

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

In the Matter of

Applications for Consent to  
Assignment of Television Station Licenses  
from Subsidiaries of Belo Corp. to Subsidiaries  
of Sander Holdings Co. LLC and Tucker  
Operating Co. LLC

To: The Chief, Media Bureau

) MB Docket No. 13-189  
) BALCDT-20130619 ADJ;  
) BALCDT-20130619 AEZ;  
) BALCDT-20130619 AFA;  
) BALCDT-20130619 AFJ;  
) BALCDT-20130619 AFL;  
) BALCDT-20130619 AFM;  
) BALCDT-20130619 AFN

**OPPOSITION OF BELO CORP. TO "PETITIONS TO DENY"**

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August 8, 2013

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## **OPPOSITION OF BELO CORP. TO “PETITIONS TO DENY”**

Belo Corp. (“Belo”), by its attorneys, hereby opposes the “Petition to Deny” filed July 24, 2013 by Free Press, NABET-CWA, TNG-CWA, National Hispanic Media Coalition, and Office of Communication of the United Church of Christ (collectively the “Georgetown Group”) and the “Petition to Deny, or in the Alternative, for Conditions,” also filed July 24, 2013 by American Cable Association, DIRECTV LLC, and Time Warner Cable Inc. (collectively the “MVPD Parties”). The two “Petitions” were filed in connection with the above-captioned applications for consent to assignment of the licenses of certain television stations currently owned and operated by Belo subsidiaries (collectively, the “Assignment Applications”).<sup>1</sup> As demonstrated in detail below, each of the “Petitions” (hereinafter “Georgetown Objection” and “MVPD Objection,” respectively) is procedurally defective and fails to present any cognizable ground for denying conditioning of any of the Assignment Applications.

### **I. INTRODUCTION AND SUMMARY**

As detailed in the Applications, Belo has entered into a merger agreement with Gannett Co., Inc. (“Gannett”), pursuant to which a newly formed Gannett subsidiary will merge into Belo, with Belo becoming a wholly owned subsidiary of Gannett. Gannett does not own any media properties in ten of the fifteen markets in which Belo owns stations (the “Belo markets”). In the remaining five Belo markets—Louisville, Phoenix, Portland, St. Louis, and Tucson—Gannett owns newspapers and/or television stations. The parties have structured the transaction

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<sup>1</sup> The MVPD Parties address only the Assignment Applications for KMOV(TV) (St. Louis), KTVK (TV) and KASW(TV) (Phoenix), and KTTU(TV) and KMSB(TV) (Tucson) and do not oppose the KGW(TV) (Portland) or WHAS-TV (Louisville) assignments or the transfer of control of the other Belo stations to Gannett Co., Inc. The Georgetown Group uses the terms “assignment” and “transfer” interchangeably at times, but its arguments specifically address only the proposed assignments of seven stations to third parties, and not the Belo/Gannett transfer. To the extent necessary and without waiving any argument that the Georgetown Group has insufficiently addressed the Belo/Gannett transfer, Belo opposes the Georgetown Opposition as to all of the applications listed in the caption of that pleading.

so that the Belo stations in the markets in which overlaps would occur will be assigned, simultaneously with the consummation of the merger, to independent third party buyers.<sup>2</sup> Thus, Gannett will not acquire television stations in any market in which Gannett now publishes daily newspapers or owns full-power television broadcast stations.<sup>3</sup>

The Georgetown Group opposes the proposed assignments of the Belo stations in Phoenix, Louisville, Tucson, Portland, and St. Louis to Sander and Tucker, arguing broadly that certain services agreements contemplated by Gannett and the independent third party assignees are inappropriate and that grant of the assignments will adversely impact viewpoint diversity and local news competition.<sup>4</sup> The MVPD Parties oppose the proposed assignments of the Belo stations in the St.Louis, Phoenix, and Tucson markets, alleging that grant of the applications “would create new virtual duopolies and facilitate coordinated retransmission consent negotiations” in those markets and “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.”<sup>5</sup>

Contrary to the claims of the Georgetown Group and MVPD Parties, the Belo/Sander and Belo/Tucker Assignment Applications demonstrate compliance with all applicable Commission rules, policies, and precedent. The objections are based on a selective and distorted reading of the carefully structured and limited services agreements contemplated by the applications and on

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<sup>2</sup> Six of the Belo stations will be acquired by operating companies controlled by Sander Holdings Co. LLC (“Sander”), while a seventh Belo station will be acquired by Tucker Operating Co. LLC (“Tucker”). As fully demonstrated in their separate Oppositions, the controlling principals of Sander and Tucker are veteran broadcasters with extensive experience and outstanding reputations as heads of television station groups.

<sup>3</sup> Gannett will acquire control of thirteen Belo television stations, including single stations in seven markets and three existing duopolies (in New Orleans, Seattle-Tacoma, and Spokane), all in compliance with the duopoly rule.

<sup>4</sup> Georgetown Objection at 5.

<sup>5</sup> MVPD Objection at 2.

an assortment of unsubstantiated claims concerning potential future actions by the parties. These claims provide no basis for denial or delay in approval of the Assignment Applications, nor for the imposition of any conditions.

Indeed, the Georgetown Group's and MVPD Parties' arguments are nothing more than a stale and overblown rehash of policy positions they have advanced in the pending 2010 Quadrennial Review of the Media Ownership Rules<sup>6</sup> and/or the Commission's ongoing proceeding concerning the retransmission consent negotiation process.<sup>7</sup> These arguments have no place in this application proceeding. Adoption of the objecting parties' subjective and open-ended approach would also be patently inequitable and would deny the parties the regulatory certainty essential to structuring prudent transactions.

**II. THE PROPOSED TRANSACTIONS, INCLUDING THE ASSIGNMENTS OF CERTAIN BELO STATIONS TO SANDER AND TUCKER, ARE STRUCTURED IN FULL COMPLIANCE WITH THE COMMISSION'S MEDIA OWNERSHIP AND ATTRIBUTION RULES AND APPLICABLE PRECEDENT.**

Although the Georgetown Group expresses its general concern about consolidation in the media marketplace,<sup>8</sup> and the MVPD Parties refer to the "nationwide footprint" of the combined television assets of Gannett and Belo,<sup>9</sup> neither opposes the transfer of control of Belo from its current shareholders to Gannett, and neither has raised any specific question in this regard. Moreover, the Georgetown Group and MVPD Parties do not dispute that transfer of control of these stations from Belo to Gannett satisfies the black-letter terms of the Commission's national

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<sup>6</sup> 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; Promoting Diversification of Ownership in the Broadcasting Services, Notice of Proposed Rulemaking, 26 FCC Rcd 17489 (2011) ("2011 NPRM").

<sup>7</sup> Amendment of the Commission's Rules Related to Retransmission Consent, Notice of Proposed Rulemaking, 26 FCC Rcd 2718 (2011).

<sup>8</sup> See, e.g., Georgetown Objection at 8-11.

<sup>9</sup> MVPD Objection at 3.

and local television ownership regulations and, thus, the proposed transfer can be approved routinely.<sup>10</sup>

The opposing parties instead focus on the “overlap” markets, where Belo now owns television stations and Gannett owns TV stations and/or daily newspapers. In these markets, the Belo station licenses will be assigned to qualified third party buyers, each with lengthy experience and impeccable credentials as television broadcasters. As is made clear in the Assignment Applications, and in the separate Oppositions filed today by Gannett, Sander, and Tucker, Gannett will have no attributable interest in the licensees of any of the Sander or Tucker stations, and the limited agreements under which Gannett will provide support for the new station owners all fall well within the boundaries established in the FCC’s media ownership and attribution rules and applicable precedent.

In this regard, the Commission’s existing television ownership and attribution rules extend to direct ownership interests and time brokerage agreements involving more than fifteen percent of a station’s weekly broadcast time.<sup>11</sup> In 2003, the Commission considered adopting a rule that would have made TV joint sales agreements attributable to the owners of TV stations in the same market, but did not do so.<sup>12</sup> Instead, the Commission initiated a separate rulemaking on

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<sup>10</sup> Based on Nielsen data concerning the number of television households included in each of the nation’s Designated Market Areas (“DMAs”), the combined audience reach of Gannett’s 23 existing stations and the additional 13 stations to be acquired from Belo will be approximately 28% without application of the UHF discount and 23% percent if the discount is applied, in either case well under the 39% national cap. As noted above, the television stations to be acquired by Gannett via the transfer of control of Belo will include single stations in seven markets and three duopolies that comply with the local TV limits.

<sup>11</sup> See 47 C.F.R. §73.3555, Note 2(j)(ii).

<sup>12</sup> *2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13743 n.688 (¶ 317 n.688) (2003).

the subject, which remains unresolved.<sup>13</sup> The Commission also requested comments on the possible attribution of certain types of services agreements between same-market television stations in the 2010 Quadrennial Review.<sup>14</sup> That proceeding, too, remains open and unresolved. Over the past decade, however, the Commission has continued to consider applications for consent to television station transactions involving joint sales agreements, other types of shared services agreements, options and similar contingent interests, and guarantees of third party debt financing, and has routinely approved them because such agreements and interests are not attributable under existing regulations.<sup>15</sup>

In St. Louis and Phoenix, where Gannett owns full power television stations, its services agreements with Sander involve engineering and other technical and back-office services, but do not extend to joint sales, the provision of programming by Gannett, or agency representation in retransmission consent negotiations. The agreements in two of the overlap markets (Portland and Louisville) where Gannett owns daily newspapers but not television stations, differ somewhat from the St. Louis and Phoenix agreements, but are also fully consistent with FCC requirements and narrower in scope than the Commission has approved elsewhere.

Finally, in Tucson, Gannett will have an even more limited role. Belo is currently a party to an agreement with Raycom Media (“Raycom”), licensee of KOLD(TV), Tucson, under which Raycom provides certain services (not including sales) to KMSB(TV) and KTTU(TV). Sander

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<sup>13</sup> *Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, Notice of Proposed Rulemaking, 19 FCC Rcd 15238 (2004).

<sup>14</sup> *2011 NPRM*, 26 FCC Rcd at 17564-65, 17569-70 (¶¶ 195, 204-08).

<sup>15</sup> See, e.g., *Malara Broad. Group of Duluth Licensee LLC*, 19 FCC Rcd 24070 (2004); see also *SagamoreHill of Corpus Christi Licenses, LLC*, 25 FCC Rcd 2809 (2010); *Piedmont Television of Springfield License LLC*, 22 FCC Rcd 13910 (2007); FCC File Nos. BALCDT-20120726AGT (WKRC-TV), BALCDT-20120726AGX (WSTR-TV) (granted Nov. 23, 2012); FCC File Nos. BALCDT-20120726AHE (WPMI-TV), BALCDT-20120726AGU (KMYS(TV)), BALCDT-20120726AGV (WOAI(TV)) (granted Nov. 23, 2012); FCC File No. BALCDT-20120822ABW (KBTW-TV) (granted Nov. 23, 2012).

and Tucker will assume that agreement with Raycom. Sander and Tucker will also enter into a joint sales agreement between themselves.<sup>16</sup> In addition, each of Sander and Tucker will enter into a transition services agreement with Gannett, under which Gannett will provide certain supplemental services not covered in the Raycom or Sander-Tucker agreements. These transition services agreements will replace those services that Belo has provided as a corporate group owner.

In short, the agreements between Gannett and Sander or Tucker, as well as the agreement between Sander and Tucker, carefully delineate the services to be provided, or made available at Sander's or Tucker's request, and are calibrated to reflect the particular circumstances of each market and the anticipated needs of Sander and Tucker as licensees operating newly free-standing television stations. As shown above and in the oppositions being filed concurrently by Gannett, Sander, and Tucker, each of these market-specific agreements is fully consistent with the Commission's rules, policies, and precedent, and none presents any extraordinary issues.

The Georgetown Group's suggestion that the Media Bureau must refer the Assignment Applications to the full Commission is baseless. The FCC's ownership and attribution standards are well-defined, and the Bureau has dealt with "issues" of the nature the Georgetown Group and MVPD Parties attempt to raise here on numerous prior occasions. Nor does the fact that, in some of the overlap markets, Gannett holds interests in daily newspapers require any different analysis. Again, the applicable attribution rules are clear and have been in effect for many years, and the Commission has carefully delineated the types of interests that are attributable in the

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<sup>16</sup> Belo currently owns and operates both KMSB(TV) and KTTU(TV), and their advertising sales are conducted jointly. Although the two stations cannot be transferred to a single owner because the number of independent voices in the Tucson market has decreased since Belo acquired the two stations, the JSA between Sander and Tucker is intended to preserve, in a non-attributable manner and consistent with the FCC's rules and policies, some of the efficiencies that the two stations currently enjoy with respect to advertising sales.

context of cross-media as well as same-media relationships. Thus, the transactions proposed here do not present “novel questions of law, fact, or policy,” and can readily be resolved by the Bureau under “existing precedents and guidelines.”<sup>17</sup>

**III. THE CLAIMS ADVANCED BY THE GEORGETOWN GROUP AND THE MVPD PARTIES ARE OR HAVE BEEN THE SUBJECT OF SEPARATE PROCEEDINGS AND SHOULD NOT BE CONSIDERED HERE.**

The arguments raised by the Georgetown Group and the MVPD Parties fail not only on their merits, but also are not properly considered in this proceeding because they have been raised (and many rejected) in separate proceedings. As the Supreme Court has observed, “rulemaking is generally a better, fairer, and more effective method of implementing new industry-wide policy than is the uneven application of conditions in isolated” licensing decisions.<sup>18</sup> The D.C. Circuit, too, has recognized the impropriety of seeking to apply new requirements in the context of licensing proceedings, highlighting the “arbitrariness of retroactive application and the inherent constraints of the adjudicatory process.”<sup>19</sup> Consistent with this precedent, the Commission has a “long . . . practice [of] mak[ing] decisions that alter fundamental components of broadly applicable regulatory schemes in the context of rulemaking proceedings,” rather than in the course of acting on individual applications.<sup>20</sup>

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<sup>17</sup> 47 C.F.R. § 0.283(c); see Georgetown Objection at 8.

<sup>18</sup> *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1983).

<sup>19</sup> *California Ass'n of the Physically Handicapped, Inc. v. FCC*, 840 F.2d 88, 96-97 (D.C. Cir. 1988).

<sup>20</sup> *Application of Sunburst Media L.P. (Assignor), and Clear Channel Broad. Licenses, Inc. (Assignee)*, 17 FCC Rcd 1366, 1368 (¶ 6) (2002); see, e.g., *Acme Television, Inc.*, 26 FCC Rcd 5189, 5192 (2011) (“Issues of broad applicability . . . are more suited to a rule-making than to adjudication, and the Commission has long refused to develop broad new rules in an adjudicatory context.”); *Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corp., Transferees*, 21 FCC Rcd 7358, 7364-65 (¶ 15) (2006) (concerns raised by petitioner “are more properly addressed in the Commission’s pending . . . rulemaking proceeding,” in which the petitioner “ha[d] raised its concerns and public interest arguments in support of changes to the Commission’s rules and policies”); *Echo Star Commc’ns Corp.*, 17 FCC Rcd 20559, 20583 (¶ 48) (2002) (declining to consider conditions requested by a commenter “that have application on an industry-wide basis”); *Comcast Corp.*, 17 FCC Rcd 23246, 23257 (¶ 31) (2002) (“The Commission’s pending rulemaking on cable horizontal ownership is the

The Georgetown Group focuses on the various sharing agreements that Gannett will enter into with Sander and Tucker, arguing that these agreements will “significantly” or “meaningfully” “reduce[] the number of market voices and harm[] competition in the local news market”<sup>21</sup> and undermine the purpose behind the FCC’s multiple ownership rules.<sup>22</sup> As shown above, however, the agreements involved in this transaction fully comport with existing Commission precedent, under which they do *not* give rise to media ownership attribution.<sup>23</sup> The Georgetown Group’s members have presented the very same arguments in the pending Quadrennial Review proceeding regarding the allegedly harmful effects that sharing agreements can have, and have argued there that such agreements should be made attributable.<sup>24</sup> Their pleading thus amounts to nothing more than a transparent and improper attempt to single out one proposed transaction for attack and end-run the rulemaking process.

The MVPD Parties likewise raise arguments that have been presented (and many that have been rejected) in other proceedings. They argue broadly that permitting broadcasters to engage in so-called “joint” retransmission consent negotiations raises competitive concerns and increases the threat of station blackouts, and insinuate that sharing agreements should be

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more appropriate forum for consideration of the potential effects of industry-wide clustering on the distribution of programming by MVPDs to consumers.”); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Telecommunications, Inc. to AT&T Corp.*, 14 F.C.C.R. 3160, 3183 (¶ 43) (1999) (“[T]his is like other cases where the Commission has declined to consider, in merger proceedings, matters that are the subject of rulemaking proceedings before the Commission.”).

<sup>21</sup> *E.g.*, Georgetown Opposition at 18, 22, 30, 34.

<sup>22</sup> *E.g.*, *id.* at 27.

<sup>23</sup> *See supra* Section II.

<sup>24</sup> *See, e.g.*, *Comments of Office of Communication, Inc. of United Church of Christ*, MB Docket No. 09-182 (Mar. 5, 2012), at i, 1-23 ; *Comments of Free Press*, MB Docket No. 09-182 (July 12, 2010), at ii, 9-13; *Comments of Communications Workers of America, The Newspaper Guild/CWA, and National Association of Broadcast Employees and Technicians/CWA*, MB Docket No. 09-182 (July 12, 2010), at iv-vi, 19-25.

considered to violate the spirit, if not the letter, of the television duopoly rule.<sup>25</sup> Their support for these claims consists of a combination of conclusory assertions and citations to their own filings in the FCC’s pending rulemakings regarding media ownership and retransmission consent, thus exposing—as if it were not obvious enough—the overlap between their arguments here and those presented in the rulemakings.<sup>26</sup> Moreover, two of the MVPD Parties themselves previously have objected to other television station transactions by raising claims nearly identical to those presented in the MVPD Opposition. In each case, their attempts have been rejected, with the Bureau affirming and then “reaffirm[ing]” that the separate pending “rulemaking proceedings are the proper forum for consideration of the issues raised . . . concerning the retransmission consent process.”<sup>27</sup> The same result is required here.

The misplaced nature of the arguments advanced by the Georgetown Group and the MVPD Parties exposes yet another flaw in their efforts to derail this application proceeding: neither group of opponents has the necessary standing to qualify as a “party in interest” entitled

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<sup>25</sup> *E.g.*, MVPD Opposition at 10-13.

<sup>26</sup> *Id.* at 11-12 nn.33-34 (citing filings in retransmission consent and Quadrennial Review proceedings); *id.* at 11 (stating that “ACA and others have documented extensively” the harms they allege “in the ongoing media ownership and retransmission consent reform proceedings”); *see also, e.g.*, Comments of American Cable Association, MB Docket No. 09-182 (July 12, 2010), at 2, 8, 10-12; Comments of Time Warner Cable Inc., MB Docket No. 09-182 (Mar. 5, 2012), at 2-3, 4-17; *see generally* Comments of DIRECTV, LLC, MB Docket No. 09-182 (Mar. 5, 2012).

<sup>27</sup> *High Maintenance Broad., Inc.*, FCC File No. BALCDT-20120315ADD (Aug. 28, 2012), at 2 & n.9; *see Acme Television, Inc.*, 26 FCC Rcd at 5192; *Acme Television Licenses of Ohio, LLC*, 26 FCC Rcd 5198, 5200-01 (2011) (stating that “it is apparent that TWC’s real concern is its desire” for changes to the must-carry and retransmission consent processes, that “[t]he proper way” to seek such changes is to submit “a petition for rulemaking, which TWC has done,” and noting pendency of retransmission consent rulemaking); *Free State Comme’ns, LLC*, 26 FCC Rcd 10310, 10312 (2011) (stating that “[t]he gravamen of ACA’s petition” concerns matters “squarely under consideration in the Retransmission Consent Proceeding,” and concluding that “[w]e will not address here the substance of [that proceeding], and we decline to reach a decision that would effectively pre-judge the outcome of a pending proceeding in favor of one of the parties that petitioned to commence it”).

to file a formal petition to deny.<sup>28</sup> *First*, they have failed to, and cannot, establish “injury in fact.” With respect to the Georgetown Group,<sup>29</sup> the D.C. Circuit has already rejected an organization’s claim of standing based on similarly “broad and conclusory assertions.”<sup>30</sup> That Court was unwilling to accept a naked assertion that “common control of two licenses in the same market necessarily or even probably affects their programming.”<sup>31</sup> Instead, the Court found that “fears of decreased diversity remain purely speculative.”<sup>32</sup> The MVPD Parties’ contention that the challenged assignments pose a “clear threat of economic harm that would result from the coordinated handling of retransmission consent negotiations”<sup>33</sup> is “remote, speculative, conjectural, or hypothetical” and thus similarly insufficient.<sup>34</sup> The MVPD Parties have not made, and cannot “make a *concrete showing* that [they are] likely to suffer financial

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<sup>28</sup> 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939. To qualify as a “party in interest,” a party must show that: (1) “grant of the challenged application would cause the petitioner to suffer a direct injury,” (2) “the injury can be traced to the challenged action,” and (3) it is “likely, as opposed to merely speculative, that the injury would be prevented or redressed by the relief requested.” *Alaska Native Wireless*, Order, 18 FCC Rcd 11640, 11644 (¶ 10) (2003); see *Rockne Educational TV*, Memorandum Opinion and Order, 26 FCC Rcd 14402, 14405 (¶ 7) (2011). An organization must show that at least one of its members satisfies each of these requirements. *Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002).

<sup>29</sup> Georgetown Opposition at 4-5 (claiming standing because the organizations which make it up “have members and constituents that reside in areas served by television stations whose licenses are to be assigned” who will allegedly suffer a loss in diversity as a result of the assignments).

<sup>30</sup> *Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539, 544 (D.C. Cir. 2003) (rejecting claim of standing based on assertion the “increased concentration in the ownership of broadcast stations results in fewer voices being heard and therefore in decreased diversity in content; ergo, the public interest automatically suffers when two formerly independent stations come under common ownership”). This case post-dates the two decisions on which the Georgetown Group relies, see Georgetown Opposition at 4-5 n.5 (citing *Llerandi v. FCC*, 863 F.2d 79, 85 (D.C. Cir. 1988); *Office of Comm’n of the United Church of Christ, Inc. v. FCC*, 359 F.2d 994 (D.C. Cir. 1966)), and distinguishes both of those cases as inapposite, 309 F.3d at 542-46.

<sup>31</sup> *Rainbow/PUSH Coalition*, 309 F.3d at 545.

<sup>32</sup> *Id.*

<sup>33</sup> MVPD Opposition at 8. Time Warner does not claim that it has standing but, rather, joined in the MVPD Opposition as an informal objector. *Id.* at 1 n.1.

<sup>34</sup> *Pub. Citizen v. NHTSA*, 489 F.3d 1279, 1293 (D.C. Cir. 2007) (alleged injuries were not imminent “because no one can say” which association members might be harmed, “nor can anyone say when such [harm] might occur”).

injury,”<sup>35</sup> which is necessary to establish injury in fact.<sup>36</sup>

*Second*, even if the opposing parties could establish injury in fact, they cannot show causation or redressability. Without assigning any stations, Belo and Gannett could enter into the very same types of agreements, in the very same markets, that Sander and Tucker will enter into with Gannett. Accordingly, the assignments to which the Georgetown Group and the MVPD Parties object are not the cause of any injuries they might suffer, nor would denying the applications redress their asserted injuries.<sup>37</sup>

**IV. THE OPEN-ENDED CASE-BY-CASE APPROACH SUGGESTED BY THE GEORGETOWN GROUP AND MVPD PARTIES WOULD RENDER THE COMMISSION’S BLACK-LETTER RULES MEANINGLESS AND ROB PRIVATE PARTIES OF NECESSARY REGULATORY CERTAINTY AND STABILITY.**

The Assignment Applications under consideration here are part of a larger transaction that is of critical importance to Belo and the other parties. Commenting on the transaction, Dunia A. Shive, Belo’s President and CEO, observed, “This is an outstanding and financially compelling transaction for our shareholders. It is also a testament to the tremendous value our employees have created over Belo’s long history and to the strength of our brand in the media industry. I am confident that we have found an excellent partner in Gannett – they are a leading

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<sup>35</sup> *KERM, Inc. v. FCC*, 353 F.3d 57, 60-61 (D.C. Cir. 2004) (citations omitted).

<sup>36</sup> See *High Maintenance Broad., Inc.*, FCC File No. BALCDT-20120315ADD (Aug. 28, 2012), at 2 (finding similar claims to be unsupported). In addition, participation in related proceedings, *see, e.g.*, Georgetown Opposition at 1-4; MVPD Opposition at 11, does not establish standing. *KERM*, 353 F.3d at 59. Moreover, the MVPD Parties’ footnote assertion that they have standing “[m]ore generally” because of their “broader interests . . . as distributors of programming that compete for television viewers with . . . broadcasters” fails. MVPD Opposition at 8 n.23. This does not show the necessary “actual or imminent increase in competition” or any “actual, here-and-now injury.” *Sherley v. Sebelius*, 610 F.3d 69, 73-74 (D.C. Cir. 2010). Further, the Georgetown Group and the MVPD Parties “cannot establish standing simply by asserting a role as public ombudsman.” *KERM*, 353 F.3d at 61 (citing *Sierra Club v. Morton*, 405 U.S. 727, 736-38 (1972)).

<sup>37</sup> In any event, as otherwise shown herein and in the other oppositions, the contentions of the Georgetown Group and the MVPD Parties provide no basis for denying or conditioning the challenged applications regardless of whether their filings are treated as formal petitions to deny or informal objections.

media company that shares our commitment to the highest levels of journalistic integrity and embraces an active approach to community involvement. Together, this portfolio of media assets will be well-positioned to capitalize on substantial growth opportunities in the years ahead.”<sup>38</sup> Indeed, Gannett itself has a long tradition of outstanding public service, and the economies of scale created by the Gannett/Belo merger and resulting efficiencies will create real benefits for the public.

Belo’s board of directors considered the proposed transaction with great care and, after extensive evaluation, concluded that it would serve the best interests of Belo and its shareholders. The Company, its shareholders, and numerous other parties with relationships to Belo and its television stations are vitally concerned with the progress, outcome, and timing of the FCC’s consideration of the necessary transfer and assignments. As discussed above, each component part of the overall transaction has been carefully structured to meet the needs of the parties and ensure the stations’ ability to continue to serve the public interest, and to comply fully with all applicable FCC rules, policies, and precedent.

Belo, Gannett, Sander, and Tucker, like any other parties attempting to structure a significant transaction, need to be able to ascertain readily the pertinent FCC requirements. They should not be expected to try to hit a moving target, the trajectory of which is defined not by the Commission’s black-letter rules and policies, but by an opposing party’s own parochial views of what those rules and policies “should” be. Nor should the FCC’s processes be hijacked and individual applicants and transactions held hostage by self-appointed advocacy groups or

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<sup>38</sup> Gannett Co., Inc., *Gannett to Acquire Belo, Accelerating Ongoing Transformation Into Diversified Higher-Margin Multi-Media Company* (June 13, 2013), available at <http://www.gannett.com/article/20130613/PRESSRELEASES2013/130613001/GANNETT-TO-ACQUIRE-BELO--ACCELERATING-ONGOING-TRANSFORMATION-INTO--DIVERSIFIED-HIGHER-MARGIN-MULTI-MEDIA-COMPANY>.

business competitors attempting to impose their own views of the public interest or to increase their leverage in ongoing rulemaking proceedings.

To the contrary, the applicants here are entitled to the expeditious processing and approval of their applications, in accordance with existing rules and policies and established precedent. Both the Commission and the Courts have made clear that, consistent with the requirements of Due Process and the Administrative Procedure Act, parties who are similarly situated must be accorded the same treatment by the agency.<sup>39</sup>

## V. CONCLUSION

For the foregoing reasons, the objections of the Georgetown Group and MVPD Parties should be dismissed or denied, and the Belo/Sander and Belo/Tucker Assignment Applications, as well as the Belo/Gannett transfer of control applications, should be granted without delay.

Respectfully submitted,



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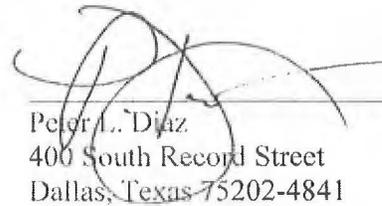
<sup>39</sup> *E.g., Independent Petroleum Ass'n of Am. v. Babbitt*, 92 F.3d 1248, 1260 (D.C. Cir. 1996) (“An agency cannot meet the arbitrary and capricious test by treating type A cases differently from similarly situated type B cases . . . . The treatment . . . must be consistent.”); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732-33 (D.C. Cir. 1965) (stating that “the Commission’s refusal at least to explain its different treatment . . . was error” and that the FCC must “do more than enumerate factual differences, if any, between . . . cases; it must explain the relevance of those differences to the purposes of the Federal Communications Act”).

**DECLARATION OF PETER L. DIAZ**

I, Peter L. Diaz, do hereby declare under penalty of perjury:

1. I am the President/Media Operations of Belo Corp.
2. I have read the foregoing "Opposition of Belo Corp. to 'Petitions to Deny,'" and the facts stated therein, of which the Federal Communications Commission may not take official notice, are true and correct to the best of my knowledge and belief.

August 8, 2013



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Peter L. Diaz  
400 South Record Street  
Dallas, Texas 75202-4841

## CERTIFICATE OF SERVICE

I, Eve Klindera Reed, hereby certify that on this 8th day of August 2013, I caused the foregoing "Opposition of Belo Corp. to 'Petitions to Deny'" to be served by first-class mail, postage prepaid, upon the following:

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Eve Klindera Reed