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

In the Matter of	)	
	)	
Amendment of Section 73.3555(e)	)	MB Docket No. 13-236
of the Commission's Rules, National	)	
Television Multiple Ownership Rule	)	

To: The Commission

REPLY COMMENTS OF TRIBUNE COMPANY

Tribune Company ("Tribune") respectfully submits these reply comments in the captioned proceeding regarding the Commission's proposal to eliminate the "UHF Discount" embodied in Section 73.3555(e)(2)(i) of the Rules.[1]

I. INTRODUCTION AND SUMMARY

Tribune supports the Commission's proposal to grandfather existing station groups that would exceed the 39 percent national television ownership cap absent the UHF discount -- including groups, like Tribune, that would exceed the cap as the result of transactions pending as of the release of the NPRM.[2] Grandfathering is consistent with precedent and is necessary to ensure that station groups assembled in reasonable reliance on existing rules are treated fairly. To hold otherwise would unfairly penalize Tribune by forcing it to unwind a

[1] *Amendment of Section 75.3555(e) of the Commission's Rules, National Television Multiple Ownership Rules*, MB Docket No. 13-236, Notice of Proposed Rulemaking (MB rel. Sept. 26, 2013) ("NPRM"). Unless otherwise noted, all references to comments refer to this proceeding.

[2] As of the date of the NPRM, Tribune had applications pending for Commission consent to its acquisition of certain television station licensees controlled by Local TV Holdings, LLC, that, upon consummation, would cause Tribune's national reach to exceed the 39 percent cap on an undiscounted basis. The Commission approved the transaction on December 20, 2013, subject to the condition that Tribune "com[e] into compliance with the results" of the UHF discount rulemaking proceeding. *Local TV Holdings, LLC*, Memorandum Opinion and Order, MB Docket No. 13-190, ¶ 21 (MB rel. Dec. 20, 2013). Tribune and Local TV Holdings closed the transaction on December 27, 2013.

multi-billion dollar transaction that was not only deliberately structured to comply with current rules but was also filed months before the release of the NPRM. Tribune also endorses the proposals of ION Media Networks, Inc. ("ION"), and Univision Communications, Inc. ("Univision"), that the small number of station groups that would exceed the cap absent the discount be permanently grandfathered and freely transferrable in the event the discount is modified.[3]

II. STATION GROUPS WITH APPLICATIONS PENDING AS OF THE DATE OF THE NPRM SHOULD BE GRANDFATHERED IN THE EVENT THE UHF DISCOUNT IS MODIFIED.

Tribune urges the Commission to adopt the NPRM's proposal to grandfather station combinations subject to assignment or transfer of control applications as of the release of the NPRM on September 26, 2013.[4] This approach takes into account the settled expectation that transactions will be evaluated under the rules in effect when applications are submitted; it conserves the financial and human resources already committed to the transaction by the parties thereto and by the FCC staff; and it avoids the inequity of retroactive rulemaking and a forced divestiture.

Grandfathering pending applications is consistent with precedent. The Commission grandfathered pending applications for licenses in the 900 MHz band after concluding that grandfathering would be equitable to applicants without causing material harm to the public interest.[5] Similarly, in grandfathering pending applications in the terrestrial fixed

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[3] *See* Comments of Univision Communications, Inc., at 3-7 (filed Dec. 16, 2013) ("Univision Comments"); Comments of ION Media Networks, Inc., at 17-21 (filed Dec. 16, 2013) ("ION Comments").

[4] *NPRM* at ¶ 20.

[5] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Order on Reconsideration, 11 FCC Rcd 22462, ¶ 11 (1996).

service, the Commission recognized the importance of protecting applicants' investments.[6] These basic principles -- advancing the public interest and respecting companies' investments -- should guide the Commission's actions here, as well. The public is well served by the responsible use of airwaves by licensees, such as Tribune, with a record of "meritorious service,"[7] and grandfathering pending applications protects business investments made in compliance with existing rules.

Here, where the NPRM proposes a change in the rules retroactive to the date of the NPRM, and where licensees had no notice of the pending rule change until the day it was announced, grandfathering pending applications is especially appropriate. In the 2002 Biennial Review Order -- the last time it addressed the UHF discount -- the Commission concluded that "the UHF discount continues to be necessary to promote entry and competition among broadcast networks."[8] And although that order proposed to sunset the discount for the top four broadcast networks, the Commission stated that it would "continue to examine the extent of competitive disparity between UHF and VHF stations as well as the impact on the entry and viability of new broadcast networks."[9] Such a comprehensive examination has yet to be undertaken. In the meantime, Tribune's transaction to acquire 17 television stations owned by Local TV Holdings was announced on July 1, 2013, nearly three months before the NPRM was released. Its

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[6] *Redesignation of the 17.7-19.7 Ghz Frequency Band*, Notice of Proposed Rulemaking, 13 FCC Rcd 19923, ¶ 40 (1998). The Commission adopted the proposal to grandfather pending applications in *Redesignation of the 17.7-19.7 Ghz Frequency Band*, 15 FCC Rcd 13430, 13462 (2000).

[7] *See FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775, 805 (1978) (finding that the Commission has "consistently acted on the theory that preserving continuity of meritorious service furthers the public interest").

[8] *2002 Biennial Review Order -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 02-277, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13845 (2003) ("2002 Biennial Review Order").

[9] *Id.* at 13847.

applications seeking Commission consent to the transaction were filed more than two months before the NPRM was released. Tribune structured the transaction under the only rules it knew.

Grandfathering pending applications would thus protect the reasonable expectation of broadcasters, such as Tribune and others, that they would not retroactively and unfairly be stripped of the regulatory provision on which they relied in good faith to build station portfolios consistent with FCC rules.

III. PERMANENT GRANDFATHERING OF EXISTING COMBINATIONS WOULD PROMOTE THE PUBLIC INTEREST IN DIVERSITY AND COMPETITION AND WOULD SERVE THE PRINCIPLE OF BASIC FAIRNESS TO STATION GROUPS THAT HELPED DEVELOP THE UHF BAND.

The NPRM proposes to grandfather "broadcast station ownership groups to the extent that they exceed the 39 percent national audience cap solely as a result of the termination of the UHF discount rule as of the date of the release of this NPRM."[10] The NPRM also proposes that "any grandfathered ownership combination subsequently sold or transferred would be required to comply with the national ownership cap in existence at the time of the transfer."[11]

Tribune joins Univision and ION in urging the Commission to permanently grandfather station groups that would exceed the national ownership cap in the absence of the UHF discount.[12] Fundamental fairness requires the Commission to respect the business arrangements of broadcasters like Tribune, ION, Univision and Trinity Broadcasting that

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[10] *NPRM* at ¶ 20.

[11] *Id.*

[12] Tribune opposes the proposal of Free Press to allow grandfathering for only 18 months. *See* Comments of Free Press at 6-7 (filed Dec. 16, 2013). It is manifestly unfair to force divestiture of station groups assembled in good faith reliance on existing rule. Free Press's assertion that broadcasters have been on notice that the Commission was considering changing the discount, *see id*., is at odds with the Commission's own statements about the continuing value of the discount in promoting entry of new networks and the persuasive evidence amassed by ION and Univision that broadcasters were not on notice the discount would be eliminated as the NPRM proposes. *See* ION Comments at 7-8, 18-19, Univision Comments at 8-10.

assembled their station portfolios in reliance upon and fully consistent with the UHF discount. Indeed, these broadcasters advanced the Commission's policy objective of developing a competitive UHF band.[13]

The Commission provided UHF allotments in the hope of promoting diversity, providing viewers with alternative voices, and fully exploiting the potential of the UHF spectrum.[14] Companies like Tribune, with many UHF stations, have expanded viewer choice locally and provided platforms for new national network entrants such as FOX, the CW and MyNetworkTV. They did exactly as the Commission hoped. To force these companies to divest stations if they undergo any change in control would fail to take account, as the Commission must, of "the dynamic nature of the communications marketplace and the entry of new competitors at both the programming and the distribution levels."[15]

Permanent grandfathering, however, would avoid the harms of forced divestiture, which the Commission has found to be warranted only in the "most egregious cases."[16] The Commission has noted that "licensees of current combinations should be afforded an opportunity to retain the value of their investments made in reliance on our rules and orders"[17] and that "the

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[13] *See* ION Comments at 17 ("Building these [ION and Univision] networks was a huge financial risk, but their success has been an even greater benefit to television viewers."); Univision Comments at 9-10 (noting that station groups like Univision "have been UHF pioneers, putting down stakes in a band that was long neglected and, just as the Commission hoped …, building UHF into a home for quality programming and a rival to VHF").

[14] *Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, GN Docket No. 83-1009, 100 FCC 2d 17, 93-94 (1984).

[15] *Comcast Corp. v. FCC*, 579 F.3d 1, 8 (D.C. Cir. 2009) (holding the Commission's rule that a cable operator cannot serve more than 30 percent of the market to be "arbitrary and capricious") (citation and internal quotation marks omitted).

[16] *Amendment of Part 76, Subpart J, of the Commission's Rules and Regulations Relative to Cable Television Systems; and Postponement of Divestiture Requirements of Section 76.501 Relative to Prohibited Cross-Ownership in Existence on or Before July 1, 1970*, 55 FCC 2d 540, 543-44 (1975) ("1975 Broadcast/Cable Order").

[17] *2002 Biennial Review Order* at 13808; *see also* Univision Comments at 4-5.

harshness of the divestiture remedy appears to us only warranted in those situations where there would otherwise be a virtual monopoly over local video expression."[18] The Supreme Court has observed that the public interest is well served by supporting "licensees who have invested the money and effort necessary to produce quality performance" and who have brought "proved broadcast service to the public."[19]

The limited grandfathering proposed in the NPRM -- that a station group's grandfathered status would remain in effect only so long as it does not undergo a change in control -- jeopardizes both the public interest contributions of Tribune and other broadcasters and the high level of service enjoyed by their viewers because it could lead to forced divestiture in situations as prosaic as a corporate change that does not affect the size of the station group. Univision has noted that forced divestiture could result in the loss of Spanish-language news and programming in some markets.[20] ION has warned that forced divestiture could threaten the high quality, independent, over-the-air network it has assembled from once-struggling UHF stations.[21] Tribune's record of local service is well known throughout the industry and has been noted by the Commission.[22] Tribune will continue this record of service to viewers of the stations it recently acquired from Local TV, providing residents of those communities with the award-winning news, weather, sports and entertainment programming that are Tribune hallmarks. Forced divestiture would devalue Tribune's investment and impair the long-term viability of the quality programming Tribune provides to its viewers.

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[18] *1975 Broadcast/Cable Order* at 544.

[19] *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775, 805 (1978).

[20] Univision Comments at 6-7.

[21] ION Comments at 2-4.

[22] *See, e.g.*, *Tribune Co.*, 27 FCC Rcd 14239, 14254-55 (rel. Nov. 16, 2012) (finding that Tribune Company's WGN-TV and *Chicago Tribune* have "consistently maintained high levels of public service").

Tribune therefore supports the proposals set forth by ION in its comments in this proceeding,[23] to wit, that stations continue to be subject to the UHF discount as long as they remain part of an intact group, irrespective of changes in ownership and/or capital structure. This approach would preserve the economies of scale that these station groups achieve *as a group* -- and that have allowed them to provide high-quality service.[24] It would also preserve the value of existing station groups without any public interest detriment. Indeed, the Commission has determined that the preservation of "an existing combination" does not "decrease the level of diversity and competition in the market."[25]

Permanent grandfathering would allow Tribune and other affected licensees to continue to offer the diverse and quality programming they have brought to the UHF band without fear of losing their substantial investments, and it would treat fairly companies that relied in good faith on the Commission rules to build their businesses and serve the public.

IV. CONCLUSION

For the foregoing reasons, Tribune requests that the Commission retain its proposal to grandfather transfer of control applications that were pending as of the date of the NPRM and that it help ensure continued high-quality service by permanently grandfathering existing station groups that will exceed the 39 percent cap in the absence of the UHF discount.

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[23] *See* ION Comments at 22-23.

[24] *See* ION Comments at 22.

[25] *E.W.S. News Corp.*, 12 FCC Rcd 20243, 20247 (MMB 1997); *see also Solar Broadcasting Co.*, 17 FCC Rcd 5467, 5475 (2002) (reauthorizing an existing radio station combination where it "does not increase ownership concentration" and "is likely to have little or no effect on radio competition" in the market).

Respectfully submitted,

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