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

In the Matter of	)	
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Applications for Consent to Assignment of Broadcast Station Licenses from Local TV, LLC to Dreamcatcher Broadcasting, LLC	))))	MB Docket No. 13-190

To: The Commission

Opposition to Application for Review

Dreamcatcher Broadcasting, LLC ("Dreamcatcher"), by counsel, hereby opposes the Application for Review ("Application") filed by Free Press of the Media Bureau's decision in *Applications for Consent to Transfer of Control of Certain Licensee Subsidiaries of Local TV Holdings, LLC*, MB Docket No. 13-190 (rel. Dec. 20, 2013)(the "*MB Decision*"). The Application was filed on January 22, 2014.[1]

I. The Application Should Be Dismissed Because it Does Not Allege Any Errors in the Media Bureau's Decision

The Application asks the Commission to reverse the Media Bureau's decision approving the transfer of control of licensees of three television stations from Local TV Holdings, LLC to Dreamcatcher.[2] The Application, however, has little to do with the substance of the

[1] On February 3, 2014, Dreamcatcher and Tribune Broadcasting Company II, LLC jointly requested, with the consent of Free Press, an extension of time within which to respond to the Application until February 21, 2014.

[2] As Free Press concedes (Application at 6 n.22), the Bureau found that the Petition to Deny had not established standing to contest the transfer of control of the licensee of WNEP-TV, Scranton, Pennsylvania. *MB Decision* at ¶ 8. Free Press does not argue that the Bureau's standing decision was incorrect, and the purported petitioner with respect to WNEP-TV is not a party to the

Dreamcatcher applications; instead it is another in Free Press' broad attacks on a series of decisions concluding that arrangements under which a station obtains specified and limited services from another station do not result in one station being attributed to the other.[3] The Application does not argue that the Media Bureau violated any precedent or obligation in the *MB Decision*, apart from a generalized argument that the Bureau should have examined the "cumulative effect" of the proposed transaction, an argument that Free Press did not make in its Petition to Deny and therefore is waived.[4]

The actual thrust of the Application is revealed by the fact that it is not until page 6 that Free Press even begins to discuss the Dreamcatcher transactions. And its discussion of other transactions approved by the Media Bureau in which a station has obtained services from another in-market station is notable for references to "facts" Free Press alleges which are not in fact part of the arrangements between Dreamcatcher and Tribune. For example, Free Press claims that, in these arrangements, the licensee "typically receive[s] a fee or portion of advertising revenues,"[5] implying that the service provider station has financial control. In fact, Dreamcatcher sells all

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Application. The Media Bureau's decision consenting to the transfer of control of that station is, therefore, final. *See Sagittarius Broadcasting Corp.*, 18 FCC Rcd 22551, 22555 (2003).

[3] The Commission's ECFS system reports, as of February 21, 2014, that Free Press has submitted 77 separate comments, letters and *ex parte* notices in MB Docket No. 09-182, the quadrennial review of the Commission's ownership rules. The vast majority no doubt reiterate Free Press' arguments concerning sharing agreements among television stations. And Free Press has pressed this point in other proceedings as well.

[4] The one case cited for the proposition that the Commission must examine the "cumulative effect" of proposed agreements is *Ackerley Group, Inc.*, 17 FCC Rcd 10828 (2002). *Ackerley* was not cited by Free Press in its petition to deny. Section 1.115(c) of the Commission's Rules, 47 CFR § 1.115(c), provides that "[n]o application for review will be granted if it relies on questions of fact *or law* upon which the designated authority has been afforded no opportunity to pass." (emphasis added) For the same reason, the Commission cannot consider Free Press' arguments (Application at 12-13) concerning an alleged loss of diversity in local news, since those arguments (1) are not tied to anything in the Dreamcatcher applications, and (2) rest on studies by Professor Danilo Yanich that were not referenced in the petition to deny.

[5] Application at 2.

advertising time and is entitled to 100 percent of the advertising revenues from its stations.[6] In contrast to Free Press' portrayal, it is *Tribune* that is entitled only to a specified services fee and a discretionary bonus. Free Press later reiterates that under these agreements, the licensee "is permitted to have another station sell all of its local spot advertising time."[7] As the Media Bureau recognized, however, "Tribune will not have a role in the sale of advertising time by the stations."[8]

Even when the Application does address the agreements between Dreamcatcher and Tribune, it distorts the facts. The Application states that, with respect to the programming that Tribune may supply for the Dreamcatcher stations, Tribune "exercises editorial judgment."[9] While the creator of any programming no doubt exercises editorial judgment, that is irrelevant to the issue of licensee control that was before the Media Bureau. As to that question, the Shared Services Agreement specifically provides that any programming provided to the Dreamcatcher stations is subject to Dreamcatcher's review and approval.[10]

Significantly, the Application does *not* contend that the *MB Decision* was incorrect in its assessment of any fact presented to the Media Bureau or in its application of existing precedents

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[6] Shared Services Agreement § 3.3.

[7] Application at 5.

[8] *MB Decision* ¶ 12.

[9] Application at 11. Notably, it does not cite any provision in the agreements between Dreamcatcher and Tribune for this statement, but instead an article written before this transaction was proposed or approved.

[10] Shared Services Agreement § 6.5. Free Press made the same argument in its petition to deny, and Dreamcatcher pointed to this provision of the Shared Services Agreement in response. Dreamcatcher Broadcasting Opposition to Petition to Deny, MB Docket No. 13-190 (filed Sept. 4, 2013) at 6. It does not serve the Commission's processes for parties to repeat factual claims that they know are inaccurate.

to those facts. Therefore, because the Application does not raise specific issues concerning either the transaction before the Media Bureau or its decision, it should be dismissed.

II. It Would Be Inappropriate for the Commission to Rule on the Issues Raised in the Application in the Context of a Specific Application

The thrust of the Application is that the *MB Decision* was the product of a series of Media Bureau decisions taken either in contradiction to or without approval by the Commission. The Application further argues that the Commission should reverse that long line of decisions in ruling on the Dreamcatcher applications, and it claims that applicants like Dreamcatcher do not have a reliance interest in the Media Bureau's decisions. All of these propositions are incorrect.

First, it is simply untrue that the Commission has not recognized the existence and prevalence of shared services agreements. It discussed them in detail and asked whether it should regulate them differently in the 2010 quadrennial review.[11] Thus, the Commission is and has been fully cognizant of the consistent Media Bureau decisions granting assignments of license or transfers of control where the proposed licensee plans to obtain specified services from another station.

Second, contrary to Free Press, the propositions on which the *MB Decision* and the Bureau's previous decisions rest have repeatedly been passed on and approved by the Commission. For example, Free Press contends that an entity providing up to 15 percent of a station's programming should be viewed as in control of that station. Application at 11. But the 15 percent programming attribution limit is not a standard conjured up by the Media Bureau as Free Press implies, but is in fact established in *the Commission's rules*. *See* 47 CFR § 73.3555, note 1(j.2); *Commission's Regulations Governing Attribution of Broadcast and Cable/MDS*

[11] *2010 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules*, 26 FCC Rcd 17489, 17564-70 (2011). As noted above, Free Press has filed extensive comments and other pleadings in that proceeding.

Interests, 14 FCC Rcd 12559, 12597 (1999). Applying a Commission-established standard that has been in place for almost 15 years, as the Bureau did in this case, is hardly the uncontrolled staff action that Free Press attempts to portray. As a matter of fact, Tribune does not supply news programming to the Dreamcatcher stations, and the news on those stations is produced by Dreamcatcher using its own employees.

Free Press also tries to make something (although it fails to specify what) of the fact that Dreamcatcher's sole owner, Ed Wilson, previously was employed by Tribune.[12] The Bureau correctly found that Mr. Wilson's previous employment by Tribune did not establish that Tribune would be able to exercise control over the Dreamcatcher stations. That an applicant's prior employment – without more – does not imply control by the former employer is not merely a Media Bureau position, but again a conclusion reached by the full Commission.[13] The application by the Media Bureau of full Commission decisions to the established facts in this case was not error and presents no issues for the Commission to review. *See Golden Gulf Coast Broadcasting, Inc.*, FCC 14-14 (rel. Feb. 20, 2014) at ¶ 2 (upholding Media Bureau decision applying "the Commission's appropriate analysis regarding transfer of control allegations").

Similarly, Free Press complains that, under some sharing agreements, licensees may have only one managerial employee, implying again that approval of these agreements by the Bureau was out of keeping with Commission rulings. Application at 5. In *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), however, the Commission made clear that its main

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[12] Application at 11-12. Free Press neglects to mention that Mr. Wilson has not been employed by Tribune since 2010, and during the course of a distinguished career in broadcasting, was also a senior executive of CBS, Fox and NBC.

[13] *See BBC License Subsidiary, L.P. (WLUK-TV)*, 10 FCC Rcd 7926, 7933 (1995); *Spanish International Communications Corp.*, 2 FCC Rcd 3965 (MMB 1987), *aff'd*, 3 FCC Rcd 4319 (1988), *aff'd sub nom. Coalition for the Preservation of Hispanic Broadcasting v. FCC*, 931 F.2d 74 (D.C. Cir. 1991).

studio rule requires the presence of one manager and one staff member during normal business hours. The Media Bureau decisions about which Free Press complains did no more than apply case law established by the Commission. And on this point again, Free Press' complaints have nothing to do with the transactions at issue since Dreamcatcher employs both the news and the sales staffs at its stations.

Free Press in general fails to recognize that the full Commission has reviewed arrangements between stations and other entities for services and programming and concluded that those agreements do not transfer control over a licensee. An example is *BBC License Subsidiary, L.P. (WLUK-TV)*, 10 FCC Rcd 7926 (1995), where the proposed licensee entered into several agreements with the Fox network to provide programming and other services, and the full Commission concluded after careful review that the agreements preserved the key elements of licensee control – control over personnel, programming and finances.[14] Commission decisions permit licensees, if they continue to set policies and remain in control of those areas, to use other entities to provide day-to-day operations and provide back office and other services.[15]

The agreements between Dreamcatcher and Tribune provide that Dreamcatcher will control its own personnel (who in fact will sell all time for the stations), have control over all programming broadcast on the stations, and be financially responsible for the stations' obligations. The contractual agreements between Dreamcatcher and Tribune preserve for Dreamcatcher the elements that *the full Commission* has concluded constitute control. Free Press did not present any evidence in its petition to deny that Dreamcatcher would not be in control of its stations, and the Bureau correctly rejected its speculation that the parties would not

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[14] The Commission reaffirmed those key elements of control only yesterday in *Golden Gulf Coast Broadcasting, Inc.*, FCC 14-14 (rel. Feb. 20, 2014) at ¶ 2.

[15] *E.g., WGPR, Inc.*, 10 FCC Rcd 8140, 8142 (1995).

follow their agreements. Thus, the Media Bureau decisions about which Free Press complains rest on a foundation of established Commission decisions.

Third, even if that were not so, applicants like Dreamcatcher would have been entitled to rely on the Media Bureau's decisions. The Commission's Rules provide that decisions issued by the Media Bureau under delegated authority "shall have the same force and effect" as actions of the Commission.[16] One reason why decisions of the Commission and its bureaus are published is so that applicants can understand the requirements they must meet in future transactions. Tailoring agreements to the agency's decisions is not, as Free Press would have it, an evasion, but rather exactly what the requirement that the Commission's rules and decisions be published enables.

Further, the Supreme Court agrees that decisions of the Commission's staff are entitled to be relied on by the Commission's regulatees. In *Fox Television Stations, Inc. v. FCC*, 132 S. Ct. 2307 (2012), the Commission argued that television stations could not claim reliance on FCC staff decisions holding that depictions of nudity were not indecent, and that the full Commission had been free to sanction stations for similar conduct. The Court strongly rejected the Commission's contention, and held that television stations could not be punished for episodes of brief nudity similar to those addressed in the staff decisions. *Id.* at 2319. For the same reason, Free Press cannot dismiss years of Media Bureau decisions as somehow *ultra vires* and contend that applicants which have expended millions of dollars organizing businesses in reliance on the Bureau's decisions should have that reliance interest disregarded by the Commission.[17]

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[16] Section 0.203(b); 47 CFR § 0.2.3(b).

[17] The fact that applications for review of some earlier Media Bureau decisions have been pending for many years is further support for the reasonableness of parties' reliance on the Bureau's decisions since the Commission chose to leave the Bureau's decisions in place, apparently accepting the Bureau's reasoning. As Justice Cardozo remarked, the "verdict of

Fourth, because the Media Bureau's decisions rest squarely on Commission rules and precedents and have been relied on by stations for many years, the questions advanced by Free Press are particularly the kind of issue that should be addressed in rulemaking, where the Commission can have the benefit of comments from many interested groups and parties, rather than in the context of a single set of applications as Free Press desires. *See Community Television of Southern California v. Gottfried*, 459 U.S. 499, 511 (1983); *Hispanic Broadcasting Corp.*, 18 FCC Rcd 18834, 18841 (2003). The case for addressing these issues in rulemaking is particularly strong here where the issues have already been raised and comments received by the Commission in a rulemaking proceeding, a proceeding where the Commission did not even express a tentative conclusion that the Media Bureau's approval of shared services agreements was incorrect. Free Press may point to decisions that the Commission *can* make changes to established precedents in ruling on specific applications, but the question is not the Commission's theoretical authority, but rather whether it *should* set broad policies in ruling on a specific application. There is no reason to, and a multitude of reasons not to, accept Free Press' request to jump the gun.

III. The Application Does Not Present a Novel Question of Law Concerning the Newspaper-Broadcast Cross-Ownership Rule

The Application's sole argument that the Bureau exceeded its delegated authority is Free Press' claim that the Dreamcatcher-Tribune agreements are different from the cases previously decided by the Media Bureau because, rather than owning another television station in the Dreamcatcher markets, Tribune owns newspapers. But as the Media Bureau correctly held, the question before it was whether the agreements between Dreamcatcher and Tribune preserved

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quiescent years" should not lightly be put aside. *Coler v. Corn Exchange Bank*, 280 NY 136, 141, 164 N.E. 882, 884 (1928), *aff'd* 280 U.S. 218 (1930).

licensee control, and thus whether Tribune would be deemed to have an attributable interest in the Dreamcatcher stations. *MB Decision* ¶ 17 & n.61. Once the Media Bureau found that Tribune would not have an attributable interest in the Dreamcatcher stations under its existing precedents – a conclusion that Free Press does not even contend was incorrect under those precedents – then no question was presented as a result of Tribune's ownership of local newspapers. The Commission has never established a set of attribution standards for the newspaper-broadcast cross-ownership rule different than for the local television ownership rule. To the contrary, "[t]he function of our attribution rules is to define which interests will be counted in applying our ownership *rules*."[18] The mere application of the attribution rules in a different context, but one clearly encompassed by those rules, is not a "novel question" for which Commission review is required or appropriate.

Conclusion

The Media Bureau thoroughly considered Free Press' allegations concerning the agreements between Dreamcatcher and Tribune and correctly concluded that those agreements were fully supported by established precedent. It analyzed each of Free Press' arguments and found them insufficient. The structure and content of the Application demonstrate that Free Press has no basis to argue that the Media Bureau erred in any part of its decision; instead the

[18] *Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 16 FCC Rcd 1097, 1100 (2001)(emphasis added).

Application is a thinly-veiled effort to disregard the Commission's already-pending rulemaking proceeding concerning agreements between television stations. It should be dismissed.

Respectfully submitted,

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Certificate of Service

I, Jack N. Goodman, hereby certify that I have, on this 21st day of February 2014, caused to be sent by mail, first-class postage prepaid, copies of the foregoing "Opposition to Application for Review" to the following:

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