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Congress of the United States
House of Representatives
Washington, DC 20515-0535

November 1, 2006

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The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

ATTN: Audio Division, License Renewal Processing Team
Mail Stop 1800B

Re: **Petition to Deny Request for Renewal of Broadcast License**
Petition to Deny Request for Waiver of Cross-Ownership Rule;
File No.: BRCT - 20060811ASH

Dear Chairman Martin:

As a Member of the U.S. House of Representatives for the 35th District of California and a regular viewer of KTLA-TV, I have standing to file this petition. My constituents are residents of the Los Angeles, California Designated Market Area ("Los Angeles DMA" or "DMA") served by KTLA-TV. KTLA-TV is a dominant television station in the Los Angeles DMA, and *The Los Angeles Times*' 55 bureaus make it the largest newspaper not only in Los Angeles, but in the State of California. Cross-ownership of KTLA-TV and *The Times* by the Tribune Company ("Tribune") violates the newspaper and television broadcast cross-ownership rule¹ ("cross-ownership rule" or "Rule"). With an inordinate amount of economic power through its cross-ownership, Tribune influenced public opinion in the Los Angeles DMA to harm its residents and one of its most critical public health facilities – the Martin Luther King/Drew Medical Center (King/Drew). This cross-ownership has created an overly-concentrated combination and a clear lack of diversity in media that has negatively impacted the local community; therefore, the Federal Communications Commission ("FCC" or "Commission") should deny KTLA, Inc.'s ("Applicant") request for renewal of its broadcast license and its request for either a permanent or temporary waiver of the cross-ownership rule ("waiver application").

¹ 47 C.F.R. 73.3555(c) (as amended, October 3, 2003).

The Tribune Company's existing cross-ownership violates public policy and law.

The Tribune Company's ownership combination in the Los Angeles DMA violates the FCC Rules, federal antitrust principles, and federal court jurisprudence. Because Tribune, owner of KTLA-TV and KTLA, Inc., acquired control over the *Los Angeles Times* in 2000 by way of a merger with Newsday, Inc., it was permitted to cross-own the two entities in violation of the FCC rules until the next broadcast license renewal date of December 1, 2006. After five years with a significant advantage over its less-concentrated competitors, Tribune, through its combination, has developed an audience reach of nearly 7 million people daily² out of the 12.8 million people in the greater Los Angeles DMA - approximately 55 percent. Daily, KTLA-TV reaches over three million households within the DMA and 4.5 million households in the United States through cable,³ and by its own admission, it is "one of the nation's farthest-reaching television stations."⁴

Tribune Company, furthermore, has a tremendous level of influence over Los Angeles print media with *The Los Angeles Times* - the only publication with readers throughout the entire DMA.⁵ The newspaper itself boasts "daily circulation ... greater than the next 5 largest local newspapers-combined,"⁶ and "Sunday circulation ... greater than the next 10 largest local newspapers-combined."⁷ While *The Los Angeles Times'* daily circulation is close to one million, its largest local competitor has only approximately 300,000 in average daily circulation.⁸ *The Times* further reveals that its reach is so vast that it "is the only newspaper in the West with the resources" to report on the world's most "important stories wherever they happen" and that it is "the largest in California."⁹

While the Applicant claims in its request for a waiver that KTLA-TV's ratings have declined from 2001 to 2006, suggesting that it "does not have any cognizable market power over viewership and that its combination with *The LA Times* has not enabled it to adversely impact competition in the market,"¹⁰ a recent study shows that "in Los Angeles, the second largest market in the country ... , any cross media merger involving the top newspaper and TV firms would increase concentration in excess of the DOJ/FTC *Merger Guidelines*."¹¹ The

² See http://www.latimes.com/extras/ads/triple_01.html, last visited October 17, 2006.

³ Id..

⁴ See http://www.latimes.com/extras/ads/ktla_02.html, visited on October 17, 2006.

⁵ See http://www.latimes.com/extras/ads/circ_01.html, visited on October 17, 2006.

⁶ See http://www.latimes.com/extras/ads/circ_02.html, visited on October 17, 2006.

⁷ Id..

⁸ SEC Form 10-K, filed by Tribune Co. on February 28, 2006.

⁹ See http://www.latimes.com/extras/ads/edit_02.html, visited on October 17, 2006.

¹⁰ See Waiver application, KTLA, Inc., Ex. 14, part I at 17.

¹¹ See Mark Cooper, "How Bigger Media Will Hurt California: A Report on California Media Markets and the Impact of Newspaper/TV Cross-Ownership Mergers," McGannon Communications Research Center at 7 (October 2006, emphasis added), referring to the set of standards used by the U.S. Department of Justice (DOJ)

Applicant has attempted to justify its request for a waiver of the cross-ownership rules by stating that Tribune's merger did not give it enough market power to adversely effect competition. However, the federal government applies antitrust scrutiny to mergers in order to determine whether "[s]ellers with market power may lessen competition on dimensions *other than price*, such as product quality, service or innovation market power,"¹² and the Applicant completely fails to justify its inordinate impact on the quality and distribution of media information to the Los Angeles DMA through its combination.

In its request for a waiver of the cross-ownership rule, the Applicant makes the argument that "retaining Tribune's common ownership of the *LA Times* and KTLA[-TV] better serves the public interest than divestiture under the Rule"¹³ by citing the size of the Los Angeles market and the availability of alternate sources of media. However, research has shown that ethnic minority viewpoints and interests are served in a more competitive market regardless of its overall size.¹⁴ This finding suggests that divestiture would better serve ethnic minority viewpoints and interests in a media environment such as the Los Angeles DMA. Concentration of ownership in the media marketplace destroys competition, localism, and diversity by creating an oligopoly,¹⁵ and granting the Applicant's waiver would further the unfair polarization of the Los Angeles DMA. The FCC, in its 2002 Biennial Regulatory Review, determined that it measures diversity in four aspects – "viewpoint diversity, outlet diversity, source diversity, and program diversity."¹⁶ Tribune's violation of the cross-ownership rule and its dominance of the DMA diminish each of these types of diversity for the community. The spirit of the cross-ownership rule was to establish and to maintain a wide and diverse marketplace of ideas. Granting this waiver would undermine the public's confidence and its ability to receive information from varying perspectives. Furthermore, the federal courts have shown specific ways that large media combinations such as Tribune's actually hurt communities like the Los Angeles DMA. For example, in 2002, the Federal District Court for the D.C. Circuit held that concentration of the media has allowed those who have economic power to exert "an inordinate effect, in political, editorial, or similar programming sense, [or] on public opinion at the regional level."¹⁷

The Applicant, moreover, states that if the FCC does not grant its request for a waiver from the cross-ownership rules under the "*for whatever reason*, the purposes of the rule would

and the Federal Trade Commission (FTC) to analyze the effects of proposed mergers on the market for news and information.

¹² See *id.*, at 2, citing the *Merger Guidelines* (1997).

¹³ See *supra* note 10 at 11-13.

¹⁴ See S. Derek Turner, et al., Free Press, "Out of the Picture: Minority and Female TV Station Ownership in the United States," September 2006, found at http://www.stopbigmedia.com/files/out_of_the_picture.pdf on October 16, 2006.

¹⁵ See *infra* note 22.

¹⁶ See *In the Matter of 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, Notice of Proposed Rulemaking*, 67 Fed. Reg. 65 at 751, 756 (Oct. 28, 2002)

¹⁷ Cecelia Rothenburger, *The UHF Discount: Shortchanging the Public Interest*, 53 Am. U.L. Rev. 689, n. 24, citing *Sinclair Broad. Group, Inc. v. FCC*, 284 F.3d 148, 160 (D.C. Cir. 2002).

be disserved” standard and under its current circumstances, the Commission would be acting in an arbitrary and capricious manner.¹⁸ However, Supreme Court jurisprudence – that is still valid – states that “[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount ... the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences ... [and that] the ‘public interest’ in broadcasting clearly encompasses the presentation of vigorous debate of controversial ideas of importance and concern to the public.”¹⁹ Also, the Supreme Court has, on many occasions, decided that the Communications Act “rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.”²⁰ Additionally, with respect to the FCC’s policy on media ownership, the Supreme Court has clarified that “diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints as well as by *preventing undue concentration of economic power*.”²¹ Economic analysts define an oligopoly as a market in which the top four firms control more than 40 percent and a “tight oligopoly” as one in which the top four firms control more than 60 percent.²² The control that the Tribune Company has, through its cross-ownership, over the Los Angeles DMA meets the requirements of an oligopoly, and perhaps that of a “tight oligopoly;” therefore, allowing its combination to continue would disserve the public welfare. The Applicant’s justification erroneously suggests that the burden rests squarely on the FCC to grant waivers, leaning away from divestiture whenever possible. However, Supreme Court decisions, that remain valid, have made it clear that media policy favors the preservation of “diverse and antagonistic sources” over the creation of permanent oligopolies, thereby indicating that the “*for whatever reason, the purposes of the rule would be disserved*” standard” should be used to put the public benefit before the interests of existing business combinations like KTLA-TV and *The Los Angeles Times*.

The Los Angeles Times has had an inordinate effect on public opinion and has used it to harm the local community in specific instances.

Cross-ownership of KTLA-TV and *The Los Angeles Times* gave the Applicant so much control that it was able to influence the closure of the trauma center at King/Drew—work for which it won a Pulitzer Prize in 2004. In recent years, the one-sided focus of its coverage of King/Drew suggests that it has initiated a campaign to bring about the total closure of the facility, which would bring about the loss of critical health care services for the South Los Angeles community. King/Drew is located in an area populated by more than one million people, where 47.7 percent adults and nearly 30 percent of the children are uninsured.

¹⁸ See *supra* note 10 at 42-43.

¹⁹ See *Red Lion Broadcasting v. FCC*, 395 U.S. 367, 390 (1969).

²⁰ See *supra* note 11 at 2, citing *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

²¹ See *FCC v. Nat’l Citizens Committee for Broadcasting*, 436 U.S. 775, 780 (1978)(emphasis added); *Prometheus Radio Project, et al. v. FCC*, 373 F.3d 383 (3rd Cir. 2004)(citing *Nat’l Citizens Committee for Broadcasting*, 436 U.S. at 780).

²² See *supra* note 11 at 3-4, quoting William G. Shepherd, *The Economics of Industrial Organization* (Englewood Cliffs, NJ: Prentice Hall, 1985).

Once the hospital began to experience functional problems, it became very important for the community to remain objective in determining how to come up with solutions. Over two years ago, I, along with the community, organized the "Save King/Drew Coalition" to find ways of improving the hospital while *The Times* abused its domination of the local media by launching aggressive and malicious investigations of the L.A. County Board of Supervisors, elected officials, and community leaders who were working to keep the hospital open.

According to the U.S. Department of Health and Human Services' "Hospital Compare" website for the period of January 2005 to December 2005, approximately 75 percent of patients discharged for specific medical procedures at King/Drew received care that was no different than the level of care in other health care facilities in the greater Los Angeles area.²³ It would have been a greater public service to the community had *The Times* given equal attention to the positive benefits of bolstering the facility and helping it to improve its services to the community, rather than engaging in a self-serving effort to attack the facility and its administration. Therefore, it is reasonable to conclude that the flagrant attempts to intimidate supporters of the hospital were the means that it used to warn the public not to undermine its pursuit of a Pulitzer Prize. To make a very compelling illustration of the impact that the Applicant's cross-ownership combination has had on the fate of King/Drew, a survey found that *The Los Angeles Times* wrote about the facility in over 300 articles between 1989-2000 – which includes a special in-depth series by columnist Claire Spiegel in 1989.²⁴ However, interestingly enough, neither its 11 years of coverage as a single entity nor the special feature by Ms. Spiegel was compelling enough to influence change at the facility, but once Tribune merged *The Times* with KTLA in 2000, it only took four years – and a new series of articles in 2004, for it to convince the local community that King/Drew and its administration were so dysfunctional and inept that it left the Los Angeles County Government with no choice but to close the King/Drew Trauma Unit.

Iconic figures in the Los Angeles community such as Lillian Mobley, who have been instrumental in the fight to preserve essential services at King/Drew, have been criticized and attacked by *The Times* as "too activist." To the contrary, Ms. Mobley, one of the founders of King/Drew, has devoted much of her life and energy to its improvement, development, and maintenance. Similarly, in the course of my own long history of advocacy in support of the facility, *The Times* launched a full-scale investigation in an attempt to discredit me and my work as a State and Federal legislator. In one article regarding my attempts to garner support for the retention of neonatal services at King/Drew in 2004, it describes me as "defiant U.S. Rep. Maxine Waters,"²⁵ and another article in the same year states:

It was not clear to me which desk Rep. Waters intended to climb on top of [to protest the closure of the neonatal unit], but I left a message on hers. I asked her to call back and tell me just how many people had to die before she went

²³ See <http://www.hospitalcompare.hhs.gov/> (for the City of Los Angeles, CA; last visited Oct. 30, 2006).

²⁴ The articles used in the survey ranged from November 27, 1989 to September 27, 2006.

²⁵ See Daren Briscoe and Mitchell Landsberg, "A Spirited Defense of King/Drew," *THE LOS ANGELES TIMES*, Jan. 24, 2004.

after the hospital, instead of defending its right to take in more victims ... As for the desk-climbing threat, she said it's county health officials she's talking about ... It sounded good. Just like all the other times.²⁶

Within the period in which the Tribune Company cross-owned KTLA and *The Los Angeles Times*, King/Drew has lost its Trauma Center, accreditation of its residency program, and currently, it faces potential loss of \$200 million in annual federal Medicaid funding, absent approval of a plan that has been submitted by the Los Angeles County Board of Supervisors to improve its services. During the period in which the Federal Government reviews this plan, continued attacks by *The Times* will only diminish the community's chances of success in saving King/Drew. Yet, at a time when the community could most benefit from positive, constructive, or at the very least, objective media coverage of the situation, *The Los Angeles Times* has consistently depicted it as such:

Incredibly, there may still be private firms interested in taking over the Martin Luther King Jr./Drew Medical Center ... The county Board of Supervisors, which met Monday to discuss the center's fate, should not miss this opportunity to bring its sorry mismanagement of the center to an end once and for all ... King/Drew's failure is as much a story about the board's negligence as it is the hospital staff's. For the last three years federal inspectors, county auditors and Times reporters have detailed a decades-long pattern of medical and administrative errors, many of them fatal, at King/Drew. Two years ago the board voted to close its trauma center and hired outside consultants to oversee King/Drew's operations. Hundreds of its employees have been fired or disciplined.²⁷

On a different yet equally important issue, in the aftermath of the wrongful beating of Stanley Miller by Los Angeles Police Officers in 2004²⁸, *The Times* tried to cast aspersions about my claim concerning the injustice committed against a victim of police brutality:

Posturing and politicking are predictable responses to the emotionally freighted image of a Los Angeles Police Department officer beating a black suspect, but they could undermine a fair investigation as surely as any cover-up or whitewash ... With a mayoral election on the horizon, politicians have rushed in to exploit these fears ... And Rep. Maxine Waters (D-Los Angeles), who never misses a chance to pour gasoline on a fire, has called for criminal charges to be filed against the officers.²⁹

²⁶ See Steve Lopez, "Will Grim Saga of Hospital Ever End," THE LOS ANGELES TIMES, Feb. 1, 2004.

²⁷ See "Privatize King/Drew," THE LOS ANGELES TIMES, Editorial, Sept. 26, 2006.

²⁸ The Los Angeles Police Department filed serious interdepartmental charges against the two officers involved in the televised beating of Stanley Miller and four others got four to 15 days' suspension. See Jason Kandel and Rick Orlov, "Six Cops Face Penalties; Chief Ends 10-Month Probe in Flashlight Beating of Ex-Con," THE LOS ANGELES TIMES, Pg. N1, April 29, 2005.

²⁹ See "Give LAPD Probe a Chance," THE LOS ANGELES TIMES, Editorial, July 2, 2004.

Likewise, in 2004, *Times* columnist Chuck Neubauer co-wrote a nearly 4,000-word character assassination in which he misrepresents facts to allege inappropriate or unethical conduct by me and members of my family.³⁰ This article contains some 20 inaccurate and exaggerated claims; nevertheless, based on nothing other than *The Times*' reputation as a credible news source, an organization called "CREW" relied almost entirely on this incorrect information to further defame my reputation in its most publicized report.³¹

Clearly, with respect to coverage of King/Drew, the Tribune Company, through its cross-ownership media products, intended to convince the Los Angeles community that the facility, its staff, its service, and its supporters serve no value except as a private or a defunct institution, and its receipt of a Pulitzer Prize evidences the fact that its cross-ownership has allowed it to exert an inordinate effect on public opinion to the detriment of people who desperately need the healthcare services provided at King/Drew. Not only as to King/Drew, but relative to other very serious issues, *The Times* has used its tremendous influence to discredit me and other people who devote their lives to helping the community.

One current and one former writer for *The Los Angeles Times* have confirmed the concerted effort to destroy King/Drew.

Two of *The Times*' own writers have exposed specific ways that it has used its tremendous influence to hurt the community. In an article dated September 27 by *Times* columnist Erin Aubry Kaplan pointed out that *The Times*' intimidating control over the media market in Los Angeles is:

[e]nough to make anyone believe in conspiracy theories. After surviving repeated rounds of bad press for 20 years, King/Drew Medical Center was finally knocked out in 2004 by a series of articles in this newspaper.³²

Constant attacks on King/Drew by *The Times* led to the closure of its Trauma Center and to its control of how the community perceived efforts to improve the facility. In the September 27 article, Ms. Kaplan also wrote that:

[A]ccording to the series [done by *The LA Times*], King/Drew was so frighteningly incompetent for so long, it hardly deserved to have been called a

³⁰ See Chuck Neubauer and Ted Rohrlich, "Capitalizing on Clout: Capitalizing on a Politician's Clout," THE LOS ANGELES TIMES, Dec. 19, 2004. In Chuck Neubauer, "Group Lists '13 Most Corrupt' in Congress," THE LOS ANGELES TIMES, Pg. 26, Sept. 25, 2005, THE TIMES cites a 2006 report by CREW, which in turn cites the Dec. 19, 2004 article as one of its primary sources. Furthermore, the only other source cited in the CREW report (See Dana Milbank, "Lowering the Bar for Government Ethics?" THE WASHINGTON POST, Dec. 31, 2004.) was written based on information compiled from THE LOS ANGELES TIMES articles.

³¹ See <http://www.beyonddelay.org/files/Waters.pdf>, last visited Oct. 31, 2006.

³² See Erin Aubry Kaplan, "The King/Drew Syndrome," THE LOS ANGELES TIMES, Editorial, Sept 27, 2006.

hospital at all.

Similarly, former *Times* columnist Nikki Finke, in her October 11 article in the *L.A. Weekly* wrote that:

I don't know anyone who thinks the *Times* is doing even a decent job of covering Los Angeles and its environs, unless editors think the story will win a Pulitzer.³³

Amazingly, the Tribune Company seems to have no problem drawing attention to its blatant violations of the rule and points to a situation where *The Times* worked in collusion with KTLA-TV to negatively influence public opinion about Martin Luther King Hospital. In its application for this waiver, the Applicant states:

in December 2004, KTLA aired nightly reports on its prime-time newscast that paralleled a five-part series in the *LA Times* [and that] KTLA's reports ... triggered public investigations and reforms at the facility. *The LA Times* won a Pulitzer Prize for the series.³⁴

Testimony at public hearings has established a timeline that is corroborated in media accounts and even in the Applicant's own request for a waiver. *The Los Angeles Times* has never been interested in using its power and influence to solve the problems at King/Drew or to write about the positive actions taken by the community to improve the Hospital, and it would be an injustice to allow it to continue wielding such negative influence.

Conclusion.

In March 2000, the Tribune Company purchased Times Mirror, which owns several major newspapers such as *The Los Angeles Times*, *Newsday*, and *The Baltimore Sun* and about twenty magazines such as "Field and Stream" and "Popular Science" for about \$8 billion. The purchase gave the Tribune Company a cross-ownership advantage in several markets such as Los Angeles (*The Times* and KTLA-TV) and New York (*Newsday* and WPIX-TV) and that is in addition to its existing cross-ownerships in Chicago and south Florida (*The Ft. Lauderdale Sun-Sentinel* and Miami's WBZL-TV). The Tribune Company also owns television stations in Philadelphia, Boston, Dallas, Denver, Atlanta, Houston, Seattle, and Washington, D.C.; two local cable systems; and interest in the Chicago Cubs baseball team.

³³ See Nikki Finke, "Dean of Sycophants," THE LA WEEKLY, Oct. 11, 2006.

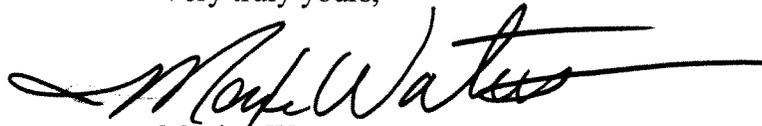
³⁴ See *supra* note 10 at 37.

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Federal Communications Commission
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Los Angeles is the second largest DMA out of 210, signifying that it has 5.023 percent of the entire U.S. television viewing population.³⁵ Allowing Tribune to keep its unfair and exclusionary cross-ownership in Los Angeles will set a dangerous precedent for other concentrated markets and make justifying the continuation of unfair combinations much easier. Media localism and diversity are the cornerstones of democracy, and we cannot afford to compromise them in any way. Without diversity in ownership and participation, our democracy is in danger. The public must have access to information and all points of view. Troubled public facilities like King/Drew exist in almost every community. It is the government's duty to create and maintain an environment where media is fair, unbiased, and promotes the public welfare.

For these reasons, I request that you deny the Applicant's request for renewal of its broadcast license and that you deny its request for a waiver of the cross-ownership rule.

Very truly yours,

A handwritten signature in black ink, appearing to read "Maxine Waters", with a long horizontal flourish extending to the right.

Maxine Waters
Member of Congress

³⁵ Nielsen Media Research Local Market Universe Estimates, effective Sept. 24, 2005, found at <http://www.nielsenmedia.com/nc/portal/site/Public/menuitem.a29bf6c4075c4c819a69c71047a062a0/?vgnnextoid=ae40c9a814955010VgnVCM100000880a260aRCRD&allRmCB=on&newSearch=yes&searchBox=DMA>.