

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Applications of Belo Corp.)	
)	
and)	
)	
Sander Operating Co. I LLC)	
(d/b/a WHAS Television))	MB Docket No. 13-189
Sander Operating Co. II LLC)	
(d/b/a KTVK Television))	BALCDT-20130619ADJ
Sander Operating Co. III LLC)	BALCDT-20130619AEZ
(d/b/a KGW Television))	BALCDT-20130619AFA
Sander Operating Co. IV LLC)	BALCDT-20130619AFJ
(d/b/a KMOV Television))	BALCDT-20130619AFL
Sander Operating Co. V LLC)	BALCDT-20130619AFM
(d/b/a KMSB Television))	BALCDT-20130619AFN
)	
and)	
)	
Tucker Operating Co. LLC)	
(d/b/a KTTU Television))	
)	
For Consent to Assignment of Broadcast)	
Station Licenses)	

To: The Chief, Media Bureau

CONSOLIDATED OPPOSITION TO PETITIONS TO DENY

The Sander Operating Companies (“Sander”),¹ by their attorneys and pursuant to Section 73.3584(b), hereby file this consolidated opposition to the petitions to deny filed in the above-captioned proceeding by a group of Washington, D.C. lobbying firms headed by Free Press and a

¹ The Sander Operating Companies include Sander Operating Co. I LLC (d/b/a WHAS Television), Sander Operating Co. II LLC (d/b/a KTVK Television), Sander Operating Co. III LLC (d/b/a KGW Television), Sander Operating Co. IV LLC (d/b/a KMOV Television), and Sander Operating Co. V LLC (d/b/a KMSB Television).

group of cable operators headed by the American Cable Association.² Petitioners oppose Sander's applications for FCC approval of its acquisition of television stations WHAS-TV, Louisville, Kentucky; KTVK(TV) and KASW(TV), Phoenix, Arizona; KGW(TV), Portland, Oregon; KMOV(TV), St. Louis, Missouri; and KMSB(TV), Tucson, Arizona.³ Both Petitions seek changes to the FCC's rules that are inappropriate in this proceeding, and neither raises any issue that would justify denial of the Applications or imposition of conditions. The Commission should deny the Petitions and grant the Applications without delay.⁴

² See Petition to Deny, Free Press, NABET-CWA, TNG-CWA, TNG-CWA, National Hispanic Media Coalition, Common Cause, and the Office of Communications, Inc., United Church of Christ, filed July 24, 2013 (the "Free Press Petition") (for convenience, signatories to the Free Press Petition are collectively referred to herein as "Free Press"); Petition to Deny, or in the Alternative, for Conditions, Time Warner Cable Inc., DirecTV LLC, and the American Cable Association, filed July 24, 2013 (the "ACA Petition") (for convenience, signatories to the ACA Petition are herein referred to as "ACA") (collectively, the Free Press Petition and the ACA Petition are referred to herein as the "Petitions" and the parties to the Petitions are referred to as the "Petitioners"). While Sander refers to the filings of Free Press and ACA as "Petitions" herein, Sander agrees with the arguments of Belo Corp. ("Belo"), Gannett Co., Inc. ("Gannett"), and Tucker Operating Co., LLC ("Tucker") that none of the signatories of the Free Press Petition or the ACA Petition have standing and that, at best, their filings should be considered informal objections. This Opposition is timely filed in accordance with the Commission's public notice announcing permit-but-disclose status for this proceeding. See Media Bureau Announces Permit-but-Disclose *Ex Parte* Status For Applications Seeking To Transfer Control of Licenses from Shareholders of Belo Corp. to Gannett Co., Inc. and for Applications Seeking To Assign Licenses from Subsidiaries of Belo Corp. to Subsidiaries of Sander Media, LLC And to Tucker Operating Co., LLC, *Public Notice*, MB Docket No. 13-189, DA 13-1666 (rel. July 31, 2013).

³ See FCC File Nos. BALCDT-20130619AFM (WHAS-TV); BALCDT-20130619AFA (KTVK(TV)); BALCDT-20130619AFJ (KASW(TV)); BALCDT-20130619AFN (KGW(TV)); BALCDT-20130619AEZ (KMOV(TV)); BALCDT-20130619AFL (KMSB(TV)) (collectively, the "Applications"). The stations subject to the Applications are referred to as the "Stations."

⁴ The Applications are related to a larger transaction through which Gannett will acquire control of several television broadcast licenses and Tucker will acquire the license for KTTU(TV), Tucson, Arizona. Sander supports grant of all of the applications involved in this transaction, and is informed that the other parties will defend their applications separately.

I. FREE PRESS’S DESIRE FOR RESTRICTIONS ON LOCAL TELEVISION SERVICE AGREEMENTS CANNOT JUSTIFY DENIAL OF THE APPLICATIONS.

Free Press raises what amounts to a single objection to each of the Applications, namely its speculation that the local service agreements contemplated in the Applications will result in Gannett controlling the stations involved in violation of the “spirit” of the Commission’s local television ownership rules.⁵ Free Press’s allegations are substantively meritless because Sander will at all times maintain ultimate control over each of the Stations. Moreover, the widespread revision of the Commission’s local media ownership and attribution rules that Free Press seeks cannot lawfully be granted in this proceeding.

A. The Commission Must Refuse Free Press’s Call To Adopt Wide-Ranging Rule Changes in This Proceeding.

First, Free Press’s Petition should be denied because it inappropriately asks the Commission to use this application proceeding to adopt sweeping changes to the local television ownership rules. The courts have instructed that when an agency seeks to change existing legislative rules, it may do so only through the notice and comment procedures outlined in the Administrative Procedure Act for legislative rulemaking proceedings.⁶ The FCC has well-defined rules governing local television ownership and attribution, and it reviews those rules

⁵ The Applications contemplate Sander utilizing several local service arrangements with Gannett to support Sander’s operation of the Stations. In addition, Sander will assume a shared services agreement with Raycom Media in Tucson that permits Sander to obtain programming from Raycom for up to 15% of the stations weekly program schedule (the “Raycom SSA”). Collectively, the service agreements that are part of this transaction are referred to as the “Service Agreements.”

⁶ See, e.g., *United States Telecom Assoc. v. FCC*, 400 F.3d 29, 39-40 (decisions that amount to a substantial change in prior rules are subject to APA notice and comment procedures); *Travelers Information Stations, Order and Notice of Proposed Rulemaking*, 25 FCC Rcd 18117, 18121 n.37 (2011) (existing policy should be changed only through the rulemaking process).

quadrennially pursuant to Congressional mandate.⁷ The Commission has reviewed local service agreements in several past proceedings, and those issues are again under Commission review in the 2010 quadrennial ownership rule review.⁸ Free Press has participated actively in those proceedings and continues to do so. Under these circumstances, the Free Press Petition is nothing less than an invitation for the Commission unlawfully to circumvent the rulemaking process and adopt Free Press's preferred policy position in this case.

Free Press cloaks its request in the language of the Communications Act, asking the Commission to find that the Service Agreements render the Applications inconsistent with the public interest.⁹ But Free Press fails to cite a single case where the Commission found that a proposed ownership arrangement complied with the local ownership rules but was nonetheless contrary to the public interest. Nor does Free Press articulate any standard that the Commission could use in applying this new "public interest" test. The Commission has never employed such an *ad hoc* approach to broadcast applications or the discharge of its important public interest responsibilities. Nothing in Free Press's Petition provides a justification for doing so here.

B. Sander Will Provide Top-Quality Local Service to the Phoenix, St. Louis, Portland, Louisville, and Tucson Markets.

The Commission should not be fooled by Free Press's efforts to portray Sander as a mere "shell corporation" set up to mask Gannett's takeover of the Stations.¹⁰ The Sander Operating Companies will be owned and operated by Jack Sander, who got his start in the television

⁷ See 47 C.F.R. § 73.3555; Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004).

⁸ See 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, *Notice of Proposed Rulemaking*, 26 FCC Rcd 17489, 17566-69 (2011).

⁹ Free Press Petition at 12-14.

¹⁰ *E.g., id.* at 6, 14.

broadcasting industry in 1965 at then-WLWC(TV) in Columbus, Ohio. In the past 48 years, Mr. Sander has built a distinguished career that has included leadership positions at local stations in Toledo, New Orleans, Phoenix, Atlanta, and in the corporate offices of Taft Broadcasting. More recently, Mr. Sander held the title of Vice-Chairman of Belo until his semi-retirement in 2006. During his long career in the industry, Mr. Sander also has served as President-Chairman of the NBC Television Affiliates, Vice Chairman of the Fox Board of Governors, Chairman of the Television Bureau of Advertising, Chairman of Broadcast Music, Inc. (BMI), Chairman of the National Association of Broadcasters' Joint Board, and on the Board of Directors of Citadel Broadcasting. The depth and breadth of Mr. Sander's experience and his familiarity with the business of modern broadcasting at both the local and national level is practically peerless. And while he has spent considerable time in broadcast boardrooms, he retains both the interest and acumen to run local television stations. Indeed, as recently as a ten-week period in 2008, Mr. Sander acted as the general manager for Belo's KTVK/KASW.

Mr. Sander's focus on local news and community service is well known. In 2006, Mr. Sander, then Vice-Chairman at Belo, received *Broadcasting & Cable* magazine's Broadcaster of the Year Award the same year that Belo's New Orleans station WWL received a Peabody award for its coverage of Hurricane Katrina.¹¹ WWL was the only station in New Orleans to stay on the air throughout the storm, and Mr. Sander helped coordinate a group wide response to the storm, devoting resources from other markets to ensure that New Orleans residents received the news they needed.¹² And Mr. Sander knows that localism is the key to broadcasting's present and future. As he noted upon his induction into the *Broadcasting & Cable* magazine Hall of

¹¹ See Allison Romano, *Jack Sander: Sprinting to the Finish Line*, BROADCASTING & CABLE, April 16, 2006, available at http://www.broadcastingcable.com/article/103710-Jack_Sander.php.

¹² *Jack Sander: Broadcasting & Cable Hall of Fame*, available at www.broadcastingcable.com/hof/1931-Jack_Sander.php.

Fame, “The key is local – local TV, local radio, local newspapers serve a consumer and advertiser base that really can’t quite be served in the same magnitude in any other way . . . I am optimistic about local television.”¹³ By purchasing the Stations from Belo, Mr. Sander is putting his considerable experience and management acumen behind that optimism to improve service to the Phoenix, St. Louis, Portland, Louisville, and Tucson markets. With Mr. Sander at the helm, there is no likelihood that the Sander Operating Companies will be powerless “shell” companies at Gannett’s beck and call.

None of Free Press’s specific objections to the Service Agreements provide any evidence that Sander will be anything less than the ultimate authority over every essential aspect of the Stations’ operations. Free Press claims that the Service Agreements “put Gannett in charge of day-to-day decision making, and in some cases programming, for the stations that are putatively owned by . . . Sander.”¹⁴ This allegation is false for every market. The FCC rules require television licensees to retain decision-making authority over a station’s programming, finances, and personnel.¹⁵ And the Service Agreements are carefully designed to ensure that Sander retains control over each of these three key areas of the Stations’ operations.¹⁶ Free Press acknowledges these provisions in the Service Agreements but seeks to minimize their importance by referring to them as “boilerplate.”¹⁷ While Free Press may believe that the most

¹³ *See id.*

¹⁴ Free Press Petition at 6.

¹⁵ *See, e.g., Siete Grande Television, Inc.*, 11 FCC Rcd 21154, 21156 (1996) (citing *WHDH, Inc.*, 17 FCC 2d 856 (1969); *Stereo Broadcasters, Inc.*, 87 FCC 2d 87 (1981)).

¹⁶ *See, e.g., Tucson Transition Services Agreement* § 5.

¹⁷ Free Press Petition at 17, 21, 25, 29, 33. Free Press also insinuates that Gannett has gained control over the Station finances through operation of a discretionary performance bonus contemplated by the Service Agreements and through fee payments that the Stations will make to Gannett. *Id.* at 17, 21, 29, 33. In reality, the performance bonus language explicitly states that “determination [of eligibility for a Performance Bonus and the amount of the Performance Bonus] shall be in the sole and absolute discretion of Station Licensee.” *See, e.g., Form of*

important attributes of station operations are back-office functions like traffic control and billings and collections, the FCC has long recognized that efficiently consolidating these ministerial areas of station operations does nothing to erode the independence of local licensees where it counts. Gannett will not have “day-to-day control” over the Stations’ operations, and the Service Agreements do not support Free Press’s claim that Sander will be a mere “shell corporation.”

Many of Free Press’s allegations of Gannett control over the Stations are simply mistakes. For example, Free Press suggests that the Service Agreements will give Gannett the right to “own or operate the news operations of the CBS, NBC, and ABC affiliates (all of which are top-four affiliates) in St. Louis.¹⁸ In fact, there is no programming component at all to the service agreements for St. Louis and Phoenix, so Free Press has no basis for claiming that Gannett will gain control over the programming aired on KMOV(TV), KTVK(TV), or KASW(TV). Similarly, while Free Press claims that the Service Agreements provide Gannett with “100% website management” of all of the Stations’ websites, this is entirely incorrect and, in any event, concerns a matter outside the FCC’s purview.¹⁹ The Service Agreements require Gannett to provide technical support and maintain the operation of the Stations’ websites, but the agreements do not confer on Gannett any right to editorial control of the websites’ contents.

Free Press also misunderstands the impact of the various agreements related to Sander’s operation of KMSB(TV) in Tucson. Free Press complains that the TSA in that market (the

Shared Services Agreement, Schedule A section 2. Far from diminishing Sander’s control, the discretionary bonus is a further example of Sander’s control over the Stations’ finances. Likewise, Sander’s agreement to purchase the services Gannett will provide on terms calibrated to the particular markets and stations demonstrates Sander’s exercise of independent business judgment to find the most efficient and cost-effective way to conduct the Stations’ operations. Mr. Sander’s 48 years in the TV broadcast industry more than qualify him to negotiate appropriate fees for the services Gannett will provide.

¹⁸ Free Press Opposition at 32.

¹⁹ *Id.* at 16.

“Tucson TSA”) will expire in at most two years and that thereafter “Gannett would be free to provide its own programming . . . or change the agreement in any other way that suits the parties.”²⁰ In reality, the Tucson TSA is a commercial agreement between Sander and Gannett. It has no programming component and it does not offer Gannett the opportunity to force Sander to accept programming – or any other services from Gannett – at any point in the future. Free Press nonsensically posits that the future expiration of the TSA will somehow expand Gannett’s role rather than terminating it. No evidence supports this claim. Free Press’s complaints about the Tucson TSA are speculative and can form no basis for the Commission to find that Gannett will exercise improper control over Sander in Tucson.

For all these reasons, Free Press has failed to provide any basis for denying the Applications. The Commission should reject the Free Press Petition and grant the Applications.

II. THE RETRANSMISSION CONSENT PROVISIONS OF THE SERVICE AGREEMENTS ARE FULLY CONSISTENT WITH CURRENT RULES AND THE PUBLIC INTEREST.

ACA’s efforts to convince the Bureau to adopt restrictions on the use of an agent for negotiation of retransmission consent agreements by local television stations in the context of these Applications suffers from the same procedural flaws as the Free Press Petition. The Commission has been considering this issue in an ongoing rulemaking proceeding for more than two years and has yet to reach a decision that would support the relief ACA requests.²¹ Moreover, ACA and Time Warner Cable repeatedly have been told by the Bureau – at least four times in the past two years – that restrictions on agency relationships in retransmission consent

²⁰ *Id.* at 27.

²¹ *See* Amendment of the Commission’s Rules Related to Retransmission Consent, *Notice of Proposed Rulemaking*, 26 FCC Rcd 2718 (2011).

negotiations will not be adopted in proceedings addressing the assignment of television licenses.²² For these reasons, the ACA Petition should be dismissed without consideration.

The ACA Petition also is riddled with errors that badly misstate the retransmission consent relationships between Sander and its Service Agreement partners in Phoenix, St. Louis, Portland, and Tucson. For example, ACA claims that the Tucson TSA amounts to an appointment of Gannett as its agent to negotiate retransmission consent.²³ The language that ACA omits from its quotations from the TSA confirms that Gannett may only act as Sander's negotiating agent if Sander makes an affirmative appointment of Gannett at some point in the future, an act that is in Sander's sole discretion.²⁴ Thus, contrary to ACA's claims, Sander may employ Gannett in an agency capacity or it may not, depending upon Sander's future business decisions.

ACA's speculation that Sander, Gannett, and Raycom could "collude" on retransmission consent agreements in Tucson also lacks any foundation.²⁵ First, the Raycom SSA excludes retransmission matters. Second, as noted above, the Tucson TSA merely permits Sander to appoint Gannett as its agent for retransmission consent negotiations, consistent with the Commission's established rules and precedent.

In addition, ACA's parade of horrors, which predicts "blackout threats by Gannett in St. Louis or Phoenix . . . pack[ing] a double punch" because they implicate two top-four rated

²² See *High Maintenance Broadcasting, LLC*, FCC File No. BALCDT-20120315ADD, rel. Aug. 28, 2012; *ACME Television Licenses of Ohio, LLC*, 26 FCC Rcd 5198 (2011); *Free State Communications, LLC*, 26 FCC Rcd 10310 (2011); *ACME Television, Inc.*, 26 FCC Rcd 5189 (2011).

²³ ACA Petition at 6.

²⁴ See Tucson TSA at §6.4.

²⁵ ACA Petition at n.16.

stations, is entirely off the mark.²⁶ The Service Agreements covering KTVK(TV) and KASW(TV) in Phoenix and KMOV(TV) in St. Louis do not contain any provisions providing for Gannett to act as Sander's agent for retransmission consent negotiations in those markets.

The Commission should reject ACA efforts to inject these rulemaking issues into this proceeding by dismissing ACA's Petition.

III. CONCLUSION

For the reasons stated herein, Sander requests that the Commission deny or dismiss the Petitions and grant the Applications without further delay.

Respectfully submitted,

SANDER OPERATING COMPANIES

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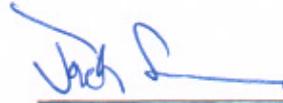
August 8, 2013

²⁶ *Id.* at 11-12.

DECLARATION OF JACK SANDER

1. My name is Jack Sander, and I am the President and sole shareholder of the Sander Operating Companies that are party to the foregoing "Consolidated Opposition to Petitions to Deny" (the "Opposition").
2. I have read the Opposition, and I am familiar with the contents thereof.
3. The facts contained herein and within the Opposition are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry, that the Opposition is well grounded in fact, that it is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose.
4. I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 8, 2013



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