

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

In the Matter of)
)
Applications of) MB Docket No. 13-190
)
Local TV Holdings, LLC,) BTCCDT-20130715AGP
) BTCCDT-20130715AGQ
and) BTCCDT-20130715AGR
)
Dreamcatcher Broadcasting, LLC)
)
For Consent to Transfer Control of Certain)
Licensee Subsidiaries of Local TV Holdings, LLC)

To: Chief, Media Bureau

OPPOSITION TO PETITION TO DENY

Tribune Broadcasting Company II, LLC (together with its affiliates, “Tribune”) urges the Commission to dismiss or deny the Petition to Deny the captioned applications (the “Dreamcatcher Applications”) filed on August 19, 2013 (the “Petition”), jointly by Free Press and Put People First PA (together, “Petitioners”).¹

BACKGROUND

Pursuant to a June 29, 2013, Securities Purchase Agreement (the “SPA”), Tribune and Local TV Holdings, LLC (together with its affiliates, “Local TV”), have jointly filed multiple applications (the “Tribune Applications”) seeking Commission consent to a transaction pursuant to which Tribune proposes to acquire sixteen full power television stations (plus a full

¹ Tribune’s Opposition is timely filed pursuant to the Commission’s July 31, 2013, *Public Notice*, “Media Bureau Announces Filing of Applications to Transfer Control of Local TV Holdings, LLC to Tribune Broadcasting Company II, LLC,” and Section 73.3584 (b) of the Rules.

power “satellite” station), in fourteen markets, from Local TV. *See* File Nos. BTCCDT-20130715AER, *et al.*, and MB Docket No. 13-190. The Tribune Applications are unopposed.²

Concurrently, pursuant to a permitted assignment of certain of Tribune’s rights and obligations under the SPA and a July 15, 2013, Asset Purchase Agreement among Dreamcatcher Broadcasting, LLC (“Dreamcatcher”), Local TV and Tribune, Dreamcatcher proposes to acquire Local TV’s WTKR(TV), Norfolk, Virginia, and WGNT(TV), Portsmouth, Virginia, both located in the Norfolk-Portsmouth-Newport News DMA; and WNEP-TV, Scranton, Pennsylvania, located in the Wilkes Barre-Scranton DMA (together with WTKR(TV) and WGNT(TV), the “Stations”). As explained in the Dreamcatcher Applications, Tribune and Dreamcatcher propose to enter into a Shared Services Agreement pursuant to which Tribune would provide certain operational and business services and have a contingent right to deliver a limited amount of programming to Dreamcatcher in connection with its operation of the Stations. Tribune would not provide any advertising sales services to Dreamcatcher or the Stations.

ARGUMENT

A party challenging an application by means of a petition to deny and seeking a hearing must, as a threshold matter, establish a *prima facie* showing that grant of the application would be inconsistent with the public interest.³ A petition “must show the necessary specificity and support; mere conclusory allegations are not sufficient.”⁴

² Petitioners have not challenged the demonstrable public interest benefits that would result from the acquisition of the Local TV stations by Tribune, a company that recently emerged from nearly four years in bankruptcy and now is renewing and redoubling its historical commitment to responsive, local television service. The resources of the Local TV stations will allow Tribune to strengthen its local news coverage in each of the markets it serves. The transaction also will afford Tribune the scale needed to support the development and distribution of original content, thereby enabling Tribune to become a new, independent competitive voice in the video marketplace.

³ *See Astroline Communications Co., Ltd. Partnership v. F.C.C.*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

⁴ *Kola, Inc.*, 11 FCC Rcd 14297, 14305 (1996) (quoting *Beaumont Branch of the NAACP v. F.C.C.*, 854 F.2d 501, 507 (D.C. Cir. 1988)); *see also Texas RSA 1 Ltd. Partnership*, 7 FCC Rcd 6584, 6585 (1992) (rejecting a petition to (continued...))

Petitioners fail to satisfy this standard.⁵ Rather, they make three unsupported, conclusory arguments regarding the Dreamcatcher Applications. As we show below, Petitioners' arguments are based variously on errors of law, misstatements of fact, speculation and surmise, and clearly are intended to impede or disrupt the *unopposed* Local TV-Tribune transaction in order to leverage their position in other unrelated pending proceedings. They should be rejected, the Petition should be dismissed or denied, and the Dreamcatcher Applications and Tribune Applications should be granted promptly.

I. The Shared Services Agreement Between Tribune and Dreamcatcher Is Consistent with the Rules and Precedent and Does Not Give Rise to An Attributable Interest in the Dreamcatcher Stations.

Petitioners' opposition to the Dreamcatcher Applications is grounded not in the specifics of the proposed transaction, but rather in their philosophical objection to the non-attribution of in-market cooperative operating arrangements involving *de minimis* amounts of programming or advertising sales.⁶ Petitioners' desire for modification of the Commission's attribution policies with respect to shared services agreements might be an appropriate subject for a petition for inquiry or rulemaking. *See, e.g.*, Petition at 5 (Dreamcatcher Applications

deny for failure to make a *prima facie* showing where it was "replete with conclusory allegations unsupported by specific facts.").

⁵ Petitioners have failed to establish standing to oppose the transfer of control of WNEP-TV. "[W]hile an organization may establish standing to represent the interests of local listeners or viewers, to do so, it must provide the affidavit of one or more individuals entitled to standing indicating that the group represents local residents and that the petition is filed on their behalf." *Cox Radio, Inc. & SummitMedia, LLC*, 28 FCC Rcd 5674, 5676 n.12 (Audio Div. 2013). In this case, Petitioners have submitted an affidavit from a Free Press member who claims to be a resident of Williamsburg, Virginia, and a viewer of WTKR(TV) and WGNT(TV). Petitioners failed to include an affidavit from any viewer of WNEP-TV. Accordingly, the Commission should dismiss the Petition with respect to WNEP-TV for lack of standing.

⁶ *See* 47 C.F.R. § 73.3555, Note 2(j)-(k).

present an opportunity for the Commission “to reestablish meaningful local ownership limits”). It is not appropriate for consideration in this adjudicatory proceeding.⁷

Petitioners’ attempt to secure changes in the Commission’s multiple ownership rules through private litigation also is disingenuous. Petitioners’ arguments here already are under consideration in a pending rulemaking proceeding in which the Commission has requested comment on proposals related to the attribution of shared services agreements, among other things.⁸ Petitioners and organizations aligned with Petitioners are participants in that proceeding, and have articulated repeatedly and at length the policy arguments Petitioners now contend must be addressed in this adjudicatory proceeding.⁹

At bottom, Petitioners’ grievance is that the Commission’s substantive media ownership rules do not impose more stringent restrictions on shared services agreements. But the rules are informed by the twin policy objectives of ensuring diversity of voices and, at the same time, enabling media companies to raise capital, attract investment and achieve the operational scope and scale needed to remain viable in a competitive marketplace.

⁷ See, e.g., *Spanish Radio Network*, 10 FCC Rcd 9954, 9956 (1995) (declining to address petitioners’ market definition arguments in the context of an adjudicatory proceeding when “the appropriate course of action is to request[] that the Commission institute a generic rule making proceeding to change its current multiple ownership rules and policies”). See also *Community Television of Southern California. v. Gottfried*, 459 U.S. 498, 511 (1983) (“rulemaking is generally a better, fairer, and more effective method of implementing a new industrywide policy than is the uneven application of conditions in isolated license renewal proceedings.”) (internal quotation marks omitted); *California Association of the Physically Handicapped, Inc. v. FCC*, 840 F.2d 88, 96-97 (D.C. Cir. 1988) (“The Commission has repeatedly taken the position that adjudicatory proceedings are an inappropriate forum for promulgating captioning requirements because of the arbitrariness of retroactive application and the inherent constraints of the adjudicatory process. The Supreme Court upheld this approach in *Community Television[.]*”); *ACME Television, Inc.*, 26 FCC Rcd 5189, 5192 (Video Div. 2011) (“the Commission has long refused to develop broad new rules in an adjudicatory context.”).

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, FCC 11-186 at ¶¶ 194-208 (Dec. 22, 2011) (“2010 Quadrennial Review NPRM”).

⁹ See, e.g., Comments of Office of Communication of United Church of Christ, *et al.*, MB Docket Nos. 09-182 and 07-294 (March 5, 2012) (proposing seven-factor test for attribution of shared services agreements under Section 73.3555 of the Rules); Comments of Free Press, MB Docket Nos. 09-182 and 07-294 (March 5, 2012) (endorsing United Church of Christ, *et al.*, attribution proposal).

Consequently, not every interest in a media company is treated as the type of “ownership” that triggers application of the substantive rules. Instead, the attribution criteria set out in the detailed notes to Section 73.3555 of the Rules establish bright-line standards that serve as proxies for the degree of influence or control that the Commission has determined justify limitation by the substantive rules.¹⁰

In adopting bright-line standards, the Commission sought to ensure that its rules “are clear to our broadcast regulatees, provide reasonable certainty and predictability to allow transactions to be planned, ensure ease of processing, and provide for the reporting of all the information we need in order to make our public interest finding with respect to broadcast applications.”¹¹ That was precisely the rationale underlying the criteria for attribution of certain time brokerage and radio joint sales agreements, codified at Note 2(j) and (k) to the Section 73.3555 of the Rules. The Commission was at pains to identify the nature of and level at which involvement in a media outlet’s operations confers a degree of influence that “outweighs any potential benefits and requires attribution,” yet to do so in a manner that “reflect[s] accurately competitive conditions” in the relevant market.¹² The Commission has concluded that a 15 percent threshold for programming time brokerage services, and a 15 percent threshold for

¹⁰ See *Review of the Commission’s Regulations Governing Attribution of Broadcast Interests*, Notice of Proposed Rulemaking, 10 FCC Rcd 3606, 3609 (1995), (“1995 Notice of Proposed Rulemaking”) (“[T]he attribution rules represent the Commission’s judgment regarding what ownership interest in or relation to a licensee will confer on its holder that degree of influence or control over the licensee and its facilities as should subject it to limitation under the multiple ownership rules.”) (internal quotation marks and footnote omitted). See also *Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 1097, 1100 (2001) (“The function of our attribution rules is to define which interests will be counted in applying our ownership rules.”).

¹¹ *Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559, 12562-63 (1999) (“1999 Media Ownership Order”) (quoting *1995 Notice of Proposed Rulemaking*, 10 FCC Rcd at 3610). See also *id.* at 12581 (a bright-line attribution standard is preferable to an “*ad hoc* approach,” which “might lead to complicated interpretation and processing difficulties and would likely add uncertainty to resolution of attribution cases”).

¹² *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*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13745 (2003).

radio advertising services, would “identify the level of control or influence that would realistically allow holders of such influence to affect core operating functions of a station, and give them an incentive to do so.”¹³ Below that level, joint operating arrangements are presumptively non-attributable, irrespective of the back-office, technical or operational services they entail.

Thus, the purported legal basis for Petitioners’ argument is, in fact, a manufactured “issue.” Similarly selective and unsubstantiated are Petitioners’ “factual” allegations. For example,

- Petitioners’ assertion (*see* Petition at 6) that the sale of the Stations to Dreamcatcher evinces Tribune’s “effective ownership” of the Stations is exactly backwards. Tribune has divested all its rights under the SPA with respect to the Stations’ licensees. Dreamcatcher is owned by an experienced television broadcaster who is independent of Tribune.¹⁴ Tribune has no current equity or debt interest in Dreamcatcher. Tribune will hold a non-attributable option to acquire the Stations under certain circumstances and only subject to the Commission’s prior approval.¹⁵
- Contrary to Petitioners’ implication, the back office functionality and technical and engineering services to be made available by Tribune to Dreamcatcher are beyond the scope of the attribution guidelines precisely because they do not touch on the core licensee responsibilities of programming, personnel and finances. They routinely are elements of non-attributable operating arrangements.¹⁶

¹³ *Id.* at 13745-46; *see also Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, FCC 99-207 (1999) at ¶ 83 (adopting 15 percent programming benchmark for attribution of television time brokerage agreements).

¹⁴ Dreamcatcher’s principal, Ed Wilson, has served in senior executive positions at Fox Broadcasting Company, CBS Enterprises and NBC Enterprises, among others. Mr. Wilson also served in executive positions with Tribune Broadcasting Company and certain of its affiliates under prior ownership. Petitioners’ assertion that Mr. Wilson serves “in a consultant capacity” to Tribune is false. *See* Petition at 6.

¹⁵ *See* 47 C.F.R. § 73.3555, Note 2(e) (“options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected”).

¹⁶ *See, e.g., Nexstar Broadcasting, Inc.*, 23 FCC Rcd 3528, 3535 (Video Div. 2008) (“Shared services agreements covering technical and other back-office operations typically do not raise an issue under the Commission’s attribution rules.”).

- Contrary to Petitioners' implication, Tribune's contingent right to deliver programming to the Dreamcatcher stations is expressly limited to "less than fifteen percent (15%) of [any] Station's broadcast hours for any week." *See* Shared Services Agreement at § 6.5. This provision is consistent with non-attribution under the Rules and under applicable precedent.¹⁷ Tribune will not provide any advertising sales services to Dreamcatcher or the Stations.
- Contrary to Petitioners' implication, any programming provided by Tribune under the 15 percent limitation must conform to standards and practices specified by Dreamcatcher and is subject to rejection or preemption by Dreamcatcher. *See* Shared Services Agreement at § 6.5.
- Contrary to Petitioners' implication, any retransmission consent arrangements by or on behalf of the Stations may be undertaken only at Dreamcatcher's request and are "subject to [Dreamcatcher's] authorization" and its "ultimate approval, execution, and delivery . . . in its sole discretion." *See* Shared Services Agreement at § 6.4.

The relationship between Dreamcatcher and Tribune has been structured in order to fall within even the most stringent criteria applicable to shared services agreements. The record establishes both that the Shared Services Agreement is consistent with the Rules and Commission precedent and that Tribune does not and will not have an attributable interest in the Dreamcatcher Stations.¹⁸

II. The Review of the Dreamcatcher Transactions Falls Within the Scope of the Staff's Delegated Authority.

Relying on their persistent mischaracterization of the operative features of the Shared Services Agreement and of the relationship between Tribune and Dreamcatcher,

¹⁷ *See* 47 C.F.R. § 73.3555, Note 2; *SagamoreHill of Corpus Christi Licenses, LLC*, 25 FCC Rcd 2809, 2814 (Media Bureau 2010) (shared services agreement involving back-office support and newscasts that do not exceed 15 percent of weekly programming is non-attributable); *Nexstar Broadcasting, Inc.*, 23 FCC Rcd at 2813 (operating arrangement involving delivered content accounting for less than 15 percent of station's weekly programming is non-attributable).

¹⁸ Petitioners repeatedly seek to conflate the Dreamcatcher transaction under consideration in this proceeding with several unrelated transactions pending before the Commission that they also oppose. *See, e.g.*, Petition at 5 n.3, 9-10. Of course, the Commission must evaluate the qualifications of the parties before it solely on the basis of the facts and circumstances presented. *See* 47 U.S.C. § 310(d) ("the Commission may not consider whether the public interest, convenience and necessity might be served by the transfer, assignment or disposal of the permit of license to a person other than the proposed transferee or assignee.").

Petitioners argue that review of the Dreamcatcher Applications should be referred to the full Commission for decision. *See* Petition at 9-10. The Media Bureau has authority to act upon all matters unless they “present novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines.”¹⁹ No such circumstances are presented here. The Bureau repeatedly has approved cooperative operating arrangements involving, among other things, back office and technical services, programming and advertising sales services (the latter of which, as noted above, is not present here).²⁰

Petitioners’ contention that the Rules prohibit non-attributable shared services agreements between television stations and daily newspapers is nonsense. *See* Petition at 5. As discussed above, the Rules provide, and the applicable precedent establishes, that shared services agreements conforming to the limitations of Note 2(j) and (k) to 47 C.F.R. § 73.3555 are not attributable. Meanwhile, the law is clear that a non-attributable interest does not implicate any of the structural ownership rules; indeed, this is and historically has been the predicate for the Commission’s media ownership regulatory regime. The type of media is irrelevant.²¹ Where, as here, Bureau precedent is unambiguous, and its authority is clear and well established, there is no basis for referral to the Commission.²²

¹⁹ 47 C.F.R. § 0.283(c).

²⁰ *See, e.g., SagamoreHill of Corpus Christi Licenses, LLC, supra; Nexstar Broadcasting, Inc., supra; Chelsey Broadcasting Company of Youngstown, LLC, 22 FCC Rcd 13905 (Video Div. 2007).*

²¹ We note for the record that on July 10, 2013, Tribune announced that it has begun a process that will culminate in the spin-off of its publishing assets to an independent company. Upon completion of that process, Tribune’s current publishing and broadcasting businesses will be separately owned, each with its own board of directors and management. *See* “Tribune Announces Intent to Pursue Separation of Broadcast and Publishing Businesses,” available at http://corporate.tribune.com/pressroom/?p=5765#sthash_fwNLMJc7.dpuf.

²² *See, e.g., Plus Charities, 25 FCC Rcd 14352, 14356 (Audio Div. 2010) (rejecting argument that Media Bureau must refer to the Commission the determination of compliance with the signature requirements in the Rules); Chesapeake Catholic Radio, 24 FCC Rcd 13828, 13831 (Audio Div. 2009) (denying request to Commission matter that it is “easily and appropriately resolved by applying existing Commission rules and policies.”).*

III. There Is No Basis to Condition Grant of either the Tribune Applications or the Dreamcatcher Applications on the Outcome of a Contingent Future Rulemaking Proceeding.

Commission precedent and basic administrative law principles require the Commission to reject Petitioners' request to condition the approval of the Applications on retroactive compliance with the outcome of any future rulemaking proceeding pertaining to the methodology for determining household reach under the National Television Multiple Ownership Rule. *See* Petition at 8. As Petitioners concede, under the National Television Multiple Ownership Rule the attributable reach of UHF stations currently is discounted by 50 percent of the households in their markets.²³ Also as Petitioners concede, to date, the Commission has not proposed any modification of the UHF discount. *See* Petition at 8.

Yet even if a proposal to modify the UHF discount were pending, Petitioners cite no authority that would permit the Media Bureau to condition its approval of the Dreamcatcher Applications on retroactive compliance with the outcome of such a proceeding.²⁴ Tribune, Dreamcatcher, and Local TV entered into their respective transactions in good faith reliance on Commission Rules in effect at the time of filing -- and still in effect -- and made contractual commitments to each other and financing commitments to third parties on the basis of all the parties' settled expectations under the law. Retroactively upending those expectations, devaluing the parties' transactions and subjecting them to substantial contractual and other transaction costs -- including the possibility of "fire-sale" divestitures -- would be inequitable and unlawful.²⁵ For

²³ *See* Petition at 8; 47 C.F.R. § 73.3555(e)(2)(i).

²⁴ The basis for Petitioners' argument vis-à-vis the Dreamcatcher Applications -- the only applications subject to the Petition -- is unclear. As Petitioners note, Dreamcatcher's national reach, even on an undiscounted basis (1.1 percent), would not implicate the 39 percent national reach cap under the Rule. Nor, for the reasons discussed at Section I, above, would it be attributed to Tribune.

²⁵ *See, e.g., Arkema Inc. v. EPA*, 618 F.3d 1, 7, 393 U.S. App. D.C. 31 (D.C. Cir. 2010) ("If a new rule is 'substantively inconsistent' with a prior agency practice and attaches new legal consequences to events completed (continued...)

instance, in *SagamoreHill of Corpus Christi Licenses, LLC*, the Media Bureau declined to condition a grant of assignment application on the outcome of a pending Notice of Proposed Rulemaking in which the Commission tentatively determined that certain television station joint sales agreements should be attributable.²⁶

CONCLUSION

Petitioners have failed to demonstrate that the Dreamcatcher Applications violate either the Act or the Rules, or that grant of the Dreamcatcher Applications otherwise would disserve the public interest. Accordingly, the Petition to Deny should be dismissed or denied and the Dreamcatcher Applications and Tribune Applications should be granted promptly and without condition.

Respectfully submitted,

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September 4, 2013

before its enactment, it operates retroactively.”); *NetworkIP, LLC v. FCC*, 548 F.3d 116, 122 (D.C. Cir. 2008) (“Though agencies are entitled to deference, they may not retroactively change the rules at will.”).

²⁶ *SagamoreHill of Corpus Christi Licenses, LLC*, 25 FCC Rcd at 2814.

DECLARATION OF CHANDLER BIGELOW III

I, Chandler Bigelow III, do hereby declare under penalty of perjury:

1. I am Executive Vice President, Chief Business Strategies & Operations Officer of Tribune Company, the parent of Tribune Broadcasting Company II, LLC.

2. I have read the foregoing Opposition to Petition to Deny, and the facts stated therein, of which the Federal Communications Commission may not take official notice, are true and correct to the best of my knowledge and belief.



Chandler Bigelow III

Dated: September 4, 2013

CERTIFICATE OF SERVICE

I, Patrice Jones, a secretary at Covington & Burling LLP, hereby certify that on this 4th day of September, 2013, I caused a copy of this Opposition to Petition to Deny to be served by U.S. First Class mail, postage prepaid, upon the following:

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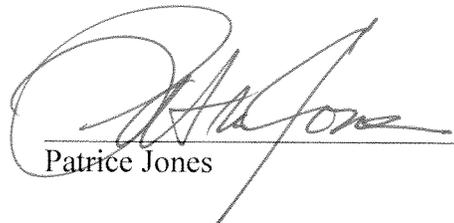
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