

Before the
Federal Communications Commission
Washington, D.C. 20554

ACCEPTED/FILED

JUL 24 2013

Federal Communications Commission
Office of the Secretary

In re Applications of)
)
Belo Corp., on Behalf of Its Subsidiaries,)
)
Assignor)
)
and)
)
Sander Operating Co. II LLC)
Sander Operating Co. IV LLC)
Sander Operating Co. V LLC)
Tucker Operating Co. LLC)
)
Assignees)
)
For Consent to the Assignment of the)
Broadcast Station Licenses of)
)
KMOV(TV), St. Louis, MO)
KTVK(TV), Phoenix, AZ)
KASW(TV), Phoenix AZ)
KMSB(TV), Tucson, AZ)
KTTU(TV), Tucson, AZ)

File Nos.: BALCDT-20130619AEZ
(Fac. ID 70034)
BALCDT-20130619AFA
(Fac. ID 40993)
BALCDT-20130619AFJ
(Fac. ID 7143)
BALCDT-20130619AFL
(Fac. ID 44052)
BALCDT-20130619ADJ
(Fac. ID 11908)

PETITION TO DENY, OR IN THE ALTERNATIVE, FOR CONDITIONS

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July 24, 2013

SUMMARY

Pursuant to Section 73.3584(a) of the Commission's rules and Sections 309(d) and 310(d) of the Communications Act of 1934, as amended (the "Act"), American Cable Association; DIRECTV LLC; and Time Warner Cable Inc. (collectively, "Petitioners") petition the Commission to deny, or in the alternative, to impose conditions on its approval of, the above-captioned assignment applications ("Applications"), which relate to the proposed acquisition of Belo Corporation ("Belo") by Gannett Co., Inc. ("Gannett"). If granted, the Applications would create new virtual duopolies and facilitate coordinated retransmission consent negotiations in the St. Louis, Missouri; Phoenix, Arizona; and Tucson, Arizona designated market areas ("DMAs"). As a result, Gannett—which would become the fourth-largest owner of television stations nationwide—would enjoy a significant increase in negotiating leverage based solely on its aggregation of market power. The transaction accordingly threatens to drive up retransmission consent fees (and, in turn, consumer prices) and to increase the risk and incidence of broadcast programming blackouts in these DMAs. Indeed, Gannett has even cited its expectation of increased retransmission consent fees as a central rationale for the transaction.

This outcome clearly is inconsistent with the public interest. There is no legal or policy justification for permitting multiple broadcast stations in the same market area—*i.e.*, stations that are licensed to operate as direct competitors—to coordinate retransmission consent negotiations. Such collusive behavior results in significant consumer harms and is starkly anticompetitive. Petitioners therefore request that the Commission deny the Applications or, in the alternative, condition approval on a requirement that Gannett and the assignees of the stations at issue refrain from coordinating negotiations for carriage on behalf of any of their non-commonly owned stations in any of such stations' markets, whether by engaging in joint carriage negotiations, each appointing the same agent to negotiate on behalf of each of the stations, negotiating separate

carriage deals but sharing details of each of their carriage negotiations, sharing any details of their carriage negotiations at any time, or in any other way colluding in the negotiation of retransmission consent. Such action would allow the Commission to address the transaction-specific harms at issue while it continues to consider broader reforms.

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¹ Time Warner Cable Inc. joins the petition as an informal objector.

Belo Corporation (“Belo”) by Gannett Co., Inc. (“Gannett”).² If granted, the Applications would create new virtual duopolies and facilitate coordinated retransmission consent negotiations in the St. Louis, Missouri; Phoenix, Arizona; and Tucson, Arizona designated market areas (“DMAs”). As a result, Gannett—which would become the fourth-largest owner of television stations nationwide—would enjoy a significant increase in negotiating leverage based solely on its aggregation of market power. The transaction accordingly threatens to drive up retransmission consent fees (and, in turn, consumer prices) and to increase the risk and incidence of broadcast programming blackouts in these DMAs. Indeed, Gannett has even cited its expectation of increased retransmission consent fees as a central rationale for the transaction.³

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² See Federal Communications Commission, Public Notice, Broadcast Applications, Report No. 28016 (rel. June 24, 2013). This Petition is limited to five of the various applications filed in connection with this proposed acquisition, which are captioned above and relate to the following broadcast stations (“Stations”): KMOV(TV), St. Louis, MO; KTVK(TV), Phoenix AZ; KASW(TV), Phoenix, AZ; KMSB(TV), Tucson, AZ; and KTTU(TV), Tucson, AZ.

³ William Launder & Drew Fitzgerald, *Gannett to Buy Belo, Expanding TV Portfolio*, WALL ST. J. (June 13, 2013).

negotiations at any time, or in any other way colluding in the negotiation of retransmission consent.⁴ Such action would allow the Commission to address the transaction-specific harms at issue while it continues to consider broader reforms.

In further support of the Petition, Petitioners state the following:

BACKGROUND

The five Applications at issue in this Petition are part of a broader transaction in which Gannett proposes to acquire Belo. Gannett currently owns and operates 23 broadcast television stations in 19 U.S. markets, making it the sixth-largest broadcast television station group in the nation.⁵ Belo, which owns and operates 20 stations in 15 markets, is presently the tenth-largest owner of television broadcast stations.⁶ The combined broadcast television assets of Gannett and Belo would provide Gannett with a nationwide footprint capable of “reaching nearly a third of all

⁴ Specifically, the Commission should prohibit Gannett and the proposed assignees from engaging in any of the following four practices: (i) delegating the responsibility to negotiate or approve retransmission consent agreements to another separately owned broadcaster in the same DMA; (ii) delegating the responsibility to negotiate or approve retransmission consent agreements for multiple stations in the same DMA to a common third party; (iii) entering into or enforcing any informal or formal agreement pursuant to which one party would enter into a retransmission consent agreement with an MVPD contingent upon another separately owned broadcast station in the same DMA negotiating a satisfactory retransmission consent agreement with the same MVPD; and (iv) engaging in any discussions or exchanges of information with separately owned broadcast stations in the same DMA or their representatives regarding the terms of existing retransmission consent agreements, or the status of negotiations over future retransmission consent agreements.

⁵ Doug Halonen, *Sinclair Hops from Sixth to Third in Top 30*, TVNEWSCHECK (May 23, 2013, 8:52 AM), <http://www.tvnewscheck.com/article/67641/sinclair-hops-from-sixth-to-third-in-top-30/page/1>.

⁶ *Id.*; Press Release, Gannett, Gannett To Acquire Belo, Accelerating Ongoing Transformation into Diversified Higher-Margin Multi-Media Company (June 13, 2013), <http://www.gannett.com/article/20130613/PRESSRELEASES2013/130613001/GANNETT-TO-ACQUIRE-BELO--ACCELERATING-ONGOING-TRANSFORMATION-INTO--DIVERSIFIED-HIGHER-MARGIN-MULTI-MEDIA-COMPANY> (“Gannett-Belo Press Release”).

U.S. households.”⁷ Gannett’s broadcast television properties would include a total of 43 broadcast stations in 32 markets, with 21 stations in the nation’s top 25 markets.⁸ Gannett also would become “the #1 CBS affiliate group, the #4 ABC affiliate group, and [would] expand its already #1 NBC affiliate group position.”⁹

Because Gannett cannot acquire Belo’s broadcast stations outright in the St. Louis, Phoenix, and Tucson DMAs under the Commission’s local television ownership rule,¹⁰ Gannett and Belo are following the playbook of an increasing number of station groups seeking to increase their market power. In particular, rather than limiting the transaction to Belo’s stations in DMAs where the Commission’s ownership rules would not be implicated (or seeking a waiver of the Commission’s ownership rules), Gannett instead intends to rely on a series of shells or “third-party sidecars,” which appear to have been established for the primary purpose of holding Belo’s broadcast licenses in DMAs where the two companies’ media properties overlap.¹¹

⁷ Gannett-Belo Press Release.

⁸ *Id.*

⁹ *Id.*

¹⁰ See 47 C.F.R. § 73.3555(b); Application for Consent to Assignment of Broadcast Construction Permit or License, File No. BALCDT-20130619AFL, Description of Transaction at 2 (filed June 19, 2013) (“KMSB Application”) (conceding that, because “Gannett owns newspaper and/or television broadcast properties” in the St. Louis, Phoenix, and Tucson DMAs, it “cannot acquire the Belo stations in those markets under the Commission’s media ownership rules”). The same or similar language is included in each of the other Applications.

¹¹ See David Hatfield, *Details revealed on how Gannett will run Tucson TV stations*, INSIDE TUCSON BUSINESS (June 23, 2013, 7:47 AM), http://www.insidetucsonbusiness.com/media_technology/inside_media/details-revealed-on-how-gannett-will-run-tucson-tv-stations/article_ed43c21a-d92f-11e2-8656-001a4bcf887a.html (reporting that “David Lougee, president of Gannett Broadcasting, explained to trade publications that Gannett is financing third parties to take ownership of Belo stations in Tucson and [in] other ... markets” where its acquisition of Belo’s broadcast television properties would conflict with the Commission’s television ownership rules); Diana Marzsalek, TVNewsCheck, *Lougee: Belo Duops Will Keep Independence*, (June 18, 2013 6:52 AM EDT)

Specifically, Gannett has entered into Asset Purchase Agreements (“APAs”), to be consummated simultaneously with Gannett’s acquisition of Belo, pursuant to which: (i) KMOV(TV), the CBS affiliate in the St. Louis, MO DMA, would be assigned to Sander Operating Co. IV LLC d/b/a KTVK Television, (ii) KTVK(TV), an independent local station in the Phoenix, AZ DMA that is among the top four- rated stations in that DMA, would be assigned to Sander Operating Co. II LLC d/b/a KTVK Television (“KTVK Television”), and (iii) KASW(TV), the local CW affiliate in the Phoenix, AZ DMA, also would be assigned to KTVK Television.¹² In both St. Louis and Phoenix, Gannett already owns the local NBC affiliate—KSDK(TV) and KPNX(TV), respectively. In the Tucson, AZ DMA, where Gannett owns a newspaper and Belo has an existing duopoly consisting of KMSB(TV), the local FOX affiliate, and KTTU(TV), the MyNetworkTV affiliate, the former station would be assigned to an additional Sander entity, Sander Operating Co. V LLC d/b/a KMSB Television (collectively with the other Sander assignees, “Sander”), and the latter to Tucker Operating Co. LLC d/b/a KTTU Television (“Tucker”).¹³

Although the APAs call for Gannett to divest Belo’s television station assets in St. Louis, Phoenix, and Tucson,¹⁴ Gannett will retain effective control of all of these stations through

(“[B]roadcasters have learned to circumvent the [Commission’s] rules by setting up third-party ‘sidecar’ companies to own stations that would conflict with the rules. The sidecars have varying degrees of autonomy.”), <http://www.tvnewscheck.com/article/68316/lougee-belo-duops-will-keep-independence>.

¹² KMSB Application, Asset Purchase Agreement at 1. Each of the prospective assignees, among others bearing his name, would be owned by Jack Sander, a former Belo executive.

¹³ *Id.*; Application for Consent to Assignment of Broadcast Construction Permit or License, File No. BALCDT-20130619ADJ, Asset Purchase Agreement at 1 (filed June 19, 2013) (“KTTU Application”).

¹⁴ KMSB Application, Description of Transaction at 2.

various sharing agreements under which it will establish virtual duopolies in each DMA.¹⁵ Of particular concern are Gannett's agreements with Sander and Tucker that will result in collusive negotiations of retransmission consent in the St. Louis, Phoenix, and Tucson DMAs.¹⁶ For example, the TSAs that Gannett intends to execute with Sander and Tucker in the Tucson DMA provide (i) for the appointment of Gannett as Sander's and Tucker's "agent with respect to the negotiation of any ... retransmission consent or other distribution agreements," and (ii) that Sander and Tucker must "*consult and cooperate* with [Gannett] in the negotiation, maintenance, and enforcement of retransmission consent or other similar distribution agreements with MVPDs."¹⁷ As the Commission is well aware, such arrangements are increasingly common among broadcasters.¹⁸ Although the applicants did not submit copies of all of the sharing

¹⁵ The term "sharing agreements" is used in this Petition to refer to local marketing agreements ("LMAs"), joint sales agreements ("JSAs"), shared services agreements ("SSAs"), transition services agreements ("TSAs"), and any other contract, whether written or oral, in which a broadcast station delegates its authority to negotiate retransmission consent agreements with MVPDs to a third party, such that the third party is empowered to conduct such negotiations on behalf of two or more broadcast stations in the same DMA.

¹⁶ In the Tucson DMA, Gannett would collude not only with Sander and Tucker in controlling KMSB(TV) and KTTU(TV), but also with Raycom Media, which owns KOLD-TV, the local CBS affiliate in Tucson and "currently provides services to KMSB(TV) and KTTU(TV) under a[] [legacy] SSA." KMSB Application, Description of Transaction at 5.

¹⁷ *Id.*, Asset Purchase Agreement, Exhibit E (Transition Services Agreement) § 6.4 (emphasis added); KTTU Application, Asset Purchase Agreement, Exhibit C (Transition Services Agreement) § 6.4 (same).

¹⁸ See Letter from Barbara Esbin, Counsel to American Cable Association ("ACA"), to Marlene H. Dortch, FCC, MB Docket Nos. 10-71, 09-182, at 2 (filed June 24, 2013) ("ACA Ex Parte Response to NAB") ("ACA has identified 48 pairs of Big 4 broadcasters in 43 DMAs coordinating their retransmission consent negotiations in 2011" alone.).

agreements applicable to the stations in St. Louis and Phoenix,¹⁹ Petitioners expect the agreements in those DMAs will call for the same degree of collusion among these non-commonly owned, same-market stations. Due to the significant competitive concerns that sharing agreements raise as a general matter, the Commission should compel the applicants to produce all such agreements in an amendment to the KMOV(TV), KTVK(TV), and KASW(TV) Applications so that the Commission and Petitioners can fully and fairly evaluate the harms threatened by the Applications. Entry of a standard protective order will address any confidentiality concerns relating to the agreements.

STANDING

Petitioners have standing to prosecute this Petition because they (or in the case of ACA, its members) would face threats of substantial harm if the proposed assignments were approved.²⁰ To establish standing, a party must show an “actual or imminent” injury that is both “fairly traceable” to the proposed agency action and “likely” to be “redressed by a favorable decision.”²¹ The D.C. Circuit has made clear that “parties suffer constitutional injury in fact when agencies lift regulatory restrictions on their competitors”—such as by approving a transaction that enables two broadcast stations in a single DMA to coordinate carriage negotiations with one another, rather than in competition, and thereby permitting those stations

¹⁹ See, e.g., Application for Consent to Assignment of Broadcast Construction Permit or License, File No. BALCDT-20130619AFA (filed June 19, 2013) (stating that “[n]ot all of the exhibits and schedules to the APA have been included” with the application).

²⁰ 47 C.F.R. § 73.3584(a) (“[A]ny party in interest may file with the Commission a Petition to Deny any application”); *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940) (establishing economic injury as a sufficient basis to confer party-in-interest standing).

²¹ See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

to raise the price of retransmission consent to Petitioners, their members, and/or other MVPDs.²² Here, Petitioners collectively offer video services, or have members that offer video services, in the St. Louis, Phoenix, and Tucson DMAs. Petitioners' interest in this proceeding thus stems primarily from the clear threat of economic harm that would result from the coordinated handling of retransmission consent negotiations on behalf of multiple stations in those DMAs following consummation of the assignments.²³ Moreover, there can be no doubt that a Commission decision to block or condition the proposed assignment would redress such threatened harms.²⁴

Separately, because ACA's members would have standing in their own right to challenge the proposed assignments threatening to create virtual duopolies in the St. Louis, Phoenix, and Tucson DMAs, but are not required to participate in bringing this Petition, ACA has standing to prosecute the Petition on their behalf.²⁵ Indeed, ACA's interest in preventing the ability of Gannett to collude with its ostensible competitors in negotiating for retransmission consent with

²² *New England Pub. Commc'ns Council, Inc. v. FCC*, 334 F.3d 69, 74 (D.C. Cir. 2003) (quoting *Louisiana Energy & Power Auth. v. FERC*, 141 F.3d 364 (D.C. Cir. 1998)).

²³ More generally, even apart from the harms associated with retransmission consent negotiations, Petitioners also have standing based on their broader interests (or, in the case of ACA, the interests of its members) as distributors of programming that compete for television viewers with Gannett, Sander, and Tucker, as broadcasters. *See, e.g., Applications of Board of County Commissioners Monroe County, Florida For Construction Permits for 25 New Translator Stations at Key West, Marathon, Matecumbe, Big Pine, and Rock Harbor, Florida*, Memorandum Opinion and Order, 72 F.C.C.2d 683, 684 ¶ 2 (1979) (finding that cable operator petitioners had standing to challenge applications to construct new television translator stations based on their status as competitors to broadcast stations in the distribution of programming to consumers).

²⁴ *See Lujan*, 504 U.S. at 560-61.

²⁵ *See Theodore Roosevelt Conservation P'ship v. Salazar*, 616 F.3d 497, 507 (D.C. Cir. 2010).

MVPDs is at the core of ACA’s mission: to ensure that its members are treated fairly in the marketplace through active participation in the legislative and regulatory process.²⁶

ARGUMENT

THE COMMISSION SHOULD DENY THE ASSIGNMENT APPLICATIONS OR, IN THE ALTERNATIVE, CONDITION APPROVAL ON REQUIREMENTS THAT PREVENT COLLUSIVE RETRANSMISSION CONSENT NEGOTIATIONS

Gannett’s intention to negotiate retransmission consent for multiple competing stations in a single DMA violates fundamental principles of competition and thus warrants denial of the Applications. Indeed, it is a core tenet of antitrust law that collusion by competitors in selling goods or services is *per se* unlawful, because there are effectively no circumstances in which such conduct could promote competition or benefit consumers.²⁷ Accordingly, the Department of Justice (“DOJ”) sued competing broadcasters operating in Corpus Christi, Texas under the antitrust laws for engaging in coordinated retransmission consent negotiations—precisely the same conduct in which Gannett, Sander, and Tucker intend to engage should the Commission approve the Applications.²⁸ The Competitive Impact Statement submitted by DOJ in the Corpus Christi case explained that, “[a]lthough the 1992 Cable Act gave broadcasters the right to seek compensation for retransmission of their television signals, the antitrust laws require that such rights be exercised *individually* and *independently* by broadcasters.”²⁹ The Competitive Impact

²⁶ *See id.*

²⁷ *See, e.g., Northern Pac. Ry. Co. v. United States*, 356 U.S. 1, 5 (1958 (certain practices are *per se* unlawful “because of their pernicious effect on competition and lack of any redeeming value”); *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 647 (1980) (“A horizontal agreement to fix prices is the archetypal example of such a [*per se* unlawful] practice.”).

²⁸ *See United States v. Texas Television, Inc., Gulf Coast Broadcasting Company, and K-Six Television, Inc.*, Competitive Impact Statement (S.D. Tex. Feb. 2, 1996), available at <http://www.justice.gov/atr/cases/texast0.htm>.

²⁹ *Id.* at 8 (emphasis added).

Statement further stated, in no uncertain terms, that “[w]hen competitors in a market coordinate their negotiations so as to strengthen their negotiating positions against third parties and so obtain better deals ... their conduct violates the Sherman Act.”³⁰ And, of course, any conduct that violates the Sherman Act could not be found consistent with the Commission’s public interest standard,³¹ especially because the Commission has identified the promotion of competition as central to that standard.³²

In the alternative, should the Commission determine that outright denial of the Applications is not necessary, the Commission at a minimum should impose conditions to prevent Gannett from abusing its market power following consummation of the transaction. Absent such conditions, post-transaction, the negotiating authority for Belo’s stations in the St. Louis, Phoenix, and Tucson DMAs effectively would be consolidated into the hands of a single entity—Gannett. Such consolidation effectively would eliminate competition between Gannett and Sander (in the St. Louis and Phoenix DMAs) and Sander and Tucker (in the Tucson DMA) in the retransmission consent context, and instead would provide Gannett with additional bargaining leverage that it may exploit to harm MVPDs and their subscribers in those markets,

³⁰ *Id.*

³¹ See 47 U.S.C. § 310(d) (requiring that license assignments serve the “public interest, convenience, and necessity”).

³² See, e.g., 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 and Order on Reconsideration, 23 FCC Rcd 2010 ¶ 97 (2008) (noting that “[t]he local community benefits from competition among broadcast television stations in the form of higher quality programming provided to viewers”); *id.* ¶ 102 (reaffirming that “combinations of top four stations should be prohibited because mergers of those stations would be the most deleterious to competition”); *Review of the Commission’s Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd 12903 ¶ 25 (1999) (explaining that the local television ownership rules are “aimed at precluding broadcasters from obtaining and exercising market power” in carriage negotiations with MVPDs by fostering competition among local stations).

most notably by threatening to disrupt or actually disrupting service for the purpose of extracting significant increases in retransmission consent fees.

Gannett's aggregation of market power in the St. Louis and Phoenix DMAs poses particular concerns, because Gannett proposes to control two of the top four-rated stations in each of those two DMAs. Specifically, Gannett currently owns the NBC affiliates in the St. Louis and Phoenix DMAs, and following the proposed transaction would effectively control KMOV(TV), the CBS affiliate in St. Louis, and KTVK(TV), a top four-rated independent station in Phoenix, through its use of sharing agreements. As ACA and others have documented extensively in the ongoing media ownership and retransmission consent reform proceedings, basic economic principles and the Commission's own empirical analysis demonstrate that such aggregation of market power, when used to coordinate carriage negotiations of multiple stations in a single DMA, drives up the price for retransmission consent.³³ Relatedly, any blackout threats made by Gannett in St. Louis or Phoenix presumably would pack a double punch by

³³ See, e.g., ACA Ex Parte Response to NAB at 3 (explaining that "increases of retransmission consent fees due to joint negotiations rang[e] from 21.6% to 161%"); Comments of American Cable Association, MB Docket No. 10-71, at 11-12 (filed May 27, 2011) ("ACA Retrans NPRM Comments") (explaining that "'the logic and findings in th[e] [Comcast-NBCU] order support the conclusion that joint ownership or control of multiple Big Four broadcasters in the same market will result in higher retransmission consent fees and harm consumers'" (quoting William P. Rogerson, *Coordinated Negotiation of Retransmission Consent Agreements by Separately Owned Broadcasters in the Same Market*, at 10 (May 27, 2011), filed as an attachment to the ACA Retrans NPRM Comments)); Michael L. Katz *et al.*, *An Economic Analysis of Consumer Harm from the Current Retransmission Consent Regime*, at 27 (Nov. 12, 2009), filed as an attachment to the Comments of the National Cable & Telecommunications Association, MB Docket No. 07-269 (filed Dec. 16, 2009) (concluding that "joint negotiations [facilitated by sharing agreements] eliminate competition ... [and] result in higher fees and consumer harm").

implicating *both* top four-rated stations under its control in those DMAs, thereby exacerbating the already harmful effects on consumers who subscribe to any affected MVPD's services.³⁴

The proposed assignment of Belo's licenses for the FOX and CW affiliates in the Tucson DMA also requires remediation.³⁵ Although one of the two stations at issue in that DMA is not a top four-rated station, the transaction and related sharing agreements with Gannett would enable two ostensibly independent competitors (Sander and Tucker) to collude in the negotiation of retransmission consent with MVPDs. Even if it does not directly implicate the Commission's rule prohibiting common ownership of two top four-rated local stations, such collusion constitutes price-fixing by competitors and thus is *per se* unlawful under the Corpus Christi precedent, as explained above.³⁶ Moreover, coordinating carriage negotiations in the Tucson DMA would enable Gannett to leverage the market power it would possess from controlling the FOX station to demand higher carriage fees for the CW affiliate—without any increase or change in the quality of the programming provided on that channel—than the CW station could garner on its own.

In addition to driving up retransmission consent fees based on a market-power premium, in the event that Gannett's fee demands were not met, the proposed assignments and related sharing agreements would enable Gannett and Sander and, in Tucson, Tucker to work in tandem

³⁴ See Steven C. Salop *et al.*, *Economic Analysis of Broadcasters' Brinkmanship and Bargaining Advantages in Retransmission Consent Negotiations*, at 53 (June 3, 2010), filed as an attachment to the Reply Comments of Time Warner Cable Inc., MB Docket No. 10-71 (filed June 3, 2010) (explaining that broadcaster brinkmanship tactics are more successful in DMAs where stations have executed sharing agreements with one another, because "DMAs and ... sharing agreements strengthen the broadcasters' bargaining position" vis-à-vis MVPDs).

³⁵ Under the Commission's local television ownership rule, no single entity could acquire the two licenses that Belo currently holds in the Tucson DMA. See 47 C.F.R. § 73.3555(b).

³⁶ See *supra* pp. 9-10.

to pull the signals of multiple stations in a single DMA. Such blackouts (and blackout threats) would be at odds with the primary goal Congress had in establishing the retransmission consent regime—namely, *preserving* the availability of broadcast programming to consumers.

Moreover, the mere prospect of a programming blackout likely would induce many subscribers to switch MVPDs—even if a threat to go dark is not carried out—and incur the costs associated with such switching. Consumers should select an MVPD based on service quality, value, and similar attributes, not based on broadcasters’ threats to hold MVPD subscribers hostage in a retransmission consent dispute.

To be sure, the competitive concerns raised by the Gannett-Belo transaction highlight the need for industry-wide reforms that address the broken retransmission consent regime, a need that is well-documented in two rulemaking proceedings currently pending before the Commission.³⁷ But the potential for such reforms plainly does not obviate the need to address the *transaction-specific* harms that would flow from Gannett’s anticompetitive efforts to gain additional leverage in retransmission consent negotiations with MVPDs. To the contrary, the Commission has an obligation to ensure that the proposed license transfers will serve the public interest.³⁸ Petitioners therefore urge the Commission to condition approval of the Applications to ensure that Gannett (or any other third party) does not use sharing agreements with any of Belo’s proposed assignees to jointly negotiate retransmission consent agreements on behalf of

³⁷ See *Amendment of the Commission’s Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718 ¶ 23 (2011) (noting concerns regarding broadcasters’ delegation of retransmission consent authority to third parties and proposing to prohibit such delegations as a *per se* violation of the obligation to negotiate in good faith); *2010 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 et al.*, Notice of Proposed Rulemaking, 26 FCC Rcd 17489 ¶ 200 (2011) (proposing reforms to address concerns that “broadcasters may be using [sharing agreements] to circumvent the Commission’s multiple ownership rules”).

³⁸ 47 U.S.C. § 310(d).

multiple broadcast stations in a single DMA. In particular, the Commission should order Gannett and the assignees to terminate any agreement, whether written or oral, that would cede authority to one party to negotiate carriage agreements on another's behalf. Such a condition should require Sander and Tucker to negotiate carriage with MVPDs entirely independently—rather than jointly or in tandem with Gannett—and to refrain from sharing any information regarding, or otherwise colluding in, such negotiations.³⁹

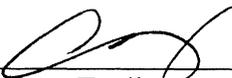
CONCLUSION

The Applications fail to demonstrate that the proposed assignments would promote the public interest, convenience, and necessity as required under the Act. To the contrary, the anticompetitive sharing agreements that Gannett proposes to execute as part of its proposed acquisition of Belo would result in significant harms to consumers in the form of higher prices for MVPD services and the increased threat and incidence of broadcast station blackouts. Accordingly, the Commission should deny the Applications, or condition approval on a requirement that Gannett and the assignees refrain from coordinating in negotiating retransmission consent with MVPDs.

Respectfully submitted,

Ross J. Lieberman
AMERICAN CABLE
ASSOCIATION
2415 39th Place, NW
Washington, DC 20007

Stacy Fuller
DIRECTV LLC
901 F Street, NW, Suite 600
Washington, DC 20004

By: 
Steven Teplitz
Cristina Pauzé
TIME WARNER CABLE INC.
901 F Street, NW, Suite 800
Washington, DC 20004

July 24, 2013

³⁹ See *supra* n.4.

CERTIFICATE OF SERVICE

I, Cristina Pauzé, hereby certify that on this 24th day of July, 2013, a true and correct copy of the foregoing Petition to Deny, or in the Alternative, for Conditions was served, via first-class mail, upon the following:

James R. Bayes
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006

John R. Feore, Jr., Esq.
DOW LOHNES PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036

Jennifer A. Johnson
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004


Cristina Pauzé

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Applications of)	
)	
Belo Corp., on Behalf of Its Subsidiaries,)	
)	
Assignor)	
	)	File Nos.: BALCDT-20130619AEZ
and	)	(Fac. ID 70034)
	)	BALCDT-20130619AFA
Sander Operating Co. II LLC	)	(Fac. ID 40993)
Sander Operating Co. IV LLC	)	BALCDT-20130619AFJ
Sander Operating Co. V LLC	)	(Fac. ID 7143)
Tucker Operating Co. LLC	)	BALCDT-20130619AFL
	)	(Fac. ID 44052)
Assignees	)	BALCDT-20130619ADJ
	)	(Fac. ID 11908)
For Consent to the Assignment of the)	
Broadcast Station Licenses of)	
)	
KMOV(TV), St. Louis, MO)	
KTVK(TV), Phoenix, AZ)	
KASW(TV), Phoenix AZ)	
KMSB(TV), Tucson, AZ)	
KTTU(TV), Tucson, AZ)	

DECLARATION OF ROSS J. LIEBERMAN

I, Ross J. Lieberman, state as follows:

1. I serve as Vice President of Government Affairs for the American Cable Association ("ACA"). My business address is 2415 39th Place, NW, Washington, DC 20007.
2. ACA, based in Pittsburgh, Pennsylvania is a private, non-profit membership corporation (i.e., trade association) whose primary objective and emphasis is to advocate for the interests of its approximately 850 small and mid-sized independent cable operators throughout the country before Congress and federal agencies.

3. In my position, I serve as the association's senior advocate on Capitol Hill and at the federal agencies, including the Federal Communications Commission ("FCC"). My responsibilities include assisting in the development and implementation of all legislative and regulatory efforts on matters that impact ACA's membership.

4. I have knowledge of the facts set forth herein, and I make this declaration in support of the Petition to Deny, or in the Alternative, for Conditions ("Petition") filed in connection with the above-captioned assignment applications, which relate to the proposed acquisition of Belo Corporation ("Belo") by Gannett Co, Inc. ("Gannett").

5. A total of nine ACA member companies have been confirmed to provide multichannel video programming services across the affected St. Louis, MO, Phoenix, AZ and Tucson, AZ designated market areas ("DMAs") and, depending on which area is served, have retransmission consent agreements with the broadcast television stations in those DMAs, including KMOV(TV) in St. Louis, KTVK(TV) and KASW(TV) in Phoenix, and KMSB(TV) and KTTU(TV) in Tucson.¹

6. ACA's members would face serious threats of substantial and imminent harm if the proposed assignments were approved. In particular, ACA's members would be harmed by Gannett's joint handling of retransmission consent negotiations on behalf of multiple stations in the St. Louis, Phoenix, and Tucson DMAs following consummation of the assignments.

¹ Eight of the nine member companies provide multichannel video programming service in the St. Louis DMA. One of these eight also serves in the Phoenix, AZ and Tucson, AZ DMAs and another also serves in the Phoenix, AZ DMA. The one member company that does not service the St. Louis DMA serves in both the Phoenix, AZ and Tucson, AZ DMAs.

7. ACA's members thus would have standing in their own right to challenge the proposed assignments in the Phoenix, Tucson, and St. Louis DMAs, but are not required to participate in bringing this Petition.

8. ACA's interest in preventing Gannett from colluding with stations owned by its ostensible competitors in negotiating for retransmission consent with MVPDs is at the core of ACA's mission: to ensure that its members are treated fairly in the marketplace through active participation in the legislative and regulatory process.

9. To the best of my knowledge and belief, all other assertions of fact that are contained in the Petition are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed July 24, 2013.



Ross J. Lieberman
Vice President of Government Affairs
American Cable Association

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Applications of)	
)	
Belo Corp., on Behalf of Its Subsidiaries,)	
)	
Assignor)	
)	File Nos.: BALCDT-20130619AEZ
and)	(Fac. ID 70034)
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For Consent to the Assignment of the)	
Broadcast Station Licenses of)	
)	
KMOV(TV), St. Louis, MO)	
KTVK(TV), Phoenix, AZ)	
KASW(TV), Phoenix AZ)	
KMSB(TV), Tucson, AZ)	
KTTU(TV), Tucson, AZ)	

DECLARATION OF LINDA BURAKOFF

I, Linda Burakoff, state as follows:

1. I am employed by DIRECTV, LLC ("DIRECTV") as Vice President, Programming Acquisitions. My business address is 2230 East Imperial Highway, El Segundo, California. In my position, I am responsible for the negotiation of all retransmission consent agreements for the company.
2. I have knowledge of the facts set forth herein, and I make this declaration in support of the Petition to Deny, or in the Alternative, for Conditions ("Petition") filed in

connection with the above-captioned assignment applications, which relate to the proposed acquisition of Belo Corporation ("Belo") by Gannett Co, Inc. ("Gannett").

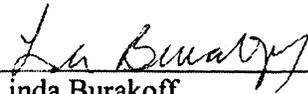
3. DIRECTV provides video services in the St. Louis, Phoenix, and Tucson designated market areas ("DMAs") and has retransmission consent agreements with the broadcast television stations in those DMAs, including KMOV(TV) in St. Louis, KTVK(TV) and KASW(TV) in Phoenix, and KMSB(TV) and KTTU(TV) in Tucson.

4. DIRECTV would face the threat of material harm if the proposed assignments were approved. In particular, DIRECTV would be harmed by Gannett's joint handling of retransmission consent negotiations on behalf of multiple stations in the St. Louis, Phoenix, and Tucson DMAs following consummation of the assignments.

5. To the best of my knowledge and belief, all other assertions of fact that are contained in the Petition are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed July 24, 2013.



Linda Burakoff
Vice President, Programming Acquisitions
DIRECTV, LLC