

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

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| In the Matter of |) | |
| |) | |
| Applications of |) | MB Docket No. 10-104 |
| |) | |
| Tribune Television Company, Debtor-in-Possession, for Assignment of License of WTIC-TV |) | File No.: BALCDT-20100428ADR |
| |) | |
| and |) | |
| |) | |
| WTXX, Inc., Debtor-in-Possession, for Assignment of License of WCCT-TV |) | File No. BALCDT-20100428ADX |

OPPOSITION TO PETITION TO DENY OF NEIL ELLIS

Tribune Television Company, Debtor in Possession, and WTXX, Inc., Debtor-in Possession (collectively “Tribune”), by their attorneys, hereby oppose the Petition To Deny (“Petition”) filed by Neil Ellis (“Ellis”) requesting that the Federal Communications Commission (the “Commission”) deny Tribune’s request for waiver of the newspaper/broadcast cross-ownership rule (the “NBCO Rule”) for Tribune’s cross-owned properties in the above-captioned applications (the “Hartford Exit Applications”).

As Tribune has amply demonstrated in the Hartford Exit Applications, it is manifestly in the public interest for the Commission to allow Tribune to exit bankruptcy with its three Hartford properties – WTIC-TV, Hartford Connecticut; WCCT-TV, Waterbury, Connecticut (WTIC-TV and WCCT-TV together collectively the “Stations”),¹ and the *Hartford Courant* (the “*Courant*”) – intact. Contrary to the assertions in the Petition, Tribune’s Stations deliver extensive public interest benefits due to their common ownership with the *Courant*, and these

¹ Prior to June 22, 2010, the call sign for WCCT-TV was WTXX(TV).

benefits are unlikely to continue if the cross-ownership is discontinued. Furthermore, because of the Tribune bankruptcy, the Stations qualify as “failed” stations, reversing any negative presumption that might otherwise apply under the NBCO Rule. As a result, their continued co-ownership is presumptively in the public interest. Because Ellis presents nothing to refute Tribune’s demonstration in the Hartford Exit Applications that waiver relief is warranted, the Petition should be denied and the Hartford Exit Applications promptly granted.

I. REMOVING COMPETITORS IS NOT AN FCC CONCERN.

Ellis is the co-owner of the *Manchester Journal Inquirer*, a newspaper published six days a week in Manchester, Connecticut.² Manchester is approximately 12 miles east of Hartford, and the *Manchester Journal Inquirer* website indicates that the newspaper serves East Hartford, but not Hartford itself or nearby communities to the west of Hartford.³ While Ellis claims that his interest is to increase competition and diversity, his true interest is in reducing competition and diversity in the Hartford/Manchester newspaper market.⁴

First, Ellis’s own statements make plain his true anti-competitive interest in opposing Tribune’s ownership of the *Courant*: “As the owner of a competitive newspaper, Mr. Ellis suffers from the Tribune’s use of the benefits it receives as a result of the cross-ownership to prop up the bankrupt *Hartford Courant*.”⁵ Yet, Ellis alleges no specific abuses regarding

² Petition at 2; see [JournalInquirer.com](http://www.journalinquirer.com), http://www.journalinquirer.com/customer_service/about_us/.

³ See [JournalInquirer.com](http://www.journalinquirer.com), http://www.journalinquirer.com/customer_service/about_us/.

⁴ Indeed, Ellis has been fighting Tribune’s ownership of the *Courant* since 2003, when Ellis filed a Section 401(b) complaint in the United States District Court for the District of Connecticut, a complaint that was ultimately dismissed by the United States Court of Appeals for the Second Circuit as an improper attempt to circumvent Commission authority. See *Ellis v. Tribune Television Co.*, 443 F. 3d 71 (2nd Cir. 2006).

⁵ Petition at 2.

Tribune's Hartford cross-ownership, nor can he. Ellis states that Tribune "utilizes the Television stations to bolster advertising revenues by offering advertisers discounted rates." This behavior, he claims, allegedly "harms the ability of other media entities like the *Manchester Journal Inquirer* from competing, [sic],"⁶ but he offers no specifics – either anecdotal or econometric.

Second, although Ellis alleges that Tribune's Hartford cross-ownership results in a "loss of diversity and viewpoints,"⁷ Ellis again fails to offer specifics. Tribune's co-ownership of the Stations and the *Courant* in Hartford has allowed WTXX(TV), in particular, to develop into a platform for local programming and expanded coverage of Waterbury and its environs, through the increased news coverage those areas receive in the news simulcast on WTIC-TV, the public affairs programming they jointly present, and WTXX(TV)'s own local origination over the years. The properties provide extensive political coverage and investigative stories, giving voice to numerous diverse sources in their newscasts. While Ellis claims to be concerned about "independent news judgment,"⁸ he ignores the fact that the *Courant* maintains an independent editorial board, and he cites no instance whatsoever in which any collaboration on videotaping or fact gathering has compromised editorial perspective.⁹

In short, Ellis simply would like the Commission to lessen his competition by denying Tribune's Hartford cross-ownership waiver request. In an economic climate in which broadcasters and newspapers are failing at unprecedented rates,¹⁰ any forced separation is highly

⁶ *Id.* at 5.

⁷ *Id.* at 2.

⁸ *Id.* at 5.

⁹ Hartford Exit Applications, Exhibit 16 at 44.

¹⁰ Hartford Exit Applications, Exhibit 16 at 21-33.

unlikely to result in a financially sound, alternative buyer that would have the resources to maintain the level of news, information, and other community services that the Tribune Hartford properties offer today.¹¹ Accordingly, granting the Ellis Petition would, in fact, harm the public interest, and, therefore, the Petition must be denied.

II. TRIBUNE'S HARTFORD CROSS-OWNED PROPERTIES ARE ENTITLED TO A REVERSAL OF THE NEGATIVE PRESUMPTION BECAUSE THEY ARE "FAILED" PROPERTIES.

Under the NBCO Rule, if a cross-ownership combination is not in the top 20 largest markets, the Commission presumes the combination is inconsistent with the public interest.¹² This negative presumption can be overcome, and the Commission will find there is a positive presumption that a proposed cross-ownership combination is in the public interest, if a newspaper or broadcast outlet is "failed" or "failing."¹³ In this case, Tribune's Hartford properties qualify as "failed" due to Tribune's bankruptcy; thus, the negative presumption is reversed and the combination is presumptively found to be in the public interest.

Ellis argues that Tribune does not qualify for the "failed" station presumption because its bankruptcy was voluntary rather than involuntary.¹⁴ As Tribune explains in its opposition to a petition to deny filed by several public interest groups, however, that distinction should not preclude reversal of the negative presumption based on the "failed" station standard in this

¹¹ Hartford Exit Applications, Exhibit 16 at 86-87.

¹² *2006 Quadrennial Regulatory Review – Review of the Comm'n's Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2014 (¶ 6) (2008); *appeal pending sub nom. Prometheus Radio Project v. FCC*, Nos. 08-3078, et al. (3d Cir. filed July 15, 2008) ("2008 Order").

¹³ *2008 Order*, 23 FCC Rcd at 2047-49 (¶¶ 65-66).

¹⁴ Petition at 3-4.

case.¹⁵ Indeed, in cases like Tribune's, when it is clear that the bankruptcy filing was not made to obtain a waiver, a voluntary bankruptcy satisfies the Commission's standard and is consistent with the history and policy of the "failed" station standard. Here, there is no doubt that Tribune entered bankruptcy for reasons totally unrelated to FCC ownership waivers. With respect to the ownership waivers, however, it should be noted that Tribune already had waivers in each of its cross-owned markets. Thus, Ellis's suggestion that Tribune entered bankruptcy to secure waivers in the first place is off-base.

Furthermore, as Tribune noted in the Hartford Exit Applications, the Commission approved a failing station waiver for WCCT-TV in 2007; since then, economic conditions have only worsened.¹⁶ Tribune attempted to find a buyer for WCCT-TV for more than six years and was unsuccessful.¹⁷ The market for CW-affiliated local stations, such as WCCT-TV, has deteriorated so much since 2007 that efforts to sell would be futile today.

Finally, as Tribune amply demonstrated in the Hartford Exit Applications, even if the Hartford newspaper combination does not qualify for the "failed" station presumption, there is more than enough evidence in the record to rebut any negative presumption against grant of the waiver. For example, Tribune's ownership of the Hartford properties has resulted in a significant increase in local news offerings. WTIC-TV currently airs 35.5 hours per week of locally-produced news and public affairs programming, more than any other station in the market and

¹⁵ See Tribune's Opposition to Petition To Deny of Free Press, Media Alliance, NABET/CWA, National Hispanic Media Coalition, Office of Communication of the United Church of Christ, Inc., and Charles Benton at Section III.A.

¹⁶ Hartford Exit Application, Exhibit 16-A; see also *See Shareholders of Tribune Co.*, Memorandum Opinion and Order, 22 FCC Rcd 21,266, 21,279-81 (¶¶ 37-45) (2007), *appeal pending sub nom. Tribune Co. v. FCC*, Nos 07-1488, 07-1489 (D.C. Cir. filed Dec. 3, 2007).

¹⁷ Hartford Exit Application, Exhibit 16-A at 6-7.

more than a tenfold increase since Tribune acquired the station.¹⁸ Working together, WTIC-TV, WCCT-TV and the *Courant* have the resources to provide the Hartford community with recurring news and public affairs series and features that add significant depth and breadth to the coverage of news and information in the market.¹⁹ Because Tribune's Hartford cross-ownership has operated in the public interest, the waiver relief requested in the Hartford Exit Applications should be granted and the Petition denied.

III. CONCLUSION.

In the Hartford Exit Applications, Tribune unquestionably has demonstrated that WTIC-TV and WCCT-TV qualify as "failed" stations for purposes of applying the presumptions in the current NBCO Rule. Accordingly, the combination of these two stations along with the Tribune ownership of the *Courant* is presumptively in the public interest. Ellis has shown nothing in the Petition to overcome this presumption. Furthermore, even if Tribune was not entitled to the "failed" station presumption in Hartford, the Hartford Exit Applications definitively show that Tribune's Hartford Stations deliver extensive public interest benefits due to their common ownership with the *Courant* and that cross-ownership is necessary to allow these benefits to

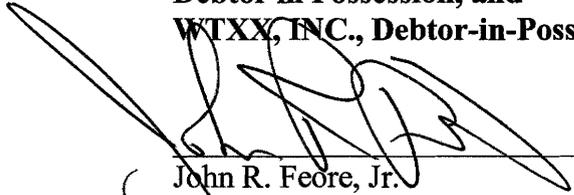
¹⁸ Hartford Exit Application, Exhibit 16-A at 3.

¹⁹ Hartford Exit Application, Exhibit 16-A at 38-43.

continue. The public interest therefore demands that the Ellis Petition be denied and the Hartford Exit Applications swiftly granted.

Respectfully submitted,

**TRIBUNE TELEVISION COMPANY,
Debtor in Possession, and
WTXX, INC., Debtor-in-Possession**



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Certificate of Service

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

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In addition, I have provided a courtesy copy of this Opposition via email to Stanley M. Brand (sbrand@brandlawgroup.com) and to all individuals listed below.

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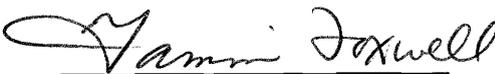
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