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SUPREME COURT
OF THE STATE OF WASHINGTON

BELO MANAGEMENT SERVICES, INC., a Delaware Corporation;
KIRO-TV, INC., a Delaware Corporation; TRIBUNE BROADCASTING
SEATTLE, LLC, a Delaware Limited Liability Company; and CBS
CORPORATION,

Respondents,

v.

CLICK! NETWORK, a Department of Tacoma Public Utilities Division
of the CITY OF TACOMA; and TACOMA NEWS, INC.,

TACOMA NEWS, INC. as

Appellant.

RESPONSE BRIEF OF FISHER COMMUNICATIONS, INC. AND
PARTIAL JOINDER IN THE RESPONSE BRIEFS OF BELO
MANAGEMENT SERVICES, INC., KIRO-TV, INC., TRIBUNE
BROADCASTING SEATTLE, LLC and CBS CORPORATION

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ORIGINAL

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Fisher Communications, Inc. (“Fisher”) responds to the opening brief of Tacoma News Inc. (“TNT”) as follows.¹

I. INTRODUCTION

Washington’s Public Records Act, RCW Chapter 42.56 (“PRA”), as interpreted by this Court, exempts trade secrets in public records from disclosure. *Progressive Animal Welfare Society v. University of Washington* (“PAWS 2”) 125 Wn.2d 243, 262, 884 P. 2d 592 (1994). RCW 42.56.540 allows the owners of trade secrets to ask a superior court to enjoin their release if a public agency notifies them that their trade secrets have been requested under the PRA and might be released.

In this case the TNT requested Fisher’s retransmission consent agreements (“RCAs”) from CLICK! a cable provider owned by the City of Tacoma (CLICK!). In order for CLICK! to air local broadcast stations it must pay fees or other non-monetary compensation (“Consideration”) to compensate a broadcaster for its programming, under an RCA.² Fisher

¹ On August 8, 2013, Sinclair Broadcast Group, Inc. acquired Fisher Communications, Inc. which owned KOMO, KOMO HD, KUNS, KUNS HD, some of the stations at issue in this case and Fisher’s name was changed to Fisher Television of Seattle, Inc.

² The FCC describes the federal retransmission consent scheme, pursuant to 47.U.S.C. § 325:

“The Communications Act requires that a television station give its consent to a cable system or other multichannel video programming distributor (MVPD) to carry its broadcast signal. Television stations and cable systems, as well as satellite carriers, negotiate for this “retransmission consent” and money or other consideration is generally exchanged between the parties in these private negotiations. If the parties do not produce an agreement in time, they may decide to extend the existing agreement, which means they would continue to

treats this Consideration as a carefully guarded trade secret, consistent with other broadcasters in the industry.

CLICK! notified Fisher of the TNT's PRA request and worked with Fisher to redact the Consideration from the Fisher RCA. CP 145. The vast majority of the Fisher RCA was then disclosed to the TNT. CP 230, VPP142.

Thereafter, Fisher, and the four other broadcasters in this case, sought injunctive relief from the Pierce County Superior Court under RCW 42.56.540 to prevent the public release of the Consideration contained in their respective RCAs.

All of the broadcasters--and CLICK!--provided substantial, compelling evidence that the Consideration in each RCA qualifies as a trade secret, that CLICK!, the public and the broadcasters would suffer serious damage from disclosure of the Consideration and that no public interest would be served by such disclosure.³ The TNT provided no evidence.

carry the stations during their negotiations. If they do not reach an agreement, then the cable system or other MVPD must stop offering the stations to their subscribers."

<http://www.fcc.gov/encyclopedia/retransmission-consent> (last visited 9/11/2013).

³ Twelve Declarations or Affidavits were submitted: Minkarah Declarations, CP 142-156, 445-484; Martinez Affidavits, CP 34-38, 325-361; Nicolais Declarations, CP 573-75, 639-44; O'Connor Affidavits, CP 362-78, 887-93; Gyaltzen Affidavits, CP 166-71; Sennett Affidavits, CP 379-84, 394-903.

On March 15, 2013 the Hon. Ronald Culpepper of Pierce County Superior Court granted a narrow injunction to enjoin public disclosure of the Consideration, finding that the broadcasters had satisfied the standards for injunctive relief under RCW 42.56.540.

TNT disputes the trial court's ruling claiming, without support, that "the final contract price with a government agency" can never be a trade secret simply because the public has an interest in scrutinizing how government works because "taxpayers" are paying for it. This overbroad argument ignores the non-governmental nature of CLICK!'s operations, as well as fundamental PRA law, which recognizes a well-settled exemption for trade secrets, and a means to protect them from disclosure under RCW 42.56.540.

If the TNT's position is taken to its logical conclusion nothing in a government contract could ever be exempt, even legitimate trade secrets and no exemptions would exist because they conflict with the open government mandate of the PRA. That is not the law. Exemptions reflect a legislative determination that sometimes disclosure of a public record is not in the public interest, as with trade secrets. Five independent broadcasters, supported by CLICK!, presented substantial, concrete, un rebutted evidence⁴ to Judge Culpepper that disclosure of their trade

⁴ See Footnote 3.

secrets would clearly not be in the public interest.⁵ His decision enjoining their disclosure should be upheld.

II. RESTATEMENT OF THE ISSUES

1. Did the trial court err in enjoining the release of the Consideration in the broadcasters' RCAs when twelve uncontroverted declarations or affidavits establish that the Consideration satisfies the criteria for a trade secret under RCW 19.108.010(4)?⁶

2. Based upon twelve uncontroverted declarations or affidavits, did the trial err by ruling that disclosure of the Consideration would not be in the public interest, and that disclosure would cause irreparable harm to the broadcasters, the public and CLICK!?

3. Based upon the foregoing findings did the trial court properly apply the criteria of RCW 42.56.540 in issuing the injunction?

4. Did the trial court abuse its discretion by declining *in camera* review of the unredacted RCAs?

⁵ As a media company, Fisher fully supports the policies of, and purpose for, the PRA. That Fisher has availed itself of a remedy under the PRA as a necessity to protect its legitimate economic interests in no way diminishes that support.

⁶ The trial court's oral ruling (VRP 106-112) clearly states that his Order is limited to the Consideration in the RCAs, which he concluded constitutes an exempt trade secret. His Order can and is being interpreted by CLICK! and Fisher to redact only statements in other records that could be used to determine Consideration. No one, certainly not TNT, has claimed denial of public records that did not contain information on Consideration. TNT has no standing to claim that the trial court's ruling has harmed it.

III. STATEMENT OF THE CASE

TNT challenges two decisions of Judge Culpepper. The first is Judge Culpepper's March 15, 2013 Order enjoining the disclosure of the Consideration contained in the RCAs of the five movant broadcasters, including Fisher. The second involves Judge Culpepper's refusal to conduct an *in camera* review of the unredacted RCAs. TNT's opening brief rests upon unproven, erroneous factual assumptions that a) broadcaster retransmission consent fees are the cause of CLICK!'s increased cable rates; b) the public – not just CLICK! subscribers – have an interest in examining these fees and c) therefore the fees can never be a trade secret. These assumptions are not supported by the facts as discussed below.

A. **CLICK! Operates A Competitive Cable Service That Is Not Subsidized By The Public.**

CLICK! is not purely a governmental agency as the rest of Tacoma Public Utilities (“TPU”).⁷ Unlike agencies that provide monopoly services like power and light, CLICK! competes with multiple private enterprises as a “multi-video programming distributor” (“MVPD”) like its

⁷ Throughout TNT's opening brief the TNT conflates the actions of CLICK! with the “City” to bolster its argument that CLICK! operates only as a governmental entity. As explained in this section that is not necessarily true because CLICK! operates in a non-essential, competitive, proprietary capacity in offering services to the public.

competitors, ComCast, Direct TV and Dish Network.⁸ As TNT states, CLICK! performs no vital governmental function.⁹ CLICK! is bound by the same rules as its private competitors when obtaining programming, like cable channels or the re-broadcast of local network stations like ABC's affiliate KOMO, owned by Fisher. While CLICK! must pay retransmission consent fees pursuant to 47 U.S.C. § 325, it must also pay programmers that are not broadcasters.

Like its competitors, CLICK! provides several packages of programs that include not only local broadcast stations but specialized cable channel programming such as the Weather Channel, Discovery, the Hallmark Channel, ESPN, Comedy Central, etc. that are bundled into package offerings.¹⁰ Thus, in order to operate CLICK! must pay other providers for all the programming it carries, whether local broadcast channels or national cable networks.

Contrary to TNT's arguments there is no evidence that local broadcast retransmission fees are the primary reason for increased CLICK! rates. When discussing the proposed rate increases, Diane Lachel, CLICK!'s government and community relations manager, told the

⁸ Opening Brief, page 2.

⁹ Id., page 43.

¹⁰ See [http://www. CLICK!cabletv.com/special offers](http://www.CLICK!cabletv.com/special_offers) (last visited 9/10/2013). MVPD's may pay very steep fees for certain cable networks such as ESPN as part of a bundle

Tacoma City Council “in some instances, programming rates have doubled year over year.” CP 129. (emphasis supplied) The TNT reported regarding the November 2012 rate hikes:

“to stay competitive, officials said CLICK! must add more high definition service, video on demand services and sports programming, such as the PAC-12 Network, which was added in August. But steep costs come with adding new cable channels and services, . . . programming costs continue to be our single largest expense, Laschel said.” CP 130.

The November 2012 rate increases passed by the Tacoma Council for the 23,000 CLICK! customers were to cover CLICK!’s total increased costs, which included many other programming costs unrelated to retransmission consent fees. The November 2012 rate increases occurred months before Fisher and CLICK! signed a renewed RCA in February of 2013.

Raising CLICK!’s cable rates to cover increased costs was done to forestall any subsidization to CLICK! from Tacoma Power ratepayers. CP 129. This means that CLICK!’s costs must be paid by rates charged to its 23,000 subscribers and not the general taxpayer, as implied by TNT.

Because CLICK! operates in a non-governmental capacity, charging rates not paid by Tacoma ratepayers, TNT’s generalized claim that the “public” has the right to examine how its “public” money is spent

offered by programmers. <http://www.npr.org/2013/08/07/209820647/the-history-and->

evaporates. Rates paid by CLICK! subscribers are no more “public” money than rates paid by Comcast subscribers for cable service. Further, the “service” offered by CLICK! is no more “public” than that offered by Comcast. Hence, the public has no more interest in the Compensation paid to Fisher by CLICK! than in what Comcast pays to Fisher. Further, unlike a customer of Tacoma Power, a CLICK! customer can disconnect from CLICK! in favor of Comcast if that customer does not like how CLICK! operates. Rather than the PRA providing accountability the market holds CLICK! accountable for its action. Thus, access to the Consideration at issue serves no truly “public” interest and sheds no light on how “government” works, contrary to the TNT’s sweeping assertions.

Assuming, *arguendo*, that the “public” should be allowed access to CLICK!’s costs—which the “public” does not pay—then such access should not be limited to broadcast retransmission consent fees, which are but a sub-set of CLICK! programming costs. The “public” should have access to the other components of programming costs, such as cable channel programming fees for all of the programs carried by CLICK! – a result that, no doubt, would foment further controversy. Nonetheless, to give a balanced picture all programming costs would have to be publicly disclosed. Although Fisher does not believe the law requires the

[future-of-cables-bundling](#) (last visited 8/26/2013).

disclosure of programming costs, such as its Consideration, if the court rules to the contrary such ruling should contemplate the disclosure of fees paid to all program providers, not just to broadcast stations.

In sum, the TNT's myopic PRA request for only a sub-set of cost information, is premised on the mistaken belief that only retransmission consent fees caused rates to go up and that the "public" pays those rates. As discussed above, the TNT misses the mark and access to the Consideration will not allow the "public" to assess the operations of "government" or to costs paid by "taxpayers."

B. The Fisher/CLICK! RCA Dispute Did Not Raise A Matter of Substantial Public Interest to Warrant Disclosure of An Unredacted New RCA.

TNT presents the Fisher/CLICK! RCA dispute out of context, implying somehow that Fisher's new RCA produced higher rates for CLICK! subscribers which, in turn heightened public interest in those fees. In fact, the rate increases had occurred before the dispute was concluded by a new RCA entered into February 1, 2013. CP 120, 127. There is no factual connection between the November 2012 rate increase and CLICK! and Fishers impasse over a new RCA.

Like all contracts, RCAs expire when their terms end. The Fisher/CLICK! RCA expired on December 31, 2012, while Fisher and CLICK! were still negotiating the Consideration for retransmission

consent. Because CLICK! had no consent to air the Fisher stations, CLICK! discontinued its retransmission of such stations' signals. This result is required by law. CLICK!'s 23,000 subscribers were upset over losing a major broadcast station like KOMO, which is an ABC affiliate. This result is not uncommon when a broadcaster and a MVPD cannot agree on key terms, such as consideration.¹¹ As discussed by Rhonda Minkarah from Fisher, RCA fees provided a significant necessary revenue stream to Fisher that has been increasing and, thus, it was not surprising that compensation was a critical issue. CP 144.

That Fisher held fast to its financial terms, which CLICK! accepted, demonstrates no unfairness, no overreaching and more important no overarching public interest that somehow supersedes Fisher's right to protect its trade secret. Disclosure of Fisher's Consideration will not change its executed RCA. The bottom line is that 23,000 CLICK! customers -- less than 8% of Tacoma's households¹² -- wanted to watch ABC or Univision and CLICK! made a decision to please those customers. That CLICK!'s manager was unhappy over the Consideration paid to

¹¹ For example, CBS Corp. recently concluded a dispute with Time Warner Cable over retransmission consent fees that involved Time Warner Cable temporarily discontinuing carriage of CBS owned stations in a number of major markets including New York, Los Angeles and Dallas.

See <http://www.usatoday.com/story/money/business/2013/09/02/cbs-time-warner-cable-agreement/2755953/> (last visited on 9/11/2013).

¹² TNT Opening Brief, p.2.

Fisher has no relevance to whether the Consideration constitutes a trade secret and whether Fisher and the other broadcasters were entitled to enjoin their disclosure.

C. The City's Response to the TNT's Request for Fisher's RCA, And Those of The Other Broadcasters Did Not Concede the Lack of an Exemption

TNT factually mischaracterizes a letter sent to Fisher by James Kauffman, the City's Record Officer for the Department of Public Utilities. CP 150. That letter stated that "no applicable exemption can be reasonably be asserted by the City under the Public Records Act."

This language can only be interpreted to mean that the City, itself, may not be in possession of sufficient factual information to assert a trade secret claim.¹³ This does not mean Fisher lacks such information. Public agencies frequently shift the burden of proving a trade secret to the owner, who has the most protectable interest. Certainly, the letter should not be viewed as a concession that CLICK! agrees that no PRA exemption applies to the RCA Consideration.

The letter provided Fisher and the other broadcasters with the opportunity to bring forth evidence to prove the trade secret exemption, and entitlement to injunctive relief under RCW 42.56.540.

¹³ For instance, the City may not know how a broadcaster maintains the security of the fee information contained in an RCA.

D. Fisher Presented Evidence That Proved Its RCA Compensation Was An Exempt Trade Secret.

Fisher provided two detailed declarations from Rhonda Minkarah, Senior Vice President for Revenue and Business Development to establish that the Consideration in Fisher's RCA is a trade secret. CP 142-56, 445-84. One of Ms. Minkarah's primary responsibilities was the negotiation of RCAs. She negotiated more than 200 RCAs, including the 23 current RCAs that Fisher has with MVPDs in the Seattle-Tacoma market. As a result of her personal experience, she knows how the broadcast industry treats RCAs and that RCA license fee information is never disclosed publicly within the broadcast industry.

RCA fees provide a significant revenue stream to Fisher, and therefore it protects against disclosure of RCA fees to prevent competitive disadvantage in future RCA negotiations with other MVPDs. Ms. Minkarah explained that RCA fees have independent economic value because they are not generally known within the broadcast industry. If they were, Fisher would be unable to negotiate higher rates with MVPDs. If these MVPDs know the financial terms upon which Fisher is willing to grant its retransmission consent they would be unwilling to pay more than the lowest fee that has been publicly disclosed. Ms. Minkarah explained that each RCA is individual, the subject of unique and complex

negotiations. As such, there is no “generic” RCA fee which could be readily ascertainable by proper means. She explained the harm Fisher would suffer from disclosure:

Disclosure of an unredacted version of the Fisher/CLICK! RCA would cause significant economic harm to both Fisher and CLICK! Such disclosure would place both entities at a significant competitive disadvantage in future RCA negotiations. Disclosure of the fees and other fee- or economic consideration-related provisions would prejudice Fisher’s ability to negotiate appropriate, market-based competitive rates and terms with other MVPDs, both in the Seattle-Tacoma DMA and in other DMAs in which Fisher operates television stations. If other MPVDs know the financial terms upon which Fisher is willing to grant its retransmission consent, they will be unwilling to pay more, and the CLICK! deal will essentially act as a ceiling upon Fisher’s ability to generate retransmission consent revenues. If Fisher is unable to grow this revenue stream, Fisher may have a lower level of revenues overall and a lower level of cash flow, which could negatively impact Fisher’s stock price, to the detriment of its shareholders. Lower retransmission consent revenues will also harm Fisher’s ability to invest in the production of local news, public affairs, sports, and emergency weather reporting, to the detriment of television viewers and the public interest. Lower retransmission consent revenues may also require Fisher to pay more to the networks which with its various television stations are affiliated. CP 146.

In her second declaration, Ms. Minkarah detailed the redactions contained in the RCA provided to the TNT. CP 446-48. These covered the cash license fees and other related provisions that determine the total financial consideration paid by CLICK! to Fisher. These include: a) provisions as to which stations or which channels of a station are entitled

to fees; b) provisions detailing the subscriber base upon which fees are calculated; c) provisions detailing how fees for bulk accounts are calculated; and d) provisions providing for forms of economic consideration other than cash, such as promotional support from CLICK! to advertise Fisher's station and its programming. CP 145.

Ms. Minkarah also provided detailed evidence regarding efforts to maintain the confidentiality of Fisher's RCAs. She testified that Fisher "treats its RCAs with the utmost confidentiality, and tightly controls the security of its RCAs within the company. Even the Fisher stations that are covered by an RCA do not receive a copy of the RCA that governs the retransmission of their signals." CP 144.

Ms. Minkarah testified about Fisher's expectations that CLICK! was obligated to keep the Consideration confidential. CP 148. This understanding was shared by CLICK! CP 236. Section 29 of the Fisher RCA obligates CLICK! to not disclose its confidential information and does not state that this obligation vanishes if a PRA request asks for confidential information. That provision simply states that disclosure may occur "to the extent necessary to comply with law or the valid order of a court of competent jurisdiction." CP 143. It contemplates the protection of RCW 42.56.540, which allows Fisher to get a court order enjoining release of the Consideration.

Ms. Minkarah also described the potential harm to CLICK! customers, and ultimately the general public, if its Consideration in its RCA would be disclosed. CP 146-47. If disclosure occurred, CLICK! would always pay retransmission consent fees at the top of the market, as other broadcasters would insist upon it. These increased costs would have to be passed on to subscribers who may then seek alternative video providers causing a spiraling effect on CLICK!'s revenues. In turn, this would undermine the investment made by the taxpayers in Tacoma in the CLICK! cable system and might require subsidization from them, which has not yet occurred. Mr. Gyaltzen echoed Ms. Minkarah's assessment of the harm CLICK! would suffer. CP 167-71.

The TNT provided no evidence to refute anything stated by Ms. Minkarah.

E. The TNT Mischaracterized Judge Culpepper's Ruling.

The transcript of the March 15, 2013 hearing before Judge Culpepper refutes the TNT's characterization of it. First, Judge Culpepper's decision was not rendered only on the basis of a desire "to preserve the status quo."¹⁴ Judge Culpepper found repeatedly that the Consideration in the RCAs qualified as exempt trade secrets, satisfying the first element of RCW 42.56.540. He said:

¹⁴ Opening Brief, p. 9.

“and I think this does qualify as a trade secret. Customer lists, price lists have been qualified as trade secrets. Here, the information has some value partly because its confidential, its not known, and partly because its done in confidence. So I think this does qualify as a trade secret.”¹⁵

Judge Culpepper’s statements show that he found that disclosure of the Consideration would clearly not be in the public interest and would substantially and irreparably damage CLICK! and the broadcasters. The trial court said “but I think the potential damage CLICK!, potentially higher prices, loss of contract control they would have if this were made public, is a major factor here.”¹⁶

The transcript shows that Judge Culpepper was aware that he was to apply the standards in RCW 42.56.540.¹⁷ His oral statements show that he did. Judge Culpepper was provided with substantial evidence that disclosure would not be in the public interest during the extensive oral argument and from the declarations and affidavits, most notably from CLICK!’s general manager, Tenzin Gyaltzen.¹⁸ Mr. Gyaltzen stated that disclosure would “cause irreparable harm to CLICK! by damaging its competitive position and long term economic performance.” CP 167. Mr. Gyaltzen said that CLICK! would be unable to negotiate rates if all the

¹⁵ VRP 111.

¹⁶ Id.

¹⁷ VRP 108.

¹⁸ See Footnote 3.

broadcasters knew the other's rates because the highest rate would be the floor and that rate increases would be inevitable. Judge Culpepper stated that he considered Mr. Gyaltzen's views seriously in his decision.¹⁹

Further, the extensive give and take between counsel and Judge Culpepper on March 15, 2013 show that Judge Culpepper based his decision on the criteria in RCW 42.56.540. He then reaffirmed his conclusion that the Consideration was a trade secret in the May 10, 2013 on *in camera*²⁰ review.

IV. ARGUMENT

A. **The Standard of Review of Judge Culpepper's Rulings Is Abuse of Discretion.**

The TNT contends that Judge Culpepper's rulings granting the injunction and declining in camera review should be reviewed *de novo*, citing *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 407, 259 Pacific 3d (1990, 2011). This is wrong. That case relies upon RCW 42.56.550(3) that covers judicial review of all agency actions which: "under RCW 42.56.030 – 42.56.520 shall be *de novo*." RCW 42.56.550(3) does not apply to appellate review of judicial action granting an injunction under RCW 42.56.540. After *Bainbridge Island*, this Court stated that trial court's decision to grant an injunction in a PRA case is to

¹⁹ VRP 111.

²⁰ VRP 176.

be reviewed for an abuse of discretion. *Resident Action Council v. Seattle Housing Authority*, 177 Wn.2d 417, 428, 300 P.3d 376 (2013). *Resident Action Council* affirms that only agency action challenged under the PRA is reviewed *de novo*.²¹ Furthermore, Judge Culpepper's decision declining *in camera* review is also subject to an abuse of discretion standard. *Forbes v. City of Gold Bar*, 171 Wn. App. 857, 288 P.3d 384, 389 (2012).

Abuse of discretion means the "decision is manifestly unreasonable or is based on untenable grounds or untenable reasons." *Waters Edge Homeowners Association v. Waters Edge Associates*, 152 Wn. App. 572, 584, 216 P.3d 1110 (2009), (citing *Mayer v. Stoindus, Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006)).

Clearly, given the twelve un rebutted declarations or affidavits from the broadcasters in this case and from CLICK!'s manager, and the four lengthy hearings that were held, Judge Culpepper's decision to enjoin the release of the Consideration is not "based on untenable grounds or untenable reasons." *Id.* Judge Culpepper was fully advised as to all of the facts necessary for him to conclude that the Consideration in each broadcaster's RCA qualified as a trade secret and that disclosure would clearly not be in the public interest and would substantially and irreparably

²¹ Under the statutory *expressio unius est exclusio alteris*, the fact that RCW 42.56.550(3) fails to mention *de novo* review for court protection of public records under

damage the public, the broadcasters and CLICK! Based upon this complete record, which Judge Culpepper clearly read, he articulated solid reasons for his decision.

Further, he found it unnecessary to review the unredacted RCAs *in camera* based upon the substantial evidence and argument before him.²²

B. RCW Ch. 19.108 is on “Other” Statute Exempting Trade Secrets from Public Disclosure and Fisher’s Consideration Constitutes a Trade Secret.

Fisher has stated the facts that establish that the Consideration in its RCA is an exempt trade secret in Section III, D. above and in the two Declarations of Randa Minkarah in the record. CP 142-56, 445-484.

Rather than repeat the extensive analysis and arguments made by the four other broadcasters that discusses why RCA Consideration is an exempt trade secret as a matter of law Fisher joins in, and adopts herein Section V., A-D of the Brief of Respondents Belo Management Services, Inc., KIRO-TV, Inc. and Tribune Broadcasting Seattle, LLC (“Belo Brief”) and Section D, 2-3 of CBS Corporation’s Response Brief (“CBS Brief”).

RCW 42.56.540 implies that review under the latter statute is *not de novo*. *In re Det. of Strand*, 167 Wn.2d 180, 190, 217 P.3d 1159 (2009).

²² See Footnote 3.

C. The Trial Court Properly Applied the Injunctive Standard of RCW 42.56.540.

As discussed in Section IV, A. under an abuse of discretion standard, none of the challenged rulings fail. The TNT's Opening Brief appears to have abandoned the claim from its Petition for Direct Review that Judge Culpepper used CR 65 criteria, rather than RCW 42.56.540 but, instead that the criteria of RCW 42.56.540 were not met. The TNT makes this claim with absurd, untenable, assertions by over-italicizing the word "clearly in RCW 42.56.540," claiming that Broadcasters are not "persons" capable of harm and that CLICK! performs no vital governmental function TNT. None of these assertions have merit.

To avoid unnecessary repetition Fisher adopts and joins in the arguments and analysis in Section V, D. of the Belo Brief and Section D, 4 of the CBS Brief to rebut the TNT's claims that the standards of RCW 42.56.540 were not met.

D. The Trial Court Properly Denied In Camera Review of the Unredacted Agreements.

Again, to avoid unnecessary repetition Fisher adopts and joins in the arguments and analysis in Section V, D. of the Belo Brief and Section D, 4 of the CBS Brief to rebut the TNT's claims that the standards of RCW 42.56.540 were not met.

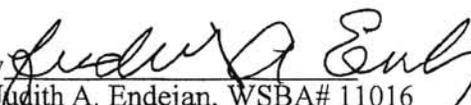
IV. CONCLUSION

Fisher and the other broadcasters satisfied their burdens of proving that the Consideration in their RCA's are their trade secrets. Assisted by Mr. Gyaltzen, from CLICK!, they also extensively proved the harm from disclosure, which would clearly not be the public interest. The trial court considered this un rebutted evidence in granting the injunctions under RCW 42.56.540. This case demonstrates that the PRA works because it allows for protection from disclosure of trade secrets.

Just because a trade secret is in a public contract cannot mean it is automatically disclosable if, as in this case, the parties present proper proof of a trade secret and the trial court applies well-settled PRA law. The TNT provides no basis to set aside the trial court's rulings.

DATED this 11th day of September, 2013.

GRAHAM & DUNN PC

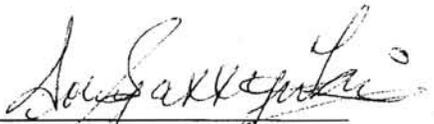
By 
Judith A. Endejan, WSBA# 11016
Email: jendejan@grahamdunn.com

DECLARATION OF SERVICE

I, Dory Satt-Yun Tai, declare under the penalty of perjury of the laws of the State of Washington that on Sept 11, 2013, I caused the RESPONSE BRIEF OF FISHER COMMUNICATIONS, INC. to be served via email, pursuant to the parties' mutual consent for service by email, as follows:

<p>Duane Michael Swinton, WSBA #8354 Steven Joseph Dixon, WSBA #38101 Witherspoon Kelley 422 W. Riverside Avenue, Ste. 1100 Spokane, WA 99201-0300 T: 509.624.5265 F: 509.458.2728</p> <p>Attorneys for BELO, KIRO-TV, Inc. and Tribune Broadcasting</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	<p>U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Facsimile Transmission Email dms@witherspoonkelley.com sjd@witherspoonkelley.com</p>
<p>Ward Douglas Groves, WSBA #20675 Tacoma City Attorney's Office P.O. Box 11007 Tacoma, WA 98411-0007 T: 253.502.8217 F: 253.502.8672</p> <p>Attorneys for CLICK! Network, a department of the Tacoma Public Utilities Division of the City of Tacoma</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	<p>U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Facsimile Transmission Email: wgroves@ci.tacoma.wa.us</p>
<p>Jaime Drozd Allen, WSBA #35742 Joseph Zachary Lell, WSBA #28744 Ogden Murphy Wallace P.L.L.C. 901 Fifth Avenue, Suite 3500 Seattle, WA 98164-2008 T: 206.447.7000 F: 206.447.0215</p> <p>Attorneys for CBS Corporation</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	<p>U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Facsimile Transmission Email jallen@omwlaw.com jlell@omwlaw.com</p>

<p>William E. Holt, WSBA #01569 James Walter Beck, WSBA #34208 Eric D. Gilman, WSBA #41680 Gordon Thomas Honeywell Malanca, Peterson & Daheim LLP 1201 Pacific Avenue, Suite 2100 Tacoma, WA 98402 T: 253.620.6500 F: 253.620.6565</p> <p>Attorneys for Tacoma News Inc.</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	<p>U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Facsimile Transmission Email</p> <p>bholt@gth-law.com jbeck@gth-law.com egilman@gth-law.com</p>
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Dory Satt-Yun Tai
Legal Assistant to Judith A. Endejan
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OFFICE RECEPTIONIST, CLERK

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Subject: RE: Belo Management Services, Inc. et al v. Click! Network et al; No. 889434-1; Response Brief of Fisher Communications, Inc. and Partial Joinder

Rec'd 9-11-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Tai, Dory Satt-Yun [<mailto:DTai@GrahamDunn.com>]
Sent: Wednesday, September 11, 2013 4:56 PM
To: OFFICE RECEPTIONIST, CLERK
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Subject: Belo Management Services, Inc. et al v. Click! Network et al; No. 889434-1; Response Brief of Fisher Communications, Inc. and Partial Joinder

Good Afternoon,

Submitted herewith is Response Brief of Fisher Communications, Inc. and Partial Joinder in the Response Briefs of Belo Management Services, Inc., KIRO-TV, Inc., Tribune Broadcasting Seattle, LLC and CBS Corporation – for filing.

Case Name: Belo Management Services, Inc. v. Click! Network et al

Case No. 88934-1

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Thank you.

Dory Satt-Yun Tai

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