

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Chief, Media Bureau

CONSOLIDATED OPPOSITION TO PETITIONS TO DENY

Tucker Operating Co. LLC (d/b/a KTTU Television) (“Tucker”), by its attorneys and pursuant to Section 73.3584(b), hereby files this consolidated opposition to the petitions to deny filed by several Washington D.C. lobbying groups led by Free Press and a handful of multichannel video providers led by the American Cable Association.¹ Both Petitions seek to

¹ 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

convert this proceeding, which properly should focus on Tucker’s qualifications to own and operate Tucson, Arizona television station KTTU(TV), into a vehicle for obtaining wide-ranging regulatory relief that Petitioners are seeking in pending rulemaking proceedings.² Neither Petition alleges that Tucker is unqualified or that its acquisition of KTTU(TV) would violate the FCC’s rules. That should be the end of this inquiry, and the Petitions should be denied.

I. Tucker’s Nearly 40 Years of Service in the Broadcasting Industry Make Him Eminently Qualified To Own and Operate KTTU(TV).

The Application proposes that Belo will assign to Tucker the license to operate KTTU(TV), Tucson’s MyTV and Estrella TV affiliate. Tucker is headed by Ben Tucker, a nearly 40-year veteran of the TV broadcast business. Mr. Tucker began his broadcasting career as an account executive for Retlaw Broadcasting in 1975 and eventually rose to the position of President and Chief Executive Officer at Fisher Communications, Inc. – then a broadcast station group including nine-station network-affiliated television and 30 radio stations – in 2005. Long an advocate of policies designed to foster localism in TV broadcasting, Mr. Tucker served as

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”). While Tucker refers to the filings of Free Press and ACA as “Petitions” herein, Tucker agrees with the arguments of Belo Corp. (“Belo”), Gannett Co., Inc. (“Gannett”), and the Sander Operating Companies I-IV, LLC (“Sander”) 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).

² *See* FCC File No. BALCDT-20130619ADJ (the “Application”). Tucker supports grant of the other applications involved in this transaction, but is informed that the other parties will defend their applications separately.

chairman of the Board of Directors of the CBS Television Network Affiliates Association from 1987-89; as chairman of the Network Affiliated Station Alliance from 1994-95, and as chairman of the Television Board of the National Association of Broadcasters.

Most recently, Mr. Tucker has served as the licensee of WGTU(TV), an ABC-affiliated station licensed to Traverse City, Michigan in the 119th-ranked Traverse City-Cadillac DMA.³ At the time Mr. Tucker acquired the station in 2007, WGTU had aired only very limited local news since 1984. During Mr. Tucker's tenure, the station entered into a service agreement with Barrington Broadcasting ("Barrington") that allowed WGTU to introduce a full weeknight evening newscast in 2010. This is not a rebroadcast of another station's news programming; the news aired on WGTU(TV) originates from its own set and has its own on-air staff. The service agreements fostering cooperation between Barrington and Mr. Tucker in Traverse City have been a great benefit to viewers in the DMA, increasing the quality and quantity of local service.⁴

Mr. Tucker's commitment to building strong local television stations has been firmly grounded in his conviction that the role local television stations play in local media markets is essential to the well-being of those markets.⁵ Mr. Tucker's wealth of experience operating local television stations, his familiarity with the economics and logistics of the modern local television industry, and his commitment to providing high-quality service to local television markets speak for themselves. Tucson residents will be well-served by grant of the Application.

³ Mr. Tucker also has been the licensee of WGTQ(TV), which is operated as a satellite of WGTU(TV) and is licensed to Sault Ste. Marie, Michigan.

⁴ Recently, Mr. Tucker agreed to sell WGTU(TV) and WGTQ(TV) to Cunningham Broadcasting Corporation, and the application for FCC approval of that transaction is pending. *See* FCC File No. BALCDT-20130315ACP.

⁵ *See* Written Testimony of Ben Tucker, President, Fisher Broadcasting Company, Field Hearing on Media Concentration, Seattle Washington, Mar. 7, 2003.

II. Petitioners' Objections To Tucker's Acquisition of KTTU(TV) Provide No Grounds for Denying the Application.

Petitioners do not question Mr. Tucker's credentials to hold the license for KTTU(TV), nor do they claim that the transaction contemplated by the Application would violate any existing rule. Instead, they claim that the public interest requires denial of the Application because the terms of service agreements contemplated by the transaction are inconsistent with Petitioners' policy preferences on several issues currently pending before the Commission in ongoing rulemakings.⁶ The Commission should not delay or deny grant of the Application based on Petitioners' policy preferences, so the Petitions should be denied.

A. KTTU(TV)'s Service Agreements Provide No Basis for Denying the Application.

Free Press concedes that the Application does not violate any existing Commission rule, but nonetheless argues that the Commission should deny approval because it claims certain service agreements contemplated by the Application are contrary to the public interest.⁷ As an initial matter, Free Press does not identify a single case where the Commission found a transaction that complies with the Commission's rules to be inconsistent with the public interest, nor does it articulate any standard by which such a determination might be made. The Commission has never denied an assignment application based on undefined public interest grounds, and Free Press offers no reason for the Commission to change its practices in this case.

The heart of the Free Press Petition is an allegation that the service agreements contemplated by the Application will give Gannett an inappropriate level of control over

⁶ Free Press Petition at 12, 23-27; ACA Petition at 9-10.

⁷ Free Press Petition at 26. The "service agreements" include a Transition Services Agreement between Tucker and Gannett; a Joint Sales Agreement between Tucker and Sander Operating Co. V; and a shared services agreement between Tucker and Raycom (the "Raycom SSA").

KTTU(TV), leaving Mr. Tucker as a figurehead only.⁸ That is simply false. Tucker will retain ultimate control over all of KTTU(TV)'s operations, and will be contractually obligated to exercise that control. Free Press derides as “boilerplate” language in the service agreements that requires Tucker to retain control over core station functions like programming, editorial policies, human resources, and paying for the operating costs of the station.⁹ But that language preserves for Tucker every essential attribute of a local TV licensee. Programming services that may be provided by other broadcasters are capped at no more than 15% of KTTU(TV)'s schedule – Tucker will decide how to program at least 85% of the station's airtime.¹⁰ Moreover, the Raycom SSA permits Tucker to reject any programming that, in his judgment, is inconsistent with the interests of the Tucson community. Free Press recognizes that the service agreements also require Tucker to retain control over the station's employees and finances.¹¹ Programming, personnel, and finances are precisely the three areas the Commission has identified as key to a licensee's exercise of operational control over its station.¹² Tucker will retain authority over all three at all times. Free Press's assertion that Tucker is merely a “shell” with “few responsibilities” ignores what running a television station is actually all about and demonstrates that Free Press's problem is with the Commission's rules, not the Application.

⁸ Free Press Petition at 27 (“Tucker, it appears, has few if any obligations once the transfer takes place.”).

⁹ *Id.* at 25.

¹⁰ Indeed, no programming services will be provided pursuant to any of the agreements entered into between Tucker and Gannett or Tucker and Sander. As Free Press recognizes, the limited programming provided to KTTU(TV) by another stations is provided through a shared services agreement with Raycom. *Id.*

¹¹ *Id.*

¹² *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)).

According to the Free Press Petition, Mr. Tucker's ownership of KTTU(TV) nonetheless offends the public interest because Tucker has agreed to delegate certain of the station's back-office functions and sales activity.¹³ Free Press claims that Tucker's retention of editorial control over the station's content and operational control over its personnel and finances is irrelevant; what is important is who provides essentially clerical services like traffic control, billing and collections, and accounts receivable.¹⁴ In the real world, the service agreements contemplated by the Application are simply the most efficient, economical way of running a local television station today and ensuring that more resources can be invested in local services – particularly a relatively small MyNetwork affiliate in a mid-sized market like Tucson. Mr. Tucker has a lifetime of experience that has led him to enter into these agreements, and he is eminently qualified to judge which functions are essential to his maintenance of control over the station and which can be outsourced without interfering with that control. Free Press apparently views Mr. Tucker's agreement to pay a flat monthly fee to Gannett for the services it provides to KTTU(TV) as an emblem of his lack of independence.¹⁵ But in reality, this is just another exercise of Mr. Tucker's well-seasoned business judgment on behalf of the station he hopes to own.¹⁶ Mr. Tucker is unquestionably qualified to determine the value of the services that Gannett will provide and to have negotiated a reasonable price for those services. Free Press offers no basis to question whether this price is appropriate, and the Commission has little basis for looking inside this market-based transaction.

¹³ Free Press Petition at 26-27.

¹⁴ *Id.* at 24.

¹⁵ *Id.* at 24-25.

¹⁶ Likewise, Free Press's objection to Tucker's agreement authorizing Gannett to provide assistance with retransmission consent negotiations is unfounded. *Id.* at 24.

Nor does Free Press offer any support for its arguments that grant of the Application would decrease diversity and “undermine the purpose of the [newspaper broadcast cross-ownership (“NBCO”)] [R]ule.”¹⁷ First, Free Press’s attack on the Raycom SSA is wrongheaded and entirely misplaced in this proceeding. It repeats a broad policy argument that is before the Commission in the 2010 quadrennial review of the Commission’s media ownership rules.¹⁸ Tucker agrees with the many parties that have demonstrated why service agreements like the Raycom SSA actually increase local news production and the diversity of news programming available at the local level.¹⁹ But the important point here is that Free Press offers no reason why the Commission should resolve this industry-wide issue in this application proceeding. If the Commission decides to change the rules governing such agreements, the appropriate venue for doing so is the pending rulemaking proceeding. Adopting new restrictions on service agreements in the course of reaching a determination concerning a specific assignment application would be unwise, unfair, and likely unlawful.²⁰

Free Press’s claim that grant of the application would undermine the NBCO Rule also is meritless. The Commission maintains that the NBCO Rule encourages diversity by prohibiting

¹⁷ Free Press Petition at 26, 27.

¹⁸ 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).

¹⁹ See, e.g., Comments of National Association of Broadcasters, MB Docket No. 09-182, filed Mar. 5, 2012, at 57-70; Comments of the Coalition to Preserve Local TV Broadcasting, MB Docket No. 09-182, filed Mar. 5, 2012.

²⁰ Any determination that shared services agreements violate the public interest would amount to a legislative rule, requiring public notice and an opportunity for comment under the Administrative Procedure Act. 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).

joint ownership of a newspaper and a local TV station within their areas of operation.²¹

KTTU(TV) will remain independently owned from the *Arizona Daily Star*, in which Gannett owns a 50% ownership stake, and Free Press provides no evidence that Gannett will have any influence over editorial policy or programming choice on KTTU(TV). Since Tucker will not merge KTTU(TV)'s voice with Gannett's – the Transition Services Agreement between Gannett and Tucker (the "TSA") has no programming component at all – the Application raises no diversity issues relevant to the NBCO Rule.

Free Press's specific objection that the limited term of the TSA creates the risk that Gannett will be able to later expand its role and provide programming at the station's request is entirely speculative and, in any event, makes no sense.²² The TSA is a commercial agreement that Gannett and Tucker have agreed to enter into upon Tucker's acquisition of KTTU(TV). The TSA does not give Gannett any rights beyond its term, and it certainly does not permit Gannett to force Tucker to accept Gannett programming upon its expiration. Tucker will be the final authority on all programming matters at KTTU(TV), and nothing in the TSA changes that. Free Press provides no basis for a finding that grant of the Application would compromise diversity in violation of the policies underlying the NBCO Rule.²³

²¹ The Commission has held that the NBCO Rule is not necessary to foster competition or localism because television stations and newspapers do not compete in the same product market and because newspaper/broadcast combinations tend to produce larger quantities of local news that would otherwise be possible. *See, e.g.*, 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 13620, 13753, 13756-57, ¶¶ 341, 347-49 (2003); 2006 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, *Report and Order and Order on Reconsideration*, 23 FCC Rcd 2010, 2032-33, ¶ 39 (2008).

²² Free Press Petition at 27.

²³ Free Press mentions but does not specifically object to Tucker's agreement to give Gannett an option to purchase KTTU(TV) in the event that the Commission's ownership rules are changed

Despite Free Press's efforts to characterize KTTU(TV)'s service agreements as eliminating Tucker's control over the station, the fact is that Tucker retains all of the freedom and flexibility necessary to provide an independent presence in the Tucson market.

B. KTTU(TV)'s Retransmission Consent Arrangements Will Serve the Public Interest.

The ACA Petition also fails to raise any issue that would justify denying or placing any conditions on grant of the Application. ACA objects to the provision of the TSA that governs Gannett's involvement in retransmission consent negotiations for carriage of KTTU(TV).²⁴ This is at least the fifth time that either ACA or TWC has raised this issue in a television transaction proceeding; the Commission has rejected its arguments four times and it should reach the same result in this case.²⁵

As the Bureau has noted each time ACA or TWC has objected to a transaction based on agreements between stations that allow one station to act as another's negotiating agent for retransmission consent, the Commission's rules do not prohibit such agreements; these parties' hypothetical claims about harm to consumers or competition are entirely speculative, and their arguments should be made in the ongoing rulemaking proceeding commenced two years ago in response to TWC'S rulemaking petition.²⁶ The ACA Petition raises only arguments that the

to permit common ownership of KTTU(TV) and maintenance of Gannett's partial ownership of the *Arizona Daily Star*. Free Press Petition at 24-25. Tucker notes that such options do not create attributable ownership interests under the Commission's rules, and that Gannett can exercise the option only if the Commission makes the judgment that the public interest is served by newspaper/television cross ownership in Tucson.

²⁴ ACA Petition at 5-6.

²⁵ 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).

²⁶ See *id.*; see also Amendment of the Commission's Rules Related to Retransmission Consent, *Notice of Proposed Rulemaking*, 26 FCC Rcd 2718 (2011).

Bureau already has reviewed and rejected. The Commission therefore should dismiss the ACA Petition as repetitious and in any event deny *in toto* the conditions sought.

III. CONCLUSION

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

Respectfully submitted,

TUCKER OPERATING COMPANY LLC

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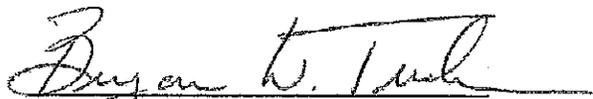
Its Attorneys.

August 8, 2013

DECLARATION OF BENJAMIN A. TUCKER

1. My name is Benjamin Tucker, and I am the President and sole shareholder of Tucker Operating Co. LLC (d/b/a KTTU Television).
2. I have read the foregoing "Consolidated Opposition to Petitions to Deny" (the "Opposition") and, I am familiar with the contents thereof.
3. The facts contained herein and within the foregoing 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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