

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

In the Matter of)
)
Application of)
Tribune Company) MB Docket No. 10-104
and its Licensee Subsidiaries)
)
For Consent to Assignments of)
License Pursuant to a Plan of)
Reorganization)

**CONSOLIDATED REPLY OF THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS**

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July 12, 2010

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On June 14, 2010, the International Brotherhood of Teamsters (“IBT”) filed a Petition to Deny (“IBT Petition”) against the above-captioned assignment of license application (the “Application”) filed by the Tribune Company (“Tribune”). On June 29, 2010, the Tribune filed an opposition¹ and an unsecured creditors committee (the “Unsecured Creditors”) filed a memorandum in support of the Tribune.²

IBT hereby replies to both filings. IBT demonstrates that the arguments made by the Tribune and the Unsecured Creditors in opposition to the IBT Petition are without merit. In particular:

¹ Opposition to Petition to Deny of the International Brotherhood of Teamsters, MB Docket No. 10-104 (June 29, 2010) (“Tribune Opposition”).

² Memorandum of the Official Committee of Unsecured Creditors of Tribune Company, et al. (I) Supporting Tribune's FCC Applications, and (II) Supporting Tribune's Opposition to Petitions to Deny

- The Tribune and the Unsecured Creditors have not addressed the merits of IBT's position that it violates the Communications Act to cede control of the Tribune to a non-owner third party.
- IBT has standing, because it will benefit if the Application is denied or held in abeyance and it will be injured if the Application is granted.
- In its Application, the Tribune did not defeat the presumption that two of its requests for waiver of the newspaper/broadcast cross-ownership rule are contrary to the public interest. That defect in the Application was not cured in the Tribune and Unsecured Creditors oppositions.

I. THE TRIBUNE'S EMPLOYEES ARE LEGALLY ENTITLED TO HAVE A SAY IN THE FILING OF THE APPLICATION.

The heart of IBT's position is that it violates Communications Act requirements and Commission precedent for the Tribune's employees to be the owners of the company, through the Tribune ESOP Plan, but for a third party, Sam Zell, to have control of the Tribune and its board and to have decision-making authority over the filing and prosecution of the Application. Neither the Tribune nor the Unsecured Creditors attempts to show otherwise. Rather, they claim the matter has been resolved by the 2007 Memorandum Opinion and Order in which the Commission approved the transfer of control of the Tribune to Mr. Zell.³ Their claims do not withstand scrutiny.

The Tribune and the Unsecured Creditors rely on a Commission statement in the MO&O that entertaining IBT's argument would involve speculation as to whether

the Applications for Consent to Assignment of Broadcast Station Licenses, MB Docket No. 10-104 (June 29, 2010) ("Unsecured Creditors Memorandum").

³ *In the Matter of Shareholders of Tribune Company, Transferors, and Sam Zell, et al., Transferees, for Consent to the Transfer of Control of The Tribune Company, and Application for the Renewal of License of LTLA(TV), Los Angeles, California, et al.*, Memorandum Opinion and Order, FCC 07-211, MB Docket No. 07-119 (rel. Nov. 30, 2007) ("MO&O").

applicants' organizational structures could be improved.⁴ Their reliance is misplaced, however, because the Commission made its "speculation" statement in response to a different argument made by IBT, *i.e.*, that giving the Tribune's employees a voice in management would serve the public interest by enhancing diversity and localism.⁵ The statement was not directed to IBT's argument that giving Zell control when the Tribune's employees own the company violates the Communications Act and Commission requirements.

The MO&O inexplicably did not address the "Zell's control is unlawful" argument, as is evidenced by the Commission's statement in the MO&O, in the same paragraph cited by the Tribune and the Unsecured Creditors, that "[n]o 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."⁶ IBT's pending petition for reconsideration⁷ is based on the absence of a ruling on this issue, and in light of the fact that there has been no ruling, the issue remains unresolved. Given that the MO&O did not address the "Zell's control is unlawful" issue, the Tribune's and the Unsecured Creditors' citation to the MO&O on the issue is meaningless.

There is nothing speculative, moreover, about IBT's position on the unlawfulness issue. To be sure, IBT's argument in some sense involves a comparison

⁴ See Tribune Opposition, p. 3; Unsecured Creditors Memorandum, p. 14.

⁵ See Comments of the International Brotherhood of Teamsters, MB Docket No. 07-119 (June 11, 2007).

⁶ MO&O, ¶ 20.

between organizational structures. But the comparison is between the present organizational structure, which is unlawful because the company's owners do not have control, and the organizational structure required under the Communications Act, which would give control to the company's owners.

Any claim that a proposed structure is unlawful involves a similar comparison. A claim, for example, that a proposed structure violates the foreign ownership limits of the Communications Act involves a comparison between a structure that has foreign ownership in excess of those limits and a structure that is under the limits. Similarly, a claim that a proposed structure is inconsistent with the Commission's multiple ownership rules involves a comparison between a structure involving attributable interests prohibited under the multiple ownership rules and a structure in which there are no prohibited attributable interests. The Commission routinely considers such claims and should do the same in this case.

II. IBT HAS STANDING.

Notwithstanding that IBT's 1.4 million members include approximately 750 persons who work for the Tribune and tens of thousands of members and retirees residing in the markets served by the Tribune's broadcast stations, the Tribune

⁷ Petition for Reconsideration of the International Brotherhood of Teamsters, MB Docket No. 07-119 (Dec. 12, 2007).

questions IBT's standing to participate in this proceeding. The Tribune claims that IBT's concerns would not be addressed by denying the Application.⁸

The Tribune is incorrect. IBT had standing to challenge the 2007 transfer of control of the Tribune,⁹ and there is a direct link between the Commission's disposition of IBT's petition seeking reconsideration in that matter and its disposition of the IBT Petition in this proceeding.

If the above-captioned Application is granted and the proposed transaction is consummated, IBT will be harmed. In this scenario, there would no longer be a basis for granting IBT's petition for reconsideration. One of the predicates for the relief IBT sought in its petition for reconsideration – the ownership of the Tribune, through the Tribune ESOP Plan, by Tribune employees – would no longer exist.

If the above-captioned Application is denied or held in abeyance on the basis of the legal arguments presented in the IBT Petition, on the other hand, IBT will benefit. The Commission will have found in retrospect that the management structure it approved in 2007 over IBT's objection was unlawful. It also will have found that the above-captioned Application cannot be considered unless a Tribune board that has been reconstituted along the lines sought by IBT has had an opportunity to pass upon the Application. Accordingly, the harms underlying the IBT Petition "will be redressed by

⁸ See Tribune Opposition, p. 2.

⁹ Although the Tribune raised questions concerning the standing of another party in the 2007 proceeding, it did not challenge IBT's standing. See MO&O, ¶ 9.

a favorable decision”¹⁰ if the Application is denied or held in abeyance. There is no basis, therefore, for the Tribune’s challenge to IBT’s standing.

III. WAIVING THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE FOR THE CHICAGO AND HARTFORD-NEW HAVEN MARKETS WOULD BE CONTRARY TO THE PUBLIC INTEREST.

IBT previously demonstrated, and the Tribune concedes, that under the Commission’s rules there is a presumption that the Tribune’s requests for waiver of the newspaper/broadcast cross-ownership rule for the Chicago and Hartford-New Haven markets are contrary to the public interest.¹¹ IBT also has shown that in its Application the Tribune did not overcome this presumption.¹² The Tribune takes issue with elements of IBT’s prior showing, but its arguments are without merit.

The Tribune maintains that it should qualify for the “failed station” exception to the presumption.¹³ It does not dispute, however, that its bankruptcy is voluntary and that the Commission has limited the exception to cases involving involuntary bankruptcies.¹⁴ The Tribune has no answer, moreover, to IBT’s showing that the Commission cannot evaluate whether the Tribune should be treated as a failed station notwithstanding its voluntary bankruptcy without becoming embroiled in the kinds of

¹⁰ Tribune Opposition, p. 2, citing *Lujan v. Defendants of Wildlife*, 504 U.S. 555, 561 (1992).

¹¹ IBT Petition, pp. 8-9.

¹² IBT Petition, pp. 9-12.

¹³ Tribune Opposition, p. 6.

¹⁴ Tribune Opposition, p. 6.

determinations it was trying to avoid by adopting a prophylactic, “only involuntary bankruptcies” requirement.¹⁵

The Tribune also attempts to justify waivers based on the levels of news programming provided by the Tribune at present in the Chicago and Hartford-New Haven markets.¹⁶ It does not meaningfully respond, however, to IBT’s showing that what matters for public interest purposes is not current levels but rather the levels of news programming that would be provided if, as is proposed, control of the Tribune is transferred to creditors who are not in the broadcast business.¹⁷ The burden is on the Tribune to overcome the presumption that its Chicago and Hartford-New Haven requests should be denied. Absent a commitment from the proposed new owners that they would maintain current levels of news programming, and no such commitment has been made, one can only speculate as to the amount of news that would be provided if waivers were granted. It takes more than speculation to overcome a presumption.

¹⁵ See IBT Petition, p. 10.

¹⁶ Tribune Opposition, pp. 7-8.

¹⁷ IBT Petition, pp. 11-12.

CONCLUSION

Accordingly, and for the reasons stated herein and in the IBT Petition, the Commission should: (1) deny the Application or hold it in abeyance until Tribune's board has been reconstituted in accordance with Commission requirements and the reconstituted board has had an opportunity to pass upon the Application; and (2) deny the newspaper/broadcast cross-ownership waiver requests for the Chicago and Hartford-New Haven markets.

Respectfully submitted,

INTERNATIONAL BROTHERHOOD OF
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consolidated Reply was sent via electronic mail,* this 12th day of July, 2010, to:

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*By agreement with counsel