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September 4, 2012

VIA ELECTRONIC SUBMISSION

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Tribune Company, Debtor-in-Possession*, MB Docket No. 10-104

Dear Ms. Dortch:

Tribune Company, Debtor-in-Possession ("Tribune") hereby responds to the August 24, 2012 letter ("August 24 Letter") filed by Free Press, Media Alliance, NABET/CWA, National Hispanic Media Coalition, Office of Communication of the United Church of Christ, Inc. ("UCC"), and Charles Benton (collectively, "Petitioners").[1] In their letter, Petitioners purport to "renew and update" their previously filed opposition to the applications that Tribune has filed seeking consent to the emergence of Tribune and its debtor-in-possession broadcast licensee subsidiaries from bankruptcy pursuant to the Plan of Reorganization that has been confirmed by the United States Bankruptcy Court for the District of Delaware (the "Exit Applications").[2]

As shown below and in previous filings, and contrary to Petitioners' contentions, Tribune has more than amply demonstrated that it is entitled to waivers of the newspaper/broadcast cross-ownership rule ("NBCO Rule") in all five markets where it has cross-owned newspaper and broadcast properties and to a waiver of the duopoly rule in Hartford.[3] Petitioners' 2010 Petition To Deny challenged only the proposed cross-ownership waivers for the Chicago and Hartford properties and the proposed duopoly waiver in Hartford. The August 24 Letter impermissibly presents a broad and untimely attack against the adequacy of all Tribune's cross-ownership waiver requests. Moreover, Petitioners also impermissibly seek to relitigate their pending petition for reconsideration of the 2007 FCC decision approving the transfer of control of Tribune and the grant of several applications for renewal of Tribune's broadcast station licenses.[4] All of these challenges to the Exit Applications are without merit and should be promptly rejected as nothing more than a last-minute effort to delay FCC approval now that the bankruptcy court has confirmed the plan for Tribune's emergence from bankruptcy.

I. Tribune Has More Than Amply Demonstrated That It Is Entitled to Waivers of the NBCO Rule.

Petitioners begin by noting that the "standard to be applied to Tribune's five requests for waivers of the [NBCO] Rule[] has changed" since the initial filing of the Exit Applications,[5] but their suggestion that Tribune has not addressed the currently applicable standards is wrong. To

the contrary, Tribune's waiver requests as initially filed with the Exit Applications in April 2010 demonstrated that Tribune is entitled to permanent waivers of the NBCO Rule not only under the modified waiver standards adopted by the FCC in 2008 (which were in effect at the time),[6] but also under the standards that the FCC has applied to such requests since the NBCO Rule's inception in 1975.[7] In addition, five months ago, Tribune amended the Exit Applications expressly to address intervening legal developments, including both "the Third Circuit's decision in *Prometheus Radio Project v. FCC* ("*Prometheus II*")," which vacated and remanded the 2008 modifications to the NBCO Rule on procedural grounds, and "the FCC's Notice of Proposed Rulemaking in its 2010 Quadrennial Review ("*2011 NPRM*")," [8] in which the Commission has proposed to re-adopt essentially the same rule changes that were made in 2008.[9] Tribune provided further support for its waiver requests in amendments filed in May 2012.[10]

Petitioners also wholly ignore the fact that, as Tribune has previously explained, the Commission has *three times* stated that an absolute ban on newspaper/broadcast cross-ownership cannot be justified, and the Third Circuit has *twice* agreed.[11] Although Petitioners may question Tribune's characterization of the *Future of Media Report*,[12] their contentions in this regard have no bearing on Tribune's ultimate showing, based on its long record of outstanding local service, that it is entitled to the permanent waivers that it seeks under any rational legal standard.[13] Moreover, Petitioners overlook that Tribune has requested, as an alternative to permanent waivers of the NBCO Rule, temporary waivers pending the outcome of the current proceeding to review the rule, and that the legal standard for such waivers has remained unchanged since 1998.[14] Further, acceptance of Petitioners' reflexively negative position with respect to common ownership of newspapers and broadcast stations would effectively preclude any waivers at all. This result, however, would run counter to settled judicial and agency precedent[15] and, as the record shows, would be particularly unjust in this case due to the protracted period during which the fate of the NBCO Rule has remained unsettled.[16] It also would violate the FCC's long-established policy of affording comity to the bankruptcy process,[17] a policy that has heightened importance in this case because of the extended length of time during which Tribune's bankruptcy proceedings have remained pending.

In their expanded attack on the merits of the waiver requests, Petitioners fail to rebut the extensive record showings of exemplary service that the Tribune properties have provided to their local communities for many years,[18] the abundant competition in the markets,[19] as well as the concrete evidence that divestitures not only would be infeasible, but might well decrease local news and community service.[20] In response, Petitioners offer mere speculation that sales to unspecified third parties might produce public interest benefits.[21] Even if the Commission could legally consider alternative owners, no guarantee exists that any theoretical new licensee would operate a station or offer programming that would better serve the local audience or satisfy Petitioners' preconceived notions of appropriate program fare.[22] The FCC cannot justify reliance on surmise in the face of real evidence – based on Tribune's actual track record in the markets at issue – that grant of the waivers would better serve the public interest. Indeed, the Administrative Procedure Act, the Constitution, and other governing legal principles forbid such a result.[23]

Petitioners again raise specific challenges to the proposed Chicago and Hartford waivers.[24] They very briefly allude to the geographical proximity of the stations' and newspapers' operations and certain instances of cooperation in newsgathering efforts in these markets and argue that Tribune's common ownership thus decreases diversity, localism, and competition.[25] Petitioners, however, incorrectly conflate the properties' common location and collaboration with a lack of editorial independence and resulting harm to diversity,[26] and their speculative contentions are rebutted by concrete evidence concerning the independence of Tribune's commonly-owned properties.[27]

Petitioners' attempt to distract the Commission from the meritorious nature of the waivers through their discussion of content that Tribune's local newspapers and websites may have obtained from Journatic, LLC is nothing but that – an irrelevant distraction. First, Petitioners' discussion contains factual inaccuracies and downplays the steps Tribune has taken to address concerns raised about Journatic, including having a former *Chicago Tribune* editor conduct an ongoing thorough review of Journatic's editorial practices and controls and, as *Chicago Tribune* editor Gerould Kern has commented, "indefinite[ly]" suspending use of Journatic news content at the paper.[28] Second, and more importantly, since the Commission first began its oversight of newspaper/broadcast cross-ownership, the agency has made clear, and the courts have affirmed, that its jurisdiction stops short of review of print – and now print website – content and editorial practices.[29] The material that Petitioners include on Journatic represents an occurrence that, while disappointing to Tribune, has no substantive legal bearing on the *bona fides* of its waiver requests.

II. Petitioners' Renewed Call for Forced Divestiture Is Unjustified and Contrary to the Public Interest.

The August 24 Letter seeks immediate divestiture of Tribune's properties, complaining that Tribune has made no effort to show that it was unable to sell its stations or could do so only "at a fire sale price."[30] As demonstrated by Tribune's previous filings, however, divestiture is not required by any Commission precedent, and such a radical step would disserve the public interest. Petitioners fail to identify any substantive basis for divestiture or any public interest objective it would advance.

In adopting the original NBCO Rule in 1975, the Commission set a high bar for mandating divestiture, acknowledging how disruptive it could be.[31] In that decision, the Commission ordered divestiture in less than two dozen "egregious" cases or "monopoly situations" in which a community was served only by a commonly-owned newspaper and broadcast outlet – far from the case today in the media-saturated markets where Tribune has sought cross-ownership waivers.[32] The United States Supreme Court affirmed the Commission's approach,[33] rejecting the intermediate appellate court's call for more extensive divestiture.[34]

In the same 1975 decision, the Commission indicated that it "anticipate[d] a number of waiver requests" in implementing its determinations and provided a general statement of the substantive policy to govern waivers, either permanent or temporary.[35] Under this policy the FCC provided four possible grounds for waivers, three of which relate to an owner's inability to

sell, sustain, or obtain a fair price for a co-owned property and encompass Petitioners' referenced "fire sale" standard. As a fourth and final ground, however, the FCC acknowledged that "if it could be shown for whatever reason that the purposes of the rule would be disserved by divestiture, if the rule, in other words, would be served by continuation of the current ownership pattern, then waiver would be warranted."[36] It is this fourth or "public interest" standard that is most relevant to Tribune's requests for cross-ownership waivers, and Tribune extensively documented, in keeping with precedent, how it has more than satisfied this test. No showing, such as Petitioners' insistence on proof of a "fire sale price," is required. While the *2008 Order* added a "failed" or "failing" waiver standard to the NBCO Rule that mirrored requirements under the duopoly rule, that modification was vacated as a result of the decision in *Prometheus II.*[37]

Petitioners also fail to refute Tribune's substantial showing that requiring divestiture would be needlessly disruptive to both Tribune and the media industry. A highly cautious approach to divestitures is even more appropriate here than it was in 1975, particularly given (1) the length of time Tribune has held its cross-owned properties; (2) the vast and demonstrated expansion of local service Tribune has brought to these communities; (3) the reliance on Tribune as a leading source of local news and other services in those markets; (4) the fact that the only reason waivers are even necessary is due to Tribune's adjudicated bankruptcy; and (5) uncertainty about the parameters of the Commission's ultimate revisions to its NBCO Rule. Divestiture is an entirely inappropriate remedy under these circumstances.[38] Moreover, Petitioners overlook the facts that the Chicago combination pre-dates the initial 1975 adoption of a ban on newspaper/broadcast cross-ownership, that it was grandfathered then, and that the Commission subsequently determined that a permanent waiver was appropriate.

The balance of Petitioners' arguments related to divestiture improperly seek to relitigate the Commission's *2007 Tribune Order* granting a permanent waiver of the NBCO Rule for Tribune's Chicago properties, temporary waivers of the NBCO Rule in other markets, and a permanent waiver of the duopoly rule in Hartford.[39] In particular, Petitioners now complain that the *2007 Tribune Order* provided Tribune an excessive amount of time to come into compliance by allowing waivers to continue until six months following finality of litigation challenging the *2007 Tribune Order*, litigation which remains pending today. As Tribune noted in 2010, the issues raised on reconsideration of the *2007 Tribune Order* were extremely limited and did not include this extension related to litigation.[40] In their 2007 Reconsideration Petition, Petitioners requested FCC review of only two very precise and limited parts of the *2007 Tribune Order* – the FCC's denial of standing with respect to certain of the 2007 transfer applications and the FCC's grant of a permanent waiver of the NBCO Rule to Tribune's Chicago media properties.[41] The time for objecting to any other aspects of the *2007 Tribune Order* is long past, and Petitioners' arguments on this point should be dismissed without further consideration.[42]

Petitioners cannot argue that Tribune has failed to comply with the *2007 Tribune Order* given the terms of the waivers conferred by that decision.[43] Their claim that Tribune "could" or "should" have come into compliance with ownership standards prior to requesting the authority necessary to emerge from bankruptcy lacks any basis or precedent. In short, Petitioners' tardy

objections to the terms of the *2007 Tribune Order* and their preferences regarding Tribune's media holdings must be rejected.

III. The Petitioners' Call for Action on the Petitions for Reconsideration of the *2007 Tribune Order* Prior to Action on the Exit Applications Is Misplaced and Should Not Delay a Decision In This Case.

The Petitioners raise two additional claims drawn from the 2007 Reconsideration Petition and other pending petitions seeking review of the *2007 Tribune Order.* Each of these claims is equally meritless, and appears to be interposed solely to delay the Commission's processing of the now-complete Exit Applications.

First, the Petitioners merely repeat the request in their 2010 Petition To Deny that the Commission grant the pending reconsideration petitions and "recover" and redistribute Tribune's licenses "to others in a manner that would increase diversity, competition, and localism."[44] Petitioners make no effort to explain how this argument is any more valid today than it was in 2010, when Tribune fully responded to it.[45] As Tribune noted then, this request both misstated the very narrow relief related only to standing and the permanent Chicago waiver that Petitioners' had sought on reconsideration and flatly ignored the practical effect of Tribune's intervening 2008 bankruptcy filing and the FCC's approval of the *pro forma* assignment of Tribune's licenses to the debtors-in-possession.[46] The intervening Tribune bankruptcy has essentially preempted the course Petitioners seek. The debtors-in-possession now hold the licenses under supervision of the federal bankruptcy court. The Petitioners' attempt at this late stage to undo the *2007 Tribune Order*, even if somehow possible, would likely be a violation of the "automatic stay" imposed pursuant to 11 U.S.C. § 362, absent extraordinary and unlikely relief from the bankruptcy court.

Second, Petitioners reargue a standing claim made in their 2007 Reconsideration Petition, which also has been fully briefed and is unaffected by any development since they first made that argument five years ago.[47] Once again, Petitioners cite no precedent to support their five-year old arguments on an issue that the FCC exhaustively examined before ruling against them in the *2007 Tribune Order*.[48] Petitioners' resuscitation of this claim is extremely untimely, and it should be rejected for the cogent reasons already provided by Tribune and others in opposing the 2007 Reconsideration Petition.[49]

IV. Petitioners' Contentions Concerning Action on Tribune's Renewals, Particularly Those in Los Angeles, New York, and Hartford, Are Baseless.

Finally, the Petitioners incorrectly argue, particularly with respect to television stations in Los Angeles, New York, and Hartford, that Tribune may not avail itself of a longstanding FCC policy under which multi-station assignment and transfer of control applications may be approved while license renewal applications for some of the applicant's stations are pending.[50] Petitioners apply their argument to what they contend are Tribune's pending 2006 KTLA(TV) license renewal application, its pending 2007 WPIX(TV) license renewal application, and its pending 2006 WTIC-TV and WTXX(TV) renewal applications. Contrary to Petitioners' basic

assumption, however, the FCC granted these applications in 2007,[51] and Petitioners' arguments concerning them must be rejected.

Nonetheless, with respect to any renewal applications for other Tribune stations that are already pending or may be filed prior to grant of the Exit Applications, Tribune is fully entitled to avail itself of an FCC policy first announced over 15 years ago in *Shareholders of CBS Corporation*.[52] Under this policy, the Commission routinely processes multi-station assignment and transfer of control applications that involve a subset of stations with pending renewal applications when (1) no basic qualifications issues are pending against the buyer or seller or, if pending, can be resolved in the context of the assignment or transfer proceeding, and (2) the new owner explicitly assents to standing in the stead of the previous licensee in the pending renewal proceeding.[53]

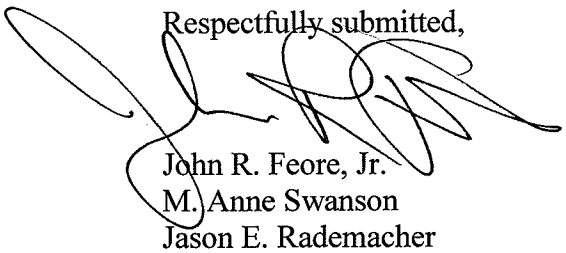
Petitioners have not raised any basic qualifications issues against Tribune. Their assertion that Tribune's failure to come into compliance with the NBCO Rule might somehow preclude Tribune from meeting the standard in *Shareholders of CBS Corporation* is equally incorrect. Compliance with the NBCO Rule and other ownership rules is not a "basic qualifications" issue under the Communications Act, and the FCC has never taken that position. Quite the contrary: Tribune's superior public service during its ownership of all its properties clearly enhances its qualifications to continue as a Commission licensee.

Furthermore, application of the "stand in the shoes" policy from *Shareholders of CBS Corporation* is not limited to proceedings in which only a single renewal application is pending. The Commission has utilized this policy in numerous cases involving more than a single pending renewal application, including the recent *Comcast/NBC Universal, Inc.* case, in which renewal applications for 11 stations were pending.[54] Accordingly, Petitioners do not present any persuasive reason why the Commission's renewal processing policy should be unavailable to Tribune in this case.

V. Conclusion

For the foregoing reasons, the Commission should promptly dismiss the Petition To Deny, deny their requested relief, and move promptly to grant the Exit Applications.

Respectfully submitted,



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ENDNOTES

[1] Petitioners filed a pleading styled as a "Petition To Deny" on June 14, 2010 ("2010 Petition To Deny"), to which Tribune and JPMorgan Chase Bank, N.A. separately responded on June 29, 2010 ("Trib. 2010 Opp." and "JPM Opp.," respectively).

[2] *See* Order Confirming Fourth Amended Plan of Reorganization, *In re Tribune Company, et al.*, Nos. 08-13141, *et al.* (KJC) (Bankr. D. Del. July 23, 2012).

[3] Tribune's licensee subsidiaries seek waivers of the NBCO Rule in the following markets: (1) Chicago (FCC File Nos. BALCDT-20100428AEL; BAL-20100428AEM); (2) Hartford (FCC File Nos. BALCDT-20100428ADQ, BALCDT-20100428ADX); (3) Los Angeles (FCC File No. BALCDT-20100428ADV); (4) Miami (FCC File No. BALCDT-20100428ADY); and (5) New York (FCC File No. BALCDT-20100428ADP). The waiver requests are Exhibit 16 to each application. The initial requests filed April 28, 2010 will be cited herein as "Initial Request(s)." The subsequent amendments to the requests will be cited as "March 2012 Amendment(s)" and "May 2012 Amendment(s)."

[4] *Shareholders of Tribune Co.*, Memorandum Opinion and Order, 22 FCC Rcd 21,266 (2007) ("*2007 Tribune Order*"), *appeal pending sub nom. Tribune Co. v. FCC*, Nos. 07-1488, 07-1489 (D.C. Cir. filed Dec. 3, 2007). The petition for reconsideration was filed on behalf of three of the Petitioners – UCC, Media Alliance, and Mr. Benton. Petition for Reconsideration of UCC and Media Alliance, MB Docket No. 07-119, File Nos. BRCT-20060811ASH, *et al.*, filed Dec. 31, 2007 ("2007 Reconsideration Petition").

[5] August 24 Letter at 2.

[6] Initial Requests (Chicago at 110-18, Hartford at 100-06, Los Angeles at 98-100, Miami at 93-95, New York at 92-94).

[7] Initial Requests (Chicago at 118-123, Hartford at 106-113, Los Angeles at 100-07, Miami at 95-102, New York at 94-100) (stating that "even if the Commission were to determine, based on developments in the Third Circuit Proceedings, a subsequent decision by the agency, or for any other reason, that the standards adopted by the agency in 2008 are not applicable here, [the properties] would be entitled to relief under prior waiver standards" and addressing 1975 waiver test and subsequent precedent).

[8] March 2012 Amendments at 2 (footnotes omitted, citing *Prometheus II*, 652 F.3d 431 (3d Cir. 2011); *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Promoting Diversification of Ownership in the Broadcasting Services*, Notice of Proposed Rulemaking, 26 FCC Rcd 17,489 (2011) ("*2011 NPRM*")).

[9] *See 2011 NPRM*, 26 FCC Rcd at 17,520-22, 17,526 (¶¶ 89-90, 101-02).

[10] *See generally* May 2012 Amendments.

[11] *See* Initial Requests (Chicago at 12-18, Hartford at 10-16, Los Angeles at 9-16, Miami at 8-13, New York at 9-15) (citing, *inter alia*, *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; Cross-Ownership of Broad. Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broad. Stations in Local Markets, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13,620, 13,747, 13,767 (¶¶ 327, 368-69) (2003) (subsequent history omitted); *Prometheus Radio Project v. FCC*, 373 F.3d 372, 398-400 (3d Cir. 2004) ("*Prometheus I*"); *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) (subsequent history omitted)); March 2012 Amendments (Chicago at 3, 46, Hartford at 3, 35, Los Angeles at 3, 34-35, Miami at 3, 32-33, New York at 3, 31) (citing *2011 NPRM*, 26 FCC Rcd at 17,520-22, 17,526 (¶¶ 89-90, 101-02)); *see also* JPM Opp. at 31, 46. As Tribune has explained, "the remand in *Prometheus II* was based not on any substantive disagreement with the Commission's bottom-line conclusion that the rule was ripe for at least some relaxation, but on the ground that the agency had failed to comply with the [Administrative Procedure Act]'s notice and comment requirements." March 2012 Amendments (Chicago at 46, Hartford at 35, Los Angeles at 35, Miami at 33, New York at 31) (citing *Prometheus II*, 652 F.3d at 449-54).

[12] *See The Information Needs of Communities: The Changing Media Landscape in a Broadband Age* (June 2011) ("*Future of Media Report*" or "*Report*"), *available at* http://transition.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf (last visited Aug. 28, 2012). First, Petitioners fault Tribune for failing to provide a citation for one conclusion that it attributed to the *Report*. August 24 Letter at 3 (quoting March 2012 Amendment (Chicago at 32)). The *Report* stated, at page 349, that "it is easy to see how newspapers and TV stations merging operations could lead to efficiencies and improved business models that might result in more reporting resources and therefore help reach the policy goal of enhanced 'localism.'" *Report* at 349. The *Report* thus found – as Tribune indicated – that common ownership *can* result in synergies that produce public interest benefits. Second, Petitioners complain that Tribune "misquoted" the *Report*, *see* August 24 Letter at 3 n.2, but the actual passages quoted in Tribune's filing appear at pages 25-26 (with page 26 cited in the March 2012 Amendments to Waiver Requests), while similar language, quoted by Petitioners, appears on page 312 (also cited in the March 2012 Amendments). The discrepancy in citation that Petitioners point out is a distinction without a difference.

[13] *See supra* nn. 7-10; *infra* nn. 18-20.

[14] Initial Requests (Chicago at 123-130, Hartford at 113-120, Los Angeles at 107-114, Miami at 102-110, New York at 101-09); March 2012 Amendments (Chicago at 44-48, Hartford at 33-37, Los Angeles at 33-35, Miami at 31-34, New York at 29-33); Trib. 2010 Opp. at 56-60; JPM Opp. at 45-46. Petitioners' citation to the FCC's decision in the Comcast/NBCU transaction in support of their request that the agency requires divestiture prior to Commission approval is inapposite. *See* August 24 Letter at 2 (citing *Comcast Corp., General Elec. Co., and NBC Universal*, 26 FCC Rcd 4328, 4344-47 (2011) ("*Comcast/NBCU Order*")). In that case, the applications, although initially requesting a period of time to come into compliance with the television duopoly rule, were later amended to include a commitment to divest the station at issue "prior to consummation." *Comcast/NBCU Order*, 26 FCC Rcd at 4345. It thus has no bearing on the situation presented here, in which continued waivers are being requested.

[15] Trib. 2010 Opp. at 13-14 (stating that "the FCC, courts, and even Petitioners themselves have consistently recognized the availability of waivers of the NBCO Rule" and that "the FCC has an absolute obligation under bedrock principles of administrative law to consider all relevant matters") (citing *Multiple Ownership of Standard, FM & Television Broad. Stations*, Second Report and Order, 50 F.C.C. 2d 1046, 1085 (¶ 19) (1975) (the "*1975 Order*"), *aff'd FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775 (1978) ("*NCCB*"); *NCCB*, 436 U.S. at nn.9, 11; *NAACP*, 46 F.3d at 1163; Petitioners Opposition to Motion for Partial Lifting of Stay at 9-10, *Prometheus Radio Project v. FCC*, No. 08-3078 (3d Cir. filed Aug. 13, 2004)); Initial Requests (Chicago at 108-123, Hartford at 100-113, Los Angeles at 98-107, Miami at 93-102, New York at 92-100) (establishing entitlement to waiver under existing and prior standards for waivers of the NBCO Rule); *see, e.g.*, Initial Requests (Chicago at 123, 124, Hartford at 112, 114, Los Angeles at 106, 107, Miami at 101-02, 103, New York at 100, 101) (discussing requirement under *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) that the Commission give all waiver requests a "hard look" and thereby ensure the "existence of a safety valve procedure for consideration of an application for exemption based on special circumstances"); JPM Opp. at 35 n.96 (noting that "the FCC is obligated to give all reasonable requests for waiver "serious consideration" and must consider all relevant circumstances).

[16] Initial Requests (Chicago at 126-28, Hartford at 115-18, Los Angeles at 109-111, Miami at 105-07, New York at 103-05); March 2012 Amendments (Chicago at 45-46, Hartford at 34-35, Los Angeles at 33-35, Miami at 31-33, New York at 30-32); *see also* Trib. Opp. at 40 (noting that "the FCC's review and efforts to revise its multiple ownership rules over the last decade have followed a tortuous administrative judicial path"); *id.* at 56-57 (recounting protracted proceedings); JPM Opp. at 32-33 (noting "the uncertain status of the NBCO Rule itself").

[17] Initial Requests (Chicago at 105-08, Hartford at 97-100, Los Angeles at 95-98, Miami at 90-93, New York at 89-92); March 2012 Amendments (Chicago at 4, 5, 44, 48, Hartford at 3, 5, 33, 36, Los Angeles at 4, 5, 32, 26, Miami at 4, 5, 30, 34, New York at 4, 5, 29, 33); *see* Trib. Opp. at 6-7, 11-13.

[18] *See, e.g.*, Initial requests (Chicago at 40 (reporting 42 hours per week of local news); Hartford at 37-38 (reporting 35.5 hours per week of local news); Los Angeles at 37 (reporting 46.5 hours per week of local news); New York at 35 (reporting 33 hours per week of local news)).

[19] Initial Requests (Chicago at 58-94, Hartford at 50-86, Los Angeles at 49-83, Miami at 44-79, New York at 42-77); March 2012 Amendments (Chicago at 5-14, Hartford at 5-13, Los Angeles at 5-13, Miami at 5-14, New York at 5-13); May 2012 Amendments; *see* Trib. 2010 Opp. at 13-22, 35-39.

[20] Initial Requests (Chicago at 94-98, Hartford at 86-90, Los Angeles at 83-88, Miami at 79-83, New York at 77-81); *see infra* at Section II.

[21] *See* August 24 Letter at 2 (asserting that "local news diversity would be furthered if different entities controlled the broadcast stations and the daily newspaper" and that "requiring divestiture *could* provide an opportunity for minority ownership and better service to underserved communities" (emphasis supplied)).

[22] *See, e.g.*, Trib. 2010 Opp. at 26-28; JPM Opp. at 32. *See also* 47 U.S.C. § 310(d) (prohibiting consideration of whether the public interest would be served better by assignment to person or entity other than proposed assignee or transferee).

[23] *See, e.g.*, Trib. 2010 Opp. at 19-20, 35, 45-46, 49; JPM Opp. at 30-31; *see also* Initial Requests (Chicago at 98-105, Hartford at 90-97, Los Angeles at 88-95, Miami at 83-90, New York at 82-89).

[24] As noted in opposition to the 2010 Petition To Deny, the Petitioners previously challenged only the requests for waiver of the NBCO Rule in Chicago and Hartford and the duopoly rule in Hartford. Tribune 2010 Opp. at 2; JPM Opp. at 33 n.90. To the extent that they now seek to broaden their "Petition To Deny" to cover all of the requests for waiver of the NBCO Rule, their contentions should be dismissed as untimely.

[25] August 24 Letter at 2 (discussing Hartford combination); *id.* at 3 (discussing Chicago operation).

[26] Tribune 2010 Opp. at 34-35, 45-46; JPM Opp. at 37, 42-43; *see also* Initial Requests (Chicago at 47-48, 116, Hartford at 44, 104-05).

[27] Trib. 2010 Opp. at 34-35, 45-46.

[28] "Report: Journatic lays off staff," *Poynter*, Aug. 7, 2012 (quoting Chicago Tribune Editor Gerould W. Kern), *available at* http://www.poynter.org/latest-news/mediawire/184229/report-journatic-lays-off-staff/.

[29] *NCCB*, 436 U.S. at 801.

[30] August 24 Letter at 5, 8.

[31] *1975 Order*, 50 F.C.C. 2d at 1078-86.

[32] *Id.* at Appendices D and E.

[33] *NCCB*, 436 U.S. at 803.

[34] *National Citizens Committee for Broadcasting v. FCC*, 555 F.2d 938, 966 (D.C. Cir. 1978), *rev'd in relevant part, NCCB*, 436 U.S. at 815.

[35] *1975 Order*, 50 F.C.C. 2d at 1085.

[36] *Id.*

[37] Petitioners cite to trade press rumors about Tribune's supposed post-bankruptcy plans to sell certain Chicago properties. August 24 Letter at 5. Not only do these offer inadequate evidentiary support, but they are completely irrelevant to the question of whether Tribune has satisfied the Commission's waiver standards in this case.

[38] Petitioners quibble with Tribune's citation to the *2011 NPRM*, complaining that Tribune has taken out of context that document's acknowledgement that grandfathering would be necessary if the FCC were to replace the NBCO Rule's contour-based analysis with a DMA test. August 24 Letter at 5. Petitioners fail to comprehend Tribune's reference to that acknowledgement, not for its specific application, but for the FCC's general and continued recognition that divestiture is "disruptive to the industry and a hardship for individual owners." *2011 NPRM* at ¶¶ 100, 104.

See also March 2012 Amendments (Chicago at 43; Hartford at 32; Los Angeles at 32; Miami at 30; New York at 28).

[39] August 24 Letter at 5-6.

[40] Trib. 2010 Opp. at 8-10.

[41] 2007 Reconsideration Petition at 5-20.

[42] *See, e.g.*, *W272BA, Cocoa Beach, Florida, et al.*, 26 FCC Rcd 11,138 (Audio Div. 2011) (citing Channelization of the 17.7-19.7 GHZ Frequency Band for Fixed Microwave Services Under Part 101 of the Commission's Rules, 21 FCC Rcd 10,900, 10,909 n.40 (2006) (noting that claims which collaterally attack earlier Commission decisions are procedurally flawed)).

[43] *2007 Tribune Order*, 22 FCC Rcd at 21,285.

[44] August 24 Letter at 7.

[45] Trib. 2010 Opp. at 8-9.

[46] Trib. 2010 Opp. at 8-10.

[47] August 24 Letter at 7. *See* 2007 Reconsideration Petition at 5-13.

[48] *2007 Tribune Order*, 22 FCC Rcd at 21,268-69.

[49] Tribune Company's Opposition to Petition for Reconsideration, MB Docket No. 07-119, FCC File Nos. BRCT-20060811ASH, *et al.*, filed Jan. 15, 2008, at 4-7. *See also* Opposition to Petition for Reconsideration (on behalf of Tribune Employee Stock Ownership Plan), MB Docket No. 07-119, FCC File Nos. BRCT-20060811ASH, *et al.*, filed Jan. 15, 2008, at 6-13.

[50] August 24 Letter at 7.

[51] *2007 Tribune Order*, 22 FCC Rcd at 21284-85.

[52] *Stockholders of CBS, Inc.*, 11 FCC Rcd 3733 (1995), *aff'd, Serafyn v. FCC*, 149 F.3d 1213 (DC Cir 1998). *See also Shareholders of CBS Corporation*, 16 FCC Rcd 16,072 (2001); Capital *Cities/ABC, Inc.*, 11 FCC Rcd 5841 (1996).

[53] 11 FCC Rcd at 3747-50.

[54] 26 FCC Rcd 4238, 4348 (2011). *See also, e.g.*, *Cumulus Media*, 26 FCC Rcd 12,956 (2011) (two applications pending).

CERTIFICATE OF SERVICE

I, Jason E. Rademacher, hereby certify that on this 4th day of September 2012, a copy of the foregoing letter was served by first-class mail, postage prepaid, on the following:

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In addition, I have provided a courtesy copy of this letter via email to Andrew Jay Schwartzman (aschwartzman@freepress.net), Angela J. Campbell (campeaj@law.georgetown.edu), and all those listed below.

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