

December 19, 2013

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: Notification of *Ex Parte* Communication of Charter Communications, DIRECTV, American Cable Association, Time Warner Cable, and Free Press in Applications Seeking To Transfer Control of Licenses from Belo Corp. to Gannett Co, Inc. et al., MB Docket No. 13-189; Amendment of the Commission’s Rules Related to Retransmission Consent, MB Docket No. 10-71; and 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, MB Docket No. 09-182**

Dear Ms. Dortch:

On December 17, 2013, the following representatives met with Maria Kirby and Gigi Sohn of Chairman Wheeler’s office to discuss the proposed acquisition by Gannett Co., Inc. of broadcast stations currently held by Belo Corp. (“Belo”): Catherine Bohigian of Charter Communications; Stacy Fuller of DIRECTV; Ross Lieberman of the American Cable Association; Cristina Pauzé of Time Warner Cable; and Lauren Wilson and Matt Wood of Free Press.

At the meeting, we reiterated the concerns raised in the parties’ respective Petitions to Deny, or in the Alternative, for Conditions (“Petitions”) regarding Gannett’s proposed sharing agreements with “sidecar” entities that would enable Gannett to, among other public interest transgressions, coordinate retransmission consent negotiations on behalf of multiple broadcast stations in St. Louis, Tucson, and Phoenix. Under the media ownership rules, Gannett cannot acquire Belo’s broadcast stations in the three designated market areas (“DMAs”) because of Gannett’s existing media holdings in those market areas. Gannett instead intends to rely on the Sander and Tucker entities, which appear to have been established for the primary purpose of holding Belo’s broadcast licenses in St. Louis, Tucson, and Phoenix.<sup>1</sup> Notwithstanding

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<sup>1</sup> In particular:

In the **St. Louis, MO** and **Phoenix, AZ** DMAs, where Gannett already owns the local NBC affiliates (KSDK and KPNX, respectively), Belo’s stations in those markets (the CBS affiliate (KMOV) in St. Louis, and in Phoenix, a top four-rated independent station (KTVK), as well as the CW affiliate (KASW)), will be

Gannett's avoidance of formal ownership of Belo's stations in these markets, the assignment applications indicate that Gannett would retain effective control of the stations, including by coordinating retransmission consent negotiations on behalf of each station.<sup>2</sup> Notably, Gannett, Sander, and Tucker have not disclaimed their intention to coordinate carriage negotiations, either in response to the Petitions or in recent *ex parte* notifications filed in this proceeding.<sup>3</sup>

We also discussed the Department of Justice's ("DOJ's") announcement this week that it is blocking the proposed transaction in the St. Louis DMA in light of competitive concerns raised by the sharing agreements between Gannett and Sander in that market area. Under the agreement reached by the parties, Gannett and Sander, among other things, (i) must divest the St. Louis station to a third party, and (ii) are prohibited from entering into any sharing agreement or otherwise "conducting ... business negotiations jointly" with the purchaser of the St. Louis Station.<sup>4</sup>

We explained that DOJ's decision to block the St. Louis acquisition was based on its determination that the close ties created between two broadcast stations engaging in a sidecar arrangement/sharing agreement necessarily would allow them to coordinate their decisions in much the same manner as though the two stations were under joint ownership. Although DOJ focused only on the competitive harms that this coordinated decisionmaking would create in the spot advertising market in the St. Louis DMA, we explained that such coordinated decisionmaking would create the same sort of harms in retransmission consent negotiations in all three DMAs. For example, Gannett's ability to control three stations in the Phoenix DMA poses particular concerns, because two of the stations at issue are top four-rated stations (plus the CW

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transferred to entities controlled by Jack Sander ("Sander"), a former Belo executive, and

In the **Tucson, AZ** DMA, where Gannett already owns a newspaper, and Belo has an existing duopoly consisting of the local FOX and MyNetworkTV affiliates (KMSB and KTTU, respectively), Sander would acquire the FOX station, while the MyNetworkTV affiliate would be acquired by Tucker Operating Co. LLC ("Tucker").

<sup>2</sup> For example, the transition services agreements that Gannett intends to execute with Sander and Tucker in the Tucson DMA include provisions expressly calling for Gannett to act as Sander's and Tucker's "agent" in carriage negotiations and requiring Sander and Tucker, the proposed owners of the stations in Tucson, to "*consult and cooperate*" with Gannett in retransmission consent matters. Application for Consent to Assignment of Broadcast Construction Permit or License, CDBS File No. BALCDT-20130619AFL, Asset Purchase Agreement, Exhibit E § 6.4 (filed June 19, 2013) (emphasis added).

<sup>3</sup> See Reply of American Cable Association, DIRECTV LLC, and Time Warner Cable Inc., MB Docket No. 13-189, at 7-8 (filed Aug. 20, 2013); Letter from John R. Feore, Jr., Counsel for Sander Media LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 13-189 (filed Dec. 13, 2013).

<sup>4</sup> *United States v. Gannett Co., Inc.*, Proposed Final Judgment, at 5, 14 (filed Dec. 16, 2013), <http://articles.law360.s3.amazonaws.com/0496000/496186/Gannett-Belo%20PFJ.PDF>.

affiliate).<sup>5</sup> Such aggregation of market power would drive up the price for retransmission consent, just as coordinated conduct between Gannett and Sander would have driven up advertising rates in St. Louis.<sup>6</sup> Likewise, in the Tucson DMA, where Gannett would control the FOX and MyNetworkTV affiliates, the ability to coordinate carriage negotiations would enable Gannett to leverage the market power it would possess from controlling the FOX station to demand higher carriage fees for the MyNetworkTV affiliate than it could garner on its own—without any increase in the quality of the programming provided on that channel.

Moreover, any blackout threats in the affected DMAs presumably would pack a double punch by implicating two or more stations in each DMA. Such blackouts (or blackout threats) would be at odds with the primary goal Congress had in establishing the retransmission consent regime—namely, *preserving* the availability of broadcast programming to consumers. And the mere prospect of a broadcast blackout likely would induce many subscribers to switch multichannel video programming distributors (“MVPDs”) and incur the costs associated with such switching from their preferred MVPD.

What is more, Gannett has also sought to impermissibly control stations in two markets where it owns a daily newspaper: Louisville, KY and Portland, OR. Again, Gannett is proposing to use sharing agreements to control stations in these DMAs while Sander will nominally hold the licenses. Allowing Gannett’s common control of a newspaper and broadcast station directly contravenes the intent of the newspaper broadcast cross-ownership rule. Such a combination would significantly diminish competition, diversity, and local news. Likewise, the public interest harms in the duopoly markets outlined above also go beyond decreased competition. Broadcaster concentration within a local market has been shown to have adverse effects on employment, local programming, journalistic independence, and diversity of viewpoints, and ownership.<sup>7</sup>

Finally, we emphasized that, although the harms threatened by the Gannett-Belo transaction highlight the need for industry-wide reforms, the potential for such reforms as part of the Commission’s ongoing retransmission consent reform and media ownership proceedings does not obviate the need to address the *transaction-specific* harms that would flow from Gannett’s efforts to gain additional leverage in retransmission consent negotiations. We therefore urged the Commission to deny the applications challenged in the Petitions, or condition approval on the parties’ agreement not to coordinate retransmission consent negotiations with MVPDs.

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<sup>5</sup> See *supra* n.1.

<sup>6</sup> We noted that for Charter Communications, retransmission consent rates in 2012 were 39% higher in markets where one entity exerted such control.

<sup>7</sup> See Comments of Free Press, MB Dockets 09-182, 07-294, at 18-23, 50-56 (filed Mar. 5, 2012).

Please contact the undersigned should you have any questions.

Sincerely,

*/s/ Cristina Pauzé*

Cristina Pauzé  
Vice President, Regulatory Affairs  
Time Warner Cable

cc: Maria Kirby  
Gigi Sohn