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June 14, 2010

VIA E-MAIL

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

RE: MB Docket No. 10-104
Tribune and Its Subsidiary Companies
Petition to Deny Applications for Consent to Assignment of Licenses

Dear Ms. Dortch:

Transmitted herewith is "Wilmington Trust Company's Petition to Deny the Applications for Consent to Assignment of Broadcast Station License (FCC Form 314) filed by Tribune Company and its Licensee Subsidiaries."

In accordance with the procedures announced by the Commission,* this submission is filed electronically via the Commission's Electronic Comment Filing System.

Please communicate any questions concerning this filing to the undersigned.

Very truly yours,

BROWN RUDNICK LLP

/s/ Kenneth B. Weckstein

Kenneth B. Weckstein

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of:	)	
	)	
Applications of Tribune Company	)	
and its Licensee Subsidiaries	)	MB Docket No. 10-104
	)	
For Consent to Assignment of	)	
Broadcast Station Licenses	)	

Petition of Wilmington Trust Company, as Successor Indenture Trustee, to Deny the Applications for Consent to Assignment of Broadcast Station License (FCC Form 314) filed by Tribune Company and its Licensee Subsidiaries

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Wilmington Trust Company ("Wilmington Trust"), the Successor Indenture Trustee for $1.2 billion principal Exchangeable Subordinated Debentures due 2029 issued by Tribune Company (with its Licensee Subsidiaries, collectively, "Tribune" or the "Applicants"), by and through its undersigned counsel, respectfully submits this Petition pursuant to 47 U.S.C. § 309(d) and 47 C.F.R. § 73.3584 for the Commission to deny Tribune's Applications for Consent to Assignment of Broadcast Station Licenses (FCC Form 314) (the "Exit Applications").[1] As discussed below, the Exit Applications are missing critical information that precludes their being granted. Indeed, based on the record, the Commission cannot affirmatively determine that a grant would be consistent with the public interest, convenience and necessity, as required by the Communications Act of 1934, as amended, 47 U.S.C. § 309(a) and 47 C.F.R. § 73.3591(a). In fact, the information in the Exit Applications and other publicly available information

[1] By Public Notice dated May 13, 2010, the Commission invited interested persons to file petitions to deny no later than June 14, 2010. *Public Notice,* "Media Bureau Announces Filing Of Applications For Consent To Assignment Of Broadcast Station Licenses By Tribune And Its Subsidiary Companies And Permit-But-Disclose *Ex Parte* Status For The Proceeding," DA 10-840, May 13, 2010. Accordingly, this petition is timely filed.

demonstrate that granting the Applications would be contrary to the public interest, convenience and necessity.[2]

As discussed below, the Applicants seek to transfer ownership and management of the licenses to entities and individuals that are subject to pending investigations for a variety of wrongdoing, to undisclosed foreign entities, and to the same management that caused Tribune's financial downfall in only 11 months. The Commission should not grant applications under such circumstances.

Summary

The Exit Applications seek the Commission's consent to implement a "Joint Plan of Reorganization for Tribune Company and its Subsidiaries" (the "Reorganization Plan" or "Plan") by which Tribune and its subsidiaries seek to emerge from bankruptcy as reorganized entities (hereinafter "Reorganized Tribune"). Under that Plan, Tribune intends to cancel its present stock, and deliver new stock largely to creditors that funded its leveraged-buyout (the "LBO") in 2007. Tribune's LBO is the subject of intense public and judicial scrutiny, prompting the ultimate appointment of noted bankruptcy expert and UCLA Law School Professor Kenneth Klee as "examiner" in the Chapter 11 cases. Professor Klee's authority and mandate are exceedingly broad; he is to investigate, among other things, alleged: (i) fraudulent transfers by Tribune amounting to many billions of dollars in connection with the LBO; (ii) wrongdoing by present and former officers and directors of Tribune in facilitating the LBO; and (iii) torts and other wrongdoing perpetrated by Tribune's lenders and advisors involved in the LBO. The Examiner has retained lawyers and financial advisors, and is now hard at work acquitting his charge. His report to the Bankruptcy Court is due to be filed on July 12, 2010 and, based on the

[2] At a minimum, the Exit Applications present substantial and material questions of fact that require resolution in a hearing pursuant to 47 U.S.C. § 309(e) and 47 C.F.R. § 73.3593.

evidence collected to date, very well may reach conclusions that, in turn, compel a finding that: (a) the Plan is not legal because it calls for the distribution of large quanta of stock to parties that do not have legally sustainable claims, have claims that are to be equitably subordinated to other pre-LBO claims, or are liable to the estates for amounts far greater than amounts owed to them; and (b) Tribune's management breached their fiduciary duties initially facilitating the LBO and now in proposing a Plan that delivers ownership to those that financed the LBO (and, in turn, submitting the Exit Applications). The Bankruptcy Court has been informed that the Plan will be vigorously opposed by many parties (including, among others, many of the LBO lenders), and a lengthy trial is now anticipated (the trial is scheduled to begin August 16, 2010 and likely will continue for many days thereafter). In sum, the Commission is now being asked to approve a proposed ownership change when it is highly uncertain that the Plan will survive many obstacles now in its path. The Exit Applications are not appropriately submitted at this juncture.

Furthermore, the Exit Applications should not be considered because they describe a transaction that is, in many respects, an inappropriate "work-around" Commission rules or perhaps an intentional evasion of such regulations. The Exit Applications acknowledge that the Plan proposes to deliver large quanta of stock to certain LBO lenders in direct violation of foreign-ownership and/or multiple/cross-ownership regulations. The Applicants request exception to the foreign-ownership rules by delivering to offending LBO lenders warrants to purchase new common stock, rather than the stock itself. And, they propose exemption from the multiple/cross-ownership rules by delivering to offending LBO lenders "Class B" stock with limiting voting power, instead of common stock with typical voting rights under applicable state law. This is a sham. The warrants will be worthless to the prospective holders, who will, by definition, be non-U.S. citizens, since they cannot be exercised without violating 47 U.S.C. § 310(b); thus, the Commission is being asked to give its blessing to a Plan that will never

become a reality. The "Class B" shares are a facial violation of Bankruptcy Code Section 1123(b)(6), which prohibits Chapter 11 plans of reorganization from issuing non-voting stock; in other words, Tribune requests Commission consent for a transaction that cannot be approved by the Bankruptcy Court. Finally, as discussed below, such a plan does not even pass muster at the Commission, whose precedents broadly interpret "control" to include "every form of control, actual or legal, direct or indirect, negative or affirmative."

Moreover, the Commission should look carefully at who is being proposed by the Applicants to be entrusted with operating the valuable licenses that the Commission is being asked to grant. The limited information about ownership and management disclosed in the Applications suggests that the proposed management of Reorganized Tribune is essentially the same as the management that consummated the ill-fated LBO and that ran Tribune into the ground, or at least into bankruptcy. It cannot be in the public interest to trust those same managers again.

Standing

Wilmington Trust, as Successor Indenture Trustee, is a "party in interest" within the meaning of the Communications Act of 1934, as amended, at 47 U.S.C. § 309(d), and has standing to file this Petition to Deny. Specifically, Wilmington Trust is the Successor Indenture Trustee for the Exchangeable Subordinated Debentures due 2029 in the aggregate principal amount of $1.2 billion (generally referred to as the "PHONES") issued in April 1999 by Tribune. As such, it currently has a substantial financial stake in the Applicants. Wilmington Trust's economic interests may be adversely affected by a grant of the Exit Applications. Accordingly, Wilmington Trust has standing to petition the Commission. *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940); *Granik v. FCC*, 234 F.2d 682 (D.C. Cir. 1956); *see In re: D. H. Overmyer Telecasting Co., Inc. Debtor in Possession*, 94 F.C.C.2d 117 (1983).

Background

As described in the Exit Applications, Tribune operates businesses in broadcasting, interactive media, and publishing. The company currently owns and operates 23 full-service commercial television stations, including WGN-TV, Chicago, and WPIX(TV), New York, and one full-power commercial television satellite station. Exit Applications, Comprehensive Exhibit ("Comprehensive Exhibit"), at 1-2.

By its own admission, Tribune is also the nation's third largest newspaper publisher in total circulation. The Company publishes eight major-market daily newspapers: the *Chicago Tribune*, the *Los Angeles Times*, *The Baltimore Sun*, the Ft. Lauderdale-based *Sun Sentinel*, the *Orlando Sentinel*, the *Hartford Courant*, *The Morning Call* (Allentown, PA), and the (Newport News, VA) *Daily Press*. Through a limited liability company, Tribune also owns an interest in *Newsday*, a daily newspaper serving Long Island, New York. Comprehensive Exhibit at 2.

On December 8, 2008, Tribune filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. That matter is docketed in the Bankruptcy Court in Delaware as Case No. 08-13141 (jointly administered). Comprehensive Exhibit at 2. However, the saga of this bankruptcy actually begins earlier. Over three years ago, on April 1, 2007, the Board of Directors of Tribune approved a transaction orchestrated by Samuel Zell ("Zell"), a Chicago-based real estate investor, who was later appointed Chief Executive Officer and Chairman of the Board. The LBO offered a strange cure for the adverse business environment for media companies: enormous debt. The LBO left Tribune saddled with an incremental ***$9 billion dollars*** in additional debt (the "LBO Debt"), the funding of which was provided by, among others, J.P. Morgan Chase, N.A. ("J.P. Morgan"), Merrill Lynch & Co. ("Merrill"), Citicorp North America, Inc. ("Citi"), Bank of America, N.A. ("Bank of America"), and Barclays Bank, PLC ("Barclays") (collectively, "the LBO Banks").

The effect of the LBO transaction was to subject Tribune to an unsustainable interest burden just as the Internet was permanently eliminating large portions of the media industry's funding base. The LBO Banks were not concerned about lending money under these circumstances, given that they cleverly (and possibly fraudulently) structured their loans so that the risk of this transaction fell on the shoulders of the existing bondholders owed some $2.4 billion under issuances from the 1990s. These bondholders found themselves swamped by $11.8 billion in structurally senior bank debt. In particular, the risk fell most squarely on the shoulders of the PHONES -- for whom Wilmington Trust is the Successor Indenture Trustee -- whose substantial claim allegedly is contractually subordinated to other funded debt at Tribune. There is no doubt that the LBO left Tribune insolvent, making the present bankruptcy inevitable. Thus, in executing that transaction, Tribune's directors and officers breached their fiduciary duties. And, as discussed below, the fact that they caused Tribune to be insolvent rendered the LBO a fraudulent transfer within the meaning of the Bankruptcy Code. These transactions are the subject of ongoing independent review by an Examiner appointed by the Bankruptcy Court. For the most part, Tribune's executives remain employed by Tribune today, most especially Zell, the architect of the entire transaction.

Tribune already has sought Commission help in facilitating an improper transaction. In connection with the LBO, Tribune requested and the Commission granted approval to transfer Tribune's licenses to the new owners and also acted on various waivers of the Commission's newspaper/broadcast cross-ownership ("NBCO") rule and local television multiple ownership ("duopoly") rule. *Shareholders of Tribune Company,* 22 F.C.C. Rcd 21266 (2007) ("*Sam Zell*"). In that proceeding, Tribune naively, at best, or more likely, irresponsibly, led the Commission into believing that it (Tribune) could operate its licenses in a fiscally responsible manner in the public interest. In fact, Tribune was in bankruptcy just 11 months after the LBO closed.

On April 12, 2010, Tribune submitted its proposed Reorganization Plan to the Bankruptcy Court. Pursuant to the Plan, Tribune hopes to emerge from bankruptcy as Reorganized Tribune. FCC approval of the reorganized ownership is a condition to the Plan becoming effective. On the effective date of the Plan, Tribune will cancel and extinguish its existing common stock, and Reorganized Tribune will issue new common stock (the "New Common Stock"). The Plan provides that a substantial portion of Tribune's existing debt will be cancelled and certain of Tribune's creditors will receive, among other things, New Common Stock. Virtually all of the New Common Stock will be issued to some (but not all) of Tribune's creditors at the time of emergence. Tribune asserts in its Exit Applications that no single creditor or group of affiliated creditors will have a controlling interest in the reorganized Tribune. Comprehensive Exhibit at 3. However, Tribune also states that 70% of Reorganized Tribune's shares will be held by as yet unknown people or entities. *Id.* at 15. The Reorganization Plan does not yet state who will be the officers and directors of Reorganized Tribune -- that information will supposedly be provided in a "supplement" -- but there is good reason to suspect that the new management will be the same people who consummated the ill-fated LBO and then drove Tribune into bankruptcy. *See* Reorganization Plan at 36. *See also* [Tribune] General Q&A #19 at http://documents.epiq11.com/ViewDocument.aspx?DocumentPk=29B60DC9-7924-4497-978F-62C5E0A65979 (visited June 14, 2010).[3]

On April 28, 2010, Tribune filed the Exit Applications pursuant to Section 73.3540 of the Commission's Rules, jointly with applications seeking consent to assign certain broadcast auxiliary, satellite earth station, private land mobile, private fixed microwave, and CARS licenses. By these, Tribune seeks Commission consent to implement its Reorganization Plan. In

[3] "19. Will Sam continue to be CEO? Will the management team stay in place? [Answer:] Sam, Randy and Gerry as well as the rest of the management team remain actively engaged and committed to this company."

connection with the Exit Applications, Tribune seeks waivers of the Commission's NBCO rule, Section 73.3555(d), and the duopoly rule, Section 73.3555(b), and Note 5 (satellite exemption) and Note 7 (failing station waiver) thereto.

On May 10, 2010, the Bankruptcy Court appointed Professor Klee to serve as the official Examiner in the bankruptcy cases, pursuant to 11 U.S.C. § 1104(c), to investigate, *inter alia*, the LBO and to assess the strength of claims that Tribune may have against the LBO Banks for the benefit of creditors other than the LBO Banks, including the holders of the PHONES. *See* Order Approving Appointment of Examiner, filed in *In re Tribune Company et al.*, Case No. 08-13141 (Jointly Administered) (Bnkr. D. Del., May 11, 2010). The Bankruptcy Court's mandate to the Examiner is to:

> evaluate the potential claims and causes of action held by the Debtors' estates that are asserted by Parties in connection with the leveraged buy-out of Tribune that occurred in 2007 (the "LBO") which may be asserted against any entity which may bear liability, including, without limitation, the Debtors [i.e., the Tribune entities], the Debtors' former and/or present management, including former/present members of Tribune's Board, the Debtors' lenders and the Debtors; [sic] advisors, said potential causes of action including, but not limited to, claims for fraudulent conveyance (including both avoidance of liability and disgorgement of payments), breach of fiduciary duty, aiding and abetting the same, and equitable subordination and the potential defenses asserted by the Parties to such potential claims and causes of action[.]

Order Approving Work and Expense Plan and Modifying Examiner Order, filed in *In re Tribune Company et al.*, Case No. 08-13141 (Jointly Administered) (Bnkr. D. Del., May 11, 2010). The Examiner's report is due to be provided to the Bankruptcy Court on July 12, 2010. If the Bankruptcy Court finds fraudulent conveyances, it can grant a variety of remedies, some of which may result in changes to the ownership structure of Reorganized Tribune. As a consequence, the currently-proposed owners of Reorganized Tribune very well might not be the owners when the company emerges from bankruptcy. And, even if some of the proposed owners

are not stripped of their interests, the Examiner's and Bankruptcy Court's findings may have a bearing on the character qualifications of certain entities to hold and operate broadcast licenses.

The Bankruptcy Court is scheduled to hold hearings on Tribune's Confirmation Plan beginning on August 16, 2010.

Discussion

I. STANDARD OF REVIEW

Under the Communications Act of 1934, as amended, the Commission may not approve an application unless the Commission makes an ***affirmative determination*** that the public interest, convenience, and necessity will be served by the granting of such application. 47 U.S.C. § 309(a) ("the Commission shall determine . . . whether the public interest, convenience, and necessity will be served by the granting of such application"); *see, e.g., Webster-Fuller Communications Assoc.* , 5 F.C.C. Rcd 4518 (1990) (referring to the "affirmative public interest finding" required by section 309). "In the case of a transfer or assignment application, determining whether grant of the application would be consistent with the public interest must, under Section 308(b) of the Act, as incorporated by reference into Section 310(d), focus on the 'citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station'." *Stockholders of CBS Inc.*, 11 F.C.C. Rcd 3733, 3739 (1995) ("*CBS*") (citing 47 U.S.C. § 308(b)). The Commission explained:

> Citizenship qualifications relate to compliance with the statutory alien voting and ownership benchmarks of Section 310(b) of the Act; financial qualifications relate to the ability to finance the proposed transaction and to operate the stations for three months; and technical qualifications relate to the conformance of the engineering aspects of the stations to Commission rules. Basic character qualifications may, among other things, entail review of the applicant's compliance with the Communications Act and Commission rules, including both programming and non-programming rules. A pattern of behavior involving persistent and unremedied violations of a rule, such as, for example, repeated

> EEO violations, noncompliance with tower lighting rules, or violations of the indecency restrictions, may raise a question as to the applicants' fitness and would be considered. The "other qualifications" considered include whether the proposed transaction follows the Commission's multiple ownership rules or, if not, whether the waiver sought propounds offsetting benefits to the public interest.

Id.

The Commission is unable to make the required affirmative determination that the public interest, convenience, and necessity will be served by a grant of the Exit Applications. The Exit Applications set off numerous alarm bells and raise more questions than they answer. For starters, they do not set forth adequate facts relating to the citizenship, character, and financial, technical, and other qualifications of the Applicants to operate the stations in question. And, the Exit Applications acknowledge the failure to disclose the identity of 70% of the would-be assignees who, while they may not be attributable investors, are likely to include a significant foreign component. *See* Comprehensive Exhibit at 14-15.

More importantly, as discussed below, the Exit Applications present a transaction that appears to be a sham, complying neither with the Bankruptcy Code nor with the spirit of the Communications Act. This dramatically calls into question the character qualifications of the would-be assignees. There also are numerous reasons to question whether the entities that are identified in the Reorganization Plan will be the ultimate assignees. These include the matters of the "New Warrants" and the "Class B" stock contemplated by the Exit Applications. And, quite simply, creditors who are found to have participated in fraudulent conveyances may lose their preferential rights and thus may not be shareholders in Reorganized Tribune. This issue will be determined by the Bankruptcy Court after the investigation being conducted by the Examiner has concluded and after extensive litigation. Right now, the Applicants are asking the Commission to approve Applications for persons who may never own Reorganized Tribune. The public

interest will not be served by granting the Exit Applications at the present time or in their present form, and the Exit Applications are unable to be granted.

II. THE EXIT APPLICATIONS ASK THE COMMISSION TO ENDORSE A PROPOSED REORGANIZATION PLAN THAT IS UNLIKELY TO BE APPROVED BY THE BANKRUPTCY COURT.

A. The Examiner's Investigation Is Likely to Result in Significant Changes in the Ownership Structure and Management of Reorganized Tribune.

As noted above, the Bankruptcy Court appointed an Examiner pursuant to 11 U.S.C. § 1104(c) to, among other things, evaluate possible fraudulent conveyances and breaches of fiduciary duties, and aiding and abetting the same, that may have occurred in connection with the LBO. Among the targets of the Examiner's investigation are the Applicant's themselves, i.e., the Tribune entities, as well as their present and former directors and management, and their lenders and advisors.

Some of those entities whose roles in the LBO are being investigated are the very same entities that are contemplated to own shares in Reorganized Tribune, the Applicants here. For example, JPMorgan, which is slated to own 11% of Reorganized Tribune (*See* Comprehensive Exhibit at 14), was a major lender in connection with the LBO. And, the "Various Non-attributable Investors" who will own 70% of Reorganized Tribune likely will include some of Tribune's other lenders and advisors who participated in the LBO and are looking to continue to participate in ownership of the Applicants. *See* Plan of Reorganization Filing Q&As #5 at http://corporate.tribune.com/pressroom/?p=1808 (visited June 14, 2010).[4]

Under 11 U.S.C. § 548(a), a bankruptcy trustee "may avoid any transfer" that meets the definition of a fraudulent transfer or fraudulent conveyance. One of the several possible bases

[4] "5. What is the proposed new ownership structure of the company? [Answer:] The company's senior lenders will receive over 90% of the cash, debt and stock to be distributed under the Plan."

for finding a fraudulent conveyance is that Tribune made a transfer or incurred an obligation with actual intent to hinder, delay, or defraud any entity to which Tribune was indebted. 11 U.S.C. § 548(a)(1)(A). This means that if the Bankruptcy Court finds that an entity such as JPMorgan obtained rights in Tribune through a fraudulent transfer or conveyance by Tribune that was meant to defraud bondholders (such as the PHONES, for whom Wilmington Trust, the petitioner herein, is the trustee), the Court can void JPMorgan's rights. This, in turn, could impact whether JPMorgan has the right to own 11% of Reorganized Tribune, or whether some other entity might receive that share instead. To the extent that JPMorgan or one or more of the other proposed owners of Reorganized Tribune turn out not to be owners of Reorganized Tribune, the current application proceeding will have been a waste of the Commission's time.

Likewise, to the extent that the proposed management of Reorganized Tribune is found by the Examiner to have engaged in wrongful conduct in connection with the LBO, that is something the Commission should, and would, want to know. Indeed, when evaluating an assignment application, the Commission is required by the Communications Act to consider the character of the applicant. *CBS*, 11 F.C.C. Rcd at 3739. Although the scope of the Commission's scrutiny of an applicant's character qualifications is circumscribed, *Policy Regarding Character Qualifications in Broadcast Licensing,* 102 FCC2d 1179 (1986), the Commission has not hesitated to modify the scope of review as warranted, *Policy Regarding Character qualifications in Broadcast Licensing,* 5 F.C.C. Rcd 3252 (1990).[5] The Commission has found relevant in the licensing context the conduct of an applicant's principal in bankruptcy that involved misrepresentations and a court finding of a fraudulent conveyance. *Kannapolis Television Co.,* 1 F.C.C. Rcd 1037 (1986).

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[5] "[W]e remain 'free to exercise . . . discretion in situations that arise.' *Guardian Federal Savings & Loan Ass'n v. Federal Savings & Loan Insurance Co.,* 589 F.2d 658, 666 (D.C. Cir. 1978)." (Footnote omitted.)

For these reasons, before acting on the Applications, it would be prudent for the Commission to await the submission of the Examiner's report to the Bankruptcy Court, and the Court's action thereon, as well as the Court's hearings and ruling on Plan confirmation. At that time, directly pertinent facts will be known that relate to the ownership of Reorganized Tribune and the character and qualifications of management. Only at that time will the Commission be able to address the affirmative public interest findings required with respect to the Exit Applications.

B. The Reorganization Plan and Exit Applications Contemplate Complying with the Communications Act's Cross- Multiple-Ownership Restrictions by Issuing Multiple Classes of Stock, but This Plan Violates the Bankruptcy Code.

The Communications Act and its implementing regulations limit cross- and multiple-ownership of competing broadcasting and media outlets. *See, e.g.*, 47 C.F.R. § 73.3555(a) (2010) (limiting ownership interests in competing radio stations); 47 C.F.R. § 73.3555(b) (2010) (limiting ownership interests in competing television stations); 47 C.F.R. § 73.3555(c) (2010) (limiting ownership of radio and television broadcast licenses in similar markets); 47 C.F.R. § 73.3555(d) (2010) (limiting common ownership of broadcast stations and daily newspapers).

Here, the Applicants acknowledge that they do not know the final composition of Reorganized Tribune's ownership, so they cannot predict all cross- or multiple-ownership issues that will arise. To avoid violations, the Exit Applications and the Reorganization Plan call for issuing multiple classes of stock with different rights. Comprehensive Exhibit at 5-6. However, this plan ignores very real questions about whether the "Class B" stock approach is consistent with Section 1123(b)(6) of the Bankruptcy Code and other applicable provisions. *See, e.g., In re Ahead Communications Systems, Inc.*, 195 B.R. 512 (D. Conn. 2008) (finding that stock restrictions prohibiting voting for three years violates 1123(a)(6)); *In re Tharp Ice Cream Co.*, 25

F. Supp. 417 (E.D. Pa. 1938) (voting rights that could only be used following payment default were improper, and all shares needed to possess "full voting rights on an equality, share for share [with the unrestricted stock]").

This again illustrates that it would be a waste of the Commission's time to consider the incomplete and highly contingent Exit Applications. This also raises a more troubling question: Are the Applicants being honest with the Commission? If not, the Commission can, and should, summarily reject the Exit Applications without even holding a hearing. *See Huddy v. FCC*, 236 F.3d 720, 722 (D.C. Cir. 2001) ("To be sure, in the interests of 'preserv[ing] the integrity' of its operations . . . the Commission is entitled to consider a would-be licensee's deceptive behavior as grounds for rejecting an application, [ ] and even to make denial of a license virtually automatic on evidence of intentional misrepresentations in license applications."). Notably, despite the fact that there were proceedings in the Bankruptcy Court to appoint the Examiner before the Exit Applications were filed with the Commission, there does not appear to be any disclosure of that fact in the Exit Applications.

III. THE EXIT APPLICATIONS PLAN FOR ADDRESSING FOREIGN-OWNERSHIP RESTRICTIONS IS ALSO A SHAM.

Section 310(b) of Title 47, United States Code, establishes certain citizenship requirements for holders of broadcast licenses. It states:

> No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by—
>
> (1) any alien or the representative of any alien;
>
> (2) any corporation organized under the laws of any foreign government;
>
> (3) any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

> (4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

As noted above, the Commission must make an ***affirmative determination*** that the statute is being complied with before granting a license. In order to facilitate that determination, the Communications Act requires that: "All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship[.]" 47 U.S.C. § 308(b). And, the Commission is not obligated to take representations in the Exit Applications at face value; rather, the Commission may and does look beyond transaction-structuring intended to evade the letter or spirit of the Communications Act. For example, the Commission broadly interprets "control" to mean "every form of control, actual or legal, direct or indirect, negative or affirmative." *WWIZ, Inc.*, 36 F.C.C. 561, 579 (1964); *see also Stereo Broadcasters, Inc.*, 55 F.C.C. 2d 819, 821 (1975) (identifying control "necessarily calls for an investigation beyond stock ownership in order to determine effectively where actual control resides."); *Fox Television Stations, Inc.*, 10 F.C.C. Rcd 8452 (1995).

In the present case, the Exit Applications do not set forth facts that would permit the Commission to make the affirmative determination that the law requires regarding the percentage of foreign ownership. To the contrary, the Exit Applications openly acknowledge that the Commission is being asked to grant licenses to entities whose ownership is unknown and unknowable. For example, the Exit Applications state:

> [T]he exact ownership percentage of direct holders of Reorganized Tribune stock will not be able to be determined until Reorganized Tribune emerges from bankruptcy.

Comprehensive Exhibit at 22, n.16.

The Exit Applications state that ***seventy percent (70%) of Reorganized Tribune stock will be owned after the reorganization by anonymous investors, some of whom will be non-U.S. citizens***. Specifically, the Exit Applications identify the following shareholders in Reorganized Tribune:

- JPMorgan Chase Bank, N.A. ("JPMorgan") -- 11%
- Angelo Gordon & Co., L.P. ("Angelo Gordon") -- 9%
- Oaktree Capital Management, L.P. ("Oaktree") -- 10%[6]
- ***"Various Non-attributable Investors" – 70%.***

Comprehensive Exhibit at 14-15 (emphasis added). Quite simply, the Applicants admit that they do not know who will own the stock of Reorganized Tribune. Accordingly, the Applicants also have to admit that they do not know whether the unknown owners are foreign citizens or entities.

It seems highly likely, however, that a vast portion of the "non-attributable" 70% is distributable to institutional investors, including many hedge funds, that, for tax and other reasons, are organized outside of the United States. It also seems likely that this is something that Tribune knows perfectly well (many such hedge funds are in regular communication with Tribune or have appeared in the Chapter 11 cases), strongly suggesting that Tribune is being less than perfectly candid with the Commission by grouping them as a miscellaneous, nameless and faceless group of creditors. This is an area that Wilmington Trust respectfully submits should be fully investigated by the Commission.

What is beyond doubt is that there are some foreign entities among the 70% "non-attributable investors." The Exit Applications disclose that, in addition to the 9% of Reorganized Tribune to be owned directly by Angelo Gordon, foreign entities controlled by Angelo Gordon may hold in the aggregate up to an additional 14.99% of Tribune shares. These entities are:

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[6] This LBO Lender is part of a group that actually *opposes* confirmation of the Plan.

Entity	Nationality	Percent Holding
GAM Arbitrage Investments, Inc.	British Virgin Islands	Less than 5
AG Super Fund International Partners, L.P.	Cayman Islands	Not more than 5
AG Diversified Credit Strategies Master, L.P.	Cayman Islands	Not more than 5

Comprehensive Exhibit at 48. This means that the domestic vs. foreign ownership of Reorganized Tribune may shape up as follows:

Entity	Percent Holding	Domestic	Foreign
JPMorgan	11	X	
Angelo Gordon	9	X	
Oaktree	10	X	
GAM Arbitrage Investments, Inc.	Less than 5		X
AG Super Fund International Partners, L.P.	Not more than 5		X
AG Diversified Credit Strategies Master, L.P.	Not more than 5		X
SUBTOTAL	**~45**	**30**	**~15**
Remaining "Various Non-attributable Investors"	~55	**?**	**?**
TOTAL	**100**	**?**	**?**

See Comprehensive Exhibit at 14-15, 47-48. Put another way, of the ownership of the Reorganized Tribune that has been disclosed so far, one-third (15/45 noted in the "Subtotal" row above) will be foreign, while the rest is unknown. It is known that there are or were foreign banks among the LBO lenders -- for example, Barclays -- and such entities may be creditors entitled to equity in Reorganized Tribune.[7] On these facts, the Commission cannot make the affirmative public interest finding.

The Applicants appear to understand that they have a problem, so they state that they will obtain certifications from investors to determine whether they qualify as foreign owners and then will issue them warrants instead of stock to avoid violating the Communications Act. The Exit Applications state:

> If the analysis reveals that the aggregate level of foreign ownership would be more than 25%, then Reorganized Tribune will issue

[7] *See* footnote 4 *supra*.

> warrants to purchase New Common Stock ("New Warrants"), New Common Stock, or a combination of New Common Stock and New Warrants to those Claim Holders with foreign ownership that exceeds 25%, on either a voting or an equity basis, as Reorganized Tribune deems necessary to ensure that the foreign ownership of the holders of the New Common Stock will be in compliance with the foreign ownership limitations. Consistent with longstanding Commission precedent, warrants and other types of future ownership interests are not relevant to the agency's foreign ownership calculations until they are exercised. If, however, the analysis based on the foreign ownership certifications reveals that the aggregate level of foreign ownership in Reorganized Tribune upon emergence would be less than the 25% threshold permitted under Section 310(b), then it will not be necessary for Reorganized Tribune to issue any New Warrants in lieu of New Common Stock upon the Tribune Debtors' emergence from bankruptcy.

Comprehensive Exhibit at 7. This approach does not resolve the matter. Indeed, it compels further Commission inquiry.

Regardless of whether the Applicants decide at some future date to issue New Common Stock or New Warrants, the foreign investment in the Applicants still requires a showing of compliance with Section 310(b), and Commission review and approval.

> [T]he Commission must construe the [statutory] benchmark in a manner that considers factors in addition to the number of alien-owned shares of stock where the distribution of shares of stock is not proportionate to equity interests. Thus, the Commission should consider the amount of foreign capital contributions to a corporation in determining compliance with the statutory ownership benchmark.

Fox Television Stations, Inc., 10 F.C.C. Rcd 8452, 8468 (1995) ("*Fox*"). Compliance with Section 310(b) is thus a two-pronged analysis, one pertaining to voting interests, and the other pertaining to ownership interests. *BBC License Subsidiary L.P.*, 10 F.C.C. Rcd 10968, 10973 (1995).

In assessing such compliance, the Commission "must examine the economic realities of the transactions under review and not simply the labels attached by the parties to their corporate

incidents." *Fox Television Stations, Inc.*, 11 F.C.C. Rcd 5714, 5719 (1995) ("*Fox II*"). The Commission explained:

> That [examination] process is consonant with our "discretion to consider a broad range of factors, including debt transactions," in evaluating compliance with the statutory benchmark. We take this opportunity to emphasize that we will apply an analysis based on the economic realities of the situation to any proposed transaction to which a distinction between debt and equity is pertinent.

Id. (citations omitted).

More importantly, perhaps, do the Applicants expect the Commission to believe that foreign entities with legitimate claims against the Tribune estate will accept the New Warrants? What value do they have to investors if they cannot be exercised without causing a violation of the Communications Act? Thus, the Commission is being asked to approve a Plan that can't work. While the Exit Applications do represent that Reorganized Tribune will comply with the foreign-ownership rules, the Exit Applications also openly anticipate that the warrants will be converted to stock. *See* Comprehensive Exhibit at 7 ("Consistent with longstanding Commission precedent, warrants and other types of future ownership interests are not relevant to the agency's foreign ownership calculations ***until they are exercised.***") (emphasis added). Tribune states that "warrant holders will be permitted to exercise New Warrants only if such exercise would not violate the Communications Act or Commission rules or policies." *Id.* But, why would a foreign claim holder accept a warrant if unable to exercise it? The conclusion is inescapable that the New Stock versus New Warrant scheme invites conduct that will constitute a violation of Section 310(b). The Commission should not blindly trust these entities and this management. That is especially true given that the same management and entities are being investigated for fraud and ran the current license holders into bankruptcy in only 11 months.

IV. THE EXIT APPLICATIONS SEEK WAIVERS OF THE MULTIPLE OWNERSHIP RULES, WHICH WAIVERS WOULD NOT BE IN THE PUBLIC INTEREST AND PREVIOUSLY WERE DENIED BY THE COMMISSION

The Commission's rules on ownership are intended to promote the public interest by limiting concentration and enhancing diversity. *CBS*, 11 F.C.C. Rcd at 3736 (1995). The Commission has explained: "Economic competition and diversity are the dual objectives underlying our multiple ownership rules. With respect to the local level, we recently reiterated our concern regarding the potential for anticompetitive behavior by owners of multiple broadcast stations where their stations serve the same market, where that market is concentrated, and where their proposed new combinations would substantially increase concentration in that market." *Id.* at 3754. Furthermore,

> Our local ownership rules are particularly important in furthering this diversity goal. At the local level, therefore, the Commission has generally restricted ownership through the radio contour-overlap rule, the television duopoly rule, the one-to-a-market rule, the newspaper-broadcast cross-ownership rule, and the cable-television broadcast cross ownership rule.

Id.

Here, the Applicants seek seven waivers of the Commission's ownership rules – five waivers of the NBCO rule and two waivers of the duopoly rule. *See* Comprehensive Exhibit at 45. In *Sam Zell, supra,* Tribune sought waivers for the same seven media combinations in six markets. Although the Commission granted the duopoly rule waivers and the NBCO waiver for WGN Continental Broadcasting Company and the *Chicago Tribune,* it denied the NBCO waivers for the media combinations in New York, Los Angeles, Hartford, and Miami. The Commission granted Tribune six months to come into compliance with the NBCO rule. *Sam Zell,* 22 FCC Rcd at 21273-79.

Tribune's appeal of the Commission's order led to a temporary waiver during the pendency of the appeal.[8] *See Tribune Company v. FCC*, Case No. 07-1488, 07-1489 (D.C. Circuit). However, that does not change the fact that the waivers now requested by the Applicant previously were found by the Commission to not be in the public interest. And, the pending appeal of the order and automatic grant of waiver do not alter the clear, direct, and incontrovertible basis of the Commission's denial of the waiver requests:

> The applicants are engaging in speculation when they take the position that their particular newspaper/broadcast combinations will comply with whatever rules are ultimately adopted. Such speculation is not sufficient to overcome our long-standing policy against granting waivers pending the outcome of rulemakings, particularly in light of the fact that such rulemakings last for an indefinite period of time.

Id. at 21276.

The fact remains that the waivers requested would restrict local ownership and diversity. The fact remains that granting the waivers would lead to further non-competitive markets. The fact remains that granting the waivers would be contrary to the public interest. Nothing in the present record affords a basis for the Commission to reach a different result. The Applications are dependent on the granting of waivers. Because the waivers are not in the public interest, as the Commission has already found, the Commission should deny the Applications.

Conclusion

Administrative agencies, like courts, should avoid the "confusion or a waste of time [that results from] having the same matter considered in more than one forum at the same time." *Chamber of Commerce of the U.S. v. S.E.C.*, 443 F.3d 890, 897 (D.C. Cir. 2006). Here, the

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[8] "[S]hould applicants challenge today's decision in court, we grant a temporary waiver of the NBCO rule for the New York, Los Angeles, Miami, and Hartford markets. This waiver will last either for two years or until six months after the conclusion of the litigation, whichever is longer." *Id.* at 21278 (footnote omitted.)

Bankruptcy Court is considering the legality and fairness of the proposed Reorganization Plan and the Examiner appointed by the Bankruptcy Court is investigating possible wrongful actions by various people and entities who are now seeking Commission approval to own and operate the broadcast licenses. Those entities may be hoping to sow confusion by trying to push through their Exit Applications, but the Commission should not be fooled. Rather, to the extent that the Commission does not reject the Applications outright (*see Huddy*, 236 F.3d at 722, quoted above), the Commission should defer its proceedings until after the Bankruptcy Court has determined who really deserves to own Reorganized Tribune. With so many uncertainties and so many clouds hanging over the Applicants, the public interest requires that the Exit Applications be rejected, or at least not granted.

[SIGNATURES ON NEXT PAGE]

Respectfully submitted,

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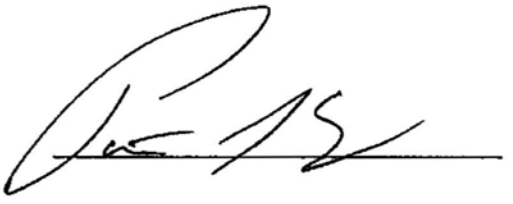
Declaration

I, Patrick Healy, declare under penalty of perjury that the following is true and correct:

I am Vice President of Wilmington Trust Company. Other than those facts of which official notice may be taken, I have first-hand knowledge of the facts set forth in the foregoing Petition to Deny. I have reviewed the Petition to Deny and the facts set forth therein are true and correct.

EXECUTED this 14th day of June 2010.



Certificate of Service

I, Catherine Johnson, hereby certify that on this 14th day of June 2010, I caused a copy of the foregoing pleading titled "Wilmington Trust Company's Petition to Deny the Applications for Consent to Assignment of Broadcast Station License (FCC Form 314) filed by Tribune Company and its Licensee Subsidiaries" to be served by first class U.S. mail, postage prepaid, or *by email delivery, to the following:

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