

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
)	
and)	
)	
Subsidiaries of Sander Media LLC)	
)	
For Consent to Assignment of Broadcast)	
Station Licenses)	

OPPOSITION TO APPLICATION FOR REVIEW

By its attorneys and pursuant to Section 1.115(d) of the Commission’s rules, Tucker Operating Co. LLC (“Tucker”) hereby opposes the Application for Review (the “AFR”) filed by several Washington, D.C. lobbying groups in the above-referenced proceeding.¹ The AFR provides no basis for reversing the Bureau’s well-considered decision in this matter, which is entirely consistent with the record in this proceeding and with all of the FCC’s rules and prior precedent.² The AFR should be dismissed or denied, and the Bureau Order should be affirmed.

¹ 47 C.F.R. §1.115(d); Application for Review, NABET-CWA, TNG-CWA, National Hispanic Media Coalition, Common Cause, and Office of Communication, Inc., of the United Church of Christ, MB Docket No. 13-189 (filed Jan. 22, 2014) (the “AFR”). The proponents of the AFR are referred to herein as “NABET, *et al.*” Tucker also supports and to the extent necessary, incorporates herein, the arguments raised by Gannett Co., Inc. (“Gannett”) and Sander Media Co., LLC (“Sander”) in their oppositions. This Opposition is timely filed within 15 days of the filing of AFR.

² Applications for Consent to transfer of Control from Shareholders of Belo Corp., *Memorandum Opinion and Order*, MB Docket No. 13-189, File Nos. BTCCDT-20130619AAV, *et seq.*, DA 13-2423 (rel. Dec. 20, 2013) (the “*Bureau Order*”).

I. INTRODUCTION

The *Bureau Order* correctly found that Tucker is fully qualified to be a Commission licensee and that Tucker's acquisition of the license to operate KTTU(TV), Tucson, Arizona, would serve the public interest.³ Those conclusions were amply supported by a record demonstrating that the agreements among the various parties ensured Tucker's independence from any third party and guaranteed that he would exercise full ownership of and control over the station.⁴ The AFR repeats exactly the same arguments to the full Commission that failed before the Media Bureau and those arguments should meet the same fate here. Indeed, the AFR mentions Tucker, but offers no facts or law supporting reversal of the Bureau's approval of the assignment of Belo's license for KTTU-TV to Tucker. For that reason, the Commission should either (1) deem the AFR to present no challenge to the Bureau's grant of Tucker's application; or (2) dismiss the AFR with respect to Tucker's application for failure to provide any basis for granting the requested review.

Even assuming that the AFR actually challenges the Bureau's grant of Tucker's application, each argument raised by the AFR fails on the merits. First, contrary to the AFR's contentions, the applications in this matter presented no "novel" issue calling for full Commission intervention. Second, the parties in this case did not seek to "evade" the newspaper/broadcast cross-ownership rule (the "NBCO Rule") or the Commission's other ownership rules; they sought to comply with those rules, and they succeeded. The Bureau's correct ruling on that matter should not be disturbed. Third, the Bureau correctly found that the transaction would serve the public interest and that Tucker, and Sander will maintain independent control of their respective stations. Notably, the transaction adds an additional

³ *Id.* at paras. 28, 33.

⁴ *Id.* at para. 28.

independent voice to the Tucson market because two stations previously owned by Belo will now be owned by two independent broadcasters. Nothing in the record below or the AFR provides any grounds for reversing that decision. Fourth, the Commission should reject the AFR's invitation to use this proceeding to legislate new ownership and attribution rules. Individual application proceedings are not the right venue for promulgating rules that will govern an entire industry that is crucial to serving the information needs of local communities across the country. The Commission is considering the issues raised in the AFR in open rulemaking proceedings, and those issues must be decided in those proceedings.

II. THE AFR IDENTIFIES NO "NOVEL" ISSUES REQUIRING COMMISSION REVIEW.

The AFR claims that this proceeding presents novel issues because the Commission has not previously decided "whether sharing arrangements can be used to evade the NBCO rule."⁵ In other words, since NABET, *et al.* cannot identify a single rule violation in a transaction they dislike, Tucker's compliance with the Commission's rules must constitute an "evasion" of those rules. That is certainly a novel proposition, but it doesn't merit any Commission attention at all, let alone intervention in a normal application proceeding before the Bureau.

The logical consequences of the AFR's "compliance equals evasion" formula would be pernicious and unbounded. The over-the-air television service remains Americans' chief source of news and critical emergency information. But those services are only possible because local TV broadcasting remains a stable, profitable business. Regulatory certainty is a foundation stone of TV broadcasting's success. Without it, investment in this important news and information source would disappear. The AFR invites the Commission to remove any certainty that the Commission's ownership rules (and presumably other rules, as well) will be enforced in a fair

⁵ See AFR at 9-10.

and uniform way. Removing this certainty will significantly depress investment in the television industry, a result that will harm viewers by reducing the funds available for the improvement of local service.

Accepting the AFR's compliance equals evasion formulation would transform the current orderly, rules-based application process into an unpredictable process in which the standards for the "public interest" are set by the policy preferences of the sitting Commissioners -- and destined to shift as the Commission's membership changes. The *Bureau Order* faithfully applied the Commission's rules and previous Commission and Bureau precedent, arriving at the correct conclusion that Tucker's acquisition of KTTU(TV) satisfies the public interest. The Commission should decline the AFR's invitation to turn compliance with the Commission's rules into the very evidence that justifies reversal. Indeed, the Commission should not entertain that argument at all and should dismiss the AFR.

III. TUCKER'S ACQUISITION OF KTTU-TV IS CONSISTENT WITH THE PUBLIC INTEREST.

The AFR next argues that the Bureau erred because it did not reach the same "public interest" determination that the AFR's proponents would have reached.⁶ Here the AFR purports to apply a truly novel "cumulative effects" test to determine that Gannett will "maintain[] significant control" over and "call[] the shots" for Tucker.⁷ These are strong claims, but the AFR fails to back them up. The AFR falsely claims that the Bureau failed to apply *Ackerley's* test of whether the licensee will retain the incentive to exercise control over its station.⁸ In fact, the Bureau engaged in precisely that analysis and found that Tucker would retain the necessary

⁶ AFR at 10-16.

⁷ *Id.* at 11, 13.

⁸ *Id.* at 11-12 (citing *Shareholders of the Ackerley Group, Inc and Clear Channel Communications, Inc.*, 17 FCC Rcd 10828, 10841 (2002)).

incentives to perform its important role as a Commission licensee without undue interference.⁹ The AFR fails to identify any relevant evidence that the Bureau failed to consider. Instead, the proponents ask the Commission to overrule the Bureau because they don't like the result.

Remarkably, in a pleading supposedly dedicated to showing that Tucker's acquisition of KTTU(TV) is not in the public interest, the AFR barely mentions the public in any of the markets involved in this transaction. It all but ignores TV viewers in Tucson, where Tucker will be operating KTTU(TV) for the benefit of viewers throughout that market. In particular, the AFR claims the Bureau erred because it did not consider the effect the transactions would have on local news.¹⁰ But the AFR, like the petition to deny below, doesn't contain a single word about the market for local news in Tucson; whether the market is properly served; or whether additional stations in the market can economically provide more local news than is currently available. Instead, it references studies about the Honolulu news market that have nothing to do with this case.¹¹

Indeed, NABET, *et al.* failed to identify any negative effects that Tucker's ownership of KTTU(TV) would have for Tucson viewers or the public interest. It claims that Gannett will be "calling the shots," but Gannett has no agreements to program KTTU(TV). The undisputed facts demonstrate that Tucker will provide a new voice to the Tucson market, will exercise independent editorial judgment, will independently program at least 85% of the programming that will appear on the station, and will retain the right to reject any of the programming provided by third-parties if it is unsuitable for Tucson viewers. While the AFR ignores Tucson in favor of broad, wrongheaded policy prescriptions, Tucker is serving that community through KTTU(TV).

⁹ See Bureau Order at para. 28.

¹⁰ AFR at 13-14.

¹¹ *Id.* at 14.

The Commission should reject the AFR's hollow claims that the transaction does not serve the public interest and affirm the *Bureau Order*.

IV. THE FCC SHOULD REJECT THE AFR'S INVITATION TO ADOPT UNLAWFUL RULE CHANGES IN THIS PROCEEDING.

The Commission also should reject the AFR's request that the agency adopt new, more restrictive ownership attribution rules in this proceeding. Both the courts and the FCC have long recognized that the appropriate forum for adopting legislative rules is a proceeding governed by the notice and comment procedures of the Administrative Procedure Act.¹² The Commission's ownership and attribution rules are clearly legislative rules that have been developed through Congressional action and rulemaking proceedings for decades.¹³ Proposed changes to those rules are, in fact, pending in open rulemaking proceedings right now.¹⁴ For the Commission to adopt wholesale changes to its rules in this proceeding – rules that would be adopted without any notice to interested parties -- would be arbitrary, capricious, and contrary to law.¹⁵

It is telling that an AFR based on the claim that Tucker is evading the law by complying with it would also argue that the Commission should ignore volumes of administrative law and rewrite its ownership and attribution rules in this proceeding. But it isn't surprising. The entire impetus of the AFR is that its proponents don't like these transactions and the Commission shouldn't either. TV viewers across the country will be harmed if the Commission adopts the

¹² 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).

¹³ 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) (requiring quadrennial review of FCC ownership rules).

¹⁴ 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).

¹⁵ See *Prometheus Radio Project v. FCC*, 652 F.3d 431, 453-54 (2011).

rudderless standard for evaluating broadcast applications advocated in the AFR. The Commission should reject the AFR's efforts to convert application proceedings into mere vehicles for the agency to impose some third parties' view of the public interest.

V. CONCLUSION

For the reasons stated herein, Tucker requests that the Commission dismiss or deny the AFR and affirm the *Bureau Order*.

Respectfully submitted,

TUCKER OPERATING COMPANY LLC

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Its Attorneys.

February 6, 2014

DECLARATION OF BENJAMIN W. 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 "Opposition to Application for Review" (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 February 3, 2014



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CERTIFICATE OF SERVICE

I, Verdette Coltrane, certify that on this sixth day of February 2014, I caused the foregoing Opposition to Petition for Review to be served by first-class mail on the following:

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