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August 18, 2010

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**FILED ELECTRONICALLY VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: MB Docket No. 10-104**

Dear Ms. Dortch:

On behalf of JPMorgan Chase Bank, N.A. (“JPMorgan”), this letter responds to the August 4 and 5, 2010 filings of Wilmington Trust Company (“WTC”) in the above-referenced docket.<sup>1</sup> As JPMorgan explained in opposition to WTC’s petition to deny, WTC’s appearance before the Commission is highly suspect and quite obviously driven by a desire to gain leverage in Tribune’s bankruptcy case with respect to its deeply subordinated claims against Tribune.<sup>2</sup> It is thus not surprising that WTC’s most recent filings grossly mischaracterize the recently-issued Examiner’s Report in the Tribune bankruptcy case, vastly overstating the potential impact of the Examiner’s Report on the matters addressed in the Exit Applications, in an attempt to fuel WTC’s argument that the Commission should delay this proceeding. As shown below, WTC’s arguments provide no basis for the FCC to depart from its routine practice of considering applications seeking consent to a company’s emergence from bankruptcy during the pendency of a bankruptcy proceeding.

*First*, the Examiner’s Report is just that—a “report” that is in no way binding on the court, does not determine the rights of the parties involved and in fact does not even reach firm conclusions but rather presents assessments in the form of probabilities. The FCC’s review of character qualifications is, however, limited to *adjudicated*

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<sup>1</sup> See Letter from Kenneth B. Weckstein to Marlene H. Dortch, MB Docket No. 10-104 (Aug. 5, 2010) (“WTC August 5 Ex Parte”); Request of Wilmington Trust Company, as Successor Indenture Trustee, For Leave to Supplement its Petition for Deny, and Supplement to Petition of Wilmington Trust Company, as Successor Trustee, to Deny the Applications for Consent to Assignment of Broadcast Station License (FCC Form 314) filed by Tribune Company and its Licensee Subsidiaries, MB Docket No. 10-104 (Aug. 4, 2010) (“WTC Petition Supplement”).

<sup>2</sup> See JPMorgan Consolidated Opposition to Petitions to Deny at 10-11.

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*findings*, not unresolved allegations or non-evidentiary reports.<sup>3</sup> WTC concedes as much, expressly “recogniz[ing] that the Examiner’s findings are not binding on the Bankruptcy Court, and certainly not on the Commission.”<sup>4</sup>

*Second*, WTC grossly mischaracterizes the actual contents of the Examiner’s Report in many respects and overlooks the fact that the Examiner’s findings do not, in any event, involve issues that would be relevant to the FCC’s consideration of the Exit Applications. For example, while highlighting the Examiner’s finding that JPMorgan might be found not to have acted “in good faith” at “Step Two” of Tribune’s previous leveraged buy-out,<sup>5</sup> WTC conveniently fails to explain that this finding does not in fact suggest any wrongdoing on the part of JPMorgan and omits other findings.<sup>6</sup> The Examiner’s “good faith” analysis focused on whether lenders were “put on inquiry notice” such that they should have conducted a more extensive investigation prior to going forward with the “Step Two” transactions.<sup>7</sup> Importantly, the Examiner’s Report does not conclude that JPMorgan engaged in subjective “bad faith” or that it was otherwise a “bad actor”, but in fact reaches the opposite conclusion in determining that JPMorgan’s conduct did not evidence the kind of bad faith necessary to justify equitable subordination of its claims. Further, the Examiner explicitly expressed “sympathy” for the predicament that JPMorgan and other lenders found themselves in due to their preexisting contractual obligations to fund the “Step Two” transactions.<sup>8</sup> In any event, any legal claims that might possibly arise from the issues covered by the Examiner’s Report would not be relevant to this proceeding. As JPMorgan previously explained, the Commission considers adjudicated decisions regarding “non-FCC misconduct” only in limited circumstances, none of which apply here.<sup>9</sup> The matters covered in the Examiner’s Report could give rise only to civil, not criminal, causes of action; they do not

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<sup>3</sup> See *id.* at 18 & n.34 (collecting cases).

<sup>4</sup> See WTC Petition Supplement at 5.

<sup>5</sup> See *id.* at 3 n.2.

<sup>6</sup> See *id.* at 4.

<sup>7</sup> Examiner’s Report, Vol. II pp. 265-67.

<sup>8</sup> Examiner’s Report, Vol. II p. 268.

<sup>9</sup> See JPMorgan Consolidated Opposition to Petitions to Deny at 19-20.

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involve alleged fraudulent statements to government agencies; and they have nothing at all to do with anti-competitive or antitrust statutes.<sup>10</sup>

*Third*, WTC’s suggestion that either the Examiner’s Report or any future proceeding before the Bankruptcy Court could materially affect who is entitled to own Reorganized Tribune is specious.<sup>11</sup> As JPMorgan previously explained, WTC represents the interests of deeply subordinated unsecured creditors (the holders of so-called “PHONES” notes), and would have to overcome numerous, substantial legal obstacles in order to realize any recovery whatsoever from a theoretical fraudulent conveyance cause of action.<sup>12</sup> The Examiner’s Report, in fact, confirms this, making clear that in most conceivable circumstances the holders of PHONES notes would be entitled to no recovery at all.<sup>13</sup> Most importantly, under *any* scenario, even if the holders of PHONES notes were entitled to full recovery—a highly unlikely outcome—the senior lenders would still control the vast majority of Reorganized Tribune. The PHONES debt comprises a small, deeply subordinated portion of the company’s overall debt structure, and given the enterprise value of Reorganized Tribune and the size of the claims of the senior lenders, the determination of WTC’s claims would have at best a negligible impact on the ownership of Reorganized Tribune. WTC’s contention that the Exit Applications ask the FCC to approve an ownership structure that might never come to pass is, accordingly, false.

*Fourth*, WTC’s suggestion that counsel for Tribune and JPMorgan have urged the Commission to rush to judgment on the Exit Applications is erroneous.<sup>14</sup> Rather, during our August 2, 2010 meeting with FCC staff—and throughout this proceeding—we have maintained that the oppositions to the applications, including WTC’s petition to deny, provide no basis for delaying processing of the applications or denying the requested waivers of the media ownership rules. For all of the reasons stated above, the issuance of the Examiner’s Report does not alter this

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<sup>10</sup> *See id.* at 19 & n.38.

<sup>11</sup> *See* WTC Petition Supplement at 2, 5-6.

<sup>12</sup> *See* JPMorgan Consolidated Opposition to Petitions to Deny at 14-15.

<sup>13</sup> Examiner’s Report, Vol. II, Annex B; *see also* JPMorgan Consolidated Opposition to Petitions to Deny at 15.

<sup>14</sup> *See* WTC August 5 Ex Parte at 1-2 (stating that counsel “exhort[ed] the Commission to act quickly” and “urge[d] the Commission to rush”).



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calculus. And, although counsel for Tribune and JPMorgan have urged the Commission to continue to move the FCC process forward, it has always been contemplated that the Commission would follow its normal practice and would formally act on the Exit Applications *after* court approval of a Plan of Reorganization.<sup>15</sup>

Sincerely,

/S/ Richard E. Wiley  
Richard E. Wiley

cc: Certificate of Service Attached

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<sup>15</sup> See, e.g., JPMorgan Consolidated Opposition to Petitions to Deny at 17 (stating that “Commission review of the Exit Applications will enable the agency to issue its decision promptly following issuance of the bankruptcy court’s confirmation order”). Consistent with this view, and in the interest of ensuring that the FCC is kept informed of developments that may impact the timing for resolution of the bankruptcy case, we note that the Bankruptcy Court recently extended the date by which shareholders must vote on the Plan of Reorganization pending further action by the Court, which is expected shortly

**Certificate of Service**

I, Eve Reed, hereby certify that on this 18th day of August, 2010, a copy of the foregoing document was served by first-class mail, postage prepaid, upon the following:

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In addition, I have provided a courtesy copy of this Opposition via email to Kenneth B. Weckstein ([kweckstein@brownrudnick.com](mailto:kweckstein@brownrudnick.com)), Robert J. Stark ([rstark@brownrudnick.com](mailto:rstark@brownrudnick.com)), Martin S. Siegel ([msiegel@brownrudnick.com](mailto:msiegel@brownrudnick.com)), William M. Dolan III ([wdolan@brownrudnick.com](mailto:wdolan@brownrudnick.com)), John Wells King ([JKing@gsblaw.com](mailto:JKing@gsblaw.com)), and to all individuals listed below.

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/S/ Eve Reed \_\_\_\_\_  
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