

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

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

**CONSOLIDATED OPPOSITION TO PETITIONS TO DENY  
OF JP MORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT UNDER  
THE TRIBUNE COMPANY CREDIT AGREEMENT DATED MAY 17, 2007**

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JPMorgan Chase Bank, N.A. (“JPMorgan”) hereby opposes the Petitions to Deny filed in the above-referenced proceeding by (1) the International Brotherhood of Teamsters (“IBT”), (2) Media Access Project and the Institute of Public Representation at Georgetown Law Center on behalf of Free Press, Media Alliance, NABET/CWA, National Hispanic Media Coalition, Office of Communication of the United Church of Christ, Inc., and Charles Benton (“MAP/GL”), (3) Neil Ellis (“Ellis”), and (4) Wilmington Trust Company (“WTC”) (collectively “petitioners”). JPMorgan is the Administrative Agent under the Tribune Company (“Tribune”) Credit Agreement dated May 17, 2007. As set forth in the assignment applications that are the subject of this proceeding (the “Exit Applications”),<sup>1</sup> JPMorgan’s current debt in Tribune will be converted into more than five percent of Tribune’s New Class A Common Stock under

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<sup>1</sup> See, e.g., FCC File No. BALCDT-20100428AEL, Comprehensive Exhibit, Description of Transaction, Agreement for Assignment of Licenses, Parties to Applications, Other Media Interests, and Compliance with Foreign Ownership Restrictions (“Comprehensive Exhibit”).

Tribune's proposed Plan of Reorganization ("Plan"), and accordingly JPMorgan will hold an attributable ownership interest in Reorganized Tribune upon the company's emergence from bankruptcy.<sup>2</sup>

## **I. INTRODUCTION AND SUMMARY**

In this proceeding, Tribune seeks consent from the FCC to emerge from bankruptcy and continue its current operations. In order to accomplish these objectives, the company has proposed an ownership structure pursuant to which it will distribute virtually all of its New Common Stock to its existing creditors. Tribune's Plan will ensure that any attributable shareholder will comply with the FCC's multiple ownership rules and that the company will conform to the FCC's foreign ownership limitations. Tribune also is requesting permanent or, in the alternative, temporary waivers of the FCC's newspaper/broadcast cross-ownership ("NBCO Rule") and a continued permanent waiver of the FCC's Local Television Ownership Rule.

The parties attempting to block Tribune's efforts have a narrow range of interests that are unrelated to this proceeding and/or reflexively oppose the requested waivers without taking into account the circumstances of the combinations in question. Obviously falling into the first category is WTC, a holder of deeply subordinated Tribune notes which is vigorously arguing in the bankruptcy proceeding that it nonetheless is entitled to equity in, or otherwise should be compensated by, Reorganized Tribune. WTC's petition is a transparent ploy to gain leverage in its efforts to obtain a settlement from Tribune and its other creditors. MAP/GL is the representative of self-described opponents of virtually all forms of broadcast group ownership. As longstanding

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<sup>2</sup> JPMorgan understands that Tribune intends to file four Oppositions to the petitions and hereby states that it supports each of those filings.

opponents of the Tribune combinations, these parties mechanically oppose the Chicago and Hartford combinations as a form of “media consolidation” while continuing to turn a blind eye to the realities of the marketplace and the extensive benefits combined ownership has brought to the communities in question. Mr. Ellis is a newspaper publisher with parochial competitive concerns whose objections to the Hartford combination echo those of MAP/GL. Finally, IBT, a labor union with some Tribune employee members, is pursuing an alternative, “employee-controlled” ownership structure for Tribune that is not properly under consideration at the FCC.

WTC raises a number of criticisms of Tribune’s proposed Plan that misconstrue the Commission’s rules and distort the underlying facts. WTC asserts that it would be premature for the FCC to process the Exit Applications because the “fraudulent conveyance” claims that have been raised in the bankruptcy proceeding, and the forthcoming report from an independent Examiner evaluating these issues, may dramatically change the proposed Plan. This argument, however, amounts to little more than pure fancy, given the chain of highly implausible events that would have to occur in order for the fraudulent conveyance claims to have any material impact on the proposed Plan. In order for the scenario suggested by WTC to come to fruition, separate causes of action would need to be filed either by or on behalf of Tribune and, with respect to those claims, a series of wholly unprecedented and unrealistic victories would have to be achieved.

WTC’s suggestion that the Examiner’s report will be relevant to the FCC’s consideration of the character qualifications of Tribune or other parties is similarly far-fetched. Because the issues being considered by the Examiner and other generalized

allegations of wrongdoing are wholly speculative and have not been adjudicated, these allegations have no relevance to the instant applications. And, even in the unlikely event that these issues ever were to be resolved in the manner hypothesized by WTC, they still would not be relevant to the qualifications of either Tribune or its proposed shareholders.

In addition, WTC reflects significant confusion about the FCC's rules in complaining about Tribune's proposed use of warrants to address potential foreign ownership issues. Warrants are routinely used in FCC proceedings, and the agency has approved several transactions during the past year alone in which warrants have been used to deal with analogous foreign ownership concerns. Further, in contending that the owners of Reorganized Tribune are "unknown and unknowable" or that the disclosures in the applications somehow fall short of FCC requirements, WTC appears to be jumbling the concepts of attribution and foreign ownership. In reality, Tribune's disclosures are in full compliance with the Commission's standards, and the applicants have put in place a detailed plan to address any foreign ownership issues that may arise upon Tribune's emergence from bankruptcy.

Likewise, in questioning Tribune's proposed use of New Class B Common Stock to address potential conflicts with the FCC's multiple ownership rules, WTC either is unaware of or blithely ignores the fact that both the courts and the Commission have approved the use of stock with characteristics nearly identical to the New Class B Common Stock proposed in the Tribune Plan. In fact, one such approval was issued this year by the same judge who is presiding over the Tribune bankruptcy.

Turning to the requests to have the Commission dismantle Tribune's longstanding combinations in Chicago and Hartford, MAP/GL and other petitioners essentially ask the

FCC to ignore the unprecedented financial challenges, intense competitive realities, ever-accelerating technological advances, and continuing regulatory uncertainty that broadcasters and newspaper publishers are facing in today's marketplace. According to MAP/GL, these considerations are not germane because they do not relate solely and exclusively to the combinations in question. But, as Tribune demonstrated in its waiver requests, the severe marketplace conditions and regulatory limbo in which all newspaper publishers and broadcasters, including Tribune, currently operate are direct evidence of the need for approval of these specific waivers.

In asking the FCC to deny Tribune's request to maintain its Chicago combination, petitioners disregard that this pioneering combination has been in existence for 62 years, was grandfathered by the Commission in 1975, and just was recently granted a permanent waiver. To reverse course and require that Tribune break up this combination now, when the company is seeking only to maintain its current combinations as it emerges from bankruptcy, would be arbitrary and draconian, and unquestionably adverse to the interests of Chicago residents. In any case, Tribune demonstrated in the applications that it should qualify for a waiver of the NBCO Rule under the standards now in effect, and MAP/GL's arguments to the contrary do not seriously call this showing into question. In particular, these petitioners would have the agency overlook the long and outstanding history of local news and informational services each of the Chicago properties already provides to its community, simply because these commitments would not be "new" post-emergence. Such an outcome would be an overly literalistic interpretation of the four-factor test and would undermine the localism goals the FCC attempts to promote via the revised rule.

Tribune's Hartford combination also is well-deserving of a permanent NBCO waiver, as well as a continuing failing station waiver for WCCT-TV (formerly WTXX(TV)). Notwithstanding petitioners' claim that Tribune has circumvented the FCC's rules by maintaining this combination, the company is holding each of its Hartford properties pursuant to express Commission authority. Once again, petitioners seek to turn Tribune's proven commitment to local news and community service on its head by arguing that these past efforts should count for nothing under the local news component of the four-factor test. But, if anything, Tribune's current and past operation of the Hartford properties provides the best form of assurance that the benefits of cross-ownership will continue to be realized through grant of a waiver.

Finally, the FCC already twice has determined that WCCT-TV meets all of the criteria for a failing station waiver, and it is hard to imagine how the agency could take a different view in the context of Tribune's emergence from bankruptcy. Petitioners' primary argument for the FCC to reach a contrary result—that the company has made insufficient efforts to sell WCCT-TV—simply is inapposite because Tribune has been under no obligation to sell the station since 2007 and would have had no real prospect of a sale in view of the economic downturn and subsequent bankruptcy proceeding.

The FCC should move forward promptly and grant Tribune permanent waivers in Chicago and Hartford as well as in Los Angeles, Miami, and New York, so that the company may proceed with a prompt and orderly emergence from bankruptcy. In the event that the Commission finds that a temporary waiver is more appropriate for any of the requested waivers, however, an 18-month period following the outcome of the FCC's

ongoing broadcast ownership review is entirely reasonable in light of the company's circumstances and the realities of the marketplace.

## **II. PETITIONERS MISCHARACTERIZE THE CIRCUMSTANCES AND ECONOMIC CONDITIONS SURROUNDING THE PROPOSED EXIT TRANSACTIONS.**

Petitioners expend much effort trying to paint Tribune and its creditors as bad actors. In particular, WTC and MAP/GL assert that Tribune's creditors and management either purposely or negligently, and purportedly in order to further their own interests, drove the company into bankruptcy following the transfer of control of Tribune to Mr. Zell in 2007.<sup>3</sup> Petitioners cite no evidence showing that these allegations amount to anything more than litigation-driven posturing. More importantly, the merits of the Plan and the fairness of the proposed settlement among Tribune's creditors are being evaluated and will be resolved by the bankruptcy court. In particular, as both WTC and MAP/GL acknowledge, allegations that the Tribune bankruptcy was the result of a "fraudulent conveyance" are being actively contested in the bankruptcy court overseeing Tribune's Chapter 11 cases,<sup>4</sup> which is the appropriate forum for consideration of this issue. As

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<sup>3</sup> See WTC Petition at 5-7; MAP/GL Petition at 12; see also IBT Petition at 4-5. WTC, for example, declares that the Zell transactions intentionally were structured "to subject Tribune to an unsustainable debt burden" and that "there is no doubt" that this restructuring "left Tribune insolvent," thereby making "the present bankruptcy inevitable." WTC Petition at 12. WTC further alleges that "Tribune's directors and officers breached their fiduciary duties" in executing the Zell deal and that "Tribune naively, at best, or more likely, irresponsibly, led the Commission into believing that it . . . could operate its licenses in a fiscally responsible manner. . . ." *Id.* at 6. MAP/GL includes similar allegations in its petition, which notably are supported by a citation to a WTC filing in the Tribune bankruptcy proceeding. See MAP/GL Petition at 15 ("Tribune, Zell and the Lead Banks structured the [2007 Leveraged Buyout] knowing that it would add a tremendous amount of debt to Tribune and render it insolvent.") (citing [Amended] Complaint for Equitable Subordination of and Disallowance of Claims, Damages, and Constructive Trusts, Wilmington Trust Co. v. JP Morgan Chase Bank, N.A. *et. al*, No. 08-13141 (Bankr. D.Del. Mar. 4, 2010).

<sup>4</sup> See WTC Petition at 2 (noting that Tribune's LBO "is the subject of intense public and judicial scrutiny"); MAP/GL Petition at 14-15.

explained in more detail below, there is no basis for the Commission to take these speculative claims into account.<sup>5</sup>

Petitioners also greatly misconstrue the series of events and decisions, as well as the larger economic trends and conditions, that led to Tribune's bankruptcy filing in 2008. The supposition that either Tribune or its creditors engineered or have benefited from the present bankruptcy cases ignores all context. As demonstrated more fully in the Exit Applications and accompanying requests for waiver of the NBCO Rule, newspaper publishers and broadcasters have faced unforeseen and unprecedented financial challenges over the past couple of years.<sup>6</sup> During this trying period, the newspaper industry experienced a series of severe revenue losses that forced long-established newspapers in major, medium, and smaller markets to shut down and compelled even comparatively healthy publications to take drastic cost-cutting measures, such as closing domestic and foreign bureaus and laying off highly valued journalists and other personnel.<sup>7</sup> The broadcast industry has experienced similar financial stresses.<sup>8</sup> During 2008 and 2009, the revenues earned by television broadcasters industry wide declined nearly 30 percent and fell to the lowest levels the industry had experienced since the 1990s.<sup>9</sup>

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<sup>5</sup> See Sections III.A, B, *infra*.

<sup>6</sup> See, e.g., FCC File No. BALCDT-20100428AEL, Exhibit 16, Request for Cross-Ownership Waiver at 21-34 ("Chicago NBCO Waiver Showing").

<sup>7</sup> See *id.* at 22-27.

<sup>8</sup> See *id.* at 32-34.

<sup>9</sup> *Id.* at 32.

As a direct result of these often insurmountable economic adversities, bankruptcies in the newspaper and broadcasting industries unfortunately have been commonplace in recent years. Since December 2008, when Tribune filed for bankruptcy protection, at least eight other major newspaper publishers (collectively representing more than 130 daily and more than 280 weekly publications) also filed bankruptcy cases.<sup>10</sup> A significant number of large broadcast companies also have sought bankruptcy protection.<sup>11</sup> Thus, notwithstanding petitioners' intimations to the contrary, Tribune's bankruptcy is hardly unique in the media industry, nor should the bankruptcy itself be construed as evidence of mismanagement or poor judgment.

In any event, petitioners' insinuations that Tribune's creditors have sought to undermine the company are illogical on their face and oversimplify a highly complex series of transactions.<sup>12</sup> JPMorgan and other creditors financed the 2007 transactions with an expectation that they would be repaid in full. At that time, this supposition was reasonable in light of the then-strong economy, Tribune's robust broadcast operations, Tribune's marketable assets, and its publishing division, which enjoyed advertising revenues which had *increased* during the previous recession.<sup>13</sup> However, instead of having these expectations fulfilled, Tribune's prepetition senior lenders will receive

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<sup>10</sup> *See id.* at 23-24.

<sup>11</sup> For example, recent broadcast bankruptcies have included ION Media Networks, Citadel Broadcasting, Freedom Communications, Inc., New Vision Television, Young Broadcasting, and NextMedia Group, Inc. *See* note 45, *infra*.

<sup>12</sup> *See* WTC Petition at 5-6; MAP/GL Petition at 15.

<sup>13</sup> Tribune Company Annual Report for Fiscal Year Ending 12/28/2003 (Form 10-K) (filed Feb. 27, 2004), available at <http://www.sec.gov/Archives/edgar/data/726513/000104746904005918/a2129212z10-k.htm> (last visited Jun. 28, 2010).

pennies on the dollar for their original investments under the Plan.<sup>14</sup> Such losses, which amount to billions of dollars in total, certainly do not benefit the current owners of Tribune or its lenders. Petitioners' apparent belief that JPMorgan or other creditors had nefarious intentions to overload the company with debt are wholly unsubstantiated and, when examined against these realities, simply do not hold water. The more straightforward truth is that both Tribune and its creditors have been subject to economic forces that neither could control.

**III. PETITIONERS' OBJECTIONS TO THE PLAN OF REORGANIZATION ARE BASED ON UNFOUNDED CLAIMS THAT ARE IRRELEVANT TO THE INSTANT PROCEEDING AND REFLECT A FUNDAMENTAL MISUNDERSTANDING OF APPLICABLE FCC STANDARDS.**

WTC makes a variety of claims regarding (i) the propriety and the alleged prematurity of the Commission's review of the Exit Applications because the Plan remains under consideration by creditors and the bankruptcy court, (ii) the need to consider alleged "character" issues involving Tribune and its creditors due to the appointment by the court of an Examiner (at WTC's request) to review claims that Tribune's 2007 recapitalization and merger constituted a fraudulent conveyance, (iii) the completeness of the information contained in the Exit Applications and the use of warrants to resolve potential foreign ownership issues, and (iv) the use of Class B Common Stock to resolve potential attribution issues.

As an initial matter, WTC's appearance before the FCC in this proceeding is suspect. As described further below, WTC's debt in Tribune is deeply subordinated and, accordingly, it is not entitled to receive equity in Tribune post-emergence or otherwise to

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<sup>14</sup> See Disclosure Statement for Amended Joint Plan of Reorganization for Tribune Company and Its Subsidiaries at 12-15, Tribune Company, *et al.*, Debtors, Jointly Administered, No. 08-13141 (Bankr. D.Del. Jun. 4, 2010) ("Disclosure Statement").

be compensated under the proposed Plan.<sup>15</sup> Its motivation for participating in the instant proceeding—to gain leverage with respect to its deeply subordinated claims against Tribune—is both transparent and unrelated to any issues relevant to the FCC.<sup>16</sup> In any case, as discussed more fully below, WTC’s complaints are without merit. To the contrary, not only is it appropriate for the Commission to consider the Exit Applications,

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<sup>15</sup> See *id.* at 13.

<sup>16</sup> In fact, it appears that WTC lacks standing to oppose the instant exit transactions. The Commission and courts have made clear that the test for determining whether a would-be petitioner is a “party in interest” under the Communications Act is closely grounded in the same considerations that are relevant to a determination of Article III standing for purposes of judicial proceedings. In that context, petitioners must satisfy the three elements that form the “irreducible constitutional minimum” of standing: (1) a “concrete and particularized” injury that is “actual or imminent, not ‘conjectural’ or ‘hypothetical;’” (2) a “causal connection” between the injury and the conduct complained of; and (3) a showing that it is “likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal citations omitted); see also *Rainbow/PUSH Coalition v. FCC*, 396 F.3d 1235, 1240 (D.C. Cir. 2005). Similarly, to qualify as an economic party in interest under Section 309(d) of the Communications Act, a petitioner must show a “direct and immediate injury and not merely nominal or speculative injury.” 47 U.S.C. § 309(d); *WLVA, Inc. v. FCC*, 459 F.2d 1286, 1298 n.36 (D.C. Cir. 1972); see *Nat’l Broad. Co. v. FCC*, 132 F.2d 545, 548 (1942), *aff’d*, 319 U.S. 239 (1943). In addition, the petitioner must demonstrate that there is a causal link between the claimed injury and the challenged Commission action, *i.e.*, that the injury would be prevented or redressed by the relief requested. See *Rainbow/PUSH Coalition*, 396 F.3d at 1240; *MCI Comm’ns Corp.*, 12 FCC Rcd 7790, 7794 (¶ 11) (1997); *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, Memorandum, Opinion and Order, 82 FCC 2d 89, 96 (¶ 11) (1982). WTC cannot point to any cognizable injuries that can be redressed by an FCC decision in this proceeding. To the contrary, WTC’s alleged financial injuries (as deeply subordinated unsecured creditors) properly can be resolved only through the bankruptcy proceeding. See WTC Petition at 4. As noted above, grant of the Exit Applications and requested waivers in fact would *benefit* any party with a legitimate claim to a future interest in Tribune.

Similarly, IBT has not demonstrated that it has standing as a petitioner to deny Tribune’s Exit Applications. As discussed below, see note 32, *infra*, IBT’s only specific asserted grievance relates to the management of the employee stock option plan established in connection with the 2007 transfer of control of Tribune—an issue that should have been addressed in another forum at the time and is not within the scope of the FCC’s role in reviewing the instant applications. IBT refers to members who “resid[e] in the affected markets,” IBT Petition at 2, but offers no specific information in support of this statement, nor does it include the required affidavits or declarations from such members. See *Rainbow/PUSH Coalition*, 396 F.3d at 1240. In any case, it is unclear what legitimate grievance IBT has with respect to Tribune’s proposed Plan. Notably, the Plan provides that Reorganized Tribune will assume and accept all Collective Bargaining Agreements that remain in effect as of the emergence date, including those to which IBT is a party. See Disclosure Statement at 41-42.

but the Plan, for which Tribune currently is soliciting the creditors' acceptances, is fully consistent with both FCC and bankruptcy precedents.

**A. It Is Appropriate, and Fully Consistent with Precedent, for the Commission to Consider the Exit Applications.**

WTC contends that the Exit Applications “are not appropriately submitted at this juncture.”<sup>17</sup> According to WTC, this is because approval of Tribune’s Plan is “highly uncertain”<sup>18</sup> and the proposed ownership structure of Reorganized Tribune will not “pass muster” at the FCC.<sup>19</sup> As shown below, all of WTC’s claims about the proposed ownership structure of Tribune are misguided and distorted.<sup>20</sup> Far from being premature, moreover, the Commission’s consideration of the Exit Applications is fully consistent with routine FCC practice and procedure and will further the public interest by allowing Reorganized Tribune to emerge from bankruptcy as soon as practicable after the Plan is approved by the court.

1. *The Examiner’s Report Provides No Reason for the Commission to Delay Consideration of the Exit Applications.*

The Examiner’s investigation centers on possible claims and defenses arising from Tribune’s recapitalization and merger in 2007, including arguments that these transactions constituted a “fraudulent conveyance.” WTC’s assertion that the investigation is likely to result in “significant” changes to the ownership structure and

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<sup>17</sup> WTC Petition at 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*; *see also id.* at 11-13.

<sup>20</sup> *See* Sections III.C, D, *infra*.

management of Reorganized Tribune is unfounded.<sup>21</sup> In reality, a lengthy and highly implausible chain of events would have to occur in order for the investigation to have any material impact on the ownership or management of Reorganized Tribune. Accordingly, there is no basis for the FCC to delay its consideration of the Exit Applications pending the outcome of the report.

The Examiner's report will aid parties in interest in determining whether to support the Plan, and will assist the court in evaluating the reasonableness of the settlement embodied in the Plan during the confirmation process. Importantly, while the report will provide the court with an independent evaluation of conflicting claims raised in the bankruptcy proceedings, it will not constitute a formal ruling.

In order for WTC's fraudulent conveyance claims even to be litigated on the merits, separate causes of action would need to be filed.<sup>22</sup> In this regard, it is important to note that fraudulent conveyance claims raised in a bankruptcy proceeding properly belong to the debtors (here, the Tribune companies) and could not be brought by WTC absent a grant of standing by the court. Indeed, there is currently pending a motion by Tribune seeking to have WTC held in contempt of court for improperly attempting to take control of the alleged fraudulent conveyance claims from the debtors in violation of the automatic stay.<sup>23</sup> If the debtors do not bring the claims, the most likely party to be

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<sup>21</sup> WTC Petition at 11.

<sup>22</sup> The Plan includes a settlement of the fraudulent conveyance allegations and all other claims that have been raised in the bankruptcy proceeding. In evaluating confirmation of the Plan, the bankruptcy court will assess the fairness and reasonableness of that settlement. Indeed, in order for the process of litigating the fraudulent conveyance claims even to begin, the Plan would have to fail and separate causes of action would need to be filed.

<sup>23</sup> See Motion to Show Cause (Motion of the Debtors for an Order (I) Determining that Wilmington Trust Company Has Violated Automatic Stay, (II) Requiring Wilmington Trust Company to Show Cause Why It Should Not Be Held in Contempt of Court, and (III) Halting All Proceedings with Respect to the

given standing to prosecute them on behalf of the debtors would be the Unsecured Creditors' Committee, which is statutorily appointed to represent the interests of all unsecured creditors (including WTC, a member of the Committee). Notably, however, the Creditors' Committee has indicated that it strongly supports the Plan and believes that the settlement contained in the Plan is reasonable.<sup>24</sup>

Even assuming that these claims ultimately are litigated, the worst case scenario noted by WTC—that the bankruptcy court would “void” the rights of certain parties to the Exit Applications to receive Tribune stock under the Plan<sup>25</sup>—is wholly speculative and exceedingly unlikely. There are numerous, substantial obstacles that would have to be surmounted in order for WTC to realize any recovery whatsoever from a theoretical fraudulent conveyance cause of action. WTC is indenture trustee for a class of notes (the so-called “PHONES”) that is subordinated to all other funded debt of Tribune.<sup>26</sup> In

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Complaint), Tribune Company, *et al.*, Debtors, Jointly Administered, No. 08-13141 (Bankr. D.Del. Mar. 18, 2010).

<sup>24</sup> See Disclosure Statement at 6.

<sup>25</sup> WTC Petition at 12.

<sup>26</sup> Pursuant to Article XIV of the PHONES Indenture, the PHONES are “expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness,” including either “debt outstanding on the date of the Indenture or thereafter incurred.” Tribune Company, Issuer, and Bank of Montreal Trust Company, Trustee, Indenture, Subordinated Debt Securities (Apr. 1, 1999), Exhibit 4 to Tribune Company Form 8-K (filed Apr. 9, 1999), available at <http://www.sec.gov/Archives/edgar/data/726513/0000950131-99-002191.txt> (last visited Jun. 29, 2010). As broadly defined in the Indenture, “Senior Indebtedness” means the principal of (and premium, if any) and interest on . . . and other amounts due on or in connection with any Indebtedness of the Company incurred, assumed or guaranteed by the Company, whether outstanding on the date of this Indenture or hereafter incurred, assumed or guaranteed and all renewals, extensions and refundings of any such Indebtedness of the Company; provided, however, that the following will not constitute Senior Indebtedness: (A) any Indebtedness of the Company as to which, in the instrument creating the same or evidencing the same or pursuant to which the same is outstanding, it is expressly provided that such Indebtedness of the Company shall be subordinated to or *pari passu* with the Securities; (B) Indebtedness of the Company in respect of the Securities; (C) any Indebtedness of the Company constituting trade accounts payable arising in the ordinary course of business; and (D) any Indebtedness of the Company to any Subsidiary of the Company. *Id.* at § 14.01.

exchange for receiving a higher interest rate than other classes of debt, holders of the PHONES assumed the risks of their deeply subordinated position in Tribune's capital structure. Under the terms of the PHONES indenture, all senior debt, including over \$10 billion in senior debt and approximately \$1.283 billion in debt held through bonds, is entitled to be paid in full before the PHONES receive any recovery. Because of the PHONES' deeply subordinated position, they are not entitled to any recovery under the Plan. In order for WTC to overcome its current out-of-the-money status in the bankruptcy proceeding, the debtors or another party granted standing to bring fraudulent conveyance claims would have to prevail on each and every question of fact and law, and all of the senior debt of the company would have to be wiped out at both the parent and guarantor subsidiary levels. The combination of such a litigated result and such a remedy would be unprecedented in a bankruptcy case of this nature.

But even if this highly improbable outcome were to occur, the proposed structure of Reorganized Tribune still would not be significantly affected. If the debtors or another representative of their interests ultimately were to prevail notwithstanding the many obstacles set forth above, the PHONES would own only a small percentage of Reorganized Tribune's equity. Pursuant to the Plan, no single shareholder or group of shareholders will be in control of Tribune upon its emergence from bankruptcy, and it is virtually unimaginable that the proposed widely-held control structure of Reorganized Tribune would change prior to Plan confirmation.

2. *The FCC Routinely Considers Applications Seeking Consent to a Company's Emergence From Bankruptcy During the Pendency of the Bankruptcy Proceeding.*

In addition, WTC's suggestion that the current proceeding may be "a waste of the Commission's time"<sup>27</sup> disregards the FCC's well-established procedures. In order to be able to issue a decision as promptly as possible following entry of a bankruptcy court's confirmation order, the agency's routine practice is to review applications for consent to emerge from bankruptcy during the pendency of a bankruptcy proceeding. This approach appropriately recognizes that timely and efficient processing of applications for consent to emerge from bankruptcy advances the interests of the public, licensees, and creditors. In fact, the FCC has followed this approach in approving several bankruptcy transactions during the past year, including those involving ION Media Networks, Inc. and Citadel Broadcasting Corporation.<sup>28</sup> There is no credible reason for the FCC to depart from its normal process here.

Notably, the bankruptcy proceeding is moving forward expeditiously. Tribune, which currently has the exclusive right to have a proposed plan of reorganization considered by creditors and the court, has submitted its Plan for consideration and approval. The company is in the process of soliciting approval of the Plan by its creditors, with votes due no later than July 30, and a confirmation hearing is scheduled for August 16.<sup>29</sup> Given this timetable, there is no reason for the FCC to defer its review

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<sup>27</sup> WTC Petition at 12.

<sup>28</sup> See note 45, *infra*; see also Tribune Company Opposition to Petition to Deny of Wilmington Trust Company, MB Docket No. 10-104, at Section II (filed Jun. 29, 2010).

<sup>29</sup> The Examiner recently requested a two week extension of the deadline for delivery of his report. See Motion of Court-Appointed Examiner, Kenneth N. Klee, Esq., for Extension of Report Deadline, Tribune Company, *et al.*, Debtors, Jointly Administered, No. 08-13141 (Bankr. D.Del. Jun. 23, 2010). Although it

of the Exit Applications and needlessly delay Tribune's ability to emerge from bankruptcy.<sup>30</sup> Thus, far from "wasting" the FCC's time, Commission review of the Exit Applications will enable the agency to issue its decision promptly following issuance of the bankruptcy court's confirmation order.

Moreover, both Tribune's proposed settlement with its creditors and the fraudulent conveyance issues raised in WTC's petition are within the jurisdiction of the bankruptcy court. The FCC has recognized that "the public interest is generally best served by deferring to the findings of the court," noting that to the extent there is a dispute with the bankruptcy court ruling, the "remedy lies in an appeal to the appropriate federal court, and not to the Commission."<sup>31</sup> And, as set forth in Tribune's initial filing, the Commission is obliged to reconcile its policies with those underlying the bankruptcy

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is possible that there will be a short delay in confirmation as a result, any such delay is not expected to be significant.

<sup>30</sup> See, e.g., *Coram Healthcare Corp.*, 315 B.R. 321, 329 (Bankr. D. Del 2004). In addition, MAP/GL's suggestion that the FCC should resolve the pending petition for reconsideration of the 2007 Zell transaction before moving forward with its review in the instant proceeding is a red herring that is both substantively and procedurally defective. See MAP/GL Petition at 19. First, it bears emphasis that the petition for reconsideration to which MAP/GL refers did not request that the Commission "reverse" the Zell transaction, as petitioners now ask the FCC to do. Rather, MAP/GL's 2007 petition for reconsideration challenged only (i) the FCC's determination that certain participants in the Zell proceeding lacked proper standing and (ii) the grant of a permanent waiver with respect to Tribune's Chicago combination. See Petition for Reconsideration of Institute for Public Representation, Georgetown University Law Center and Media Access Project, MB Docket No. 07-119 (filed Dec. 31, 2007). More fundamentally, and as explained in more detail in Tribune's Opposition to MAP/GL, petitioners' effort to use their previous petition for reconsideration as a mechanism to derail the instant Exit Applications is misguided, given the intervening bankruptcy of Tribune, as well as the FCC's prior approval of the assignments of Tribune's broadcast licenses from their previous licensees to those same licensees as "debtors-in-possession." See Tribune Company Opposition to Petition to Deny of Media Access Project, Free Press, Media Alliance, NABET/CWA, National Hispanic Media Coalition, Office of Communication of the United Church of Christ, Inc., and Charles Benton, at II.A., MB Docket 10-104 (filed Jun. 29, 2010) ("Tribune MAP Opposition"); Comprehensive Exhibit at 2-3. The Commission's approval of those assignments renders moot MAP/GL's claim, which is fanciful in any case, that the FCC somehow could use the prior request for reconsideration to "recover" Tribune's licenses and "make them available to others." MAP/GL Petition at 19.

<sup>31</sup> *Dale J. Parsons, Jr.*, Memorandum Opinion and Order, 10 FCC Rcd 2718, 2720 (¶¶ 11, 13) (1995).

laws and to afford comity to the bankruptcy process in the interest of protecting creditors and providing a “fresh start” to debtors.<sup>32</sup> Thus, it is entirely within the bankruptcy court’s province to consider whether the proposed settlement reflected in the Plan is reasonable.<sup>33</sup>

**B. The Plan and Exit Applications Do Not Present Any Issues Concerning the Qualifications of the Proposed New Owners.**

Ignoring extensive and consistent FCC precedent, WTC further suggests that the allegations that WTC itself has raised in the bankruptcy proceeding should bear on the Commission’s consideration of the character qualifications of Tribune and certain parties to the Exit Applications. These arguments fail on multiple levels.

First, of course, the agency’s review of character qualifications is limited to adjudicated findings, not unresolved allegations.<sup>34</sup> Because the fraudulent conveyance

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<sup>32</sup> See, e.g., Chicago NBCO Waiver Showing at 105-08.

<sup>33</sup> In addition, IBT’s peculiar request to have the FCC either “hold in abeyance” or “dismiss” the Exit Applications is entirely misplaced in this proceeding. See IBT Petition at 7. IBT specifically asks the FCC to stop processing the instant applications so that the post-bankruptcy structure of the company theoretically could be re-designed by a newly constituted, employee-controlled Board of Directors. *Id.* In essence, IBT is asking the FCC to approve a corporate structure that never has been presented to the agency and, indeed, has not even been proposed in the ongoing bankruptcy proceeding. As such, its request is far outside the bounds of the FCC’s jurisdiction. Section 310(d) of the Communications Act makes clear that the FCC may not consider hypothetical alternatives to licensing applications that are presented to it. 47 U.S.C. § 310(d) (“[T]he Commission *may not consider* whether the public interest, convenience, or necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.”) (emphasis added); see also *Plough Broad. Co.*, 70 F.C.C.2d 683, 693 (¶ 16) (1978) (refusing to consider argument that an assignment to a different party might have increased minority ownership). Indeed, in rejecting similar requests that IBT made to the Commission in the context of the Zell transaction, the FCC made clear that it was not in a position to consider whether the organizational structure of the transfers proposed in that proceeding “hypothetically could be changed to better serve the public interest.” *Shareholders of Tribune Co.*, Memorandum Opinion and Order, 22 FCC Rcd 21,266, 21,272 (¶ 20) (2007), *appeal pending sub nom. Tribune Co. v. FCC*, Nos. 07-1488, 07-1489 (D.C. Cir. filed Dec. 3, 2007) (“2007 Tribune Order”).

<sup>34</sup> *Policy Regarding Character Qualifications in Broad. Licensing; Amendment of Rules of Broad. Practice and Procedure Relating to Written Responses by Comm’n Inquiries and the Making of Misrepresentations to the Comm’n by Permittees and Licensees*, Report, Order and Policy Statement, 102 F.C.C.2d 1179 (¶ 46) (1986) (“*Policy Statement*”); see also *Policy Regarding Character Qualifications in Broad. Licensing*, Memorandum Opinion and Order, 6 FCC Rcd 3448, 3448-49 (¶ 6) (1991) (“The Commission generally

claims that WTC relies upon are wholly speculative and far from being resolved by a court or other government agency, these allegations have no relevance whatsoever to the Commission’s consideration of the instant applications. As explained above, not only is there no court order or finding of any wrongdoing, there is not even a pending action alleging any misconduct.<sup>35</sup>

Second, it is well-established that an adjudicated decision regarding “non-FCC misconduct” is relevant to an applicant’s character qualifications before the Commission “only where . . . that adjudication falls into one of the . . . categories of [relevant] non-FCC behavior.”<sup>36</sup> As WTC itself acknowledges, the agency’s evaluation of an applicant’s character qualifications is “circumscribed” in this regard.<sup>37</sup> Here, even assuming that an ultimate finding were to be made, it is highly unlikely that any finding regarding a fraudulent conveyance would fall within an area of expressed agency concern.<sup>38</sup>

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does not have the expertise or resources to resolve questions of state or federal law outside its principal area of jurisdiction, and it is generally more efficient to allow other forums to resolve such matters and for us to focus on adjudicated misconduct.”).

<sup>35</sup> See Section III.A.1, *supra*.

<sup>36</sup> *Policy Statement*, 102 F.C.C.2d at 1204 (¶ 46).

<sup>37</sup> See WTC Petition at 12.

<sup>38</sup> Concluding that it is concerned only with “non-FCC behavior . . . which allows us to predict whether an applicant has or lacks the character traits of ‘truthfulness’ and ‘reliability,’” the Commission delineated three specific types of non-FCC “adjudicated misconduct” that are relevant to an applicant’s character qualifications: (1) fraudulent statements to government agencies; (2) certain criminal convictions; and (3) violations of media-related anti-competitive and antitrust statutes. *Policy Statement*, 102 F.C.C.2d at 1195 (¶ 34); see also *Policy Regarding Character Qualifications in Broad. Licensing*, Policy Statement and Order, 5 FCC Rcd 3252 (1990) (broadening the range of relevant non-FCC misconduct to include any felony conviction and adjudications of antitrust or anticompetitive laws involving any media of mass communications, not merely broadcast-related violations); *Anabelle Savage*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 10-628 (¶ 22) (Media Bur. rel. Apr. 13, 2010) (“[T]he Commission generally considers only three types of adjudicated, non-FCC related misconduct: felony convictions; fraudulent misrepresentations to governmental units; and violations of antitrust or other laws protecting competition.”).

In bankruptcy, “fraudulent conveyance” claims are civil claims that seek to avoid transfers of assets made by the debtor or obligations incurred by the debtor, either because they were made with actual intent to hinder, delay or defraud its creditors or because they were made while the debtor was insolvent for inadequate consideration.<sup>39</sup> WTC does not allege any deceitful statements or misrepresentations to the government or any criminal law violation. Thus, its unsubstantiated allegations do not fit within any of the categories of non-FCC matters the agency considers in licensing decisions. In any case, the claims provide no basis for concern that any party to the Exit Applications will have the propensity to engage in misrepresentation before the Commission or that after its reorganization Tribune, a longstanding FCC licensee, will not continue to operate its stations in accordance with the agency’s rules post-emergence.<sup>40</sup>

Thus, WTC is simply wrong that unsubstantiated allegations implicate the character qualifications of Tribune or any party to the Exit Applications. The suggestion that the FCC should delay its review of the applications until the Examiner’s report has been issued or any other aspect of the bankruptcy proceeding has been resolved is not

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<sup>39</sup> 11 U.S.C. §548.

<sup>40</sup> WTC’s reference to *Kannapolis Television Co.* to support its contention that “misrepresentations and a court finding of a fraudulent conveyance” are relevant to a broadcast licensee’s character qualifications misconstrues the conclusion in that case. See WTC Petition at 12 (citing *Kannapolis Television Co.*, Memorandum Opinion and Order, 1 FCC Rcd 1037 (1986), *recon. granted* 3 FCC Rcd 2676 (1988) (“*Kannapolis*”). In *Kannapolis*, the Commission’s character qualification determination was based on the applicant’s misrepresentations to a government agency under oath in testimony about the fraudulent conveyance transactions, not the transactions themselves. Consistent with the *Policy Statement*, the Commission noted that the agency “focus[ed its] review” on false oaths made to the bankruptcy court because this type of conduct raises “the possibility that the applicant may engage in similar misbehavior in dealing with the Commission.” *Kannapolis*, 1 FCC Rcd at 1038 (¶ 12) (citation omitted). The Commission further explained that the adjudicated fraudulent conveyances of residential and commercial property, which involved actual intent to place such property beyond the reach of creditors, “remain[] relevant to our determination *only* to the extent that they reflect on the significance of the false oaths, because, although adjudicated, there has been no criminal conviction for those conveyances, which is a prerequisite for our considering non-FCC misconduct involving a false statement or dishonesty other than a misrepresentation to a government agency.” *Id.* (citing *Policy Statement* at 1205) (emphasis added).

only inconsistent with the FCC's normal process, but would be meaningless to the Commission's examination of the Exit Applications.<sup>41</sup>

**C. The Company's Plan for Ensuring Compliance with Foreign Ownership Limits Is Based on Well-Established FCC Policy and Precedent.**

In questioning Tribune's plan to ensure that it will be in compliance with the FCC's foreign ownership limitations upon emergence,<sup>42</sup> petitioners seem to be unaware of longstanding Commission precedent relating to Section 310(b) of the Communications Act.<sup>43</sup> Despite their strong rhetoric, neither WTC nor MAP/GL provides any legitimate basis for challenging the company's plan to use warrants or the other mechanisms that will be employed to guarantee that Reorganized Tribune will maintain compliance with the 25% foreign ownership cap.<sup>44</sup> In particular, not only is the use of warrants as proposed in the Exit Applications standard practice in FCC proceedings,<sup>45</sup> but warrants

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<sup>41</sup> See, e.g., *David Oxenford, Esq., Tom W. Davidson, Esq.*, Letter, 21 FCC Rcd 6895 (MB 2006) (declining to delay or condition grant consent to an assignment of a broadcast license pending the resolution of character questions raised in a state court action).

<sup>42</sup> See WTC Petition at 14-19; MAP/GL Petition at 20.

<sup>43</sup> 47 U.S.C. § 310(b).

<sup>44</sup> In this regard, it also should be noted that controlling precedent indicates that petitioners claiming a right to participate in Commission proceedings on the basis of viewership or listenership injury, such as MAP/GL, do not have standing to raise issues concerning compliance with the statutory foreign ownership limitations. See *Coalition for the Preservation of Hispanic Broadcasting v. FCC*, 931 F.3d 73, 79 (D.C. 1991) ("Though viewers and listeners are among the intended beneficiaries of many Communications Act provisions, they are not the intended beneficiaries of §310(b)"). As noted above, WTC lacks standing in this proceeding altogether and certainly has advanced no basis for a Section 310(b) challenge. See note 16, *supra*.

<sup>45</sup> See, e.g., *Univision Holdings, Inc.*, 7 FCC Rcd 6672, 6674 & n. 6 (1992), *recon. denied*, 8 FCC Rcd 3931 (1993) (citing *Data Transmission Co.*, 52 FCC 2d 439 (1975)); see also, e.g., *Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, 19 FCC Rcd 22612, 22627 (IB 2004).

have been used to deal with similar concerns in several transactions recently approved by the Commission involving companies emerging from bankruptcy.<sup>46</sup>

Not surprisingly, neither the WTC Petition nor the MAP/GL Petition even attempts to discuss these precedents. Instead, WTC and MAP/GL generally rely on misunderstandings—or misstatements—of fact and law. For example, WTC claims that the FCC cannot determine whether Reorganized Tribune will be in compliance with the FCC’s foreign ownership limits because the ownership of the company is both “unknown and unknowable.”<sup>47</sup> In a similar vein, MAP attempts to argue that the Exit Applications should be dismissed because of allegedly incomplete information about the owners of Reorganized Tribune.<sup>48</sup> WTC also raises concern that a large percentage of the stock of Reorganized Tribune will be held by “anonymous investors, some of whom will be non-U.S. Citizens” or “organized outside of the United States.”<sup>49</sup> This line of argument is wholly without merit.

To begin with, WTC confuses *attribution* under the FCC’s rules with ensuring compliance with the limitations on alien ownership. Pursuant to well-established and well-understood FCC disclosure requirements, the Exit Applications identify three

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<sup>46</sup> See, e.g., FCC File Nos. BALCDT-20090901AAM (approving application for ION Media Networks, Inc. to emerge from bankruptcy via a plan of reorganization that included use of warrants to ensure compliance with the Communications Act, including Section 310(b) thereof); File Nos. BTC-20100318ABL (approving application for Citadel Broadcasting Corporation to emerge from bankruptcy via a reorganization plan that proposed use of warrants to address foreign ownership compliance). These proceedings show that, despite WTC’s unsupported assertions and rhetorical questions to the contrary, see WTC Petition at 19, parties are, in fact, prepared to accept warrants in lieu of stock when broadcast companies emerge from bankruptcy.

<sup>47</sup> WTC Petition at 15.

<sup>48</sup> MAP/GL Petition at iv, 20.

<sup>49</sup> WTC Petition at 15. Of course, Section 310(b) does not wholly preclude foreign ownership in broadcast licensees, but only serves to place restrictions on its scope.

entities that are projected to hold five percent or more of the New Class A Common Stock of Reorganized Tribune upon the company's emergence from bankruptcy.<sup>50</sup> Because the remainder of Reorganized Tribune's shareholders will hold less than five percent of the company's New Class A Common Stock and therefore will be non-attributable,<sup>51</sup> the applicants do not identify these shareholders in the Exit Applications. As WTC and MAP/GL certainly should be aware, however, they are not required to do so,<sup>52</sup> and the mere fact that the applicants correctly limited their disclosures to potentially attributable parties does not mean that they will not know the identities of the non-attributable shareholders of Reorganized Tribune.<sup>53</sup>

As demonstrated in the Exit Applications, the applicants understand that ensuring compliance with the limitations on alien ownership requires an analysis of the holdings and foreign ownership percentages of the proposed shareholders of Reorganized Tribune, regardless of whether or not such shareholders are attributable. As explained in the Exit Applications and the relevant bankruptcy court filings, the Plan will require each

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<sup>50</sup> See Comprehensive Exhibit at 5, 14. Moreover, as discussed in more detail below, the parties will be in a position to identify any other creditors that could potentially be attributable in Reorganized Tribune post-emergence. See Section III.D, *infra*. To the extent that there are any such entities, the parties will disclose them to the FCC via amendments to the Exit Applications. See Comprehensive Exhibit at 6. Accordingly, all creditors that propose to hold an attributable interest in Reorganized Tribune have been, or will be, fully disclosed to the FCC.

<sup>51</sup> See *id.* at 5.

<sup>52</sup> See, e.g., 47 C.F.R. § 73.3555, Note 2, subsection a (generally, only shareholders that hold five percent or more of the voting stock of a corporation are deemed attributable for FCC ownership purposes); FCC Form 314, Section III, Item 4a (requiring disclosure only of parties that hold an attributable interest in the licensee).

<sup>53</sup> WTC suggests that the applicants' non-disclosure of non-attributable parties "should be fully investigated by the Commission." See WTC Petition at 16. As discussed above, the applicants have disclosed or will disclose information concerning all attributable parties to the FCC. Accordingly, WTC's demand for an investigation, based on WTC's own misstatements concerning relevant Commission requirements, should be ignored.

potential shareholder to certify its foreign ownership on both a voting and an equity basis.<sup>54</sup> To the extent a potential shareholder fails to make the required certification, it will be deemed wholly foreign for purposes of the company's foreign ownership evaluation.<sup>55</sup> If, after a review of the information received, it is determined that the foreign ownership of Reorganized Tribune would exceed 25 percent (on either a voting or equity basis), each claim holder with a foreign ownership level greater than 25 percent (again, on either a voting or equity basis) will receive warrants, or a mix of stock and warrants, calculated to ensure that the overall foreign ownership of Reorganized Tribune does not exceed the 25 percent cap.<sup>56</sup> Simply put, the company will have detailed and up-to-date information about the debt holdings and foreign ownership of its shareholders, and will use this information to ensure that Reorganized Tribune complies with the FCC's alien ownership limitations upon emergence from bankruptcy.<sup>57</sup>

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<sup>54</sup> See Comprehensive Exhibit at 7. The Tribune debt will continue to trade throughout the bankruptcy proceeding, which may result in changes in the identity of certain ultimate shareholders of Tribune and/or the percentage of Tribune's debt held by various proposed shareholders. See *id.* at 6. In order to base the necessary foreign ownership calculations on the most current information possible, the certification process, the final foreign ownership calculations, and the allocation of stock and/or warrants will be finalized immediately prior to emergence.

<sup>55</sup> See *id.* at 7 & n.13. As a result of this conservative approach, it is likely that the information used as a basis for the company's foreign ownership calculations will *overstate* the foreign ownership of several proposed shareholders. Accordingly, the company's foreign ownership calculations will represent something of a worst-case scenario, and the actual aggregate foreign ownership of Reorganized Tribune may well be lower than the calculations suggest. This provides further assurance that Reorganized Tribune will comply with the foreign ownership requirements at emergence.

<sup>56</sup> See *id.* at 7.

<sup>57</sup> When discussing the foreign ownership of Reorganized Tribune, WTC states that "in addition to the 9% of Reorganized Tribune to be owned directly by [Angelo, Gordon & Co., ("Angelo Gordon")], [three] foreign entities controlled by Angelo Gordon may hold in the aggregate, up to an additional 14.99% of Tribune shares." See WTC Petition at 16-17. On the basis of these figures, WTC claims that "of the ownership of Reorganized Tribune that has been disclosed so far, one-third . . . will be foreign, while the rest is unknown." See *id.* at 17. The Exit Applications make clear, however, that Angelo Gordon will own, directly or through affiliates, 9 percent of Restructured Tribune's voting stock. See Comprehensive Exhibit at 14. This voting percentage represents an aggregation of the voting interests of all investment vehicles ultimately controlled by Angelo Gordon. See *id.* at 14 n.4, 22. Accordingly, the Exit Applications clearly

Moreover, as noted in the Exit Applications, Reorganized Tribune will be able to ensure that it remains in compliance with Section 310(b) after emergence.<sup>58</sup> The warrants issued pursuant to the foregoing foreign ownership review will specify that the holder can exercise the warrant only if doing so would not cause a violation of the Communications Act or Commission rules or policies.<sup>59</sup> In addition, Reorganized Tribune's Certificate of Incorporation will give the company the authority to restrict the ownership of New Common Stock by any party if such ownership would be inconsistent with either the Communications Act or FCC regulations.<sup>60</sup>

In sum, the applicants' disclosures to the Commission concerning foreign ownership matters have been candid and complete, and the Company has properly certified that it will be in compliance with Section 310(b) upon its emergence from bankruptcy. The FCC accordingly should disregard the foreign ownership arguments raised in the WTC Petition and the MAP/GL Petition, and find that the Exit Applications deal appropriately with any potential foreign ownership concerns implicating Section 310(b) of the Communications Act.

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state that the three foreign entities identified by WTC are *included within* the 9 percent figure disclosed to the FCC. The FCC should disregard any foreign ownership "calculations" based on WTC's confused and incorrect statements to the contrary.

<sup>58</sup> See Comprehensive Exhibit at 7-8.

<sup>59</sup> See *id.* at 7.

<sup>60</sup> See *id.* at 7-8.

**D. The Proposed Use of Class B Stock Is Fully Consistent with Recent FCC and Bankruptcy Court Rulings.**

In its Petition, WTC seeks to cast doubt on the issuance of New Class B Common Stock proposed in the Plan and the Exit Applications.<sup>61</sup> Specifically, WTC questions whether the issuance of the New Class B Common Stock, as contemplated in the Exit Applications, is consistent with Section 1123(a)(6) of the U.S. Bankruptcy Code, which precludes a company emerging from bankruptcy from having a class of non-voting stock.<sup>62</sup> As discussed below, both bankruptcy courts and the Commission have approved the use of stock with characteristics nearly identical to the New Class B Common Stock proposed by Tribune to ensure compliance with the Commission’s attribution rules. In any case, WTC’s suggestion that the New Class B Common Stock is inconsistent with the Bankruptcy Code would be a matter for the bankruptcy court, and not the FCC, to resolve. If WTC believes that the New Class B Common Stock is impermissible under the Bankruptcy Code, it can and should raise that issue in the context of the confirmation of the Plan.

The Plan has put in place mechanisms to ensure that Reorganized Tribune will comply with the Commission’s ownership rules upon its emergence from bankruptcy and thereafter. As explained in the Exit Applications, the vast majority of shareholders of Reorganized Tribune upon emergence will remain below the relevant attribution threshold because they will hold less than five percent of Reorganized Tribune’s New

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<sup>61</sup> See WTC Petition at 4, 13-14.

<sup>62</sup> See 11 U.S.C. 1123(a)(6) (a bankruptcy plan shall “provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities. . .”).

Class A Common Stock.<sup>63</sup> If, however, a party is in a position potentially to hold an attributable interest in Reorganized Tribune through ownership of New Class A Common Stock, that party must certify in a Media Ownership Certification (to be submitted to Tribune by July 1, 2010) that taking an attributable interest in Reorganized Tribune would be consistent with the Commission's rules. Any such party also will be disclosed to the FCC by amendment to the Exit Applications.<sup>64</sup> Parties that cannot certify compliance with the FCC's media ownership rules, or that fail to submit a timely Media Ownership Certification, will be issued less than five percent of the New Class A Common Stock and will receive the remainder of their equity, if any, in the form of the New Class B Common Stock.<sup>65</sup>

WTC claims that there are "very real questions about whether the 'Class B' stock approach is consistent with Section 1123(b)(6) [sic] of the Bankruptcy Code."<sup>66</sup> As can be surmised from its reliance on an inapposite, 72 year-old case, however, such questions do not exist today.<sup>67</sup> Indeed, in just the past year, a number of media companies have emerged from bankruptcy using similar structures to avoid attribution of certain investors. The bankruptcy court-sanctioned and FCC-approved reorganizations of two

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<sup>63</sup> See Comprehensive Exhibit at 5.

<sup>64</sup> See *id.* at 4.

<sup>65</sup> *Id.* at 8; see Disclosure Statement at 17-18.

<sup>66</sup> WTC Petition at 13.

<sup>67</sup> While it is for the bankruptcy court to determine whether the New Class B Common Stock proposed in the Plan is consistent with Section 1123(a)(6), the two cases cited in the WTC Petition are easily distinguishable. Both *In re Ahead Commc'ns Sys., Inc.*, 395 B.R. 512 (D. Conn. 2008), and *In re Tharpe Ice Cream Co.*, 25 F. Supp. 417 (E.D. Pa. 1938), involved classes of stock that held *no* voting rights whatsoever for a prescribed period of time. Here, however, holders of the proposed New Class B Stock will be able to vote on a limited number of specified issues from the outset. See Comprehensive Exhibit at 7.

such companies—Citadel Broadcasting (“Citadel”) and NextMedia Group, Inc. (“NextMedia”)—are particularly relevant here.

In its Second Modified Joint Plan of Reorganization, Citadel proposed two classes of stock. Significantly, Citadel’s Class B shares, which are virtually identical to those proposed by Tribune, were approved by the bankruptcy court.<sup>68</sup> Notably, Citadel’s Plan provided that none of Citadel’s equity holders would be permitted to acquire more than 4.99 percent of Citadel’s voting common Class A shares and, thus, none of its creditors would hold an attributable interest. Rather, to the extent that one of Citadel’s creditors was entitled to more than a 4.99 percent interest in the reorganized company, Class B shares and/or warrants would comprise the balance of its interest.<sup>69</sup> Both the bankruptcy court and the Commission approved this structure, and Citadel emerged from bankruptcy this past month.<sup>70</sup>

NextMedia’s plan of reorganization relied on not just one, but two classes of stock with limited voting rights.<sup>71</sup> As was the case with Citadel, NextMedia used classes of stock with limited voting rights to ensure that investors with conflicting media interests would remain non-attributable in NextMedia.<sup>72</sup> Once again, both the bankruptcy court

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<sup>68</sup> See, e.g, FCC File No. BTC-20100318ABL, Revised Exhibit 14, Description of the Transaction at 3-4 n.3.

<sup>69</sup> *Id.* at 4 & n.4. As a result, upon emerging from bankruptcy on June 3, 2010, Citadel had *no* attributable investors.

<sup>70</sup> FCC File No. BTC-20100318ABL, Exhibit 6, Confirmation Order (approving Second Joint Amended Plan of Reorganization); Press Release, Citadel Broadcasting, Citadel Broadcasting Corporation Completes Financial Restructuring and Emerges from Chapter 11 (June 3, 2010), available at [http://www.citadelbroadcasting.com/uploadedFiles/Websites/Citadel\\_Broadcasting/Content/Press\\_Room/2010/Citadel%20%20Emergence.pdf](http://www.citadelbroadcasting.com/uploadedFiles/Websites/Citadel_Broadcasting/Content/Press_Room/2010/Citadel%20%20Emergence.pdf) (last visited Jun. 28, 2010).

<sup>71</sup> See, FCC File No. BALH-20100127AER, Revised Exhibit 12, Comprehensive Exhibit at 2-4.

<sup>72</sup> *Id.*

and the Commission approved this structure, and NextMedia emerged from bankruptcy in May 2010.<sup>73</sup>

WTC's "very real questions"<sup>74</sup> about Tribune's proposed use of Class B Stock are further answered by the confirmation order recently entered in *In re Affiliated Media, Inc.* by Judge Carey—the very judge presiding in the Tribune bankruptcy cases. There, Judge Carey approved a plan of reorganization that contained a class of stock virtually identical to the New Class B Common Stock at issue here.<sup>75</sup> Thus, WTC offers no credible basis for concern that the stock structure set forth in Tribune's Plan will face any hurdles in the confirmation process, and the applicants will ensure that, upon emergence from bankruptcy, the ownership of Reorganized Tribune complies with applicable Commission attribution standards and ownership regulations.

**IV. TRIBUNE'S REQUESTS FOR WAIVERS IN THE CHICAGO AND HARTFORD MARKETS ARE WELL-SUPPORTED AND SHOULD BE GRANTED EXPEDITIOUSLY BY THE FCC.**

As demonstrated in the Exit Applications, Tribune's existing combinations in Chicago, Illinois (WGN-TV, WGN(AM), and the *Chicago Tribune*) and Hartford, Connecticut (WTIC-TV, WCCT-TV (formerly WTX(TV), and the *Hartford Courant*) long have provided exemplary service to their local communities and are well-deserving

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<sup>73</sup> FCC File No. BALH-20100127AER, Exhibit 4, Bankruptcy Court Order; Press Release, NextMedia Group, NextMedia Group Completes Plan of Reorganization (June 1, 2010), available at [http://www.nextmediagroup.net/images/stories/docs/06.01.10\\_reorgcompletionfinal.pdf](http://www.nextmediagroup.net/images/stories/docs/06.01.10_reorgcompletionfinal.pdf) (last visited Jun. 28, 2010).

<sup>74</sup> WTC Petition at 13.

<sup>75</sup> *In re Affiliated Media, Inc. et al.*, Case No. 10-10202, slip op. (KJC) (Chapter 11) (Bankr. D. Del. 2010) (confirming Prepackaged Plan of Reorganization).

of permanent waivers.<sup>76</sup> The narrow range of parties asking the FCC to reject Tribune's waiver requests in these two markets consist of a rival newspaper publisher with parochial competitive concerns,<sup>77</sup> two participants in the Tribune bankruptcy with interests unrelated to the instant waiver requests,<sup>78</sup> and a consortium of longstanding and vigorous opponents of any and all forms of broadcast cross and/or multiple ownership.<sup>79</sup> The objections in these petitions are based on generalized assumptions about the ills of common ownership and do not take into account the realities of today's media marketplace or the circumstances of the specific combinations in question.

In opposing Tribune's requests to maintain its existing local combinations as it emerges from bankruptcy, moreover, these petitioners disregard the manifest public interest benefits that already have come to fruition with respect to each of these outlets. As shown in Tribune's extensive market-specific waiver requests, the combinations that petitioners would have the FCC dismantle collectively provide dozens of hours of local broadcast news and informational programming each and every week.<sup>80</sup> Over the course of the years that these combinations have been in existence, they have provided substantial and enduring benefits to their communities. As Tribune amply demonstrates in its waiver requests, many of these services simply would not have been feasible absent

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<sup>76</sup> See Chicago NBCO Waiver Showing at 36-56; FCC File No. BALCDT-20100428ADR, Exhibit 16, Request for Cross-Ownership Waiver at 35-48 ("Hartford NBCO Waiver Showing").

<sup>77</sup> See Ellis Petition at 2-5.

<sup>78</sup> See IBT Petition at 8-12; WTC Petition at 20-21.

<sup>79</sup> See MAP/GL Petition at 26-52.

<sup>80</sup> See Chicago NBCO Waiver Showing at 40-48; Hartford NBCO Waiver Showing at 37-43.

common ownership.<sup>81</sup> While petitioners also attempt to refute Tribune’s demonstration that these outlets have bolstered, rather than impaired, the abundant diversity of viewpoints available to local consumers and exist in vibrantly competitive and unconcentrated markets,<sup>82</sup> they fail to provide a single concrete example in which Tribune’s commonly owned properties even arguably have harmed diversity or competition.<sup>83</sup>

Petitioners also criticize Tribune for discussing general market conditions, the recent troubled history of the NBCO Rule, and the legal infirmities of the outdated rule.<sup>84</sup> As the applicants have explained, however, these factors are directly relevant to the instant waiver requests.<sup>85</sup> The dire marketplace conditions in which all newspaper publishers and broadcasters currently operate informs the urgent need for, and the clear

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<sup>81</sup> See Chicago NBCO Waiver Showing at 56-58; Hartford NBCO Waiver Showing at 48-50.

<sup>82</sup> See MAP/GL Petition at 31, 46; WTC Petition at 21.

<sup>83</sup> Mr. Ellis candidly admits that his *Manchester Journal Inquirer* competes for advertisers with the *Hartford Courant* and “all the media entities in the DMA.” Ellis Petition, Attachment A. Mr. Ellis goes on to complain that Tribune “offer[s] advertisers discounted rates for purchasing ads with both the television station and the newspaper.” *Id.* at 5. He fails to explain, however, how offering reduced advertising rates is any way improper or adversely affects the public interest.

<sup>84</sup> See MAP/GL Petition at 23-26. As set forth in the waiver requests, these legal infirmities have been recognized by the Commission and the reviewing court of appeals. See *2002 Biennial Regulatory Review – Review of the Comm’ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13,620, 13,767 (¶ 369) (2003) (“*2003 Order*”), *aff’d in part, remanded in part, Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005); *2006 Quadrennial Regulatory Review – Review of the Comm’ns 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, 2021-22 (¶ 19) (2008) (“*2008 Order*”) (concluding that “[e]vidence in the record continues to support the Commission’s earlier decision that retention of a complete ban is not necessary in the public interest as a result of competition, diversity, or localism”); *Prometheus*, 373 F.3d at 398-99 (finding that “reasoned analysis supports the Commission’s determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest”); see also Chicago NBCO Waiver Showing at 6-19.

<sup>85</sup> See, e.g., Chicago NBCO Waiver Showing at 108-23.

benefits that would arise from, the grant of the requested waivers.<sup>86</sup> As Tribune makes clear in its initial showings, in this challenging environment, there is a strong likelihood that the company would not be able to sell the subject properties at all if divestitures were required, and a near certainty that a new owner would not have the resources or incentive to continue Tribune's longstanding and costly dedication to local news and community service.<sup>87</sup>

The tortured history of the NBCO Rule and the prolonged period in which all industry participants, including Tribune, have been in regulatory limbo also are highly relevant to the need for permanent waivers here. Because the rule has been unsettled for well over a decade, regulatory certainty is sorely needed to ensure the long-term viability of these properties. The protracted period during which the fate of the NBCO Rule has remained ambiguous also is germane to petitioners' allegations that Tribune somehow has misled the FCC in seeking these waivers as well as those the company has sought (and been granted) in the past.<sup>88</sup> To fully understand petitioners' mischaracterizations in this regard, it is important for the Commission to keep squarely in mind that the uncertain

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<sup>86</sup> *See id.* at 21-34. At the same time that MAP/GL argues that general economic conditions in the newspaper publishing and broadcasting industries are irrelevant to consideration of the Tribune waiver requests, they also note that there has been a "significant recovery" in the financial condition of the media industry. MAP/GL Petition at 23. However, this point has been addressed in Tribune's initial filing, which explained that, although there has been an uptick in some financial trends, industry financials and valuations remain "drastically lower" than they had been just a few years earlier. *See, e.g.*, Chicago NBCO Waiver Showing at 31 & n.96; *see also* Tribune MAP Opposition at II.C.

<sup>87</sup> *See, e.g., id.* at 94-98. In this connection, it is noteworthy that IBT, while opposing the grant of the requested cross-ownership waivers in Chicago and Hartford, also complains that Tribune sold all but a small stake in *Newsday* to Cablevision, a Long Island, New York cable operator "which had no experience running a major newspaper." IBT Petition at 6, 8. The obvious inconsistency in these positions casts serious doubt on the legitimacy of IBT's professed concerns about the proposed continuation of Tribune's existing newspaper/broadcast combinations.

<sup>88</sup> *See* MAP/GL Petition at 7-19.

status of Tribune’s existing combinations correlates directly to the uncertain status of the NBCO Rule itself.<sup>89</sup>

For these reasons and as further illustrated below, Tribune is entitled to permanent waivers in the Chicago and Hartford markets. The FCC should move forward promptly to grant these waivers, as well as the permanent waivers requested by Tribune for its combinations in Los Angeles, Miami, and New York,<sup>90</sup> so that the company may proceed as soon as possible with an orderly emergence from bankruptcy. In the event that the Commission finds that a temporary waiver is more appropriate for any of the requested waivers, however, the 18-month period following the outcome of the FCC’s ongoing broadcast ownership review requested by Tribune is entirely reasonable in light of the company’s circumstances and the realities of the current marketplace.

**A. Tribune’s Longstanding Chicago Combination Should Not Be Affected by Tribune’s Emergence from Bankruptcy.**

In asking the FCC to deny the applicants’ request to maintain Tribune’s newspaper/broadcast combination in the Chicago market,<sup>91</sup> petitioners disregard the facts that this combination has been in existence for 62 years, was grandfathered by the Commission in 1975, and was granted a permanent waiver just two years ago in the context of the transfer of control to Mr. Zell. They also ignore the reality that, in its most recent evaluation of this combination, the FCC expressly recognized the integrated and

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<sup>89</sup> Furthermore, as Tribune explains in its initial waiver showings, the “protracted nature” of the ongoing NBCO rulemaking proceedings and the existence of a “substantial record” on which to base a “preliminary inclination to relax or eliminate” the NBCO Rule—both of which undeniably exist here—are specific factors under the waiver standard that applies to Tribune’s alternative temporary waiver requests. *See, e.g.*, Chicago NBCO Waiver Showing at 123-28.

<sup>90</sup> The Ellis petition addresses only the Hartford market. The other petitioners advance specific arguments only with respect to the Chicago and Hartford waiver requests.

<sup>91</sup> *See* MAP/GL Petition at 26-35; IBT Petition at 8-12; *see also* WTC Petition at 20-21.

longstanding nature of the combination, the remarkably diverse and competitive makeup of the Chicago media market, and the extensive public interest benefits that have resulted from cross-ownership of these three properties.<sup>92</sup> To reverse course and require that Tribune break up this combination now, when the company is seeking to do no more than maintain its current operations as it emerges from bankruptcy and attempts to regain its footing from the economic downturn, would be arbitrary and draconian to Tribune and unquestionably adverse to the interests of Chicago residents. As the applicants demonstrate in detail in the Exit Applications, common ownership of these properties has resulted in outstanding local service—and particularly in the provision of exceptional local television and radio news options—for many decades.<sup>93</sup> A new owner in all probability would not have the resources or incentive to maintain this unusually high caliber of service.

As the applicants acknowledge, the Chicago combination does not fall within the narrow parameters for a “positive presumption” under the revised waiver standards adopted in 2007 because the commonly owned properties include an AM radio station as well as a television station.<sup>94</sup> As the FCC stated in its 2008 order revising the rule, however, proposed newspaper/radio combinations do “not face as high a hurdle” to win FCC approval “[b]ecause radio is generally a less influential voice than television.”<sup>95</sup>

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<sup>92</sup> *2007 Tribune Order*, 22 FCC Rcd at 21,277-78 (¶ 34).

<sup>93</sup> *See Chicago NBCO Waiver Showing* at 36-56.

<sup>94</sup> *Id.* at 110.

<sup>95</sup> *2008 Order*, 23 FCC Rcd at 2049 (¶ 68 n.220); *see id.* at 2044 (¶ 59 n.197).

Particularly when the long and meritorious history of Tribune's Chicago combination is taken into account, the requested permanent waiver clearly is warranted.<sup>96</sup>

Petitioners' claim that Tribune's Chicago properties should not qualify as "failed" solely because the company is in voluntary, as opposed to involuntary, bankruptcy represents an unduly narrow and illogical reading of this aspect of the rule.<sup>97</sup> As explained in the waiver showing, the FCC limited the definition of "failed" properties to those in involuntary bankruptcy primarily out of concern that station owners or publishers otherwise would be incented to enter bankruptcy in order to qualify for a waiver.<sup>98</sup> Because the Chicago combination already *has* a permanent NBCO waiver, that motivation obviously does not exist here. This technicality aside, the fact remains that all of the Tribune broadcast and newspaper properties, including those in Chicago, now have been in bankruptcy for 18 months. Tribune's lenders as well as its current stockholders are making extraordinary sacrifices to return the company to stable footing. In these circumstances, it is absurd to suggest that Tribune had the incentive to make a bankruptcy filing merely to secure a procedural advantage before the FCC.

Petitioners' further contentions that the Chicago combination does not pass muster under the FCC's four factor test, and therefore should not be deemed to rebut the presumption against cross-ownership, are based on a dismissive view of the significant

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<sup>96</sup> Despite the FCC's establishment of specific criteria for positive and negative presumptions under the revised NBCO Rule, the FCC is obligated to give all reasonable requests for waiver "serious consideration" and must consider all relevant circumstances pertaining to the Chicago and Hartford waiver requests. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). The Commission accordingly must take into account that the Chicago and Hartford combinations already have been in existence for many years, long have rendered outstanding public service, and that the waiver requests do not seek to establish any new combinations.

<sup>97</sup> MAP/GL Petition at 27-28; IBT Petition at 9-10.

<sup>98</sup> *See* Chicago NBCO Waiver Showing at 110-11.

contributions this combination has made to the local marketplace for decades as well a drastically outdated outlook on the state of the media marketplace.<sup>99</sup> While petitioners technically are correct that the Chicago broadcast outlets are not in a position to initiate newscasts on a station that currently airs none,<sup>100</sup> that is because both WGN-TV and WGN(AM) *already* provide substantial amounts of local news programming. Indeed, they have been leaders in news and informational programming for many decades. WGN-TV currently provides 42 hours of local newscasts each week, six times the 7 hours required under the four factor test.<sup>101</sup> WGN(AM), for its part, provides an exclusively local news/talk format.<sup>102</sup>

Petitioners seek to turn these impressive commitments on their head, suggesting that the stations' proven dedication to local news actually should count against Tribune here because it is not "new" or does not include an undertaking to increase the already substantial output of the Tribune stations. Such a literalistic and illogical outcome would be directly adverse to the FCC's longstanding objective of fostering the provision of local news and other community-oriented programming.<sup>103</sup> Thus, the Commission should find that, where an existing combination is involved, a rational construction of the local news

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<sup>99</sup> See MAP/GL Petition at 32-35; IBT Petition at 10-12.

<sup>100</sup> See MAP/GL Petition at 31; IBT Petition at 11.

<sup>101</sup> See Chicago NBCO Waiver Showing at 40, 114-15.

<sup>102</sup> See *id.* at 41-42.

<sup>103</sup> See, e.g., *2008 Order*, 23 FCC Rcd at 2050 (¶ 70) (noting "extremely important policy goal" of "establishing and maintaining a system of local broadcasting that is responsive to the unique interests and needs of individual communities"). For similar reasons, there is no merit to MAP/GL's quarrels with the qualifications of the Chicago combination under the "substantial news test." See MAP/GL Petition at 30-31. As shown in the waiver request, the Chicago combination clearly meets the criteria under this test and therefore is entitled to a reversal of any presumption against cross-ownership. See Chicago NBCO Waiver Showing at 113-115.

factor requires consideration of and appropriate credit for the local news contributions made by the co-owned outlets since their inception.

With regard to the second factor under the four factor test, Tribune provided straightforward confirmation in its waiver request that each of its Chicago properties maintains its own editorial staff and exercises independent news judgment.<sup>104</sup> As Tribune explains, “WGN(AM), WGN-TV, and the *Chicago Tribune* each exercise independent news judgment in making their own assignments and covering stories in the manner that they see fit, as each has throughout Tribune’s history.”<sup>105</sup> In fact, the properties routinely criticize one another. In an attempt to cast doubt on this definitive showing, however, petitioners conflate the sharing of journalistic and operational resources with the exercise of editorial independence. Petitioners apparently would take the position that, in order to meet this criterion, cross-owned properties must maintain entirely separate operations, with no common staffing whatsoever. Such a strict requirement is obviously unnecessary to maintain editorial independence and, in fact, would force parties to forego the significant public interest benefits the Commission has recognized are inherent in cross-ownership.<sup>106</sup> Indeed, without the ability to share resources, it would be extremely difficult and impractical for any proposed cross-owner to meet the increased local news threshold set forth in factor one of the FCC’s test.

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<sup>104</sup> *Id.* at 47-48, 116.

<sup>105</sup> *Id.* at 116.

<sup>106</sup> *See 2008 Order*, 23 FCC Rcd at 2032-33 (¶ 39) (noting “that efficiencies from the common ownership of two media outlets may increase the amount of diverse, competitive news and local information available to the public” and “continu[ing] to find evidence” that permitting some cross-ownership “can preserve the viability of newspapers without threatening diversity” and “can improve or increase the news offered by the broadcaster and the newspaper”); *see also id.* (noting that record evidence “shows that newspaper/broadcast combinations can create synergies that result in more news coverage for consumers”).

In addition, petitioners misconstrue and unfairly minimize the applicants' showing regarding the level of concentration in the Chicago market,<sup>107</sup> which is the nation's third largest and, as such, is presumed to be highly diverse and competitive under the revised NBCO Rule. While petitioners emphasize that the HHI in the Chicago market falls in the "moderately concentrated" range, they fail to explain why this is problematic.<sup>108</sup> In fact, the Department of Justice's *Merger Guidelines* specify that an HHI in this range is "unlikely to have adverse competitive consequences and ordinarily require[s] no further analysis," if the transaction in question will not increase the HHI by more than 100 points.<sup>109</sup> That is plainly the situation here, as the requested waiver will merely preserve the existing common ownership of the Tribune properties and will have no impact on the HHI. In any case, petitioners also ignore the fact that the HHI in the Chicago market actually has declined in recent years. Further, they fail to acknowledge that the more realistic HHI measure reflected in Tribune's waiver showing, which would take into account both traditional and alternative media, falls well into the unconcentrated range under the *Merger Guidelines*.<sup>110</sup>

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<sup>107</sup> See MAP/GL Petition at 34-35; see also IBT Petition at 11.

<sup>108</sup> MAP/GL Petition at 34.

<sup>109</sup> Dept. of Justice & FTC, *Horizontal Merger Guidelines*, Section 1.51 (Market Definition, Measurement and Concentration; Concentration and Market Shares; General Standards) (rev. Apr. 1997) ("*Merger Guidelines*"), available at <http://www.justice.gov/atr/public/guidelines/hmg.htm#15> (last visited June 24, 2010). Contrary to petitioners' statement, the HHI calculations include only commercial, and not non-commercial, TV and radio stations. See Mark R. Fratrick, Ph. D., BIA Financial Network, *Report on the Chicago, IL Media Market: Media Diversity, Revenue Share, and Concentration Analysis in Support of the Request for Cross-Ownership Waiver for Stations WGN-TV and WGN(AM)*, at 10-11 (Feb. 26, 2010) (Attachment 4 to Chicago NBCO Waiver Showing).

<sup>110</sup> See Chicago NBCO Waiver Showing at 91-93; *Merger Guidelines* at Section 1.51.

Finally, notwithstanding the Tribune bankruptcy, petitioners assert that the “Commission cannot find that WGN-TV, WGN(AM), or the *Chicago Tribune* are in financial distress.”<sup>111</sup> This argument is manifestly flawed. Put simply, because bankruptcy constitutes the quintessential form of “financial distress,” there can be little debate that this factor should weigh in favor of the grant of a permanent waiver. Petitioners further aver that, even if Tribune is deemed to be in distress, it has made no express commitment to invest in local news operations if the waiver is approved. As explained above, Tribune’s longstanding commitment to such programming is a proven quantity. What the FCC should be concerned about here is the potential loss of local news if the waiver is denied and the Chicago combination is forcibly separated.

**B. The Hartford Combination Qualifies for Both a Permanent NBCO Waiver and a Permanent Duopoly Waiver.**

MAP/GL offers a lengthy discussion purporting to show that Tribune’s Hartford properties have been held in a manner that conflicts with the NBCO Rule.<sup>112</sup> The facts, however, show that these outlets have been held by Tribune pursuant to validly granted and well-considered waivers, and petitioners do not demonstrate otherwise. More fundamentally, Tribune’s reliance on temporary waivers in the Hartford market in recent years has been necessitated by and is directly tied to the long period that the NBCO Rule itself has been unsettled.

As petitioners acknowledge, the cross-media limits adopted by the FCC in 2003 would have permitted WTIC-TV, WCCT-TV, and the *Hartford Courant* to remain

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<sup>111</sup> MAP/GL Petition at 35.

<sup>112</sup> See MAP/GL Petition at 36-42.

commonly owned.<sup>113</sup> Between the adoption of that decision in June 2003 and the lifting of the stay of the *2008 Order* in March 2010, no revisions to the absolute NBCO Rule were permitted to take effect, and the rule has remained in a continuous state of limbo over the past decade.<sup>114</sup> Now that they finally have taken effect, moreover, the revised NBCO waiver standards provide Tribune with an opportunity to demonstrate that its Hartford combination serves the public interest, which showing the company has provided to the Commission via the Exit Applications. In addition, the last time the FCC passed on the Hartford combination in November 2007, the Commission granted Tribune a waiver pending the final outcome of either the ongoing 2006 Quadrennial Review or Tribune's appeal in the D.C. Circuit, whichever occurs later.<sup>115</sup> Although Tribune and JPMorgan certainly would agree with petitioners that the uncertain status of the Hartford combination is not ideal, petitioners have mischaracterized the circumstances and sequence of events that have led up to the current situation. Read fairly, the record shows that Tribune has vigorously sought to preserve its Hartford media outlets openly and in a manner fully consistent with Commission requirements.

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<sup>113</sup> *Id.* at 39; *2003 Order*, 18 FCC Rcd at 13,804 (¶ 472) (permitting any newspaper/broadcast combinations that comply with the local television and local radio ownership rules in markets with nine or more television stations). As noted, in the waiver request, Tribune's Hartford stations are two of 11 broadcast television stations in the market. Hartford NBCO Waiver Showing at 52.

<sup>114</sup> *See Order, Prometheus Radio Project v. FCC*, No. 03-3388 (3d Cir. Sept. 3, 2003) (issuing a stay of the effectiveness of the rules adopted in the *2003 Order* pending review); *Order, Prometheus Radio Project v. FCC*, No. 08-3078 (3d Cir. June 12, 2009) (ordering that a stay issued in connection with the Court's review of the *2003 Order* remain in effect); *Order, Prometheus Radio Project v. FCC*, No. 08-3078 (3d Cir. Mar. 23, 2010) (lifting the stay); *see also* Hartford NBCO Waiver Showing at 9-17.

<sup>115</sup> The Commission also granted a contingent six-month waiver related to judicial stay of any of the revised FCC rules. *See 2007 Tribune Order*, 22 FCC Rcd at 21,278, n. 71.

1. *A Permanent NBCO Waiver Is Fully Merited and Unquestionably Would Serve the Interests of Hartford Consumers.*

In addition to their litany of complaints about the prior history of Tribune's Hartford combination, petitioners contend that the combination qualifies for neither a permanent NBCO waiver nor a permanent duopoly "failing station" waiver.<sup>116</sup> As to Tribune's request for a waiver of the NBCO Rule, petitioners' arguments essentially mirror those made with respect to the Chicago combination. These parties once again quarrel with the logical proposition that, because the company is bankrupt and notwithstanding the fact that bankruptcy was entered voluntarily, the Hartford properties should be considered "failed" under the revised NBCO Rule.<sup>117</sup> This argument has been refuted above with respect to the Tribune properties in Chicago, and the same reasoning is equally applicable here.<sup>118</sup>

Petitioners further ask the FCC to disregard Tribune's ample showing under the four-factor test supporting a permanent NBCO waiver in Hartford.<sup>119</sup> Again, petitioners would have the Commission overlook the extensive commitment that Tribune has made to local news with respect to both WTIC-TV and WCCT-TV simply because the relevant threshold under the local news factor *already* has been met.<sup>120</sup> But, if anything, the record compiled by Tribune in its operation of the Hartford properties provides the best form of assurance that the benefits of cross-ownership will continue to be realized through grant

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<sup>116</sup> See MAP/GL Petition at 42-49; IBT Petition at 8-12; Ellis Petition at 2-5; *see also* WTC Petition at 20-21.

<sup>117</sup> See MAP/GL Petition at 44; IBT Petition at 9-10.

<sup>118</sup> See Section IV.A, *supra*.

<sup>119</sup> See MAP/GL Petition at 45-49; IBT Petition at 10-12; Ellis Petition at 4-5.

<sup>120</sup> See MAP/GL Petition at 45-46; IBT Petition at 11.

of a waiver. Without logical analysis, petitioners contend that the Commission should take the view that cross-ownership in Hartford has reduced the resources that the properties have devoted to local news because of recent lay-offs at the *Hartford Courant*.<sup>121</sup> As explained in Tribune’s waiver showing, however, WTIC-TV now broadcasts more than 10 times greater local news than it did when acquired by Tribune, and WCCT-TV airs daily local newscasts today whereas it did not provide *any* local news prior to cross-ownership.<sup>122</sup> In any case, petitioners seem blind to the broadly reported fact that lay-offs and cuts in newsgathering operations have pervaded the newspaper industry for the past two years due to severe revenue losses.<sup>123</sup> Absent cross-ownership, the lay-offs petitioners irrationally attribute to cross-ownership well could have been more extensive.

Petitioners also attempt to cast doubt on Tribune’s statement that each of the Hartford outlets “exercise[s] independent news judgment in making [its] own assignments and covering stories in the manner that [it] see[s] fit, as each has throughout Tribune’s history.”<sup>124</sup> In its Hartford waiver request, Tribune fully explains the ways the properties collaborate and share resources, which enable the combination to greatly enhance the quality and quantity of local news and information it offers the local

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<sup>121</sup> See MAP/GL Petition at 46-47.

<sup>122</sup> Hartford NBCO Waiver Showing at 37-38, 103-04. In any case, the FCC’s stated concern in this regard is maintenance of local news resources at the stations, and petitioners have not shown any such reductions at either WCCT-TV or WTIC-TV. *2008 Order*, 23 FCC Rcd at 2050-51 (¶¶ 69-70).

<sup>123</sup> See Hartford NBCO Waiver Showing at 21-29.

<sup>124</sup> See MAP/GL Petition at 47; Hartford NBCO Waiver Showing at 104-05; *see also id.* at 44 (“Despite their close interactions, the Stations and the *Courant* continue to make their own separate editorial decisions regarding political and news content. The *Courant* maintains an independent editorial board.”).

community.<sup>125</sup> But such collaboration at the operational level does not suggest, as petitioners contend, that the properties coordinate their viewpoints.

Next, while petitioners make much of the fact that the HHI analysis provided by Tribune shows that the Hartford market is “moderately concentrated,”<sup>126</sup> they again fail to note that the Department of Justice would consider this level to be “unlikely to have adverse competitive consequences” with respect to an existing combination.<sup>127</sup> They also conveniently ignore the fact that the HHI for Hartford is significantly lower than the level in comparable markets and is below the national average.<sup>128</sup> Petitioners further fail even to mention Tribune’s more accurate concentration analysis, which incorporates the full range of advertising competitors present in the marketplace, instead of just the traditional media, and which definitively shows that the Hartford market is highly competitive and unconcentrated.<sup>129</sup> Finally, and for the reasons already discussed, petitioners’ suggestion that Tribune has not made an adequate showing that its Hartford properties are in financial distress should merit little consideration, given the company’s bankrupt status.

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<sup>125</sup> See Hartford NBCO Waiver Showing at 35-48.

<sup>126</sup> MAP/GL Petition at 47-48.

<sup>127</sup> See *Merger Guidelines* at Section 1.51; Mark R. Fratrick, Ph. D., BIA Financial Network, *Report on the Hartford-New Haven, CT Media Market: Media Diversity, Revenue Share, and Concentration Analysis in Support of the Request for Cross-Ownership Waiver for Television Stations WTIC-TV and WTXX(TV)*, at 11-15 (Feb. 26, 2010) (Attachment 4 to Hartford NBCO Waiver Showing); see also Section IV.A, *supra*.

<sup>128</sup> Hartford NBCO Waiver Showing at 83-85.

<sup>129</sup> See *id.*

2. *WCCT-TV Should Be Granted a Permanent Waiver of the Local Television Ownership Rule Because It Is a “Failed Station” and Continues to Qualify as a “Failing” Station.*

As already shown, drawing a distinction between voluntary and involuntary bankruptcies simply makes no sense in the context of Tribune, and accordingly WCCT-TV is properly viewed as a “failed” station.<sup>130</sup> In any case, as explained in the Exit Applications and acknowledged by petitioners, the FCC twice has determined that WCCT-TV meets all of the criteria for a failing station waiver and, accordingly, twice has ruled that the combination of WTIC-TV and WCCT-TV is permissible.<sup>131</sup> Thus, notwithstanding petitioners’ arguments to the contrary,<sup>132</sup> it would be an odd result indeed for the Commission to reverse course on this determination now as a consequence of the license transfers necessitated by Tribune’s emergence from bankruptcy. Petitioners have provided no logical basis for the FCC to do so.

Petitioners’ case for requiring Tribune to divest one of its Hartford television stations is based primarily on the assertion that the company has made insufficient efforts to sell WCCT-TV.<sup>133</sup> But, as demonstrated in the Exit Applications, making such past marketing efforts a condition to the grant of a permanent waiver here simply would make no sense.<sup>134</sup> Having been granted a permanent duopoly waiver and a temporary NBCO waiver pending the outcome of yet unsettled proceedings in connection with the transfer

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<sup>130</sup> See Section IV.A., *supra*.

<sup>131</sup> See FCC File No. BALCDT-20100428ADR, Exhibit 16-A, Request for Waiver of Section 73.3555(b) of the Commission’s Rules, at 2-3 (“Hartford Failing Station Showing”).

<sup>132</sup> See MAP/GL Petition at 42-43.

<sup>133</sup> See *id.*

<sup>134</sup> See Hartford Failing Station Showing at 7-8.

of control to Mr. Zell, Tribune has been under no obligation to sell either of the Hartford stations since 2007. In any case, any attempt to sell one of the stations during the pendency of the bankruptcy proceedings would have unduly complicated and prolonged those proceedings. Further, because of the significant difficulties inherent in selling assets during a bankruptcy and the substantial costs involved in operating WCCT-TV as a standalone station, it would not have been feasible to interest a buyer in purchasing WCCT-TV at anything approaching a satisfactory price.<sup>135</sup> And attempting to find such a purchaser would have been all the more impractical due to the deterioration in the television industry since 2007, and the corresponding sharp drop in station transactions, as well as the difficulties that already have been established with respect to the sale of this particular station.<sup>136</sup>

**C. The Temporary Waivers Requested By Tribune in the Alternative Are Reasonable in Light of the Company's Bankruptcy and Marketplace Realities.**

Finally, petitioners object to the temporary waivers requested by Tribune in the event that the FCC decides that it cannot grant permanent relief. As Tribune demonstrates in its waiver showings, a temporary waiver until 18 months after pending proceedings to revise the NBCO Rule become final would then be entirely appropriate.<sup>137</sup> While petitioners point to FCC precedent suggesting that waivers pending the outcome of a rulemaking due to the “mere initiation” of a proceeding will not routinely be granted,<sup>138</sup>

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<sup>135</sup> See Hartford Failing Station Showing at 15; *ION Media Networks Liquidating Trust*, Memorandum Opinion and Order, 24 FCC Rcd 14,579, 14,582 (¶ 12) (2009) (noting that “given the economic climate and ION’s exit from bankruptcy, obtaining financing for capital investments would be difficult....”).

<sup>136</sup> See Hartford Failing Station Showing at 6-17.

<sup>137</sup> See, e.g., Chicago NBCO Waiver Showing at 123-31.

<sup>138</sup> See MAP/GL Petition at 49-50.

the reevaluation of the NBCO Rule is hardly in a nascent stage at the FCC. To the contrary, reconsideration of the rule has been ongoing for 14 years, and the still-unresolved 2006 Quadrennial Review was initiated nearly four years ago. Both the Commission (twice) and the Third Circuit have concluded that the absolute cross-ownership ban originally adopted in 1975 no longer serves the public interest.<sup>139</sup>

Further, requiring the break-up of either the Chicago or the Hartford combination prior to the final resolution of these proceedings would be unduly harsh. Both combinations would have been permissible under the standards adopted by the agency in 2003, both should be granted waivers under the standards adopted in 2007, and both may well be permissible under any new standards that may emerge from the 2010 Quadrennial Review. Finally, given the well-documented difficulties of selling newspaper and broadcast properties in the current economic climate, an 18-month period to achieve compliance with Commission requirements is entirely reasonable.

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<sup>139</sup> See note 83, *supra*.

V. **CONCLUSION**

For the reasons set forth above, the petitions should be denied, and the FCC should move forward expeditiously to grant the Exit Applications and each of the waivers requested therein.

Respectfully submitted,

/s/

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June 29, 2010

**CERTIFICATE OF SERVICE**

I, Wanda Thorpe, hereby certify that on this 29<sup>th</sup> day of June, 2010, a copy of the foregoing Consolidated Opposition to Petitions to Deny of JP Morgan Chase Bank, N.A., as Administrative Agent Under the Tribune Company Credit Agreement dated May 17, 2007, was served by first-class mail, postage prepaid, upon the following:

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