

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

In the Matter of)	
)	
Applications of Tribune Company,)	
Debtor in Possession, and Licensee)	MB Docket No. 10-104
Subsidiaries, Debtors-in-Possession, for)	
Consent to Assignment of Broadcast Station)	
Licenses)	

**OPPOSITION TO PETITION TO DENY OF THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

Tribune Company, Debtor-in-Possession (“Tribune”), by its attorneys, hereby opposes the Petition To Deny (“Petition”) filed by the International Brotherhood of Teamsters (“IBT”). In its Petition, IBT asks the Federal Communications Commission (the “Commission”) to take the extraordinary step of dismissing or holding the above-captioned applications (the “Exit Applications”) in abeyance pending a restructuring of the pre-bankruptcy Tribune (which no longer exists) to conform to a corporate structure that IBT proposed to the Commission in 2007. Second, IBT urges the Commission to deny Tribune’s request for waiver of the newspaper/broadcast cross-ownership rule (the “NBCO Rule”) for Tribune’s cross-owned properties in Chicago and Hartford.

As demonstrated in more detail below, neither IBT request has merit. First, the Commission properly rejected IBT’s arguments regarding Tribune’s pre-bankruptcy corporate structure in 2007 and correctly found that Section 310(d) of the Communications Act prohibits the Commission from considering whether an alternative and hypothetical organizational

structure might better serve the public interest than the one the applicants propose.¹ Second, allowing Tribune to continue operating its cross-owned properties in Chicago and Hartford will allow the combinations to continue their provision of exemplary levels of news, political coverage, and other local programming. Because IBT fails to rebut Tribune's showing that grant of the Exit Applications is in the public interest, IBT's Petition must be dismissed or denied.

I. IBT'S RESTRUCTURING ARGUMENTS PRESENT NO COGNIZABLE CLAIM AND MERELY RESTATE OLD ARGUMENTS THE COMMISSION HAS ALREADY REJECTED.

As IBT itself acknowledges, its Petition merely resurrects restructuring arguments that IBT advanced unsuccessfully when it petitioned against the 2007 transfer of control of Tribune from its prior shareholders to the Tribune Employee Stock Ownership Plan (the "ESOP").² Those arguments must be rejected again for at least three reasons.

First, IBT has no standing to object to the Exit Applications and therefore, the Petition must be summarily dismissed. To have standing, "it must be 'likely' . . . that the injury will be 'redressed by a favorable decision.'"³ Here, the harms IBT notes are not caused by the transactions proposed in the Exit Applications, and denial of the Exit Applications will not address IBT's concerns.⁴ Accordingly, IBT has no standing.

Second, the Commission has already rejected IBT's restructuring arguments, and the Commission's reasoning in doing so remains valid. In its pleadings objecting to the 2007

¹ See *Shareholders of Tribune Co.*, Memorandum Opinion and Order, 22 FCC Rcd 21,266, 21,272-73 (¶ 20) (2007), *appeal pending sub nom. Tribune Co. v. FCC*, Nos 07-1488, 07-1489 (D.C. Cir. filed Dec. 3, 2007) (the "2007 Order"); 47 U.S.C. § 310(d).

² See Petition at 3-7; 2007 Order, 22 FCC Rcd at 21,271-73 (¶¶ 16-20).

³ *Lujan v. Defendants of Wildlife*, 504 U.S. 555, 561 (1992) (citations omitted).

⁴ See, e.g., Petition at 2 (harms include "members' livelihoods, economic well-being, and access to a diversity of news and opinions on public events").

transfer, IBT argued that the Tribune pre-bankruptcy ESOP corporate structure impermissibly separated the ownership of the ESOP, established for the benefit of Tribune employees, from the control of Tribune, held by Sam Zell.⁵ IBT claimed that the employees for whose benefit the ESOP was established were “shut out of the governance of the company”⁶ and would have “no voice.”⁷ IBT also claimed that, if the employees had been permitted to participate in Tribune management, “they could have diversified the viewpoints within the company and contributed to more diverse programming.”⁸

The Commission firmly rejected those arguments in the *2007 Order*, stating that

To engage in the type of review urged by the Teamsters would involve the Commission in endless speculation as to whether the organizational structure of each individual applicant could somehow be improved to generate an additional public interest benefit. No party has alleged that the Transferee’s proposed organizational and governing structure violates any Commission rule or policy or any other statute, rule, or policy. Therefore, we decline to conduct the kind of review sought by the Teamsters and will not order any changes to the organizational or governing structure of the ESOP Plan or the Tribune Trust as a condition of granting the transfer application.⁹

IBT sought reconsideration of the *2007 Order* and made the same points again.¹⁰ The petition for reconsideration remains pending.

IBT’s current Petition includes no new arguments and should be dismissed for the same reasons. Nothing in ERISA requires that IBT employees have any greater “voice” in company

⁵ Petition at 3-4; Letter to Marlene H. Dortsch from Henry Goldberg and Joseph A. Godles, Counsel to International Brotherhood of Teamsters, MB Docket No. 07-119 (filed Nov. 15, 2007).

⁶ Petition at 4.

⁷ Comments of the International Brotherhood of Teamsters, MB Docket No. 07-119 (filed June 11, 2007) at 5 (“*IBT 2007 Comments*”).

⁸ Petition at 4; *see also IBT 2007 Comments* at 6-7.

⁹ *2007 Order*, 22 FCC Rcd at 21,272-73 (¶ 20).

¹⁰ *See* Petition for Reconsideration of the International Brotherhood of Teamsters, MB Docket No. 07-119 (Dec. 12, 2007).

governance than the present ESOP confers, and IBT does not argue otherwise. As the Commission properly found in 2007, Section 310(d) of the Communications Act prohibits the Commission from speculating as to whether a different ownership structure from the one presented might better serve the public interest.¹¹ Accordingly, IBT's request that the Commission deny or hold the Exit Applications in abeyance until Tribune's Board of Directors has been reconstituted to meet IBT's singular philosophical preferences is meritless and should be summarily rejected.

Finally, IBT's narrative attributing Tribune's economic difficulties to the 2007 transaction has no bearing on the Commission's review of the Exit Applications.¹² IBT's discussion reflects nothing more than examples of the well-documented difficulties that have plagued the newspaper and broadcasting industries in the past few years, problems that are not unique to Tribune.¹³ Furthermore, none of the business troubles that IBT cites relate to Commission rules or policies or to the character or fitness of any of the parties involved in the Exit Applications to hold an attributable interest in a broadcast licensee. Accordingly, IBT's attempts to link Tribune's economic problems with the Commission's consideration of the Exit Applications or with the Commission's reconsideration of the *2007 Order* should be dismissed.

¹¹ *2007 Order* at ¶ 20; see also *Plough Broadcasting Company, Inc.*, 70 F.C.C.2d 683, 693 (¶ 16) (1978) ("Section 310(d) expressly denies us the power to consider whether the assignment of a license to a person other than the proposed assignee would serve the public interest.").

¹² Petition at 4-6.

¹³ See, e.g., Chicago Exit Application, Exhibit 16 at 22-34; Hartford Exit Application, Exhibit 16 at 21-33.

II. GRANT OF THE CHICAGO AND HARTFORD WAIVERS IS IN THE PUBLIC INTEREST.

IBT claims that Tribune's Chicago and Hartford cross-ownership waiver requests do not meet the standards of the NBCO Rule.¹⁴ Contrary to IBT's claims, and as demonstrated below, grant of cross-ownership waivers allowing Tribune to continue operating its cross-owned properties in Chicago and Hartford complies with the NBCO Rule and is in the public interest for at least two reasons. First, there is a positive presumption in favor of continued cross-ownership, as Tribune's voluntary bankruptcy meets the "failed station" waiver requirement. Second, Tribune's showings in both markets meet the NBCO Rule's four-factor test.

A. A Voluntary Petition for Bankruptcy Satisfies the "Failed Station" Waiver Requirement, Making Tribune's Cross-Ownership Presumptively in the Public Interest.

The NBCO Rule includes several presumptions. First, there is a presumption favoring certain cross-ownership combinations in top 20 markets when certain standards are met.¹⁵ When those standards are met, the expectation is that waiver of the NBCO Rule "generally would be granted."¹⁶ Although cross-ownership combinations not meeting these standards are deemed presumptively inconsistent with the public interest, this negative presumption can be overcome. For instance, the Commission will presume that a proposed cross-ownership combination is in the public interest, if a newspaper or broadcast station is "failed" or is "failing."¹⁷ The

¹⁴ Petition at 8-12.

¹⁵ *2006 Quadrennial Regulatory Review – Review of the Comm'n's Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2040-46 (¶¶ 53-62) (2008); *appeal pending sub nom. Prometheus Radio Project v. FCC*, Nos. 08-3078, et al. (3rd Cir. filed Jul. 15, 2008) ("2008 Order").

¹⁶ *2008 Order*, 23 FCC Rcd at 2040-41 (¶ 53).

¹⁷ *Id.* at 2047-49 (¶¶ 65-66).

company's bankruptcy is conclusive proof that the Tribune stations qualify as "failed" stations for purposes of the NBCO Rule.

IBT argues that only an involuntary bankruptcy qualifies for the "failed" station exception.¹⁸ As Tribune showed in the Exit Applications, however, such a narrow rendering of the failed station standard would be contrary to the public interest.¹⁹ When, as here, it has been amply demonstrated that Tribune's debts are greater than the value of its assets, the Tribune properties are properly considered as "failed" under relevant Commission standards.²⁰

IBT's principal contention in its Petition is that the Commission did not intend voluntary bankruptcy to qualify a station for the positive failed station presumption because "it wanted to avoid having to make determinations as to whether a licensee had filed for bankruptcy to bolster its case for a waiver."²¹ To the contrary, as Tribune explains in its opposition to a petition to deny filed jointly by several public interest groups, in cases like this, when it is clear that the bankruptcy filing was not made for the purpose of obtaining a waiver of the Commission's rules, a voluntary bankruptcy should satisfy the Commission's failed station standard.²² Interpreting the failed station standard in such a narrow manner would be consistent with the history and policy of the standard itself.²³ In any event, even assuming *arguendo* that a desire to avoid

¹⁸ Petition at 9-10.

¹⁹ See, e.g., Chicago Exit Application, Exhibit 16 at 110-111.

²⁰ See, e.g., Chicago Exit Application, Comprehensive Exhibit, Attachment H, *Disclosure Statement for Joint Plan of Reorganization for Tribune Company and Its Subsidiaries* at 9-13 (discussing which classes of creditors are "impaired" under the Tribune chapter 11 bankruptcy plan).

²¹ Petition at 10.

²² See Tribune's Opposition to Petition To Deny of Free Press, Media Alliance, NABET/CWA, National Hispanic Media Coalition, Office of the United Church of Christ, Inc., and Charles Benton at Section III.A. ("Opposition to Interest Groups").

²³ *Id.*

having to determine whether a licensee had filed for bankruptcy to bolster its case for a waiver was a motivating factor, that concern is inapplicable here. There is no doubt that Tribune entered bankruptcy for reasons other than seeking waivers, and with respect to waivers, *Tribune already had the cross-ownership waivers necessary to operate its properties*. Accordingly, the Commission need not be concerned here with the issue of “whether an owner has filed for bankruptcy or insolvency simply in order to qualify for a waiver.”²⁴ Thus, with the public policy concerns addressed, the Commission should find that Tribune’s bankruptcy filing meets the “failed station” test and find that Tribune’s continued cross-ownership is in the public interest.

B. Tribune’s Showings Meet the NBCO Rule Four-Factor Test.

Contrary to IBT’s claims, the Chicago and Hartford Exit Applications definitively show that Tribune’s continued cross-ownership in Chicago and Hartford meet the four-factor test established in the *2008 Order*. For example, as Tribune demonstrated in the Chicago Exit Application, Tribune’s common ownership of WGN-TV, WGN(AM) and the *Chicago Tribune* has allowed the properties to deliver in-depth coverage of news events and contribute to community awareness of important local, national and international issues.²⁵ Absent continued common ownership, it is unlikely that WGN-TV, WGN(AM) or the *Chicago Tribune* individually would be able to deliver the same level of news product each does today.²⁶ Similarly in Hartford, Tribune’s cross-ownership of WTIC-TV, WCCT-TV,²⁷ and the *Hartford*

²⁴ *Review of the Commission’s Regulations Governing Television Broadcasting, Report and Order*, 14 FCC Rcd 12,903, 12,937-38 ¶ 76 (1999) (“By excluding voluntary bankruptcy and insolvency proceedings, we hope to avoid the issue of whether an owner has filed for bankruptcy or insolvency simply in order to qualify for a waiver.”).

²⁵ Chicago Exit Application, Exhibit 16 at 36-56.

²⁶ See Chicago Exit Application, Exhibit 16 at 56-58.

²⁷ Prior to June 22, 2010, the call sign for WCCT-TV was WTXX(TV).

Courant enable each property to increase the quantity and timeliness of its news product to local residents, along with enhanced political, election and sports coverage.²⁸

Tribune also quantified the amount of news the co-owned properties offer in each market. In Chicago, for example, WGN-TV currently provides 42 hours of news per week, an increase of 10 hours per week in just the last two years, and WGN(AM) broadcasts locally produced news/talk programming 24 hours a day, seven days a week.²⁹ In Hartford, WTIC-TV currently airs 35.5 hours per week of locally-produced news and public affairs programming, more than any other station in the market and more than a tenfold increase since Tribune acquired the station, and WCCT-TV simulcasts and rebroadcasts some local news and public events programming from WTIC-TV.³⁰

Rather than acknowledge that Tribune's Chicago and Hartford properties are providing exemplary service to their local communities, IBT instead presents tortured and speculative arguments that do nothing to undermine Tribune's showing that its cross-ownership advances the public interest. First, IBT claims that Tribune's news product should be ignored in any Commission review of the cross-ownership waiver requests because the local news prong of the Commission's cross-ownership waiver review allegedly "is limited to entities that at the time of the pledge are airing no news."³¹ This proposed nonsensical standard would greatly harm the public interest. As Tribune notes in its Opposition to Interest Groups, to limit the availability of this factor only to stations never before providing news would run counter to the Commission's

²⁸ Hartford Exit Application, Exhibit 16 at 3, 35-48.

²⁹ Chicago Exit Application, Exhibit 16 at 40-42.

³⁰ Hartford Exit Application, Exhibit 16 at 3.

³¹ Petition at 11.

interest in increasing localism and diversity – a result that would bar improvement of stations’ news offerings.³²

Second, IBT argues that the Commission should disregard Tribune’s showings of its strong news product in its co-owned markets based on its speculation that Tribune’s new owners might make changes.³³ IBT, however, has no basis to assert that Tribune’s new owners would cut news programming. Mere unsupported, self-serving speculation cannot form the basis for a petition to deny.³⁴

Finally, IBT takes issue with Tribune’s factual statements that the Commission, in the *2008 Order*, determined that radio stations are less influential voices than are television stations and, therefore, that it is simpler for newspaper/radio combinations to obtain Commission approval for a cross-ownership combination.³⁵ IBT presents no logical reason why a radio station should be equated to a television station in the Tribune Chicago waiver analysis. Instead of ignoring the plain words of the Commission, IBT should acknowledge that it logically follows that adding one radio station to a newspaper/television combination is unlikely to undermine the public interest, especially in the nation’s third largest market.

³² See Opposition to Interest Groups at Sections III.C.1 and III.D.1.a.

³³ Petition at 11-12.

³⁴ See, e.g., *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14,078, 14,085 (¶ 19) (citing *California Public Broadcasting Forum v. F.C.C.*, 752 F.2d 670, 674 (D.C. Cir. 1985) (the Act “creates guidelines for the Commission to follow in dealing with such petitions to deny . . . This statutory standard puts a heavy burden on a party submitting a petition to deny . . . First the party must show the requisite specificity and support . . . dispute over the proper inferences to be drawn from agreed-upon facts does not qualify”); *Elijah Broadcasting Corporation*, Letter, 16 FCC Rcd 21,561 (MB 2001) (burden is on petition to demonstrate motive, as the Commission will not infer improper motive by speculation lacking factual support)).

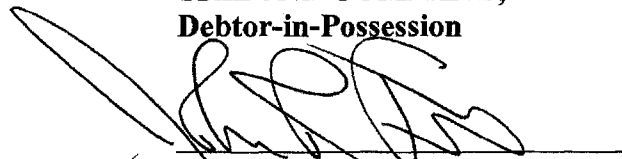
³⁵ Petition at 11; Chicago Exit Application, Exhibit 16 at 112-113; *2008 Order*, 23 FCC Rcd at 2049 & n. 220 (¶ 68).

III. CONCLUSION.

For all the foregoing reasons, Tribune respectfully requests that IBT's Petition to Deny be dismissed for lack of standing and, even if treated as an informal objection, denied.

Respectfully submitted,

**TRIBUNE COMPANY,
Debtor-in-Possession**



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June 29, 2010

Certificate of Service

I, Tammi Foxwell, hereby certify that on this 29th day of June, 2010, a copy of the foregoing Opposition to Petition to Deny of The International Brotherhood of Teamsters was served by first-class mail, postage prepaid, upon the following:

Bradley T. Raymond
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In addition, I have provided a courtesy copy of this Opposition via email to Bradley T. Raymond (braymond@teamster.org) and to all individuals listed below.

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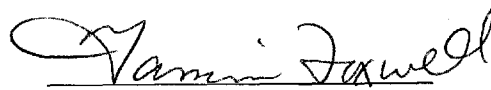
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