

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

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

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

Wilmington Trust Company (“Wilmington Trust”), the Successor Indenture Trustee for \$1.2 billion principal Exchangeable Subordinated Debentures due 2029 (generally referred to as the “PHONES”) issued by the Tribune Company, by and through its undersigned counsel, hereby supplements its Petition to Deny the captioned applications, filed June 14, 2010, in order to provide a copy of the Report of Kenneth N. Klee, As Examiner.¹ That report was filed by the Examiner in *In re Tribune Company et al.*, Case No. 08-13141 (Jointly Administered) (Bankr. D.

¹ The Examiner’s Report consists of four volumes, three annexes and over 1,100 exhibits. Wilmington Trust is simultaneously filing the four volume report and the three annexes. Due to the combined length of these documents, copies are being served on parties to this proceeding in digital form on compact disc. To the extent a waiver of Section 1.47(d) of the Commission’s rules is required for service in this manner, it is respectfully requested. Regardless, Wilmington Trust shall, upon request of any party, provide a copy of these documents in paper form. If desired, the exhibits may be accessed via the following link:
<http://dm.epiq11.com/onlinedocuments/trb/examinerreports/default.htm?DMWin=7c0abc56-b07b-4da3-be10-635f10895722>.

Del.), on July 26, 2010 (the "Examiner's Report"). Wilmington Trust respectfully requests leave of the Commission to supplement its Petition to Deny hereby, in order for the Commission to be fully apprised in the matter, and to ensure a full and complete record. The Examiner's Report is highly relevant to the public interest findings the Commission will be required to make in acting upon the Exit Applications.

As anticipated by Wilmington Trust in its Petition to Deny and its Reply filed with the Commission, the Examiner's Report makes findings that call into question: (1) the fitness of Tribune management to continue to manage the company and its licenses; (2) whether the Bankruptcy Court will approve the Reorganization Plan as currently structured; and (3) whether the interests of some of the major creditors will be avoided before Tribune emerges from bankruptcy, thus affecting who is entitled to own the reorganized company and the licenses associated with it. Essentially, Tribune has asked the Commission to approve the transfer of licenses to persons who may never become the owners of Tribune.

Tribune argued on page 5 of its Opposition to Wilmington Trust's Petition to Deny that the Commission "should not delay processing the Exit Applications because of Wilmington Trust's unfounded and self-interested speculation about the prospect of possible future 'character' issues." However, no one needs to speculate any longer about what the Examiner will find regarding "character" issues, possible bad faith, fraudulent transfers, possible avoidances, or other issues relevant to the ultimate ownership of Reorganized Tribune. As shown in the attached copy of Volume I, the Examiner's Report concluded, among other findings, that:

- “[I]t is somewhat likely that a court would conclude that the Step Two Transactions [of the LBO²] constituted *intentional* fraudulent transfers and fraudulently incurred obligations.” Examiner’s Report, Volume I, at 8 (emphasis added).³
- “[I]t is highly likely that Tribune, and reasonably likely that the Guarantor Subsidiaries, were rendered insolvent and without adequate capital as a result of the closing of the Step Two Transactions. . . . [These facts are] ‘*badges of fraud*’ for purposes of intentional fraudulent transfer analysis. . . . In particular, the Examiner focused his Investigation on three instances involving *dishonesty by Tribune* in the period leading up to, and resulting in, the Step Two Closing [of the LBO].” Examiner’s Report, Volume I, at 9-10 (emphasis added). Notably, the period of the Step Two Closing corresponds with Tribune’s application and the Commission’s proceedings leading to *Shareholders of Tribune Company*, 22 F.C.C. Rcd 21266 (2007). Thus, this finding calls into question the candor of the applicants in that proceeding, some of whom are applicants in this proceeding.
- “Tribune’s senior financial management failed to apprise the Tribune Board and Special Committee of relevant information underlying management’s October 2007 projections on which [a financial advisor] relied in giving its Step Two solvency opinion. . . . [T]he Examiner finds it implausible that the failure to apprise the

² Detailed definitions of capitalized terms are contained in Volume IV of the Examiner’s Report. The defined term “Step Two Transactions” refers to the second round of financing that completed Tribune’s leveraged buy-out. The amount of debt incurred is approximately \$4 billion dollars, and the current Plan anticipates these holders becoming owners of Tribune. The Examiner’s findings make it highly unlikely these holders will be entitled to any distribution from Tribune’s estate.

³ Under 11 U.S.C. § 548(a), a bankruptcy trustee “may avoid any transfer” that meets the definition of a fraudulent transfer or fraudulent conveyance. See *Wilmington Trust Petition to Deny*, at 11-12.

Tribune Board and Special Committee of this information . . . was unintentional.”

Examiner’s Report, Volume I, at 10.

- “[A] court is somewhat likely to conclude that the Tribune Entities incurred the obligations and made the transfers in Step Two with *actual intent to hinder, delay, or defraud creditors*. When a debtor resorts to *what appears to be dishonesty* to close a transaction . . . the natural consequence is that creditors will be hindered, delayed, or defrauded.” Examiner’s Report, Volume I, at 13 (emphasis added).
- “[T]he Tribune Entities did not receive reasonably equivalent value in exchange for the obligations incurred on the LBO Lender Debt. . . . [I]t is highly likely a court would conclude that none of the LBO Lenders conferred reasonably equivalent value on any Tribune Entity [in certain transactions].” Examiner’s Report, Volume I, at 19.⁴
- “[A] court is reasonably likely to find that section 546(e) [of the Bankruptcy Code] does not protect against avoidance of the obligations incurred on account of the LBO Lender Debt or the Stock Pledge, guarantees, or promissory notes given in connection therewith.” Examiner’s Report, Volume I, at 20-21.
- “A court is reasonably likely to conclude that JPMCB⁵] acted in good faith in connection with the obligations incurred and advances made in the Step One Transactions, *but not at Step Two*. . . . [T]he Examiner finds that it is reasonably

⁴ This finding is relevant to the Bankruptcy Court’s analysis under Section 548 of the Bankruptcy Code.

⁵ JPMCB means JPMorgan Chase Bank, N.A. See Examiner’s Report, Vol. IV, at 12. Under the current Reorganization Plan for Tribune, JPMCB would be the largest shareholder in Reorganized Tribune.

likely that the JPM Entities⁶] acted in good faith in Step One, *but not at Step Two.*” Examiner’s Report, Volume I, at 21 (emphasis added).

- Finally, “a court is reasonably likely to hold that the PHONES Subordination would not extend to LBO Lender Debt avoided at the Tribune level.” Examiner’s Report, Volume I, at 25.

The most important obligation of the Commission is to protect the public interest. Here, the Examiner’s Report makes extensive findings that, if confirmed by the Bankruptcy Court, may reflect on the character of some of the persons and entities proposed to receive or be associated with Commission licenses and/or may impact the ultimate ownership of Reorganized Tribune. The Commission may elect to defer consideration of the Examiner’s Report and to withhold judgment until the Bankruptcy Court adjudicates the cases that will almost certainly arise from the findings of the Examiner. The Commission may elect to distinguish or discount the Examiner’s findings. However, Wilmington Trust submits that because the Examiner’s findings deal with conduct that ultimately may reflect adversely upon the character qualifications of a Commission licensee, the public interest requires the Commission take cognizance of the Examiner’s Report.

Wilmington Trust recognizes that the Examiner’s findings are not binding on the Bankruptcy Court, and certainly not on the Commission. However, as noted, they raise serious questions about the future of Tribune and the identity of the persons and entities that will own Reorganized Tribune. The Examiner’s findings underscore the fact that the licenses should not be held by the persons to whom, and the entities to which, Tribune has asked to transfer the licenses. Those persons and entities may never own any portion of Reorganized Tribune, or may

⁶ JPM Entities means J.P. Morgan Securities Inc., JPMCB, and their affiliates, or any of them. See Examiner’s Report, Vol. IV, at 12.

not own the percentages set out in the Exit Applications. The character qualifications of some of those persons and entities to own Commission licenses and to operate them in the public interest have been called into question by the Examiner's findings. And, if the Bankruptcy Court ultimately reaches findings similar to those of the Examiner, the owners of Reorganized Tribune will be different than the parties identified in the Exit Applications.

For the foregoing reasons, Wilmington Trust respectfully requests that the Commission grant leave to file this supplement, and renews its request that the Commission reject the Exit Applications, as filed.

Respectfully submitted,

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Successor Indenture Trustee for the \$1.2 Billion
Exchangeable Subordinated Debentures Due 2029,
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Certificate of Service

I, Gia Madeleine Montserrat, hereby certify that on this 4th day of August 2010, I caused a copy of the “Request of Wilmington Trust Company, as Successor Indenture Trustee, For Leave to Supplement Its Petition to Deny, and Supplement to Petition of Wilmington Trust Company, as Successor Indenture Trustee, to Deny the Applications for Consent to Assignment of Broadcast Station License (FCC Form 314) filed by Tribune Company and its Licensee Subsidiaries” to be served by overnight delivery or *by email delivery, to the following:

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