prevailing economic conditions of the newspaper and broadcasting industries *in general*.” *E.g.*, Chicago Waiver App. at 34 (emphasis added). It devotes some 12 pages to a pessimistic description of the financial condition of the nation’s media industry using 2008-2009 data,. *Id.* at 22-24. Tribune ignores the significant recovery in the first and second quarters of 2010.⁵³

Tribune also argues that applying the NBCO rule would violate the Administrative Procedure Act. Noting that “the Commission has now twice expressly rejected an ‘absolute ban’ on cross-ownership,” Tribune argues that it would be arbitrary and capricious to apply it here. *E.g.*, Chicago Waiver App. at 98; LA Waiver App. at 88. This argument fails because the premise that the Commission is applying “an absolute ban” is simply untrue. The current NBCO

⁵³ Recent reports suggest that advertising revenues are going up. *See, e.g.*, *SNL Kagan: TV Ad Rev To Grow 14.3%*, TV NewsCheck, June 14, 2010; Nat Ives, *Ad Spending Rebounded in First Quarter For First Gain in Two Years*, Advertising Age, May 26, 2010, (comparing it to first-quarter 2009); Nat Ives, *Ad Spending Rebounded in First Quarter For First Gain in Two Years*, Advertising Age, May 26, 2010; Brian Steinberg, *Broadcast Upfront Finishes Between \$8.1B and \$8.7B*, Advertising Age, June 10, 2010; BIA/Kelsey, *BIA/Kelsey’s Local Media Annual Forecast – The Big Picture on ‘Local’*, <http://www.bia.com/forecasts/>.

rule as modified in the *2008 Order* is not a blanket or absolute ban. Rather, it establishes a rebuttable presumption that combinations meeting certain criteria serve the public interest and that those not meeting the criteria do not.⁵⁴

Tribune also claims that it is “arbitrary and capricious for the Commission to ignore the dramatic impact on the manner in which people obtain news and information that the Internet has had in evaluating the instant request for waiver of the NBCO Rule.” *E.g.*, Chicago Waiver App. at 102. But the FCC is not ignoring recent developments. It has two proceedings – the 2010 Quadrennial Review and Future of Media – that are currently examining the impact of recent developments in the marketplace. Tribune’s arguments concerning the need for ownership limits are best considered in a rulemaking context rather than a specific waiver proceeding.⁵⁵

Tribune also tries to re-litigate the constitutionality of the NBCO rule, which was upheld in *FCC v. NCCB*, 436 U.S.775, 801-02 (1978). *E.g.* Chicago Waiver App. at 99-100. Ignoring Supreme Court precedent establishing the standard under which broadcast ownership rules are reviewed, Tribune asks the Commission to apply intermediate constitutional scrutiny and suggests that because the “scarcity rationale” is questionable, an even higher standard of review would be appropriate.⁵⁶ Tribune’s arguments that the NBCO rule violates the First and Fifth Amendments were rejected by the Third Circuit and the Supreme Court denied Tribune’s

⁵⁴ In fact, even the 1975 NBCO rule did not provide for an absolute ban, but permitted waivers under a four-prong test. *1975 Order*, 50 FCC 2d at 1085.

⁵⁵ Similarly, Tribune’s claim that it would be arbitrary and capricious to deny waivers to Tribune when certain other media could be owned in common without a waiver, *e.g.*, Chicago Waiver App. at 99; LA Waiver App. at 89, belong in a rulemaking.

⁵⁶ The Commission’s aggressive stance towards making spectrum available for broadband renders the broadcast band spectrum more desirable – and hence more scarce – than ever. The National Broadband Plan contemplates that by 2011 the Commission will initiate proceedings to reallocate 120 MHz of spectrum currently devoted to terrestrial broadcasting, and that the transition be completed by 2015. See, National Broadband Plan, Chapter 5.4, Exhibit 5E, available at <http://www.broadband.gov/download-plan/>.

petition for a writ of certiorari. *Prometheus Radio Project v. FCC*, 373 F.3d 372, 401-02 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005).

While Public Interest Petitioners believe that these claims lack merit, it simply is not necessary for the Commission to address the merits here. Each is a blatant attack on the NBCO rule itself, and is not germane to the consideration of the particular facts of this adjudicatory case. Tribune itself created unequivocal case law that challenges to the validity of the NBCO rule can only be brought in a rulemaking context. In *Tribune Company v. FCC*, 133 F.3d 61 (D.C. Cir. 1998), the DC Circuit upheld an FCC decision denying a waiver of the NBCO rule. It noted that “Tribune present[ed] its dispute with the cross-ownership rule in three different forms: as a challenge to the rule, as a challenge to the Commission's waiver policy, and as an “as applied” challenge.” *Id.* at 69. The Court refused to consider all three.

With regard to Tribune’s challenge to the cross-ownership rule, the Court held that “whether the Commission is obliged to reconsider its rule can be raised to this court only on review of a Commission denial of a rulemaking petition.” *Id.* It added that

[I]t is hornbook law that an agency need not - indeed should not- entertain a challenge to a regulation, adopted pursuant to notice and comment, in an adjudication or licensing proceeding. *See* P. Strauss, et l., *Gellhorn and Byse's Administrative Law* 657 (9th ed.1995) (agency is bound by its substantive rules unless validly amended or rescinded); *Consumer Energy Council of Am. v. FERC*, 673 F.2d 425, 446 (D.C.Cir.1982) (APA contemplates that a substantive rule would be amended or repealed by rulemaking under APA).

Id. at 68.

With respect to Tribune’s challenge to the Commission’s waiver policy, the Court similarly declined to review it because Tribune’s

difficulty is that its claim and supporting evidence calls into question not just the FCC’s waiver policy, but the continuing validity of [the] underlying rationale....As the Commission points out, if the FCC were to grant waivers on the grounds appellant suggests, virtually all like combinations would also be entitled

to a waiver, and nothing would remain of the rule. Changes in the media marketplace are not unique to South Florida.

Id. at 69.

The Court also rejected Tribune's as applied challenge, stating that it

is, like appellant's challenge to the FCC's waiver policy, really no different than a challenge to the rule. It is as apparent to us as it was to the Commission that Tribune is not presenting a unique "as applied" case. Again, the evidence Tribune presents is not particular to the South Florida market; most, if not all, of the country's media markets have experienced similar growth.

Id.

Here, Tribune's arguments for waiving the NBCO rule are not unique to the five markets where Tribune has cross-owned stations. Indeed, Tribune has made the same arguments against the NBCO rule in its recent brief in *Prometheus Radio Project v. FCC*, 3d Cir. No 08-3078, at 21-40 (filed May 17, 2010). In addition, Tribune is free to argue that the NBCO rule is no longer necessary and that it violates the APA and/or the constitution in the current 2010 Quadrennial Review proceeding.

V. THE COMMISSION SHOULD DENY TRIBUNE'S REQUEST FOR ASSIGNMENT OF THE CHICAGO BROADCAST LICENSES

If the Commission does not dismiss Tribune's applications, it should deny Tribune's requests for waivers under the revised NBCO rule. In February 2008, the Commission relaxed the NBCO rule by adopting a rebuttable presumption that

a waiver of the cross-ownership ban is in the public interest in the following circumstances: when a daily newspaper seeks to combine with a radio station in a top 20 DMA, or when a daily newspaper seeks to combine with a television station in a top 20 DMA and (1) the television station is not among the top four ranked stations in the market and (2) at least eight "major media voices" would remain in the DMA. We will continue to presume that all other proposed newspaper/broadcast station combinations are not in the public interest, subject only to two limited exceptions.⁵⁷

⁵⁷ 2008 Order, 23 FCC Rcd at 2022-23 (codified at 47 C.F.R. §73.3555(d)).

This revised NBCO rule took effect on March 23, 2010.⁵⁸ Since Tribune’s applications are the first to be considered under the revised NBCO rule, both public interest groups and the industry will be watching closely to see if the Commission is serious about enforcing its ownership rules.

Tribune’s application to assign the licenses for WGN-TV and WGN(AM) does not qualify for this presumption because it seeks to combine a daily newspaper with both a television station and a radio station. Thus, the FCC may not approve the assignment unless Tribune can reverse or rebut this presumption. The presumption that combination is not in the public interest may be reversed in only “two special circumstances.” *2008 Order*, 23 FCC Rcd at 2047-48. Tribune, however, is unable to show that it fits within either special circumstance.

1. Tribune Does Not Meet the Failed or Failing Station Test

To reverse the presumption under the failed station test, the applicant must show that “the newspaper or broadcast outlet has to have stopped circulating or have been dark for at least four months immediately prior to the filing of the assignment or transfer of control application, or must be involved in court-supervised *involuntary* bankruptcy or involuntary insolvency proceedings.” *2008 Order*, 23 FCC Rcd at 2048 (emphasis added). Tribune cannot qualify under this test since both stations remain on the air and the *Chicago Tribune* remains in circulation.

Moreover, Tribune cannot qualify because its bankruptcy was not involuntary. A station is not presumed to be failed simply because its parent company has filed for bankruptcy relief: the station must be involved in *involuntary* bankruptcy proceedings.⁵⁹ The definition of

⁵⁸ The rule went into effect when the Third Circuit lifted the stay.

⁵⁹ *2008 Order*, 23 FCC Rcd. At 2048; 47 C.F.R. § 73.3555, Note 7, Sec. 1.

involuntary bankruptcy is well settled and distinct from voluntary proceedings such as Tribune's.⁶⁰

The *2008 Order* adopted the same criteria for failed or failing outlets that were adopted in the *1999 Duopoly Order*.⁶¹ The *1999 Duopoly Order* explained that a “station that is off the air or in involuntary bankruptcy . . . can contribute little, if anything, to any type of diversity in a local market,” and thus the “benefits to the public of joint ownership under these circumstances outweigh the costs to diversity.”⁶² The involuntary bankruptcy standard is intended to allow a station that is off the air or involved in involuntary bankruptcy “so that it is likely to go off the air” to continue broadcasting.⁶³ In contrast, companies undergoing voluntary bankruptcy are shedding debt and are likely to remain operating.

Tribune tries to get around this test by arguing incorrectly that when the FCC enacted the standard “it required the bankruptcy to be involuntary only because the agency was concerned that licensees might file for bankruptcy for the sole reason of qualifying for a waiver.” Chicago Waiver App. at 110-11. Tribune's argument for accepting “substantial compliance” is contrary to the Commission's insistence that the failed station waiver criteria be strictly construed,⁶⁴ If the Commission were to accept mere substantial compliance, it would be likely encourage other companies to request failed station waivers.

Nor can Tribune meet the failing station test:

⁶⁰ Involuntary proceedings are those initiated by a debtor's creditors without the debtor's consent, whereas voluntary proceedings are those initiated by the debtor. Ballentine's Law Dictionary 665, 1350 (3rd ed. 1969). They are also subject to different laws. “Involuntary Cases” are governed by 11 U.S.C. § 303 (2009), while “Voluntary Cases” come under § 301.

⁶¹ *2008 Order*, 23 FCC Rcd at 2047.

⁶² *Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12936 (1999) (“*1999 Duopoly Order*”).

⁶³ *Id.* at 12955. The standard promotes the efficient use of broadcast spectrum as well as increasing competition and diversity. *Id.* at 12936-37.

⁶⁴ *Id.* at 12937-38.

To qualify as failing, the applicant must show that (1) the broadcast station has had a low all-day audience share (*i.e.*, 4 percent or lower), (2) the financial condition of the newspaper or broadcast station is poor (*i.e.*, a negative cash flow for the previous three years), and (3) the combination will produce public interest benefits. In addition, as with requests for failed station waivers of the local television ownership rule, the applicant must show that the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the failed or failing newspaper or station and that selling the newspaper or station to any out-of-market buyer would result in an artificially depressed price.⁶⁵

Tribune does not meet this test. First, WGN-TV's audience share is above 4%. Indeed, for the most recent rating period (February 2010), WGN-TV's was tied for fourth place with the Fox station, WFLD, each with a 4.5 share. Chicago Waiver App., Ex. 16, Att. 3.

Second, Tribune has not alleged that WGN-TV has had a negative cash flow for the past three years. Indeed, it has not submitted any documentation of the stations' financial condition. To demonstrate that a station is failing, the Commission requires that an applicant "submit data, such as detailed income statements and balance sheets, to demonstrate" that the station has had a negative cash flow for the previous three years.⁶⁶ If anything, the information submitted by Tribune suggest that its broadcast stations are performing well. In the Plan of Reorganization, Tribune states that its "television broadcasting stations outperformed the broader television broadcasting industry," while its "newspaper advertising revenue continued to be in line with, and in some cases superior to, other large metropolitan papers."⁶⁷

Third, Tribune has not shown that it has been unable to find buyer for either of the stations or the newspaper.⁶⁸ The Commission requires that

⁶⁵ *Id.* at 2048

⁶⁶ *1999 Duopoly Order*, 14 FCC Rcd at 12939. The *2008 Order* states that it will use the same criteria. 23 FCC Rcd at 2048.

⁶⁷ Disclosure Statement and Joint Plan of Reorganization for Tribune Co. and its Subsidiaries, In re: Tribune Co. *et al.*, Case No. 08-13141 at 45 (April 12, 2010). This document is included as Att. H to Tribune's Comprehensive Exhibit filed with the FCC.

⁶⁸ Although Tribune does assert that it would be unreasonable to assume that Tribune could locate a buyer for any of the properties involved at other than an artificially depressed price, this

applicants to make a serious attempt to sell the troubled station to an entity that would not require a waiver of our revised duopoly rule. Waiver applicants must demonstrate that the “in-market” buyer is the only reasonably available entity willing and able to operate the station, and that selling to another buyer would lead to an artificially depressed price for the station. One way to make this showing will be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the station, and that no reasonable offer from an entity outside the market has been received.⁶⁹

Tribune has not provided an affidavit from an independent broker. Indeed, it appears not to have made any efforts to find a buyer for either of the stations or the newspaper. It only claims that “due largely to the economic conditions of the newspaper and broadcast industries, it is . . . unreasonable to assume that Tribune could locate a buyer for any of the properties involved at other than at an artificially depressed price.” *Chicago Waiver App.* at 111.

The Commission simply cannot assume that Tribune could not sell the *Chicago Tribune*, WGN-TV or WGN(AM) without evidence that Tribune has tried to sell them. These are valuable properties. The *Chicago Tribune* is the dominant newspaper, and both the TV and radio station are well established. WGN is especially valuable because as a Superstation carried on cable systems, it reaches 80% of US households. Moreover, if vague claims of industry-wide financial distress were deemed sufficient to meet the failing station test, then every broadcaster and/or newspaper owner could arguably qualify for a waiver.

2. Tribune Does Not Meet the Substantial News Test

Just as Tribune fails to meet the test for a failed or failing property, it also fails to meet the substantial news test. To reverse the negative presumption under the “substantial news test,” Tribune would have to show that the “combination is with a broadcast station that was not offering local newscasts prior to the combination, and the station will initiate at least seven hours

unsupported assertion does not come anywhere even close to what the FCC requires.

⁶⁹ *1999 Duopoly Order*, 14 FCC Rcd at 12937-38.

per week of local news programming after the combination.” 47 CFR §73.3555(d)(7)(ii). On its face, this provision does not apply to Tribune’s existing TV-AM-newspaper combination in Chicago.

Tribune is not proposing to create a new combination. Rather, it acknowledges that the Commission grandfathered the Chicago combination when it adopted the cross-ownership rule in 1975. Chicago Waiver App. at 20. In adopting that rule, however, the Commission noted that the prohibition would “apply to all applications for assignment or transfer other than those to heirs or legatees or those for pro-forma changes in ownership.” *1975 Order*, 50 FCC 2d at 1076. Clearly, Tribune does not fit into either of these exceptions.

Even if the Commission could somehow overlook the fact that this application involves the transfer of an existing combination rather than the creation of a new one, it does not involve a station that was not previously offering local news. To the contrary, Tribune boasts that “WGN-TV now provides an impressive 42 hours of news per week, far more than any of its competitors.” Chicago Waiver App. at 114. Nor does Tribune promise to increase the amount of news it will offer in the future as a result of the assignment of licenses. Instead, it threatens to cut local news, noting that “it is highly unlikely that WGN(TV) could continue to offer the amount or quality of local news programming that it does absent continued common ownership with the Chicago Tribune. Similarly, it is highly unlikely that a new owner of WGN(AM) – which airs two local newscasts per hour throughout the broadcast day – would have the newsgathering resources “to continue providing this level of news.” *Id.* Thus, Tribune fails to meet either test for reversing the presumption that transfer of the Chicago combination diserves the public interest.

3. Tribune Has Failed to Meet the Heavy Burden for Rebutting the Presumption that the Assignment is Not in the Public Interest Under the Four Factor Test

In the *2008 Order*, the Commission notes that “[t]o the extent that a proposed combination does not qualify for a positive presumption, it will have a high hurdle to cross to win Commission approval.” 23 FCC Rcd at 2049. To overcome the negative presumption, Tribune would have to “show by *clear and convincing evidence* that the co-owned major newspaper and station will... increase competition among independent news sources in the market.” 47 CFR § 73.3555(d)(6) (emphasis added). The evidentiary standard of “clear and convincing evidence” falls between a “preponderance of the evidence” and proof beyond a reasonable doubt. *See, e.g., Jones v. United States*, 463 U.S. 354, 372 (1983); *Addington v. Texas*, 441 U.S. 418, 425 (1979). Clear and convincing evidence is sufficient “to allow the court to ‘reach a firm conviction of the truth on the evidence about which [it] is certain.’” *E.g., Samra v. Shaheen Bus. and Inv. Grp., Inc.*, 355 F. Supp. 2d 483, 494 (D.D.C. 2005) (quoting *United States v. Montague*, 40 F.3d 1251, 1255 (D.C. Cir. 1994)). The FCC considers the “clear and convincing” evidentiary standard to be a significantly high burden. *See, e.g., ITT World Communications Inc.*, 85 FCC 2d 916 (1981).

In considering whether an applicant has made a clear and convincing showing to overcome the presumption that the combination is in the public interest, the Commission considers the four factors set forth in 47 CFR § 73.3555(d)(5). The first factor is whether the combined entity will *significantly increase* the amount of local news in the market. Yet, as shown above, Tribune has not promised any increase in the amount of local news in the market.

The second factor is whether the newspaper and the broadcast outlets each will continue to employ its own staff and each will exercise its own independent news judgment. However,

Tribune's waiver application makes clear that the editorial functions of WGN-TV, WGN(AM), and the *Chicago Tribune*, as well as Tribune's local cable news channel, CLTV, are intertwined to a significant degree. WGN(AM), which has a news/talk format, has its studio in the Tribune building where the *Chicago Tribune* is housed as well. Chicago Waiver App. at 37. In fact, WGN(AM)'s news studio facility is adjacent to the *Chicago Tribune* newsroom, and this "close proximity facilitates interaction between journalists from the two news staffs." *Id.* at 38.

WGN-TV shares studio facilities with CLTV (and WGN America, Tribune's national cable and satellite superstation) at a different location about six miles from the Tribune building. However, Tribune has established data links that allow for the transmission of both video and audio. *Id.* at 37. WGN-TV and CLTV also "maintain a television studio in *Chicago Tribune's* newsroom, from which they originate video reports and news interview segments featuring *Chicago Tribune* reporters." *Id.* at 38. Tribune explains that

Many *Chicago Tribune* reporters and photographers carry video cameras and make their video available via a dedicated fiber connection to WGN-TV and CLTV, as well as to the websites operated by WGN-TV, WGN(AM), and CLTV. Similarly, WGN-TV's video is available for use on the separate websites of Chicago Tribune, WGN(AM), and CLTV...

Id.

The assignment editors and news managers of WGN-TV, WGN(AM), CLTV, and the *Chicago Tribune*, hold two daily conference calls to "discuss what stories are being covered that day." *Id.* at 42-43. "In addition, to this collaboration on regular newscasts and daily print coverage, WGN-TV, WGN(AM), CLTV, chicagotribune.com, and Chicago Tribune have worked together to produce specials and recurring reports on many issues of importance to the community. . ." *Id.* at 43. In covering political campaigns, "editors from the newspaper and assignments editors at the television station discuss the angles each plans to pursue." *Id.* at 50.

Thus, Tribune’s claim that “WGN(AM), WGN-TV and the *Chicago Tribune* each exercise independent news judgment in making their own assignments and covering stories in the manner that they see fit, as each has throughout Tribune’s history,” Chicago Waiver App. at 116, is contradicted by the very facts set forth in its Waiver Application.

Third, the Commission considers the level of concentration in the DMA. Tribune has failed to show that the market is unconcentrated. Tribune attaches BIA Report that concludes that the HHI index for “traditional media” in Chicago is of 1,230.⁷⁰ Even assuming for purposes of argument that this figure is correct, Chicago falls not only within the moderately concentrated range, but is higher than the average for the top 10 markets, which is 1097. Because Chicago is the third largest market, one would expect it to be much less concentrated than the average for all 210 DMAs, which is 1339 according to the BIA Report.

The BIA Report does not show the underlying data used to calculate this HHI, thus making it impossible to verify its calculations. Nonetheless, there are indications that the BIA Report overstates the actual amount of competition in the relevant markets. For its analysis of the advertising market, BIA counts all broadcast and print media in the DMA including 16 full power television stations (13 commercial and 3 non-commercial) owned by 13 companies (10 commercial and 3 non-commercial), 16 low power and Class A television stations owned by 11 companies, 166 full power radio stations (111 commercial and 55 noncommercial) owned by 90 companies (44 commercial and 46 non-commercial) 6 low power radio stations owned by 6 different entities, 24 daily newspapers owned by 12 companies, 172 weekly newspapers owned by 50 companies, 65 specialty and 14 collegiate publications, and 49 local magazines.⁷¹ Thus it

⁷⁰ Exhibit 16, Att. 4, Mark R. Fratrik, Report on the Chicago, IL Media Market, 11 (Feb 26, 2010) (“BIA Report”).

⁷¹ BIA Report at 21.

includes both non-commercial media that presumably are not selling advertising, as well as media that is only published infrequently, serves only a very small portion of the DMA, and/or provides little or no local news.⁷² Even with all of these media included, however, Tribune garners 28.6% of the advertising revenues.⁷³

Fourth, the Commission considers the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the proposed owner's commitment to invest significantly in newsroom operations. The Commission cannot find that WGN-TV, WGN(AM) or the *Chicago Tribune* are in financial distress because Tribune provided no specific information about their financial conditions. Nor has Tribune made any commitments to invest significantly in newsroom operations if the assignment is approved. If anything, the Commission should be concerned that the new owners will demand further cost-cutting. Tribune's showing regarding the four factors falls far short of what is needed to rebut the presumption that allowing the radio-television newspaper combination to continue.

VI. THE COMMISSION SHOULD DENY TRIBUNE'S REQUEST FOR ASSIGNMENT OF CONTROL OF THE HARTFORD BROADCAST LICENSES

Tribune's attempts to hold on to two television stations serving Hartford and the *Hartford Courant* -- in violation of FCC rules -- have spanned over a decade. On multiple occasions, the Commission has granted Tribune temporary waivers to give Tribune time to come into compliance with the cross-ownership rule, but Tribune has made no discernable effort to comply. In light of this history and the fact that Tribune does not meet the criteria for waivers of either

⁷² In *Hopkins Hall Broad., Inc.*, 10 FCC Rcd 9764, 9766, (1995), the Commission found that "many county newspapers and many broadcast stations licensed to distant communities . . . do not contribute to coverage of issues of local concern . . . issues that are at the heart of the Commission's concern with diversity."

⁷³ BIA Report at 8.

the local TV rule or the NBCO rule, the FCC must deny the waivers for the Hartford combination.

A. Tribune Has a History of Failing to Comply with FCC Conditions on License Transfers

In November 1999, Tribune asked the Commission to approve the transfer of the license of WTXX(TV) even though transfer was prohibited under the then-recently relaxed TV duopoly rule.⁷⁴ Tribune sought a waiver of the local television rule on the grounds that WTXX(TV) was a “failing” station.⁷⁵

In June 2000, while the WTXX(TV) transfer application was still pending, Tribune purchased Times-Mirror, which owned the *Hartford Courant*, the dominant daily newspaper in Hartford.⁷⁶ Under the NBCO rule, Tribune was required to divest the Hartford Courant of WTIC-TV by the time WTIC-TV’s license came up for renewal in 2006. However, Tribune’s purchase of the *Hartford Courant* also made it impossible for the FCC to approve the transfer of the license for WTXX(TV) because it would violate the NBCO rule’s prohibition on the grant of a TV station license to the owner of a daily newspaper serving the same area. Tribune therefore amended its WTXX(TV) transfer application to request a two-year waiver to “permit it sufficient time to pursue a transaction that will allow it to achieve compliance” with the Commission’s rules.⁷⁷

⁷⁴ *1999 Duopoly Order*, 14 FCC Rcd. 12903. The transfer was not permitted because WTXX(TV) served the same area as Tribune’s WTIC-TV, and post-acquisition, there would not be eight remaining independently owned and operated television stations.

⁷⁵ *Counterpoint Communications, Inc.*, 16 FCC Rcd 15044, 15045 (2001).

⁷⁶ *Id.* at 15045

⁷⁷ *Id.* at 15047.

On August 3, 2001, the FCC granted a permanent waiver of the duopoly rule to allow Tribune to own both TV stations because WTXX(TV) was a “failing station.”⁷⁸ The Commission denied Tribune’s request for a two year waiver of the NBCO rule. It concluded that “a significantly shorter period of time was appropriate” in light of the lack of diversity in the Hartford market,⁷⁹ and that six months would give Tribune “a reasonable period of time to bring its media assets into compliance with our rules.”⁸⁰ Commissioners Copps and Tristani issued separate statements expressing concern about the degree of concentration resulting from this transaction. Commissioner Copps noted that the public interest was served here by only “the barest of margins” and that an important factor for him was that the decision required Tribune to divest the necessary properties to come into compliance within six months and that he “would expect the company’s divestiture efforts to begin immediately.”⁸¹

However, six months later in February 2002, Tribune asked the FCC for a six-month extension, claiming that it was unable to sell WTXX(TV).⁸² The Commission granted Tribune an additional six-month waiver on February 11, 2002.⁸³ However, the waiver was conditioned on the requirement that the FCC “expect[ed] Tribune to continue to exercise its best efforts and to expand its current efforts if needed to sell the necessary assets to come into compliance with the rule” by the expiration of the waiver on August 19, 2002.⁸⁴ Commissioner Copps again issued a concurring decision expressing reluctance about granting Tribune an extension and

⁷⁸ *Id.* at 15046.

⁷⁹ *Id.* at 15048.

⁸⁰ *Id.*

⁸¹ *Id.* (Copps, concurring).

⁸² *See Counterpoint Communications, Inc.*, 17 FCC Rcd 3243, 3244, (2002).

⁸³ *Id.* at 3246 (Copps, concurring).

⁸⁴ *Id.* at 3245.

warning that “[a]sking the Commission to go beyond this extension would, I think be asking too much.”⁸⁵

1. Despite Tribune’s Noncompliance, the Commission Granted Tribune a New Temporary Waiver

Nonetheless, six months after the Commission granted the second temporary waiver Tribune was still in violation of the NBCO rule. On August 6, 2002, Tribune filed another waiver request asking for a permanent waiver of the rule, or alternatively, a temporary waiver until December 2006, when the WTXS(TV) license renewal application was due, or “for a reasonable period after the Commission’s pending newspaper/broadcast cross-ownership rulemaking is final.”⁸⁶ The 2002 waiver request revealed that Tribune was only considering divesting WTXS and had made no efforts at all to sell the *Hartford Courant*.⁸⁷

The Commission did not respond to Tribune’s August 2002 waiver request before the previous waiver expired on August 19, 2002. In May 2003, a Hartford area citizen, Neil Ellis, filed a complaint in federal district court to enforce compliance with the FCC Order that originally granted the temporary waiver to Tribune.⁸⁸ Ellis requested that the court issue an enforcement order declaring Tribune to be in violation of the 2001 temporary waiver and requiring Tribune to divest immediately either WTXS or the *Hartford Courant*.⁸⁹

⁸⁵ *Id.* at 3247.

⁸⁶ Request for Waiver of Counterpoint Communications, Inc., File No. BTCCT – 19991116AJW, at 41-42 (filed Aug. 6, 2002) (“Tribune 2002 Waiver Request”).

⁸⁷ *Id.* at 19 (stating that it is not practical to sell the *Courant* because of tax liability); 39 (“If the license renewal of WTIC requires divestiture of WTIC or the newspaper to come into compliance with the Rule, Tribune’s most likely course would be to attempt to sell WTIC and WTXS as a combination.”).

⁸⁸ *See Ellis v. Tribune Television Co.*, 363 F. Supp. 2d 121, 126 (D. Conn. 2005), *vacated* 443 F.3d 71 (2d Cir. 2006).

⁸⁹ *See id.*

While Ellis' case was pending before the District Court for the District of Connecticut, the FCC completed the 2002 Biennial Regulatory Review and promulgated new rules on cross-media ownership.⁹⁰ Under the revised cross-ownership rule, Tribune's common ownership of the *Hartford Courant*, WTXN(TV), and WTIC-TV would have been permissible. On appeal, however, the Third Circuit found that the FCC had failed to provide reasoned analysis to support the new cross-ownership limit, stayed the FCC from implementing the revised cross-ownership rule, and remanded to the FCC to justify or modify its approach.⁹¹

Subsequently, Tribune asked the Third Circuit to modify the stay to enable the new cross-media limits to come into effect in markets with nine or more television stations.⁹² This would have permitted Tribune to commonly own two TV stations and a daily newspaper in the Hartford area without requesting a waiver. However, the Third Circuit rejected Tribune's motion and maintained the stay of the revised cross-ownership rule.⁹³

Almost year after the Third Circuit had ordered the newspaper-broadcast cross-ownership ban to remain in effect, the Commission had still not responded to Tribune's 2002 waiver request and Tribune was still operating the WTXN(TV)/*Hartford Courant* combination. In light of the Commission's inaction, the District Court ruled in favor of Ellis and ordered Tribune to immediately comply with the NBCO rule.⁹⁴

⁹⁰ See 2002 Biennial Regulatory Review, Report and Order, 18 FCC Rcd 13620 (2003) ("2002 Biennial Regulatory Review Order").

⁹¹ *Prometheus Radio Project v. FCC*, 373 F.3d 372, 402, 435 (3d Cir. 2004).

⁹² Motion of Petitioner Tribune Company for a Partial Lifting of this Court's Stay of the FCC's Cross-Ownership Rules, *Prometheus Radio Project v. FCC*, 3rd Cir. Nos. 03-3388, et al (filed July 21, 2004).

⁹³ Order, *Prometheus Radio Project v. FCC*, 3rd Cir. Nos. 03-3388, et al. (Sept. 3, 2004).

⁹⁴ *Ellis*, 363 F. Supp. 2d at 137. On appeal, the Second Circuit vacated the decision of the district court, finding that the lower court should have referred the matter to the FCC under the primary jurisdiction doctrine. *Ellis v. Tribune Television Co.*, 443 F.3d at 73.

Tribune moved to stay the judgment pending appeal, and the District Court scheduled a hearing for April 14, 2005.⁹⁵ The day before the hearing, the FCC finally responded to Tribune's August 2002 waiver request by denying a permanent waiver but granting a new temporary waiver.⁹⁶ The purpose of the temporary waiver was to "afford Tribune additional time for divestiture of both Stations, if that is the course Tribune chooses to come into compliance with our rules."⁹⁷ The Commission rejected Tribune's argument that the difficulties in finding a buyer for WTXX(TV) justified a permanent waiver, finding that "Tribune has not demonstrated--and we have no basis to assume--that market or economic conditions will not improve, or that the value of station will not be enhanced by Tribune's efforts such that it will become more attractive to potential buyers in the future."⁹⁸

The Commission also declined to grant Tribune's alternative request for a waiver pending the completion of the 2002 Biennial review proceeding.⁹⁹ It found:

[T]he public interest is better served by extending the waiver of the newspaper-broadcast cross-ownership rule as applied to the *Courant-WTXX* combination to coincide with the renewal cycle for the licenses of both WTXX and WTIC-TV. This should enhance the likelihood that Tribune can sell one or both of the Stations on commercially reasonable terms, and thus provide the best hope that WTXX will remain on the air and as a source of news, information, and entertainment for citizens in the Hartford DMA.¹⁰⁰

It added that: "In extending Tribune's waiver, we again emphasize that we are doing so only temporarily, and based only on the unique circumstances present here."¹⁰¹

⁹⁵ See Ruling on Motion for Stay Pending Appeal, *Ellis v. Tribune Television Co.*, Civil Action No. 3:03 CV 833 (D. Conn. Apr. 19, 2005).

⁹⁶ *Counterpoint Communications, Inc.*, 20 FCC Rcd 8582, 8589, (2005).

⁹⁷ *Id.* at 8587.

⁹⁸ *Id.* at 8589.

⁹⁹ *Id.* at 8584.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 8589. The Commission noted that one of the unique circumstances here was that the Media Bureau had sent a letter stating that Tribune was in full compliance with the FCC's ownership rules.

Commissioners Copps and Adelstein “reluctantly concur[red]” in the result.¹⁰² They supported the Commission’s rejection of Tribune’s permanent waiver request, stating: “Tribune has simply not made the case for permanent waiver. We would also point out that through this decision, the Commission implicitly recognizes that a permanent waiver for the Hartford matter has the clear potential to undermine localism, competition, and diversity.”¹⁰³

2. After Failing to Comply with the Cross-Ownership Rule Prior to the License Renewal Application Deadline, Tribune Again Sought a Permanent Waiver

Instead of coming into compliance, Tribune filed yet another, even more extraordinary, waiver request along with its renewal applications for WTXX(TV) and WTIC-TV on December 1, 2006. Notwithstanding its continuing failure to obey the prior Commission directives, Tribune requested a waiver to allow it to permanently own the *Courant* and *both* television stations. Alternatively, it asked for a waiver until the Commission finalized its review of the media ownership rules.¹⁰⁴ Tribune did not argue that it needed more time to divest either the TV stations or the newspaper or commit to make any efforts to do so. On March 1, 2007, UCC filed a petition to deny the license renewals of WTIC-TV and WTXX(TV) and opposed the grant of any further waivers for Tribune. Before the Commission acted, however, Tribune entered into an agreement with Samuel Zell to transfer control of Tribune.

On November 30, 2007, the Commission narrowly approved the transfer to Zell, granting one permanent and four temporary waivers, and denied UCC’s and MA’s petitions to deny the transfer.¹⁰⁵ In the same order, it renewed the licenses for the Hartford stations, finding that

¹⁰² *Id.* at 8591 (Copps and Adelstein, concurring).

¹⁰³ *Id.* at 8591-92.

¹⁰⁴ Request for Waiver, File Nos. BRCT-20061210APT and BRCT-20061201AJE, at 54.

¹⁰⁵ *Tribune-Zell Order*, 22 FCC Rcd at 21284-86.

Tribune had met all of the criteria for a failing station waiver, and denied UCC's petition to deny the Hartford license renewals.¹⁰⁶

B. The Local TV Rule Prohibits the Transfer of the Hartford Television Licenses to a Common Owner and Tribune Does Not Meet the Test for a Waiver

Under the *1999 Duopoly Order*, “any combination formed as a result of a failing station waiver may be transferred together only if the combination meets [the] duopoly rule or one of [the FCC’s] three waiver standards at the time of transfer.”¹⁰⁷ In the *2008 Order*, the Commission determined that it was necessary to retain this rule to preserve adequate levels of competition for viewers and advertisers.¹⁰⁸ Tribune’s requests to transfer the two Hartford stations in tandem should be denied because the combination is inconsistent with the duopoly rule and does not meet the criteria for a new waiver.

Tribune seeks a waiver based on its claim that WTX(X)TV is both a “failed” and a “failing” station. Hartford Duopoly Waiver App. at 100. However, WTX(X)TV does not meet the test for a failed station because it has not gone dark and is not in *involuntary* bankruptcy. Separately, it fails the test for either a failed or failing station because it has not made “a showing that the in-market buyer is the only entity ready, willing and able to operate the stations [or] that sale to an out-of-market applicant would result in an artificially depressed price.”¹⁰⁹ In adopting

¹⁰⁶ *Id.* at 21281.

¹⁰⁷ *1999 Duopoly Order*, 14 FCC Rcd at 12940.

¹⁰⁸ 23 FCC Rcd at 2060.

¹⁰⁹ 47 C.F.R. § 73.3555, note 7. It is not clear whether Tribune meets the other tests required for a failing station waiver. For example, Public Interest Petitioners have not been able to assess Tribune’s claim that WTX(X)TV has had a negative cash flow for the past 3 years, as Tribune has requested confidential treatment for its financial statements. Hartford Duopoly Waiver App. at 20. Because Tribune has not met the separate requirement that it undertake a serious effort to sell the station, the Commission may not need to address this question. If, however, the Commission finds that the financial condition of WTX(X)TV is material, then it should either make Tribune’s financial information publicly available or allow petitioners access under a protective

this requirement, the Commission “emphasize[d] that waiver applicants cannot satisfy the requirement to demonstrate that there is no out-of-market buyer without making a serious, good-faith effort to attempt to sell the station.”¹¹⁰ The Commission added that “[o]ne way to make this showing will be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the station, and that no reasonable offer from an entity outside the market has been received.”¹¹¹

Tribune offers a declaration from a broker, which states that he was involved in efforts to sell WTXX(TV) between September 2001 and September 2006.¹¹² He further asserts based on his involvement with sales of stations in completely different markets that he does “not believe that there is any likelihood that WTXX(TV) could be sold today to an out-of-market buyer for a price that would represent anything other than a significant loss.”¹¹³

This declaration falls short in several ways. First, it does not show any efforts to sell the station after September 2006. Surely, this does not represent active and serious efforts to sell the station. Second, the broker’s claim that the station could only be sold at a “significant loss” is not the same as showing that a sale to an out-of-market buyer would result in an artificially depressed price.¹¹⁴ Although Tribune, like any business, would prefer not to have to sell an asset at a loss, it is not the Commission’s responsibility to ensure that licensees suffer no losses or earn fair returns on investments.

order.

¹¹⁰ *1999 Duopoly Order*, 14 FCC Rcd at 12937.

¹¹¹ *Id.* at 12938.

¹¹² Decl. of Brian Byrnes, ¶3 (Att. A to Hartford Duopoly Waiver App.).

¹¹³ *Id.* at ¶11.

¹¹⁴ *2008 Order*, 23 FCC Rcd at 2048.

C. The NBCO Rule Prohibits the Transfer of the Cross-Owned Stations and Tribune Does Not Qualify for a Waiver

As discussed above, an applicant seeking a waiver of the NBCO rule must satisfy four tests to qualify for a presumption that a waiver is in the public interest. If any one of these requirements is not met, a waiver is presumed to be against the public interest. Tribune's application to assign the licenses of WTIC-TV and WTXN(TV) is presumed to be strongly against the public interest because it fails not just one, but three of the rule's four criteria. First, Tribune seeks to combine a daily newspaper with two television stations. Second, one of those stations, WTIC-TV, is among the top four ranked stations in the market. Hartford Duopoly Waiver App at 50. Third, the Hartford & New Haven DMA is ranked thirtieth, well outside the nation's top twenty DMAs. *Id.* Thus, according to the plain language of the rule, the Commission may not approve the assignment unless Tribune can reverse or rebut this presumption.

1. Tribune Does Not Meet the Failed Outlet Test

Tribune alleges that its Hartford properties qualify under the failed outlet test. Hartford NBCO Waiver App. at 100. To meet this test, an applicant must show that "the newspaper or broadcast outlet has to have stopped circulating or have been dark for at least four months immediately prior to the filing of the assignment or transfer of control application, or must be involved in court-supervised *involuntary* bankruptcy or *involuntary* insolvency proceedings."¹¹⁵ Tribune cannot qualify under this test since both stations remain on the air, the *Hartford Courant* remains in circulation, and Tribune's bankruptcy was not involuntary.

¹¹⁵ 2008 Order, 23 FCC Rcd at 2048 (emphasis added).

Tribune also does not meet the failed outlet test because it has not demonstrated any serious efforts to find an out-of-market buyer for either of the stations or the *Hartford Courant*. In fact, Tribune’s consolidated the operations of all three outlets into a single building completed in 2009. Hartford Duopoly Waiver App at 36. This action makes plain that Tribune has had no intention of divesting any of the Hartford outlets for the past several years, if ever. Thus, Tribune fails to reverse the presumption that the Hartford cross-ownership is contrary to the public interest.

2. Tribune Fails to Meet the Heavy Burden for Rebutting the Presumption that the Assignment is Not in the Public Interest Under the Four Factor Test

The presumption that Tribune’s Hartford combination is against the public interest is difficult to rebut. In the *2008 Order*, the Commission stated that “[t]o the extent that the proposed combination does not qualify for a positive presumption, it will have a *high hurdle* to cross to win Commission approval.”¹¹⁶ To overcome the negative presumption, Tribune would have to show “by *clear and convincing evidence* that... the merged entity will increase the diversity of independent news outlets (*e.g.*, separate editorial and news coverage decisions) and increase competition among independent news sources in the relevant market.”¹¹⁷ Tribune’s showing regarding the four factors falls far short of the clear and convincing evidence standard required to rebut the presumption.

Increased Local News. The first factor is whether the combined entity will *significantly increase* the amount of local news in the market.¹¹⁸ However, Tribune has not promised *any* increase in the amount of local news in the market. It only claims that “since Tribune acquired

¹¹⁶ 23 FCC Rcd at 2049 (emphasis added).

¹¹⁷ *Id.*; see also 47 CFR § 73.3555(d)(6).

¹¹⁸ 47 CFR § 73.3555(d)(5)(i).

WTIC-TV in 1997, it has increased more than tenfold the hours of locally-produced news and public affairs programming broadcast on the station, with 35.5 hours now aired weekly.”

Hartford Waiver App. at 103. In addition, Tribune simulcasts WTIC-TV’s 10 pm local newscast on WTXX(TV). *Id.*

While increasing local news on WTIC-TV benefits the public interest, the fact that Tribune acquired the station several years before it acquired the *Hartford Courant* suggests that the combined ownership is unnecessary for WTIC-TV to continue providing local news. Moreover, there is minimal public interest benefit to Tribune’s simulcasting of the WTIC-TV’s 10 pm news program on WTXX(TV). Such duplication does nothing to increase the diversity of news available to the public. It also undermines the Commission’s goal of efficient use of the broadcast spectrum.

In addition to the amount of news, the Commission “will examine the resources that the broadcast entity will be devoting to the coverage of local news, such as the hiring of additional reporters and newsroom staff.”¹¹⁹ This factor supports denial of a waiver. Rather than devoting increased resources to local news, Tribune has reduced its newsgathering staff. In early 2009, the *Hartford Courant* laid off 100 employees, 30 of whom were reporters and editors. This action brought the editorial staff down to 135, or about half the number employed at the end of 2007.¹²⁰ Tribune had eliminated 57 jobs in July of 2008, when it also significantly reduced the

¹¹⁹ 2008 Order, 23 FCC Rcd at 2050.

¹²⁰ Paul Bass, *Courant Lays Off Top Reporters*, New Haven Independent, Feb. 29, 2009, http://www.newhavenindependent.org/archives/2009/02/courant_axes_to.php; Paper Cuts, *Hartford Courant: 100**, Feb. 20, 2009, <http://newspaperlayoffs.com/2009/02/hartford-courant-100/>.

number of pages published per week.¹²¹ Thus, Tribune's newsgathering resources and personnel shared between properties do not build upon, but rather replace, independent newsgathering.

Independent News Judgment. The second factor is whether the newspaper and the broadcast outlets each will continue to employ its own staff and each will exercise its own independent news judgment. In touting the alleged synergies of consolidation, Tribune actually exposes how the editorial functions are interrelated. Both television stations and the *Courant* share a single building, and share administrative staff, including a single Chief Operating Officer. Hartford NBCO Waiver App. at 36. A single shared employee monitors the flow of information between the different properties. *Id.* The staff-sharing extends beyond administration, and into the newsroom. Every day, the news assignments for the stations and the *Courant* are exchanged, compared, and modified to avoid duplicative newsgathering. *Id.* at 36-37. WTXX(TV) effectively exercises no news judgment at all because it merely rebroadcasts news produced by WTIC-TV.

Market Concentration. The third factor looks at the extent of competition in the market. Tribune attaches a BIA report that estimates an HHI of 1,256 for the Hartford DMA, which, under DOJ guidelines, is considered "moderately concentrated."¹²² However, the BIA report does not show the underlying data used to calculate this HHI, nor how it defined the relevant market.

Nonetheless, there are good reasons to believe that the BIA Report exaggerates the amount of actual competition in the area served by the Tribune properties. The Hartford & New

¹²¹ Paper Cuts, *Hartford Courant*: 57* July 21, 2008, <http://newspaperlayoffs.com/2008/07/hartford-courant-unknown/>.

¹²² Mark Fratrick, *Report on the Hartford-New Haven, CT Media Market*, 11, 13 (Feb 26, 2010).

Haven DMA is the largest of Nielsen’s dual DMAs.¹²³ The breadth of this combined DMA allows Tribune to claim competition and viewpoint diversity from papers and stations that operate in other communities and do not compete with its properties. For example, Tribune cites the *Register*, based in New Haven, and the *Waterbury Republican-American* as its competition. Hartford NBCO Waiver App. at 50, 60. However, the *Register* describes itself as “Serving New Haven.”¹²⁴ and the *Republican American* covers only Waterbury and the greater Waterbury area.¹²⁵ BIA’s HHI analysis overstates the amount of competition because it includes 12 daily papers; 53 general newspapers; 12 specialty papers; 15 shoppers' publications; 8 college newspapers; and 17 local magazines. It does not show that these publications are actual competitors of the *Hartford Courant*.

Financial Condition. Under this factor, the Commission considers only the condition of the specific newspaper and broadcast stations at issue, rather than that of the conglomerate parent company. Tribune has provided no specific information about the financial condition of the *Courant* or the Hartford television stations that would allow the Commission to find financial distress. Moreover, even “where a newspaper or broadcast entity makes a showing of financial distress, [the FCC] will look for evidence of the owner’s commitment to invest significantly in newsroom operations.”¹²⁶ Tribune’s current creditors, who would control the properties if the assignment is approved, have not evidenced any commitments to invest significantly in

¹²³ Katy Bachman, *Market Profile: Hartford and New Haven, Conn.*, Media Week, May 23, 2010, http://www.mediaweek.com/mw/content_display/eseach/e3idbde8a913c88374258be39dce6713ff1.

¹²⁴ See <http://www.nhregister.com/>.

¹²⁵ *Republican-American*’s self-description. <http://www.linkedin.com/companies/waterbury-republican-american>.

¹²⁶ *2008 Order*, 23 FCC Rcd at 2054.

newsroom operations. As discussed above, the creditors are banks and investments firm, with a reputation for cutting costs and making a quick sale.

In sum, Tribune has not come close to rebutting the presumption that continuing the combined ownership of the two Hartford television stations and the *Hartford Courant* would be contrary to the public interest.

VII. THE FCC SHOULD NOT GRANT EVEN TEMPORARY WAIVERS

Tribune asks that in the event the Commission is not disposed to grant permanent waivers, it should afford “temporary” waivers to run until 18 months after “pending proceedings to revise the NBCO Rule become final.” *E.g.*, Chicago Waiver App. at 123. It argues that “such limited relief is more than justified here, in view of the difficult economic conditions facing the newspaper and broadcast industries in general and Tribune in particular, and the need to ensure comity with the bankruptcy process.” *Id.* at 123.¹²⁷

The Commission should deny this request for several reasons. First, granting a waiver pending resolution of the rulemaking would violate longstanding and appropriate FCC precedent not to link new NBCO rule waivers to the existence of other pending proceedings or otherwise grant temporary NBCO waivers of indeterminate length. Although the Commission had granted some contingent waivers prior to 1998, in yet another case to which Tribune’s former owner was party, the Commission established a clear policy against doing so. The Commission found that “If the mere initiation of a proceeding called for an interim waiver of our broadcast cross-ownership rules, the granting of waivers would be the rule rather than the exception even though it was far from clear that a change in the rule was contemplated.” *Renaissance Communications*

¹²⁷Tribune’s misplaced reliance on the need for “comity” is discussed above.

Corp., 13 FCC Rcd 4717, 4718 (1998). Going forward, the Commission said, “[I]t should now be clear that the mere initiation of a proceeding stating that the rule would be examined, or merely the fact that such a proceeding was on the horizon, would not be sufficient to warrant an interim waiver.” *Id.* at 4719.

The Commission has subsequently declined to link new waivers to other, pending, proceedings. For example, in *Counterpoint Communications*, the Commission declined to grant Tribune a waiver pending the remand for its Hartford cross-ownership, and instead granted it a temporary waiver to allow for the sale of the station. 20 FCC Rcd at 8589. In *UTV*, the Commission reiterated its unwillingness to grant interim waivers pending resolution of a rulemaking regarding the NBCO rule. 16 FCC Rcd 14975, 14988 (2001). In the *2008 Order*, the Commission gave parties operating under temporary waivers 90 days within which to amend their applications or to file new requests for permanent waivers. 23 FCC Rcd at 2091.¹²⁸

Second, granting a waiver for 18 months after “pending proceedings to revise the NBCO Rule become final,” could effectively be the same as granting a permanent waiver. Because the FCC has told the Third Circuit in *Prometheus* that it intends to address the petitions for reconsideration of the *2008 Order* in the 2010 Quadrennial Review which has just begun, it could take years for the pending proceedings to become final, if ever, in light of the statutory requirement that the FCC review its ownership rules every four years.

Third, granting a waiver pending finality of review proceedings would eviscerate the media ownership rules, as it would arguably require the Commission to grant a temporary waiver

¹²⁸In granting temporary waivers to Tribune in November, 2007, the Commission afforded relief through the completion of litigation in that same atypical adjudicatory proceeding, not an unrelated rulemaking. *Tribune-Zell Order*, 22 FCC Rcd 21286. Petitioners, of course, have sought to challenge that determination, and it is not only wholly distinguishable, but also non-final.

to every violator in every renewal proceeding because the Commission's media ownership rules are always subject to review. Indeed, Tribune itself cites to the Commission's decision to give Media General and Gannett permanent waivers of the NBCO rule in the *2008 Order*, as precedent for its request here. *E.g.* Hartford NBCO Waiver App. at 108-09.¹²⁹

Fourth, Tribune's effort to rely on general economic conditions in seeking waivers is wholly irrelevant to the question of the duration of any waiver which might be afforded. The only factors the Commission should properly consider are those which face Tribune itself. As to that, the overwhelmingly important consideration is that Tribune's newspaper and broadcast properties are profitable on an operating basis. That previous ownership may have paid too much to purchase Tribune, and evidently took on far too much debt in attempting to structure a deal requiring almost no cash, are matters for the bankruptcy court, not the FCC, to consider.

Finally, Tribune is asking for far more time than could possibly be required to effectuate an orderly divestiture. Even if Tribune's request for 18 months from the date of the end of the NBCO Rule litigation were recast as a request for 18 months from the date of Commission action in this docket, it would be an outrageously outsized demand for a temporary waiver involving profitable properties. The Commission typically allows much less time for orderly divestiture in temporary waiver cases.¹³⁰ *See, e.g., Univision Communications Inc.*, 23 FCC Rcd 2548 (2006) (six months); *Chancellor Media/Shamrock Radio Licenses, LLC*, 15 FCC Rcd 17053 (2000) (12 months); *WDRQ, Inc.*, 12 FCC Rcd 11671 (1997) (4 months); *Combined Communications Corp.*,

¹²⁹ In their brief in *Prometheus Radio Project v. FCC*, 3d Cir. Nos. 08-3078, *et al.*, some of the Public Interest Petitioners argued that the FCC acted arbitrarily and capriciously in granting these permanent waivers. Brief for Citizen Petitioners at 37-43 (May 17, 2010).

¹³⁰ In *K. Rupert Murdoch*, 21 FCC Rcd 11499 (2006), the Commission afforded two years for divestiture of a cross-ownership violation where, after review of detailed financial information, the Commission concluded that the financial viability of the newspaper was at stake. There has been no similar showing here.

12 FCC Rcd. 3929 (1997) (6 months); *WHOA-TV, Inc.*, 11 FCC Rcd 20041 (1996) (6 months).
See also, NewCity Communications, Inc., 12 FCC Rcd 3929 (1997) (6 months).

Despite the heavy burden on Tribune, it makes not the slightest effort to demonstrate that there are any unusual circumstances that would preclude the disposition of its properties within a reasonable and delimited time. Accordingly, the Commission should decline to grant a waiver of indefinite length, and either deny the assignment or condition any assignment on divestiture of cross-owned properties within six months of the date of Commission action.

CONCLUSION

Tribune's applications request for unprecedented waivers should be dismissed or denied. They subordinate the interests of the public to the private interests of Tribune's creditors, and do not come close to meeting the evidentiary standards required for waivers of the Commission's ownership rules. While Tribune's creditors evidently believe that sale of the properties as a block might be somewhat more remunerative, such a benefit would come at the expense of the public interest.

WHEREFORE, Public Interest Petitioners ask that the Commission grant the pending petition for reconsideration of the *Tribune-Zell Order*, dismiss or deny the applications for assignment and/or deny the requested waivers. In the event that the Commission determines to grant temporary waivers for the purpose of assisting in the orderly divestiture of the affected properties, Public Interest Petitioners ask such waivers be of no more than six months duration,

that the Commission declare that it does not intend to grant further such temporary waivers, and that it grant all such other relief as may be just and proper.

Respectfully Submitted,

/s/ Angela J. Campbell
Angela J. Campbell
Guilherme C. Roschke.
Institute for Public Representation
Georgetown Law
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 662-9535

Of Counsel:

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Pamela Hartka
Georgetown Law Students

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Media Access Project
1625 K Street, NW
Suite 1000
Washington, DC 20006
(202) 232-4300

June 14, 2010

Counsel for Pubic Interest Petitioners

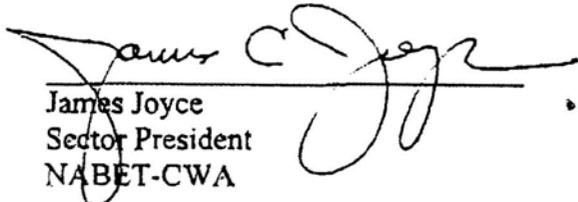
ATTACHMENT A

DECLARATION OF NABET-CWA

- 1) I, Jim Joyce, am Sector President of NABET-CWA. NABET-CWA is located at **501 Third Street, NW, Washington, DC 20001**
- 2) I reside in **New Canaan, CT.**
- 3) NABET-CWA, the National Association of Broadcast Employees and Technicians, and The Broadcasting and Cable Television Workers Sector of the Communications Workers of America, is a labor union with 10,000 workers employed in the broadcast field, and along with CWA (Communications Workers of America) represents over 600,000 workers in the public and private sector in the United States. NABET-CWA and CWA Members are employed in telecommunications, printing and news media, public service, and cable television fields, among others. Major employers include the NBC and ABC networks, and independent companies in broadcast television across America.
- 4) A consistent concern of NABET-CWA is to protect the interests and jobs of its members. NABET-CWA has an interest in ensuring the markets in which its members work remain competitive, to ensure its members receive competitive wages, including collective bargaining with Tribune's direct competitors. CWA is also involved in public communications advocacy, and is at the forefront of legislative initiatives to promote the creation of good-paying high-skill jobs in America. This year, at a field hearing on media ownership in Palo Alto, Calif., I, Jim Joyce, urged the FCC to regulate consolidation of TV stations that are costing hundreds of workers their jobs and result in fewer voices covering the news. Further, as employees involved in the media and news industries, NABET-CWA members have an especially strong interest in receiving the best news coverage possible, as the quality and content of local news directly relates to their profession.
- 5) NABET-CWA has members in the markets of: Miami, Florida; Chicago, Illinois; Los Angeles, California; New York City, New York; and Hartford, Connecticut.
- 6) Members of NABET-CWA have been harmed by Tribune's consolidated cross-ownership of newspapers and broadcast stations in markets where NABET-CWA members work, as this cross-ownership has resulted in the loss of jobs and deteriorated employment conditions. Further, NABET-CWA members have suffered a loss of diversity and competition in news coverage, and being deprived of independent voices in the media. They will continue to be harmed if the cross-ownership is permitted to continue.
- 7) This declaration has been prepared in support of the foregoing Petition to Deny.

This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.

Date Executed: 6/11/10


James Joyce
Sector President
NABET-CWA

DECLARATION OF ANDREW HALPIN

- 1) I, Andrew Halpin, am President of NABET-CWA Local 51017, Newington, CT.
- 2) I reside at 36 Theodore St. Newington, CT. 06111
- 3) I am a regular viewer of the television stations serving the Hartford-New Haven, CT market. Including WTIC-TV and WTXX(TV).
- 4) I reside within the circulation area of the *The Hartford Courant* and am a subscriber to the *Courant*. *The Hartford Courant* is the only daily newspaper that provides comprehensive coverage of my entire community.
- 5) The continued common ownership of WTXX(TV), WTIC-TV and the *The Hartford Courant* by Tribune harms me by sharply reducing the number of independent voices and competitive news sources available to me.
- 6) About six months ago when the Tribune Television Stations moved into the *The Hartford Courant* I have truly seen the quality of the product decline. Too often I see *Courant* reporters doing work on the broadcast side and can read print articles written by reporters on FOX 61. It is no longer a separate voice, nor does Tribune pretend it to be anything but one source for information.
- 7) This Declaration has been prepared in support of the foregoing Petition to Deny.
- 8) This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Date Executed: 6-13-2010



Andy Halpin
President
NABET-CWA, Local 51017

DECLARATION OF Vincent J. Butler

1. I, Vincent Butler, am a member in good standing of IBEW Local 1212 New York, whose offices are located at 225 West 34th Street New York City, New York, N.Y. 10122

2. I reside at 1886 Maple Hill Street Yorktown Heights N.Y.

3. I am a regular viewer of the television stations serving the New York, N.Y. market, including WPIX TV.

4. I reside within the circulation area of *Newsday* and read this newspaper regularly.

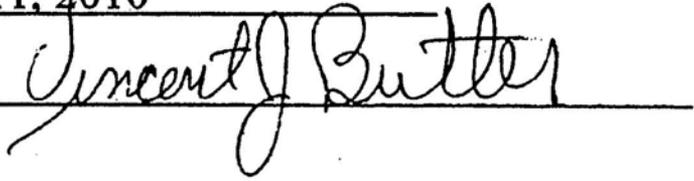
5. The continued common ownership of WPIX TV and *Newsday* by the Tribune Company harms me by sharply reducing the number of independent voices and competitive news sources available to me. It also harms me as an IBEW member by adversely affecting competition and employment opportunities in the media and communication fields.

6. The consolidation of ownership of media outlets, combined with shared services agreements and the use of a Local News Service (LNS) to eliminate almost 38% of staff broadcast engineering positions in the New York market, drastically reducing the number of electronic news gathering (ENG) crews available to cover breaking news and provide in depth investigative news stories has created public policy issues in diversity, or the lack thereof, created barriers to entry for new media entities, and reduced the quantity and quality of the news coverage available to the members of our community. Therefore I respectfully request that Tribune's request to continue to own multiple media outlets in the New York market be denied.

7. This Declaration has been prepared in support of the foregoing Petition for Denial.

8. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Date Executed: Friday, June 11, 2010

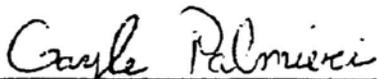
A handwritten signature in cursive script, reading "Vincent J. Butler", is written over a horizontal line.

Vincent J. Butler

DECLARATION OF GAYLE PALMIERI

1. I, Gayle Palmieri, am a member in good standing of IATSE New York Local 764, whose offices are located at 545 West 45th Street, New York, N.Y. 10036.
2. I reside at 45 Hunter Street, Ossining, New York 10562.
3. I am a regular viewer of the television stations serving the New York, N.Y. market, including WPIX TV.
4. I reside within the circulation area of *Newsday* and read this newspaper regularly.
5. The continued common ownership of WPIX TV and *Newsday* by the Tribune Company harms me by sharply reducing the number of independent voices and competitive news sources available to me. It also harms me as an IATSE local 764 member by adversely affecting competition and employment opportunities in the media and communication fields.
6. The consolidation of ownership of media outlets, combined with shared services agreements and the use of a Local News Service (LNS) to eliminate almost 38% of staff broadcast engineering positions in the New York market, drastically reducing the number of electronic news gathering (ENG) crews available to cover breaking news and provide in depth investigative news stories has created public policy issues in diversity, or the lack thereof, created barriers to entry for new media entities, and reduced the quantity and quality of the news coverage available to the members of our community. Therefore I respectfully request that Tribune's request to continue to own multiple media outlets in the New York market be denied.
7. This Declaration has been prepared in support of the foregoing Petition for Denial.
8. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

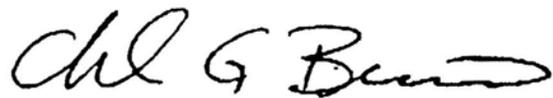
Date Executed: Thursday, June 10, 2010



Gayle Palmieri

DECLARATION OF CHARLES BRAICO

- 1) I, Charles Braico, am President of NABET-CWA, Chicago Local 41, located at 203 North Wabash, Suite 2118, Chicago, IL, 60601.
- 2) I reside at 520 W Huron # 407, Chicago, IL 60654.
- 3) I am a regular viewer of the television stations serving the Chicago, IL market, including WGN-TV.
- 4) I reside within the circulation area of the *The Chicago Tribune* and read the newspaper on a regular basis. *The Chicago Tribune* is the larger of only two daily newspapers that provide comprehensive coverage of my entire community.
- 5) I reside within the broadcast area of WGN(AM), and regularly listen to radio stations serving Chicago, IL, including WGN(AM).
- 6) The continued common ownership of WGN-TV, WGN(AM) and the *The Chicago Tribune* by Tribune harms me by sharply reducing the number of independent voices and competitive news sources available to me. The continued common ownership also harms me in my capacity as a NABET-CWA member and my duties as Local 41 president by adversely affecting competition and the media and communications employment market.
- 7) NABET-CWA, Chicago Local 41 members in Chicago include technical employees, producers, writers and couriers. They are employed by various media and broadcasting companies, such as ABC, NBC, FOX, Telemundo, and Univision.
- 8) This Declaration has been prepared in support of the foregoing Petition to Deny.
- 9) This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.



Date Executed: 6/11/2010

Charles Braico
President
NABET-CWA, Local 41

DECLARATION OF ROBERT DARAIO

1. I, Robert Daraio, am a member in good standing of NABET-CWA New York Local 51016, whose offices are located at 80 West End Avenue Room 501 New York, N.Y. 10023.

2. I reside at 45 Hunter Street, Ossining, New York 10562.

3. I am a regular viewer of the television stations serving the New York, N.Y. market, including WPIX TV.

4. I reside within the circulation area of *Newsday* and read this newspaper regularly.

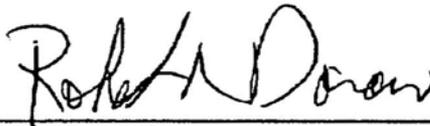
5. The continued common ownership of WPIX TV and *Newsday* by the Tribune Company harms me by sharply reducing the number of independent voices and competitive news sources available to me. It also harms me as a NABET-CWA member by adversely affecting competition and employment opportunities in the media and communication fields.

6. The consolidation of ownership of media outlets, combined with shared services agreements and the use of a Local News Service (LNS) to eliminate almost 38% of staff broadcast engineering positions in the New York market, drastically reducing the number of electronic news gathering (ENG) crews available to cover breaking news and provide in depth investigative news stories has created public policy issues in diversity, or the lack thereof, created barriers to entry for new media entities, and reduced the quantity and quality of the news coverage available to the members of our community. Therefore I respectfully request that Tribune's request to continue to own multiple media outlets in the New York market be denied.

7. This Declaration has been prepared in support of the foregoing Petition for Denial.

8. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Date Executed: Thursday, June 10, 2010



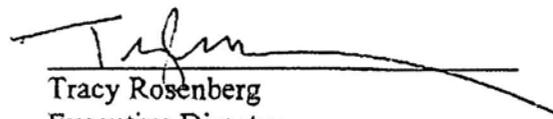
Robert Daraio

DECLARATION

- 1) I, Tracy Rosenberg, am Executive Director of Media Alliance. Media Alliance is headquartered at 1904 Franklin St., #500, Oakland, CA 94612
- 2) I reside at 826 Adams Street Albany CA 94706
- 3) Media Alliance is a 34 year-old media resource and advocacy center for media workers, non-profit organizations, and social justice activists. Our mission is excellence, ethics, diversity, and accountability in all aspects of the media in the interests of peace, justice, and social responsibility. Media Alliance strives to increase public participation in media policy debates to produce a more competitive and public interest oriented media system. We work to ensure that local radio, TV and newspaper outlets are meeting the needs of diverse communities.
- 4) A consistent concern of Media Alliance is to prevent concentrated and noncompetitive media markets. Media Alliance filed comments with the FCC in *Cross-Ownership of Broadcast Stations and Newspapers*, MB docket Number 01-235, one of the proceedings consolidated in the 2002 Biennial Review. Media Alliance also filed a Petition for Review of the FCC's 2002 Biennial Review Order in the US Court of Appeals for the Ninth Circuit, which was transferred to the Third Circuit and consolidated with *Prometheus Radio Project v. FCC*. Media Alliance filed a brief jointly with the other Citizens Petitioners in that case. We also joined *the Council Tree et.al vs FCC* filing in 2008. Media Alliance continues to be actively advocate for greater diversity and competition in the media
- 5) Media Alliance has members throughout the state of California with 200 current subscribers located within the 5-city service area of KTLA and the LA Times in the Southern California region. Members of Media Alliance have been harmed by Tribune's consolidated cross-ownership of newspapers and broadcast stations in the same markets, suffering a loss of diverse and independent voices in the media. They will continue to be harmed if the cross-ownership is permitted to continue.
- 6) This declaration has been prepared in support of the foregoing Petition to Deny.

This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.

Date Executed: 06/12/10


Tracy Rosenberg
Executive Director
Media Alliance

DECLARATION

1. I, Forrest Woolman, am a member of the Media Alliance, located at 1904 Franklin St. Suite 500, Oakland, CA.
2. I reside at 19670 Lonerock St, Canyon Country, CA 91351.
3. I am a regular viewer of the television stations serving the Los Angeles, CA market including KTLA-TV.
4. I reside within the circulation area of the *Los Angeles Times* and I am a daily subscriber to the *Los Angeles Times*. The *Los Angeles Times* is the only daily newspaper that provides comprehensive coverage of my entire community.
5. Allowing Tribune Co. to own the television station and KTLA-TV and the *LA Times* harms me by sharply reducing the number of independent voices and competitive news sources available to me.
6. Other additional harms that we are suffering because of this include:
 - a. Lack of news covering local government. According to independent research, released at the LA Media Reform Summit (March 2010), less than one minute out of thirty minutes of local news coverage – on average – is devoted to reporting on local government.
 - 1) This lack of coverage denies local viewers access to important local information.
 - 2) This lack of access harms the community because citizens are not well-informed about local issues
 - 3) Therefore, the programming needs of community not being met.
 - b. There are numerous examples of local news stories not being covered or covered in a biased manner, including:
 - 1) Recent reports about Proposition 16 fail to mention the public benefit of CCA municipal energy agencies providing affordable energy to residents. That's because the station and newspaper generate tremendous advertising revenue from the PG&E company that is the main backer of Prop 16.
 - 2) The station and newspaper consistently fail to accurately report on the position of the school teachers' union on key issues. That's because union demands adversely affect shareholder dividends for the corporate sponsors.
 - 3) Additional examples are available.
7. This Declaration has been prepared in support of the foregoing Petition for Denial.
8. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Forrest P. Woolman

Forrest P. Woolman

06-10-2010

Date

DECLARATION

- 1) My name is Andrea Cano. I am the Chair of the Office of Communication of the United Church of Christ, Inc. and the liaison between the Office of Communication, Inc. and the United Church of Christ.
- 2) The United Church of Christ (UCC) is a union of Protestant churches, the Congregational Christian Church and the Evangelical and Reform Church, which collectively includes more than 1.4 million people of whom a significant number are racial minorities. UCC members reside in areas served by Tribune's broadcast stations and or newspapers throughout the United States including the New York, Hartford, Los Angeles, Chicago, and Miami metropolitan areas.
- 3) The Office of Communication, Inc. is a not-for-profit corporation of the United Church of Christ charged with responsibility for developing the Church's policies in media advocacy. Since the mid-1950's, the Office of Communication, Inc. has participated in proceedings before the Federal Communications Commission to promote a diversity of viewpoints, a greater role for citizens in Commission regulatory proceedings, and more minority involvement in the electronic mass media industries. For example, the Office of Communication, Inc., filed comments in FCC's 2006 Quadrennial Review (Docket No. 06-121), the 2002 Biennial Review (Docket No. 02-277), and the Newspaper-Broadcasting Cross-Ownership proceeding (Docket No. 01-235). UCC also sought review of the FCC's 2002 Biennial Review decision in *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004) and is recently filed a brief in that court seeking review of the Report and Order in the 2006 Quadrennial Review.
- 4) UCC previously filed a petition to deny the transfer of control of the Tribune Co. licenses to Zell, and is party to a pending petition for reconsideration of the FCC's order approving that transfer. UCC also filed petitions to deny the license renewals of Tribune's Hartford television stations WTTX and WTIC-TV, and New York station WPIX, on the grounds that the grant of renewal violated the FCC's cross-ownership rule and that renewal was not in the public interest.
- 5) I have reviewed the foregoing Petitions to Deny. All of the relevant facts stated in the Petition are subject to official notice by the Federal Communications Commission, as they are drawn from the Commission's own orders, the waiver requests themselves, Commission and court decisions, industry publications, or are supported by the attached Declarations.
- 6) Waiving the Newspaper-Broadcast Cross-Ownership Rule as requested by Tribune on either a permanent or temporary basis would harm UCC members who reside in the communities where Tribune owns newspaper-broadcast combinations by reducing the number of independently controlled sources of local news and public affairs that would otherwise be available. Allowing the transfer of these combinations reduces diversity and competition and limits opportunities for new owners, including minorities, women and local entities, to acquire broadcast stations.
- 7) This Declaration has been prepared in support of the foregoing Petition to Deny.

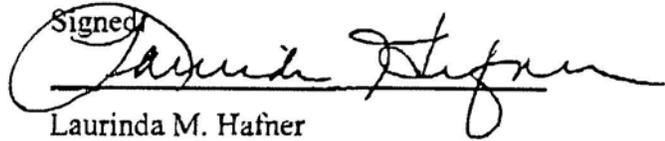
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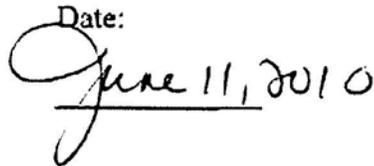
Date Executed: 06/12/10



Andrea Cano
Chair, Board of Directors
Office of Communication of the United
Church of Christ, Inc.

1. I, Laurinda Hafner, am a member of the Florida Conference of the UCC, located at 924 N. Magnolia Ave., Suite 250, Orlando, FL 32803.
2. I reside at: 3131 DeSoto Blvd., Coral Gables FL 33134.
3. I am a regular viewer of the television stations serving the Miami, FL market including WSFL-TV.
4. I reside within the circulation area of the *Sun Sentinel* and read the newspaper on a regular basis. The *Sun Sentinel* is the only daily newspaper that provides comprehensive coverage of my entire community.
5. Allowing Tribune Co. to own the television station WSFL-TV and the *Sun Sentinel* harms me by sharply reducing the number of independent voices and competitive news sources available to me.
6. WSFL-TV is not responsive to the need for running public service announcements and regularly refuses to run them.
7. This Declaration has been prepared in support of the foregoing Petition for Denial.
8. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Signed: 
Laurinda M. Hafner

Date:


DECLARATION

1. I, Bennie E. Whiten, Jr., am a member of the Pilgrim Congregational Church of the United Church of Christ located at 460 Lake Street, Oak Park, IL 60302
2. I reside at: 4512 South Greenwood Avenue, #4, Chicago, IL 60653.
3. I am a regular viewer of the television and radio stations serving the Chicago, IL market including WGN-TV and WGN-AM.
4. I reside within the circulation area of the *Chicago Tribune* and subscribe to it. The *Chicago Tribune* is the only daily newspaper that provides comprehensive coverage of my entire community.
5. Allowing Tribune Co. to own the television station WGN-TV, the radio station WGN-AM, and the *Chicago Tribune* harms me by sharply reducing the number of independent voices and competitive news sources available to me.
6. I am displeased with the restyling of the Chicago Tribune as the quantity and quality of news coverage seem to have been reduced.
7. I have not heard public service announcements on WGN-AM.
8. This Declaration has been prepared in support of the foregoing Petition for Denial.
9. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Signed:

Bennie E. Whiten Jr.

Date: June 10, 2010



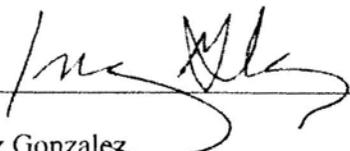
National Hispanic Media Coalition
 55 South Grand Avenue
 Pasadena, CA 91105
 Tel: (626) 792-6462
 Fax: (626) 792-6051
 Email: info@nhmc.org
www.nhmc.org

DECLARATION

- 1) My name is Inez Gonzalez, I am the Executive Vice President of the National Hispanic Media Coalition, headquartered at 55 S. Grand Avenue, Pasadena, CA 91105.
- 2) The National Hispanic Media Coalition (NHMC) is a non-profit, civil rights media advocacy organization created to advance American Latino employment and programming equity throughout the entertainment industry and to advocate for media and telecommunications policies that benefit the American Latino community.
- 3) The National Hispanic Media Coalition has constituents in Chicago, IL and Hartford, CT.
- 4) NHMC has participated in proceedings before the Federal Communications Commission to promote a diversity of viewpoints, more citizen participation in Commission regulatory proceedings, and greater representation of American Latinos in the electronic mass media industries. For example, NHMC has filed numerous petitions to deny the license renewals of broadcast stations that were failing to serve the public interest, and comments regarding broadcast localism, broadcast diversity, the broadcast media ownership rules, network neutrality, and hate speech.
- 5) Waiving the Newspaper-Broadcast Cross-Ownership Rule as requested by Tribune on either a permanent or temporary basis would harm NHMC constituents who reside in the communities where Tribune owns newspaper-broadcast combinations by limiting the number of independently controlled sources of local news and public affairs that would otherwise be available. Allowing the transfer of these combinations reduces opportunities for diversity and competition and limits access for new owners, including people of color, women and local entities, to acquire broadcast stations.
- 6) This Declaration has been prepared in support of the foregoing Petition to Deny.

This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.

Date Executed: June 11, 2010



 Inez Gonzalez
 Executive Vice President
 National Hispanic Media Coalition

President & CEO

Alex Nogales

Executive Board

Brenda Castillo, Chair
 Fern Espino, 1st Vice Chair
 Marta Garcia, 2nd Vice Chair
 Jeff Penichet, Treasurer
 Pete Gomez, Secretary

General Counsel

Francisco X. Gutierrez, Esq.

National Board

Pete Gomez, Los Angeles, CA
 Jeff Penichet, Los Angeles, CA
 Brenda Castillo, Whittier, CA
 Francisco Gutierrez, Phoenix, AZ
 Fern Espino, Detroit, MI
 Marta Garcia, New York, NY
 Angelo Falcon, New York, NY

Staff

Inez Gonzalez, Executive Vice President
 Jessica Gonzalez, Vice President, Policy & Legal Affairs
 Tatiana Arizaga, Communications Coordinator

National Hispanic Media Coalition Business Advisory Board

* Gilbert Davila * Eddie Batiz, Batiz.com * Ivelisse Estrada, Univision *
 Raul Medrano, Medrano & Associates * Fernando Soler, SOS Global Express * Anna Allee, Alarus, The Alarus Agency * Brenda Castillo, B.P America Inc.

National Hispanic Media Coalition Creative Advisory Board:

* Moctesuma Esparza * Dennis Leoni *
 * Jeff Valdez * Sergio Aguero * Santiago Pozo * David Valdez * Jeff Penichet

DECLARATION OF LUIS E. COTTO

1. I, Luis E. Cotto, am a constituent of the National Hispanic Media Coalition, located at 55 S. Grand Avenue, Pasadena, CA 91105.
2. I reside at 10 Park Terrace, Apt. 2, Hartford, CT 06106.
3. I am a regular viewer of the television stations serving the Hartford, CT market, including WTXX(TV) and WTIC-TV.
4. I reside within the circulation area of the *The Hartford Courant* and buy and read the newspaper on a regular basis. *The Hartford Courant* is the only daily newspapers that provide comprehensive coverage of my entire community.
5. The continued common ownership of WTXX(TV), WTIC-TV and the *The Hartford Courant* by Tribune harms me by sharply reducing the number of independent voices and competitive news sources available to me.
6. Further, the "alternative" print publication in this media market, *The Hartford Advocate*, is also owned by Tribune via the Hartford Courant, which has reduced *The Advocate* into a publication dedicated to selling ad-space and not presenting alternate views.
7. This Declaration has been prepared in support of the foregoing Petition for Denial.
8. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Date Executed:

6/9/10


Luis E. Cotto

DECLARATION OF **amalia deloney**

1. I, amalia cristina deloney, am a constituent of the National Hispanic Media Coalition, located at 55 S. Grand Avenue, Pasadena, CA 91105.
2. I reside at 335 West Broadway St. Bradley, IL 60915
3. I am a regular viewer of the television stations serving the Chicago, IL market, including WGN-TV.
4. I reside within the circulation area of the *The Chicago Tribune* and read the newspaper on a regular basis. *The Chicago Tribune* is the larger of only two daily newspapers that provide comprehensive coverage of my entire community.
5. I reside within the broadcast area of WGN(AM), and regularly listen to radio stations serving Chicago, IL, including WGN(AM).
6. The continued common ownership of WGN-TV, WGN(AM) and the *The Chicago Tribune* by Tribune harms me by sharply reducing the number of independent voices and competitive news sources available to me. Outside of Los Angeles, Chicago has the largest Guatemalan population in the United States. As a Guatemalan born migrant, its important to me that I am able to receive accurate news and information about Latinos in Chicago, and the immigration issues we face. A variety of independent news sources is necessary for this, rather than one entity with an overly powerful single voice.
7. Additionally, in my professional capacity I am employed as a Grassroots Media Policy Director. In this capacity, it's important that I am able to read and listen to a variety of coverage on pressing media issues such as Net Neutrality, from a number of sources. I now fear that a local television station owned by a newspaper could simply televise a summary of the paper's content as well as dominate the local political and cultural discourse.
8. This Declaration has been prepared in support of the foregoing Petition for Denial.
9. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Date Executed: 6/11/10



amalia deloney

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40 main st, suite 301
florence, ma 01062
tel 413.585.1533
fax 413.585.8904

WASHINGTON
501 third street nw, suite 875
washington, dc 20001
tel 202.265.1490
fax 202.265.1489



DECLARATION OF FREE PRESS

- 1) I, Coriell Wright, am Policy Counsel for Free Press. Free Press is located at 501 Third Street NW, Suite 875, Washington, DC 20001
- 2) I reside in Washington, DC
- 3) Free Press is a national nonpartisan and nonprofit organization working to increase informed public participation in media policy debates and to generate policies that will produce a more competitive and public interest-oriented media system. Free Press is the largest media reform organization in the United States, with nearly half-a-million activists and members and a full-time staff of more than 30 based in our offices in Washington, D.C., and Florence, Mass.
- 4) A core component of Free Press' organizational mission is to promote diverse and independent media ownership and to deter overly-concentrated and noncompetitive media markets. Free Press has participated extensively in media ownership proceedings at the Federal Communications Commission, including the FCC's 2002 Biennial Media Ownership Review (MB Docket Number 02-277), the 2006 Quadrennial Media Ownership Review (MB Docket 06-121), and is currently involved in litigation concerning the revised news-paper broadcast cross-ownership rule adopted in the latter proceeding. More recently, Free Press staff have spoken on panels hosted by the FCC in conjunction with the Commission's 2010 Quadrennial Media Ownership Review (MB Docket 09-182). As part of its advocacy work, Free Press is also conducts grassroots outreach to educate and mobilize popular support for a more competitive, diverse media system.
- 5) Free Press has members in the markets of: Miami, Florida; Chicago, Illinois; Los Angeles, California; New York City, New York; and Hartford, Connecticut.
- 6) Free Press members have been harmed by Tribune's consolidated cross-ownership of newspapers and broadcast stations in the same markets, suffering a loss of diversity and competition, and being deprived of independent voices in the media. They will continue to be harmed if the cross-ownership is permitted to continue.
- 7) This declaration has been prepared in support of the foregoing Petition to Deny.

This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.

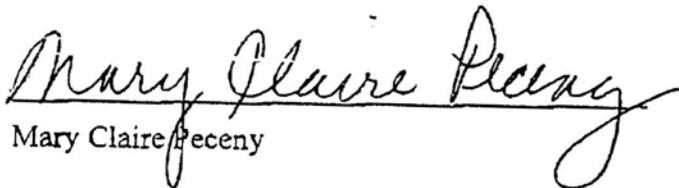
Date Executed: 6/11/10

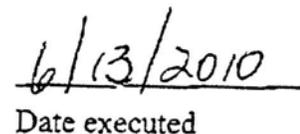


Coriell Wright
Policy Counsel

DECLARATION OF MARY CLAIRE PECENY

1. I, Mary Claire Peceny, am a member of Free Press.
2. I reside at 1332 West Birchwood Ave, Chicago, Illinois 60626
3. I am a regular viewer of the television stations serving the Chicago, IL market, including WGN-TV.
4. I reside within the circulation area of the *Chicago Tribune* and have a Sunday subscription and also read the weekly newspaper on a regular basis. The *Chicago Tribune* is the larger of only two daily newspapers that provide comprehensive coverage of my entire community.
5. I reside within the broadcast area of WGN(AM), and regularly listen to radio stations serving Chicago, IL, including WGN(AM).
6. The continued common ownership of WGN-TV, WGN(AM) and the *Chicago Tribune* by Tribune harms me by sharply reducing the number of independent voices and competitive news sources available to me.
7. It is clear to me that since the Tribune companies were purchased by Sam Zell, my access to good information about the Chicagoland area has decreased significantly. As each of the outlets has needed to create more profit for its private owners, it appears the quality and quantity of local news coverage has diminished. Reporters at all outlets have been let go and news stories available through wire services seem to dominate. Many local issues are often either not reported or lack any local context when they are. For example, shooting deaths of teenagers are often not reported, and when they are, the killers are simply referred to as "gangbangers" as if that is all anyone needs to know about the situation.
8. This Declaration has been prepared in support of the foregoing Petition for Denial.
9. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.


Mary Claire Peceny


Date executed

DECLARATION OF CHARLES BENTON

1. My name is Charles Benton.
2. I am a resident of Evanston, IL.
3. I am the Chairman of the Benton Foundation. The Benton Foundation works to ensure that media and telecommunications serve the public interest and enhance our democracy. We pursue this mission by seeking policy solutions that support the values of access, diversity and equity, and by demonstrating the value of media and telecommunications for improving the quality of life for all.
4. I am a regular viewer of the television stations serving the Chicago, IL market, including WGN-TV.
5. I reside within the circulation area of the *The Chicago Tribune* and regularly read that newspaper.
6. I reside within the broadcast area of WGN(AM), and regularly listen to radio stations serving Chicago, IL, including WGN(AM).
7. On December 31, 2007, I filed a Petition for Reconsideration of the FCC's Order approving the transfer of control of the Tribune Co. to Sam Zell and granting Tribune an unsolicited permanent waiver of the newspaper-broadcast cross-ownership rule for Chicago on the grounds that the waiver was not in the public interest. That petition is still pending
8. Grant of yet another waiver to Tribune as requested here similarly is not in public interest. I will be harmed if the Commission waives the newspaper-broadcast cross ownership rule to permit the continued common ownership of WGN-TV, WGN(AM) and the *The Chicago Tribune*. Allowing the combination to continue sharply reduces the number of independent and competitive news sources that would otherwise serve the Chicago area.
9. This Declaration has been prepared in support of the foregoing Petition for Denial.
10. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Date Executed:

09/12/10


Charles Benton

Certificate of Service

I, Guilherme Roschke, hereby certify that on this 14th day of June 2010, a copy of the foregoing Petition to Deny the Voluntary Assignment of Licenses of the Tribune Co. and Licensee Subsidiaries was served by first-class mail, postage prepaid, upon the following:

John R. Feore
Dow Lohnes PLLC
1200 New Hampshire Avenue, NW, Suite 800
Washington, DC 20036

In addition, I have provided a courtesy copy of this Petition via email to John R. Feore, jfeore@dowlohn.com, and to all individuals listed below.

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fcc@bcpiweb.com

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Chairman Julius Genachowski:
Julius.Genachowski@fcc.gov

Commissioner Michael J. Copps
Michael.Copps@fcc.gov

Commissioner Mignon Clyburn
Mignon.Clyburn@fcc.gov

Commissioner Meredith Attwell Baker:
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Barbara.Kreisman@fcc.gov

/s/ Guilherme Roschke
Guilherme Roschke