BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Voluntary Transfer of Control	)	MB Docket No. 07-119
From Shareholders of Tribune Company	)	
To Samuel Zell	)	

REPLY COMMENTS OF THE MEDIA INSTITUTE
EX PARTE FILING

The Media Institute appreciates the opportunity to submit comments in reply regarding Tribune Company's applications seeking Commission consent to the transfer of control of its licenses and authorizations.[1] The Commission announced in Public Notice DA 07-1947 that its consideration of these applications would be governed by the ex parte procedures applicable to permit-but-disclose proceedings.[2] The Media Institute submits these reply comments as an ex parte filing in accordance with Public Notice DA 07-1947.

The Media Institute has a long-standing interest in media ownership regulations generally, and the newspaper-broadcast cross ownership (NBCO) rule in particular. The Institute is a nonprofit research foundation that includes among its goals a competitive communications industry, a goal implicated by the NBCO rule. The Media Institute has consistently expressed the view that the NBCO rule should be repealed.[3]

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[1] *Television Applications for Transfer of Control Accepted for Filing,* Broadcast Applications Public Notice, Report No. 26483, DOC-272938 (May 10, 2007) at 13-17.
[2] *Media Bureau Announces Permit-But-Disclose Ex Parte Status for Transfer of Control Applications Filed by Tribune Company,* Public Notice, DA 07-1947 (May 10, 2007).
[3] *See, e.g.,* Richard T. Kaplar, *Cross Ownership at the Crossroads: The Case for Repealing the FCC's Newspaper/Broadcast Cross Ownership Rule* (Washington, D.C.: The Media Institute, 1997); Richard T. Kaplar and Patrick D. Maines, "Media Consolidation, Regulation, and the Road Ahead," *Policy Views* [issue paper], The Media Institute, 2006.

Granting the Waivers Will Not Adversely Affect Competition and Diversity

The newspaper-broadcast cross ownership rule, enacted in 1975, seeks to promote competition and diversity in local media markets by prohibiting one entity from owning both a newspaper and a television station in the same market.[4] At the time the rule was enacted, the Commission recognized 79 jointly owned newspaper-broadcast combinations,[5] most of which were then "grandfathered." As part of its transfer of ownership, Tribune Company now seeks waivers to maintain its jointly owned combinations in five markets: New York, Los Angeles, Chicago, Miami-Ft. Lauderdale, and Hartford, Conn.

Opponents of these waivers argue that competition and diversity would be diminished in these markets if the new owners were allowed to maintain the existing newspaper-broadcast combinations. The Office of Communications of the United Church of Christ, Inc. (UCC) and Media Alliance (MA) make this point emphatically in their Petition to Deny (June 11, 2007). They are supported in a joint letter from Free Press, Consumers Union, and Consumer Federation of America (June 11, 2007). The International Brotherhood of Teamsters also makes this point in its comments (June 11, 2007).

We strongly disagree. First, if existing combinations are maintained, competition and diversity will not diminish at all – they will remain at the same level. No evidence has been presented or complaints received to suggest that the combinations in question are not serving the public interest well. Therefore, we must conclude that the present levels of competition and diversity are eminently adequate in this regard. (In fact, data put forth at the time and subsequent to enactment of the NBCO rule have suggested that the newspapers and television stations in jointly owned combinations actually offer *superior* news coverage because they can draw on each others' resources.)

Second, the markets in question are already highly competitive and diverse, offering a rich array of media choices. New York, Los Angeles, and Chicago are the first, second, and third largest media markets respectively,[6] while Miami-Ft. Lauderdale and Hartford are the 17th

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[4] *Amendment of Sections 73.34, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, Second Report and Order,* 50 F.C.C.2d 1046 (1975).
[5] *Id.* at para. 112.
[6] *Broadcasting & Cable Yearbook 2007* (New Providence, N.J.: R.R. Bowker LLC, 2006) at B-186, B-176, B-147.

and 28th largest markets respectively,[7] out of 210 television markets nationwide.[8] Petitioners in opposition try to minimize the rich competition and diversity that currently exist. In Chicago, for example, the UCC/MA petition asserts that "[t]he presence of 16 local news radio stations does not necessarily contribute significantly to the diversity of the Chicago market," and it discounts the fact that Chicago has eight foreign-language radio stations (p. 28) – even though foreign-language stations are perhaps the ultimate expression of diversity of voices.

Likewise, the petition states that the daily circulation of the *Chicago Tribune* is 579,079 and that the combined circulation of its two major competitors is 533,908 – and then tries to imply that the *Chicago Tribune* is *not* facing significant newspaper competition (p. 29). The petition also tries to minimize the importance of weekly papers in Chicago by noting that the number of weekly papers nationally "has increased only moderately" since 1975, while downplaying the fact that the circulation of those papers has more than *doubled*, from 35.9 million to 81.6 million (p. 36).

These and many other examples for Chicago and the other markets in the UCC/MA petition strike us as thinly veiled attempts to obscure the larger reality: that all five of these markets are highly competitive and diverse. For example, common sense tells us that any metropolitan area having 11 television stations, 34 radio stations, and 12 daily newspapers[9] (plus cable and Internet outlets) is a richly competitive and diverse media market – and we are speaking here of Hartford, the smallest (*i.e.,* "least" competitive and diverse) of the five markets in question.

In short, maintaining the Tribune Company's combinations under new ownership will not diminish competition and diversity in the slightest; conversely, breaking up these combinations would not add to competition and diversity in any meaningful way in markets that are already extremely competitive and diverse. Thus, granting the Tribune's waiver requests will not be at odds with the stated objective of the NBCO rule.

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[7] *Id.* at B-180, B-164.
[8] *Id.* at B-132.
[9] Tribune Company, Hartford Waiver Request at 17, 23, 26. Tribune lists 76 radio stations including New Haven. The UCC/MA Petition To Deny challenges these numbers, claiming that the Harford calculation should include only 15 radio stations and five newspapers. It does not list an alternate number for TV stations. The UCC/MA numbers still reflect a great deal of diversity, even though the real-world experience of Hartford media consumers is arguably far broader as Tribune suggests.

Granting the Waivers Would Be Consistent With the Commission's Movement Toward Repealing the NBCO Rule

Petitioners to Deny make much of the point that the waivers should not be granted because of Commission precedent to the effect that initiating a proceeding to review a rule is not sufficient reason to grant a waiver in the meantime.[10] However, this precedent is inapt here. The Commission has done far more than merely initiate a proceeding to review the NBCO rule – in fact, for several years the Commission has actively moved in the direction of relaxing or repealing the rule.

Beginning in 2001, the Commission compiled an extensive record in this matter and ultimately concluded that the cross ownership ban no longer served the public interest.[11] In 2003 the Commission instituted Cross Media Limits, a formula for various permissible combinations of cross ownership in medium and large markets.[12] However, the U.S. Court of Appeals for the Third Circuit stayed the new rules and remanded the matter to the Commission for further consideration, even as the court affirmed that the Commission acted reasonably in concluding that the original NBCO rule was no longer in the public interest.[13] (That notwithstanding, the original rule remained in force.)

Thus, this is not a case where the Commission has merely initiated a general review of a rule – the Commission has already tried to replace the outright prohibition with a relaxed formula, but has not yet completed the further proceedings compelled by the court.[14] Clearly, since at least 2003 the Commission's intent has been to significantly relax if not repeal its cross ownership restrictions. In fact, the Cross Media Limits adopted by the Commission in 2003 would allow cross ownership in the five markets for which Tribune Company seeks waivers.

Therefore, granting Tribune Company's waiver request would be consistent with the Commission's demonstrated intent to relax its cross ownership rules, a decision reached after the

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[10] UCC/MA Petition To Deny at 18, *citing Mobilemedia Corporation,* 14 FCC Rcd 8017, 8026 (1999).
[11] *Cross Ownership of Broadcast Stations and Newspapers, Newspaper/Radio Cross-Ownership Policy,* Order and Notice of Proposed Rulemaking, 16 FCC Rcd 17,283 (2001); *2002 Biennial Regulatory Review,* Notice of Proposed Rulemaking, 17 FCC Rcd 18,503 (2002).
[12] *2002 Biennial Regulatory Review,* 18 FCC Rcd 13,620 (2003).
[13] *Prometheus Radio Project v. FCC,* 373 F.3d 372, 398 (3d Cir. 2004), *cert. denied,* 125 S. Ct. 2902 (2005).
[14] *2006 Quadrennial Regulatory Review,* Further Notice of Proposed Rulemaking, 21 FCC Rcd 8834 (2006).

Commission not only initiated a rulemaking, but compiled an extensive record in several proceedings and subsequently took action to relax the NBCO ban.

Tribune Company Should Not Be Penalized for Procedural Delays

We agree with the Newspaper Association of America, which states in its Comments in Support (June 11, 2007) that Tribune Company should not be penalized because the cross ownership proceedings have taken such an interminably long time. Opponents of the transfer suggest that no action regarding Tribune Company's applications should be taken before the entire cross ownership proceeding is completed. However, there is no indication that a new decision from the Commission is imminent and, in any event, a new decision could be subject to further court challenges that could stretch on for years. The Telecommunications Act of 1996[15] mandated a biennial review of media ownership rules (including the newspaper-broadcast cross ownership rule). We are now 11 years and multiple proceedings into that process, with no end in sight.

Deferring action on the Tribune matter until the entire ownership proceeding is resolved would be tantamount to denying Tribune Company's applications without due process or review. This would be unfair and unwarranted. A more equitable solution would be to grant Tribune Company's waiver requests now. As NAA correctly states: "Tribune's waiver applications do not involve any newly created newspaper/broadcast combinations. Rather, Tribune is merely asking the agency to maintain the status quo with respect to existing combinations pending the completion of the ownership rulemaking" (p. 6).

The NBCO Rule Hinders the Competitiveness of Newspapers and Broadcast Outlets in Today's Expanded Media Environment

In the current media environment, the newspaper-broadcast cross ownership rule has become counterproductive because it hinders, rather than promotes, competition and diversity. Consumers now have a broad array of choices that include the Internet itself, Internet radio, satellite radio, broadband video, television downloads on the Internet, IP video from telephone companies, cell phone video, iPods and other MP3 players, and music download services (legal and otherwise) on the Internet. These "new media" are competing for the time and attention of

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[15] Pub. L. No. 104-104, 110 Stat. 56 (1996).

consumers, forcing the so-called "legacy" or "old media" like newspapers and broadcast television stations to compete like never before just to remain viable. But a prohibition such as the NBCO rule puts newspapers and TV stations at a competitive disadvantage vis-a-vis other media, which are not hampered by such a restriction.

Today's media landscape is a far cry from the one that existed in 1975 when the NBCO rule was adopted. The competitive demands on media outlets are far greater than they were three decades ago, and a level playing field is a prerequisite for survival. We reiterate our long-held view that the newspaper-broadcast cross ownership ban should be repealed because it no longer serves its purpose in this environment. In the meantime, granting Tribune Company's waiver requests would be consistent with the principle that the Commission should strive to encourage competitiveness by creating a level playing field for *all* media.

Conclusion

The Media Institute strongly urges the Commission to grant the waiver requests of Tribune Company in a timely way. Granting the waiver requests will not diminish competition and diversity in the slightest in any of the five markets in question – it will merely maintain the current level. Conversely, forcing a breakup of Tribune Company's combinations would not add to competition and diversity in any meaningful way, because these five markets are already highly competitive and diverse.

Moreover, granting the waiver requests would be consistent with the Commission's movement in recent years toward significantly relaxing or repealing the newspaper-broadcast cross ownership rule, as evidenced by its creation of the more relaxed Cross Media Limits in 2003. In addition, granting these requests would have the effect of holding Tribune Company harmless for the procedural delays that have marked the Commission's ownership proceedings, which date back to the Telecommunications Act of 1996 and for which there is no end in sight.

Finally, the Commission should grant the waiver requests because the underlying NBCO rule should have been repealed long ago. The rule puts newspapers and broadcast outlets at a competitive disadvantage in today's expanded media marketplace, which, paradoxically, is the exact opposite of the rule's original goal of promoting competition. Granting the waivers would be consistent with the Commission's interest in fostering competitive, *i.e.*, economically viable, media outlets. Granting the waivers would also be consistent with the Commission's interest in

fostering diversity, because a competitive media marketplace filled with viable entrants will give the public far more diversity in all its forms than the government could ever mandate. The Commission should stay focused on this "big picture" as it considers these waiver requests.

Respectfully submitted,

/s/

Patrick D. Maines, President

/s/

Richard T. Kaplar, Vice President

THE MEDIA INSTITUTE
Suite 503
2300 Clarendon Blvd.
Arlington, VA 22201
703-243-5700

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