

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Applications of)	
)	
Local TV Holdings, LLC, and)	MB Docket No. 13-190
)	
and)	BTCCDT-20130715AGP
)	BTCCDT-20130715AGQ
Dreamcatcher Broadcasting LLC)	BTCCDT-20130715AGR
)	
For Consent to Assignment of Broadcast)	
Station Licenses)	

To: The Chief, Media Bureau

OPPOSITION TO PETITION TO DENY

Local TV Holdings, LLC (Local TV),¹ by its attorneys and pursuant to Section 73.3584(b) of the Commission’s rules, hereby opposes the petition to deny filed by Free Press and Put People First PA (the “Petitioners”) in the above-captioned docket.² The Petition is substantively meritless, ignores all applicable precedent, and provides no basis for the unusual

¹ Local TV replies on behalf of its local operating companies in Virginia and Pennsylvania: (1) Local TV Virginia License, LLC, licensee of WTKR(TV), Norfolk, VA and WGNT(TV), Portsmouth, VA, and applicant in FCC File Nos. BTCCDT-20130715AGP and BTCCDT-20130715AGQ; and (2) Local TV Pennsylvania License, LLC, licensee of WNEP-TV, Scranton, PA, and applicant in FCC File No. BTCCDT-20130715AGR. The three applications that are being contested in this proceeding are collectively referred to as the “Applications.”

² See 47 C.F.R. §73.3584(b); Petition to Deny, Free Press and Put People First PA, filed August 19, 2013 (the “Petition”). While Local TV refers to Free Press and Put People First PA as “Petitioners” and their protest of the applications as a “Petition,” Local TV does not concede that Petitioners have carried their burden to demonstrate standing to oppose the Applications. Courts have rejected standing claims premised, as Petitioners’ are, merely on the potential threat to programming diversity presented by a given transaction. See *Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539, 544 (D.C. Cir. 2003). This opposition is timely filed in accordance with the pleading cycle established by the Bureau. See Media Bureau Announces Filing of Applications to Transfer Control of Local TV Holdings, LLC to Tribune Broadcasting Company II, LLC, *News Release*, MB Docket No. 13-190 (Med. Bur. July 31, 2013).

procedural steps it requests or the outcomes it advocates. The Media Bureau (the “Bureau”) should deny the Petition and promptly grant the Applications.

I. The Applications Fully Comply With the FCC’s Rules and Grant Will Serve the Public Interest.

Petitioners argue that permitting Dreamcatcher to operate pursuant to certain shared services agreements (the “Dreamcatcher SSAs”) with Tribune Broadcasting Company II, LLC (“Tribune”) would be contrary to the public interest.³ In reality, the Applications contain more than enough information demonstrating that the proposed transaction will serve the interests of viewers in Norfolk and Scranton, and the Applications can and should be granted by the Bureau consistent with well-established precedent.⁴

Petitioners’ “public interest” objection is based on their unsupported and erroneous claim that Tribune, not Dreamcatcher, will exercise “ultimate control” over the core operations of WTKR(TV), WGNT(TV), and WNEP-TV.⁵ To the contrary, the Applications demonstrate that the Dreamcatcher SSAs are structured to ensure the stations are independently managed and operated without interference from Tribune.⁶ Dreamcatcher will maintain its own management

³ See Petition at 4-5.

⁴ Petitioners claim that to grant the Applications, the Bureau or Commission must make separate findings that the Applications satisfy existing rules and that grant would benefit the public interest. Petition at 4-5. This argument is foreclosed by years of precedent from the D.C. Circuit Court of Appeals. In *Committee to Save WEAM v. FCC*, 808 F.2d 113, 118 (D.C. Cir. 1988), the D.C. Circuit established that once the Bureau is satisfied that an application satisfies the standards laid out in an assignment or transfer application, no further public interest finding is necessary because “[b]y requiring a proposed assignee to address the relevant facets of the public interest, convenience and necessity on FCC Form 314, the Commission has incorporated the consideration of these issues into its application process.” The courts will not reexamine the grant of transfer or assignment applications based on the FCC’s alleged failure to conduct a separate “public interest” inquiry. See *id.*; see also *Office of Communication of the United Church of Christ, et al. v. Federal Communications Commission*, NO. 01-1374, 2002 WL 31496407, at **1 (D.C. Cir. Nov. 8, 2002).

⁵ Petition at 4-7.

⁶ See, e.g., WTKR(TV)/WGNT(TV) SSA, §§ 3.1-3.3.

structure, control over its own employees, control over all programming that will air on the stations, and control over all ad sales.⁷ While Tribune is granted the right to program up to 15% of the stations' weekly programming, Dreamcatcher will program at least 85% of the stations' broadcast schedules and maintains the right to reject any Tribune programming if Dreamcatcher determines that its viewers would not be served by that programming.⁸ Petitioners' appear to view Tribune's ability to program a small portion of the stations' programming schedules as a smoking gun demonstrating Tribune's control, but the Commission has repeatedly approved similar programming arrangements for years, and the Dreamcatcher SSAs are fully compliant with the standards that govern such agreements.⁹ As described more fully below, the fact that the Dreamcatcher SSAs involve agreements with a company under common ownership with a local newspaper owner is irrelevant to the question of whether the agreements preserve licensee control.¹⁰ No Commission ruling has ever suggested that newspaper owners are prohibited from providing programming or any other services to local television stations, and no rational basis would exist for such an exclusion.¹¹

Petitioners' other groundless objections to the Dreamcatcher SSAs also fail to show that Tribune will exercise sufficient control over the stations to implicate the FCC's ownership and

⁷ See *id.*

⁸ See, e.g., WTKR(TV)/WGNT(TV) SSA, §§ 3.2; 6.5-6.6.

⁹ See, e.g., *SagamoreHill of Corpus Christi Licenses, LLC*, 25 FCC Rcd 2809, 2813 (Med. Bur. 2010); *Nexstar Broadcasting, Inc., Letter Ruling*, 23 FCC Rcd 3528, 3533, 3535 (Vid. Div. 2008) (citing 15% programming threshold for attribution announced in *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Report and Order*, 14 FCC Rcd 12559 (1999)).

¹⁰ See Section IV, *infra*; see also Petition at 5, 9.

¹¹ Indeed, such a rule would make no sense at all, since previous Bureau and Commission decisions permit service agreements between competing television stations in the same market, and the Commission has determined that television stations and newspapers are not direct competitors. See n.24, *infra*.

attribution rules. First, the facts that Dreamcatcher is newly incorporated and owned by a former Tribune officer is irrelevant to whether Tribune can exercise control over the stations.¹² New corporate entities are typically formed as part of station transactions and the timing of their formation has nothing to do with which party controls them. Moreover, Ed Wilson is a broadcaster with vast experience, having served as President of the Fox Television Network, President and Chief Operating Officer of CBS Enterprises, President of NBC Enterprises and President of Tribune Broadcasting Company until his retirement in 2010. Nothing in Mr. Wilson's background, the Dreamcatcher SSAs, or any information provided by Petitioners suggests that he will allow his company to be controlled by Tribune. Second, the structure of the transaction by which Dreamcatcher acquires the stations will have no impact on Dreamcatcher's post-transaction operations.¹³ Petitioners fail to explain how this structure would result in Tribune exercising control, and the Bureau need not speculate on Petitioners' behalf. Third, Petitioners' objection to Tribune's provision of technical support to the Dreamcatcher stations ignores numerous Commission decisions holding that contracting for technical assistance does not compromise a licensee's control.¹⁴ Fourth, the Bureau has repeatedly rejected Petitioners' claim that provision in the Dreamcatcher SSAs contemplating cooperation in the negotiation of retransmission consent agreements results in an abdication of licensee control.¹⁵ Indeed, in this

¹² See Petition at 5-6.

¹³ See Petition at 6.

¹⁴ See, e.g., *Nexstar*, 23 FCC Rcd at 3535 ("Shared services agreements covering technical and other back-office operations typically do not raise an issue under the Commission's attribution rules"); *WGPR, Inc.*, 10 FCC Rcd 8140, 8144 (1995) (providing engineering support not evidence of control over station).

¹⁵ 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).

case, Dreamcatcher will retain sole discretion to negotiate its retransmission consent agreements on its own or appoint Tribune as its agent for negotiations.¹⁶

In short, Petitioners have failed entirely to demonstrate that the Dreamcatcher SSAs will result in Tribune controlling WTKR(TV), WGNT(TV), or WNEP-TV. Consequently, the Commission's multiple ownership rules and the policies underlying those rules are not implicated by this case and need not be considered by the Bureau. The Dreamcatcher SSAs will permit the Norfolk and Scranton stations to realize operational efficiencies and provide top-quality service to viewers. That is a more than sufficient public interest justification for grant of the Applications.

II. Petitioners' General Policy Objections to Shared Services Agreements and the Commission's Ownership and Attribution Rules Are Not Appropriate Subjects for This Application Proceeding.

Petitioners' failure to demonstrate that Tribune will exercise control over Dreamcatcher reduces the rest of the Petition to arguments about changing existing FCC policy, and those arguments provide no basis for denying the Applications. Petitioners admit that they object to shared services agreements generally, that they believe such agreements should create attributable ownership interests, that they have advocated that policy position in FCC rulemakings, and that they are indiscriminately opposing major broadcast transactions that rely on shared services agreements as a component of the deal.¹⁷ But this proceeding is not the appropriate place to address Petitioners' broad policy preferences; the only question raised by Petitioners is whether the Dreamcatcher SSAs will create a prohibited ownership interest for Tribune, and, as described above, the answer to that question is "no."

¹⁶ See, e.g., WTKR(TV)/WGNT(TV) SSA, § 6.4.

¹⁷ Petition at 5 & n.3.

Granting Petitioners' request for changes to the Commission's ownership rules and policies in this case would be arbitrary, capricious, and contrary to law under governing D.C. Circuit precedent. The Commission's ownership and attribution rules are legislative rules that have been enacted and defined over many years through notice-and-comment rulemaking proceedings. And the Commission is specifically charged by Congress with reviewing these rules through quadrennial rulemakings.¹⁸ Indeed, the Commission currently is considering issues related to shared services agreements in two ongoing rulemaking proceedings.¹⁹ Despite Petitioners' professed policy preferences, these legislative rules simply cannot be amended in this application proceeding. Such changes can be made only in a rulemaking proceeding that complies with the Administrative Procedure Act; the Commission may not amend legislative rules like the ownership and attribution rules absent notice and comment procedures.²⁰ For these reasons, the Bureau must reject Petitioners' efforts to use this proceeding as a vehicle for attaining their preferred policy outcomes.

III. The Applications Present No Novel Issue Justifying Immediate Commission Review.

Petitioners also offer no justification for the unusual step of referring this matter to the full Commission for disposition.²¹ As described above, this case involves nothing more than the routine application of existing Bureau and Commission precedent and is entirely appropriate for

¹⁸ 47 C.F.R. §73.3555; Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 202 (1996); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004) (amending Sections 202(c) and 202(h) of the 1996 Act).

¹⁹ See 2010 Quadrennial Regulatory Review- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; Promoting Diversification of Ownership in the Broadcasting Services, *Notice of Proposed Rulemaking*, 26 FCC Red 17489 (2011); Amendment of the Commission's Rules Related to Retransmission Consent, *Notice of Proposed Rulemaking*, 26 FCC Red 2718 (2011).

²⁰ See *United States Telecom Association v. FCC*, 400 F.3d 29 (D.C. Cir. 2005); *C.F. Communications Corp. v. FCC*, 128 F.3d 735, 739-40 (D.C. Cir. 1997).

²¹ See Petition at 9-10.

Bureau review. Petitioners claim that this case presents novel issues because the party providing programming to the Dreamcatcher stations owns a newspaper in the market, allegedly implicating the Newspaper/Broadcast Cross-Ownership Rule.²² But since Petitioners failed to show that Tribune will control WTKR(TV), WGNT(TV), or WNEP-TV, the NBCO Rule is entirely inapplicable to this transaction.

The Bureau also should reject Petitioners' meritless argument that allowing agreements like the Dreamcatcher SSA will negatively impact the Commission's competition and diversity policies underlying the NBCO Rule.²³ Neither the NBCO Rule nor any other Commission rule or policy prohibits any newspaper and local television station from entering into arrangements like the Dreamcatcher SSAs, so Petitioners' assertion that the agreements in this case would undermine the NBCO Rule's policy of promoting diversity in local news makes little sense. The Commission also repeatedly has held that the NBCO Rule is not necessary to ensure competition in local television markets, so competitive impact can form no part of the Bureau's analysis here.²⁴ Thus, the Applications present no threat to the NBCO Rule or its underlying policies that would justify referral of this case to the full Commission.

IV. There is No Basis for Imposing the UHF-Discount Related Conditions Petitioners Request.

Petitioners' failure to demonstrate that Tribune will control the Dreamcatcher stations also dooms its request that any grant of the Applications be conditioned on future Commission

²² See *id.* at 9. See also 47 C.F.R. §75.3555(d) (the "NBCO Rule").

²³ See Petition at 9.

²⁴ 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 (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 (2008).

DECLARATION OF THEODORE KUHLMAN

1. My name is Theodore Kuhlman, and I am the Chief Financial Officer of Local TV Holdings, LLC.
2. I have read the foregoing "Opposition to Petition 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.
4. I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 4, 2013



Theodore Kuhlman
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CERTIFICATE OF SERVICE

I, Rayya Khalaf, certify that on this fourth day of September 2013, I caused the foregoing Opposition to Petition to Deny to be served by first-class mail on the following:

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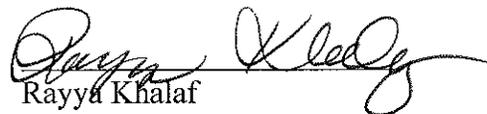
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Rayya Khalaf