

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Applications of Tribune Company)
And Its Licensee Subsidiaries)
) MB Docket No. 10-104
)
For Consent to Assignment of)
Broadcast Station Licenses)

**MEMORANDUM OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF TRIBUNE COMPANY, *ET AL.* (I) SUPPORTING TRIBUNE'S
FCC APPLICATIONS, AND (II) SUPPORTING TRIBUNE'S OPPOSITION TO
PETITIONS TO DENY THE APPLICATIONS FOR CONSENT TO
ASSIGNMENT OF BROADCAST STATION LICENSES**

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The Official Committee of Unsecured Creditors (the "Committee") of Tribune Company and its various debtor-subsidiaries (collectively, "Tribune" or the "Debtors") hereby submits this Memorandum (the "Statement in Support") (I) Supporting Tribune's FCC Applications (the "Applications"), and (II) Supporting Tribune's Opposition to Petitions to Deny (the "Petitions") the FCC Applications for Consent to Assignment of Broadcast Station Licenses filed by Media Access Project, *et al.* ("MAP"), Neil Ellis ("Ellis"), the International Brotherhood of Teamsters ("Teamsters"), and Wilmington Trust Company ("WTC"), and respectfully represents as follows:

I. SUMMARY

The Committee represents the unsecured creditors of Tribune and has a direct interest in this proceeding and standing to file this Statement in Support. The Committee requests an expeditious grant of the Applications. The Petitions provide no basis to delay the grant of the

Applications as the Petitions fail to raise any substantial and material issue that would warrant any delay in the processing and grant of the Applications.

The Applications demonstrate that Tribune is entitled to the requested waiver of the newspaper broadcast cross-ownership ("NBCO") rule¹ for WGN(AM), WGN-TV and the *Chicago Tribune* in Chicago, Illinois and a NBCO waiver and television duopoly waiver for WTIC-TV, Hartford, Connecticut, WTXN(TV), Waterbury, Connecticut and the *Hartford Courant*. Reorganized Tribune is legally, technically and financially qualified to hold the Tribune broadcast licenses and approval of the Applications will serve the public interest.

II. INTEREST OF THE COMMITTEE

The Committee supports an expeditious approval of the Applications, and has an economic interest in the outcome of the Applications sufficient to establish standing to file this Statement in Support.

A. Description of the Committee

On December 8, 2008, Tribune filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to section 1102(a)(1) of the Bankruptcy Code, on December 18, 2008, the United States Trustee for the District of Delaware appointed the Official Committee of Unsecured Creditors. In selecting members for the Committee, the United States Trustee carefully examined the nature of the various claims against the Debtors to ensure that the Committee as a whole would represent the diverse interests of creditors of all categories,

¹ See 47 C.F.R. § 73.3555(d).

including bank lenders, senior and subordinate debenture holders, trade creditors, and union/employee creditors.²

The Committee is presently comprised of the following members: Buena Vista Television, JPMorgan Chase Bank, N.A., Deutsche Bank Trust Company of Americas, Warner Bros. Television, William Niese, the Pension Benefit Guaranty Corporation, Washington-Baltimore Newspaper Guild, Local 32035, and Wilmington Trust Company. Accordingly, the Committee represents a cross-section of the interests of all general unsecured creditors in the Debtors' bankruptcy cases.

The Bankruptcy Code grants the Committee the power to investigate the Debtors, to negotiate a plan of reorganization, and to "perform such other services as are in the interest of those represented."³ The Third Circuit has construed section 1103(c) as "implying a fiduciary duty on the part of members of a creditor's committee . . . toward their constituent[s]."⁴ Therefore, the Committee has a direct and compelling interest in the timely approval by the Commission of the Applications. If the Debtors' Plan of Reorganization (the "Plan") is confirmed and the transactions contemplated thereby are consummated, the holders of unsecured claims against Tribune Company will receive significant distributions.⁵

² See 7 COLLIER ON BANKRUPTCY ¶ 1102.02[2][b][i] (16th Ed. 2009).

³ See 11 U.S.C. § 1103(c).

⁴ See *Westmoreland Human Opportunities, Inc. v. Walsh*, 246 F.3d 233, 256 (3d. Cir. 2001) (citing *In re PWS Holding Corp.*, 228 F.3d 224, 246 (3d. Cir. 2000)).

⁵ Specifically, holders of Allowed Senior Noteholder Claims against Tribune Company will receive 35.18% of the aggregate amount of their claims, in the form of each Holder's pro rata share of 7.4%

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III. THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (A) SUPPORTS TRIBUNE'S FCC APPLICATIONS, AND (B) ASSERTS THAT THE PETITIONS TO DENY ARE INSUFFICIENT TO WARRANT A DELAY IN THE GRANT OF THE APPLICATIONS

As set forth herein, the Committee has filed this Statement in Support to demonstrate and record its full support of the Debtors' Applications. In addition, in order to assist the Commission with its analysis of the Applications, the Committee provides herein a discussion of certain issues that were not sufficiently addressed and examined through the Petitions.

A. The Committee Supports Tribune's Applications

As noted above, the Committee is the official body appointed by the United States Trustee to represent the interests of all unsecured creditors. Accordingly, unlike other Tribune creditors who have been active in the FCC process, the Committee is not driven to act by the selfish motivations of any one particular creditor. Instead, the Committee seeks to reach an appropriate outcome that is consistent with the legal rights of its entire constituency.

In this case, the Committee has clearly taken its obligations very seriously, (a) by reaching an agreement on a settlement in the bankruptcy case that the Committee believes is a fair settlement for all creditors holding valid legal claims, and (b) by working closely with the

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of the New Senior Secured Term Loan, 7.4% of the Distributable Cash and 7.4% of the New Common Stock (subject to dilution by the Equity Incentive Plan). Holders of Allowed Other Parent Claims against Tribune Company will receive an amount of Distributable Cash equal to 35.18% of the aggregate amount of their claims. Holders of Allowed General Unsecured Claims against Subsidiary Debtors will receive payment in full in cash (without post-petition interest); provided, however, that if the Debtors estimate that the sum of all such claims exceeds \$150 million in the aggregate, each Holder of an Allowed General Unsecured Claim against Subsidiary Debtors will instead receive its Pro Rata share of \$150 million in cash (without post-petition interest).

Debtors on the FCC Applications (and related processes) that the Committee believes to be fully consistent with the Commission's rules and policies with regard to the approval of the Applications. After a complete review by the Committee, the Committee fully and without reservation supports the Applications in their current form.

B. The Petitions Fail to Raise Substantial and Material Issues That Would Warrant a Delay in the Grant of the Applications

Section 309(d)(1) of the Communications Act, as amended, and section 78.22 of the Commission's rules,⁶ require that a petition to deny contain specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.⁷ The FCC must hold a hearing if the Commission finds that the application presents a "substantial and material question of fact" or if the Commission is otherwise unable to conclude that granting the application would serve the public interest.⁸ However, as described below, the Petitions fail to raise any substantial and material issues of fact as to whether the Applications are in the public interest. Accordingly, the Petitions should be dismissed and the Applications processed in an expeditious manner.

1. Standard of Review

The Commission has held that section 309 erects a two-step barrier to a hearing: (1) a petition must contain specific allegations of fact that, taken as true, make out a *prima facie* case

⁶ See 47 U.S.C. § 309; *see also* 47 C.F.R. § 78.22.

⁷ See, e.g., *In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelpia Communications Corporation*, 21 FCC Rcd 8203, 8215-16 (July 21, 2006).

⁸ See 47 U.S.C. § 309(e).

that grant of the application would not serve the public interest; and (2) the allegations, taken together with any opposing evidence before the Commission, must raise a substantial and material question of fact as to whether grant of the application would serve the public interest.⁹ With regard to the first prong, "[P]etitions [to deny] must contain 'specific allegations of fact.' . . . The Commission is not required to resolve, through a hearing, issues which the Commission finds are neither 'substantial' nor 'material,' regardless of whether the facts involved are in dispute."¹⁰ Rather, the Commission considers the evidence included with the application in assessing whether the petitioner has raised any substantial and material issue.¹¹ With regard to the second prong, a substantial and material question is raised when "the totality of the evidence" arouses a sufficient doubt as to whether granting the application would serve the public interest.¹²

Moreover, the standard of review in this case also must include settled Commission case law that underscores the appropriateness of facilitating the reorganization of a company in bankruptcy. Under the Commission's *Second Thursday* doctrine, the Commission can approve the assignment of a broadcasting license, even where unresolved qualification issues exist with respect to the debtor.¹³ Within the bankruptcy context, the Commission has granted a permanent

⁹ *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) (citing *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988) (describing the two-step test)).

¹⁰ *Stockholders of CBS Inc.*, 11 FCC Rcd 3733 (Nov. 22, 1995) at ¶¶ 5-6.

¹¹ *See BBC License Subsidiary L.P.*, 10 FCC Rcd 10968 (Aug. 18, 1995) at ¶ 34.

¹² *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985).

¹³ *See, e.g., Second Thursday Corp.*, 25 FCC Rcd 112 (Aug. 31, 1970)("Second Thursday"); *see also LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974).

NBCO waiver for a new television and newspaper combination.¹⁴ Indeed, the Commission has subsequently extended the waiver to include two television stations and a newspaper.¹⁵ The Tribune Applications are essential to accomplish the expeditious effectuation of the Plan. Under this standard of review, the Commission must give due weight to the public interest benefits of such reorganization and the continued operation of Tribune broadcast stations and newspapers and must reject the Petitions which seek to delay or impede the reorganization based solely on erroneous legal arguments and mere speculation.

2. The Petitions Fail to Justify a Delay in the Grant of the NBCO Waivers

The Applications demonstrate that Tribune is entitled to the requested waiver of the NBCO rule in the Chicago and Hartford-New Haven designated market areas ("DMA"), and the NBCO rule and television duopoly rule for the Hartford-New Haven DMA. The Petitions to Deny filed by MAP and the Teamsters challenge the waiver requests in the Chicago and Hartford-New Haven DMAs and the Petition to Deny filed by Ellis challenges the waivers in the Hartford-New Haven DMA. However, as shown herein, these arguments are based on erroneous interpretations of the law and mere speculation, rather than specific factual allegations. As a

¹⁴ *In the Matter of Fox Television Stations Request for a Waiver of the Broadcast-Newspaper Cross-Ownership Rule Relating to WNYW and the New York Post*, 8 FCC Rcd 5341 (July 9, 1993) ("WNYW") at ¶ 41, *aff'd In the Matter of Rupert K. Murdoch*, 24 FCC Rcd 5824 (May 22, 2009) (Permanent NBCO waiver for WNYW and the *New York Post* affirmed by the current Commission); *In re Application of Telemundo Group, Inc.*, 10 FCC Rcd 1104 (Dec. 23, 1994) ("Telemundo") at ¶ 13.

¹⁵ *In the Matter of Applications of UTV of San Francisco*, 16 FCC Rcd 14975 (July 25, 2001); *Applications for Transfer of Control of Fox Television Stations, Inc.*, 21 FCC Rcd 11499 (Oct. 6, 2006).

result, the MAP, Teamsters and Ellis Petitions fail to raise any substantial and material issue that would warrant a denial of the requested NBCO and television duopoly waivers in the Chicago and Hartford-New Haven DMAs.

a. Chicago

It is simply beyond any reasonable dispute that Tribune is entitled to a continuation of its permanent, grandfathered NBCO waiver for WGN(AM), WGN-TV and the *Chicago Tribune* in the Chicago DMA. The *Chicago Tribune* was founded in 1847. At the inception of AM radio service, Tribune was one of the seminal investors in AM radio with the launch of WGN(AM) in 1934. Similarly, Tribune was again a seminal investor in television service with the launch of WGN-TV in 1948. Thus, by the time the NBCO rule was adopted in 1975, the Tribune combination in Chicago had been in existence for nearly 30 years.

When the Commission adopted the NBCO rule in 1975, the Commission grandfathered existing combinations, except for "monopoly situations" which consisted of small markets with one television station and one newspaper.¹⁶ As the Tribune combination in Chicago did not present such a "monopoly situation," the Tribune combination was grandfathered when the NBCO rule was adopted in 1975. The D.C. Circuit upheld the NBCO rule, but held that the Commission erred when the Commission ordered divestiture only in "monopoly situations."

¹⁶ *In the Matter of 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*, 50 FCC Rcd 1046 (Jan. 31, 1975) ("1975 Order") at ¶ 117. *See also Field Communications Corp.*, 65 FCC 2d 959 (June 22, 1977) (An NBCO waiver is appropriate where "a new ownership pattern" is not being proposed).

The U.S. Supreme Court reversed the D.C. Circuit, asserting that "the Court of Appeals erred in holding that it was arbitrary to order divestiture in the 16 'egregious cases' while allowing other existing combinations to continue in operation."¹⁷ The Court reached this conclusion based upon its finding that although the "Commission was well aware that separating existing newspaper-broadcast combinations would promote diversification of ownership . . . [the Commission] concluded, however, that ordering widespread divestiture would not result in 'the best practicable service to the American public . . .'"¹⁸ The Court noted that:

[The Commission] identifie[d] several specific respects in which the public interest would or might be harmed if a sweeping divestiture requirement were imposed: the stability and continuity of meritorious service provided by the newspaper owners as a group would be lost; owners who had provided meritorious service would unfairly be denied the opportunity to continue in operation; 'economic dislocations' might prevent new owners from obtaining sufficient working capital to maintain the quality of local programming; and local ownership of broadcast stations would probably decrease.¹⁹

Thus, the U.S. Supreme Court upheld the grandfathering of the Tribune combination in Chicago based upon these public interest considerations, all of which remain applicable today.

Only three years ago in the *Zell* case the Commission, *sua sponte*, granted Tribune a *permanent* waiver of the NBCO rule in the Chicago DMA.²⁰ The Commission noted that grant of a waiver is appropriate, "where, *inter alia*, the purposes of the rule – to foster competition and

¹⁷ *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978) ("NCCB").

¹⁸ *NCCB*, 436 U.S. at 803-04.

¹⁹ *NCCB*, 436 U.S. at 804.

²⁰ *In the Matter of the Shareholders of the Tribune Company*, 22 FCC Rcd 21266 (Nov. 30, 2007) ("Zell") at ¶ 34.

diversity – would be disserved by divestiture."²¹ After noting that Tribune "is one of the nation's oldest media pioneers," the Commission concluded:

[I]n the unique circumstances present here, forced separation of the Tribune, WGN-TV, and WGN(AM) would diminish the strength of important sources of quality news and public affairs programming in the Chicago market and . . . any detriment to diversity caused by the common ownership is negligible given the nature of the market. Therefore, we conclude that the purposes of the rule would not be served by divestiture.²²

The Commission contemplated in the 1975 Order that there would be "a number of waiver requests."²³ The Commission indicated that it did not anticipate conducting evidentiary hearings on waiver requests.²⁴ Thus, the Commission's decision in the *Zell* case to grant a permanent waiver to Tribune in Chicago is consistent with the 1975 Order as well as *NCCB*.

Petitioners MAP and the Teamsters challenge the NBCO waiver request in Chicago on the grounds that the combination does not meet the strict terms of the NBCO rule because Tribune owns two broadcast stations.²⁵ However, an application that does not meet the strict terms of the rules may still be granted where a rule waiver is requested.²⁶ The Tribune Applications request a waiver and demonstrate that the waiver will serve the purposes of the rule,

²¹ *Zell*, 22 FCC Rcd 21266 at ¶ 34.

²² *Id.*

²³ *Zell*, 22 FCC Rcd 21266 at ¶ 118.

²⁴ *Zell*, 22 FCC Rcd 21266 at ¶ 121.

²⁵ MAP Petition at 26-34; Teamsters Petition at 8-12.

²⁶ *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 201, 205 (1956).

as the Commission recently found in the *Zell* case.²⁷ The Petitions fail to raise any substantial and material issue as to whether the continuation of the Chicago combination serves the purposes of the NBCO rule and the public interest based upon the factors recognized by the U.S. Supreme Court in *NCCB*.²⁸

Moreover, the Petitioners ignore the additional public interest benefits of granting a waiver that facilitates reorganization in bankruptcy. The reduction in the debt load of a company in reorganization facilitates continued public service by the assignee. In prior bankruptcy cases, the Commission has gone farther in granting a permanent waiver for a new television and newspaper combination, and has extended the waiver to include a second television station. The Tribune Applications request a waiver for continuation of a grandfathered combination in order to facilitate a reorganization that will permit meritorious service to continue. As such, the Petitioners have a high burden to show that the Applications are not in the public interest and the Petitions fail to raise any substantial and material issue.

b. Hartford-New Haven

The Petitioners also fail to raise any substantial and material issue that would warrant any delay in the grant of a NBCO waiver and a television duopoly waiver for Tribune to continue to own WTIC(TV), Hartford, Connecticut, WTXN-TV, Waterbury, Connecticut and the *Hartford Courant* in the Hartford-New Haven, Connecticut DMA. The NBCO waiver only applies to a

²⁷ *Zell*, 22 FCC Rcd 21266 at ¶ 34.

²⁸ *NCCB*, 436 U.S. at 804.

"daily newspaper." Given the conditions in the newspaper industry, a denial of the NBCO waiver would be more likely to lead to a reduction in the publication schedule of the *Hartford Courant* than to a divestiture of the paper. It is clear that the public interest would be better served by maintenance of the status quo rather than a reduction in the publication schedule of the *Hartford Courant*.²⁹

The Commission has already examined the Tribune combination in the Hartford-New Haven DMA on multiple occasions and determined that the Tribune combination serves the public interest. The Commission approved the Tribune acquisition of Renaissance Communications, including WTIC(TV), Hartford, Connecticut in 1997.³⁰ Tribune sought Commission approval for the acquisition of WTXX-TV, Waterbury, Connecticut in 1999 and, while that application was pending, Tribune acquired Times Mirror Co., including the *Hartford Courant*. In 2001, the Commission approved the acquisition of WTXX-TV, including a television duopoly waiver for common ownership of WTIC(TV) and WTXX-TV and a NBCO waiver for common ownership of the *Hartford Courant*.³¹ The Commission approved continued ownership of the Hartford paper and the two television stations in further decisions in 2002 and

²⁹ Although Mr. Ellis, owner of a competing paper, may benefit from a reduction in the publication schedule of the *Hartford Courant*, the public interest would be better served by continuation of the paper as daily newspaper.

³⁰ *Stockholders of Renaissance Comm. Corp.*, 12 FCC Rcd 11866 (Mar. 21, 1997) ("Renaissance I") at ¶¶ 6-19. The NBCO waiver in the Miami-Fort Lauderdale DMA granted in *Renaissance I* was extended in *Stockholders of Renaissance Comm. Corp.*, 13 FCC Rcd 4717 (Mar. 6, 1998) ("Renaissance II").

³¹ See *Counterpoint Comm. Inc.*, 16 FCC Rcd 15044 (Aug. 3, 2001) ("Counterpoint I").

2005 and in the *Zell* case in 2008.³² Petitioners do not dispute that Tribune has invested in these properties and that they are providing meritorious service. Mere speculation that ownership of the properties by some other entity would better serve the public interest does not provide any reasoned basis for the Commission to reverse course after granting its approval in a series of cases over the past thirteen years since 1997.

Petitioners MAP, Teamsters and Ellis challenge the pending NBCO and television duopoly waiver requests in the Hartford-New Haven DMA on the grounds that it is not a top-20 DMA and, even if it were, Tribune owns two television broadcast stations, whereas the NBCO rule only allows one broadcast station and one newspaper.³³ However, in granting the prior waivers the Commission noted that the Hartford-New Haven DMA is located between the much larger New York and Boston DMAs and viewers in Hartford have access to out of market signals from New York and Boston, which makes the Hartford market highly competitive and economically challenging for standalone, locally-owned media.³⁴ Petitioners fail to show how a

³² See *Counterpoint Comm. Inc.*, 17 FCC Rcd 3243 (Feb. 19, 2002) ("Counterpoint II"); *Counterpoint Comm. Inc.*, 20 FCC Rcd 8582 (Apr. 13, 2005) ("Counterpoint III"). Petitioner Ellis challenged the waivers granted in 2001 and 2002 but the appeal was denied based upon the grant of the waiver in 2005. *Neil Ellis v. Tribune TV Co.*, 363 F. Supp. 2d 121 (D. Conn. 2005), *vacated and remanded with directions to dismiss*, 443 F.3d 71 (2d Cir. 2006).

³³ MAP Petition at 35-48; Teamsters Petition at 8-12; Ellis Petition at 2-5.

³⁴ *Counterpoint III*, 20 FCC Rcd 8582 at ¶ 8 ("[T]he market is sandwiched between two much larger DMAs – New York (#1) and Boston (#6) . . ."); *Counterpoint I*, 16 FCC Rcd 15044 at ¶ 6 ("Public Interest . . . Tribune maintains that the costs of these programs could not be justified for either station alone, but that efficiencies of joint operation will make such an investment sustainable."). These are fact specific inquiries. Compare *Kortes Comm. Inc.*, 15 FCC Rcd 1846 (June 30, 2000); *Columbia Montour Broadcasting*, 13 FCC Rcd 13007 (June 11, 1998) with *Hopkins Hall Broadcasting*, 10 FCC Rcd 9764 (Sept. 5, 1995). No basis has been shown to revisit the Commission's prior determinations

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forced sale to an out of market buyer would serve the public interest in diverse sources of local news and therefore fail to raise any substantial and material issue to justify any delay in granting the requested NBCO and duopoly waivers.

3. The Petitions Fail to Identify Any Other Basis to Delay the Grant of the Applications

The Applications establish that Reorganized Tribune is legally, technically and financially qualified to hold the Tribune broadcast licenses and that a grant of the Applications will serve the public interest. The Petitions to Deny filed by the Teamsters and WTC challenge the qualifications of Reorganized Tribune based upon mere speculation. The Commission has already rejected the Teamster's contentions with regard to the *Zell* case as being based upon mere speculation. "To engage in the type of review urged by the Teamsters would involve the Commission in endless speculation as to whether the organizational structure of each individual applicant could somehow be improved to generate an additional public interest benefit."³⁵ Likewise, the alien ownership allegations of WTC also are based upon mere speculation and, as the Commission has found in other cases, such allegations are insufficient to challenge an application.³⁶

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which were based on the nature of the Hartford market and the meritorious service of the Tribune, neither of which has changed.

³⁵ *Zell*, 22 FCC Rcd 21266 at ¶ 20.

³⁶ *Fox Television Stations, Inc.*, 10 FCC Rcd 8452 (May 4, 1995) ("Fox I"), ¶ 29 (Dismissing petition to deny renewal applications based on alien ownership allegations under the standard that, "[W]e must then determine whether the evidence before us presents a 'substantial and material question of fact' . . ."); *Fox Television Stations, Inc.*, 11 FCC Rcd 5714 (July 28, 1995) ("Fox II") at note 12 ("We accordingly reject as unsubstantiated the predictions of [Petitioners to Deny] that allowing FTS to

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The Petitions fail to allege specific facts sufficient to show that granting Tribune's applications would be *prima facie* inconsistent with the public interest, convenience, and necessity. As discussed below, the Commission does not require information on non-attributable shareholders, such as the 70% contemplated in Tribune's Plan. The Commission routinely approves the use of warrants to address multiple ownership issues, and the rights of the Class B shareholders are non-voting for FCC purposes, while complying with the requirements of the Bankruptcy Code.

a. **Disclosure of Non-Attributable Shareholders is Not Required**

The Commission's media ownership attribution rules are well-settled with regard to the calculation and reporting of attributable interest holders. Under the rules, an attributable interest in a corporation consists of a voting stock interest of 5 percent or more.³⁷ Specifically, the attribution rules provide that only a "voting stock interest amounting to 5% or more of the outstanding voting stock . . . will be cognizable."⁶⁸ As the Commission has noted, shareholders with ownership interests of 5 percent *or greater* are deemed able to exert influence on the management and operation of a station licensee, whereas those with less than a 5 percent voting interest are deemed not able to influence the licensee.³⁹ Thus, Petitioners' concern as to the lack

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retain its present ownership will result in 'a huge influx of foreign capital' entering the U.S. market . . .")

³⁷ See 47 C.F.R. §76.501, Note 2(a); 47 C.F.R. §73.3555, Note 2.a.

³⁸ See 47 C.F.R. § 73.3555, Note 2.a.

³⁹ *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd 12559 (Aug. 6, 1999) at ¶ 10 (emphasis added).

of specificity regarding non-attributable shareholders is contrary to the Commission's basic and well-established media ownership attribution rules and does not warrant delay in the Commission's processing of the Applications.

b. Use of Warrants Allowed for Foreign Ownership Issues

It is also well-settled that under the media ownership attribution rules, warrants are not counted for ownership purposes unless and until they are exercised.⁴⁰ Consistent with the media ownership attribution rules, the Commission has sanctioned the use of warrants to address foreign ownership issues. For example, in *Univision Holdings, Inc.*, the Commission confirmed that warrants issued to alien investors should not be considered in assessing compliance with the Commission's foreign ownership restrictions set forth in section 310(b)(4):

We have ruled that convertible instruments are not relevant to our determinations until converted and that, in this context, there is no presumption that the warrants will be converted. . . . Given that position and the Buyer's representation [that the warrants will not be convertible unless consistent with the law], the warrants are not material to our determination."⁴¹

Tribune's Plan provides that the Debtor can issue warrants, rather than shares, in such amount as is determined (based upon polling) to be required to meet the foreign ownership limit. These Plan provisions are consistent with the Commission's media ownership attribution and

⁴⁰ *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd 12559 (Aug. 6, 1999) at ¶ 10.

⁴¹ *In re Applications of Univision Holdings, Inc. (Transferor) and Perenchio Television, Inc. (Transferee) for Transfer of Control of Univision Station Group, Inc.*, 7 FCC Rcd 6672 (Sept. 30, 1992).

alien ownership rules,⁴² and with the procedures used in other applications approved by the Commission, including in bankruptcy proceedings.⁴³ Given the routine use of warrants to address alien ownership issues in Commission proceedings, the Petitions fail to raise any substantial and material issue on this point.

c. No Issue Regarding Class B Shares

Under the Commission's media cross-ownership rules, non-voting shares are not attributable for purposes of the media ownership limits.⁴⁴ The proposed use of Class B non-voting shares to comply with the media ownership limits is also consistent with routine practice in Commission applications. In fact, Petitioners do not dispute the use of non-voting shares to comply with the Commission's media ownership limits and only claim that non-voting shares may not be approved by the Bankruptcy Court. Petitioners engage in mere speculation regarding issues before the Bankruptcy Court and ignore that the Class B shares will have a number of voting rights that are permitted under Commission rules.

The proposed voting rights for Tribune Class B shareholders are premised on the Commission's decision in the NBC-Telemundo transaction,⁴⁵ which allowed Class B "non-

⁴² 47 C.F.R. §73.3555, Note 2.e; *see also Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, 19 FCC Rcd. 22612, 22627 (Nov. 17, 2004).

⁴³ For example, warrants to address foreign ownership issues were included in the Chapter 11 Plan of Reorganization of Freedom Communications Holdings, Inc., *et al.*, No. 09-13046 (BLS) (Bankr. D. Del. Mar. 9, 2009).

⁴⁴ Section 73.3555 of the FCC rules, the media cross-ownership rule, contains the ownership attribution rules in notes that follow the rule. *See* 47 U.S.C. § 73.3555.

⁴⁵ *In the Matter of Telemundo Communications Group, Inc.*, FCC 02-113 (Apr. 10, 2002).

voting" shareholders to vote only on extraordinary board actions including: (1) amendment of the Certificate of Incorporation; (2) sale of all or essentially all of the assets of the company; (3) dissolution of the company; (4) acquisition or merger with another company; (5) incurring specified indebtedness, mortgages, and loans not in the ordinary course of operations; and (6) delegation of authority to approve any of the foregoing.

The Commission has previously found that such limited voting shares do not amount to "the means to influence or control the activities of the issuing Company *unless and until* [they are] converted to voting stock",⁴⁶ and thus such shares do "not to constitute a controlling interest."⁴⁷ The proposed limited voting rights on extraordinary Board actions comply with Commission precedent. Petitioners' speculation that the Bankruptcy Court may not approve the use of the Class B shares is immaterial to the Commission's consideration of the Applications given the routine use of non-voting shares in Commission applications.

⁴⁶ *In Re Application of National Broadcasting Company, Inc.*, 6 FCC Rcd 4882, 4883 (Aug. 16, 1991).

⁴⁷ *Id.* (citing *News International PLC*, 97 FCC2d 349, 356 (1984)).

IV. **CONCLUSION**

Wherefore, for the foregoing reasons, the Commission should expeditiously grant the Applications and dismiss the Petitions to Deny.

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