WTTW had a total day, total household share of 5 with an average weekly circulation of 62 in May 1998.[31]

WSNS, Channel 44: Owned by Telemundo and its two well-financed minority partners -- TCI (through Liberty Media) and Sony -- the station is affiliated with the Telemundo Spanish-language network and airs 7 hours of local news and 15 hours of national news programming each week. WSNS registered less than a 1 share but did have an average weekly circulation of 9 in May 1998.

WCFC, Channel 38: Recently acquired by Paxson Communications. the station will air the launch of the new Pax Net Network in September 1998. The station registered less than a 1 share but did have an average weekly circulation of 12 in May 1998.

WGBO. Channel 66: Owned by Univision and affiliated with its Spanish-language network, WCBO had a total day, total household share of 3 with an average weekly circulation of 11 in May 1998.

WPWR, Channel 50: Owned by Newsweb, a well-financed broadcast group owner, and affiliated with the UPN network, WPWR had a total day, total household share of 6 and an average weekly circulation of 61 in May 1998.

WCIU, Channel 26: Owned by Weigel Broadcasting, another group operator, WCIU had a total day, total household share of 3 and an average weekly circulation of 45 in May 1998.

For its part, WGN-TV, an independent station broadcasting the programming of the WB network, had a total day, total household share of 9 and an average weekly circulation of 77 in May 1998. This placed it in a tie with WBBM for third in a highly competitive market where five stations had shares of 8 or better. Four commercial UHF stations that commenced operations after the Rule was adopted earned less than a 1 share in May 1998 -- WCFC, channel 38; WWTO Channel 35; WEHS, Channel 60; and WNS, Channel 62.

[31] There are two other PBS stations assigned to the Chicago DMA. These stations, WYCC, Channel 20 and WYIN, Channel 56, registered less than a 1 share in May 1998.

This review of the television competitors in the market by itself illustrates that Tribune's newspaper-AM-TV combination poses no threat to competition or diversity. Not counting WGN-TV, there are six local television news departments producing 122 hours of local news programming each week. Virtually all of the major players control multiple programming outlets to Chicago viewers, including national cable news channels and/or local radio stations. These combinations rebut any suggestion that Tribune could somehow dictate or control the marketplace of ideas in Chicago. Finally, as demonstrated by the May 1998 ratings, WGN-TV clearly is far from dominant in the television market.

Cable Television Competition: Any discussion of cable television competition in the Chicago DMA begins and ends with Tele-Communications, Inc. ("TCI"). More than any other cable MSO, TCI is the best example of the ownership flexibility enjoyed by the cable industry -- flexibility that has permitted the cable industry to pursue efficient ownership combinations that enhance the industry's ability to compete for the most popular programming, audience share and advertising revenues.

TCI has parlayed this opportunity into an incredible web of ownership interests. including interests in the following cable networks (through its Liberty Media subsidiary), most of which are offered to its subscribers in the Chicago area (with estimated ownership percentages in parentheses):[32]

Bay TV (49 percent)'

[32] The cable networks TCI does not offer in the Chicagoland are marked with an asterisk.

BET and Black Entertainment Television (22 percent)
BET - Movies/Starz 13 (81 percent)
Court TV (33 percent to increase to 60 percent)
Discovery Communications (49 percent) including the Discovery Channel, The Learning Channel, Animal Planet, the Travel Channel
E! Entertainment Television (10 percent)
Fit TV (S0 percent)"
Fox Sports Chicago (50 percent shared with Fox)
FX (50 percent)
Health TV (100 percent)*
Kaleidoscope (12 percent).
Recovery Channels (50 percent)*
Odyssey (49 percent)
Outdoor Life (17 percent)*
QVC Inc. (43 percent)
Speedvision (17 percent)'
Star TV (3.75 percent).
USA Networks (18.6 percent)
Time Warner (10 percent), which covers interests in all the Turner cable networks, including CNN, Headline News, TBS, TNT, Turner Classic Movies, The Cartoon Network, CNNfn, CNN/SI, and CNN International. as well as HBO and Cinemax.[33]

Through Liberty Media, TCI also owns a 50 percent interests in the Telemundo Spanish-language over-the-air network as well as a 4.95 percent voting and a 20 percent non-voting interest in Telemundo's broadcast stations located throughout the country.

TCI has also used this flexibility to integrate horizontally by swapping systems with other operators to form regional clusters. TCI uses these clusters to compete more

[33] "Liberty Has Money to Spend," Electronic Media June 29,1998.

effectively with over-the-air broadcasters for local advertising revenue. TCI has been very active in swapping systems across the country. This has led to TCI's recent announcement that by the beginning of 1999, TCI will have a cluster in the Chicago market controlling 84.2 percent of the DMA's cable subscribers. which represents over 50 percent of the television households in the market. TCI's systems in the Chicago area offer an average of approximately 80 channels of programming. TCI's cluster in Chicago will allow it to offer significant market coverage to local advertisers on those 80 different channels Of sports and entertainment programming. Moreover, TCI recently embarked on the deployment of new digital set-top boxes that will substantially increase its channel capacity in the market -- thereby increasing its local advertising capacity.

TCI has *also* invested resources in developing navigator technology that helps cable viewers locate programming of interest on the cable system. These electronic program guides are expected to become more and more valuable in the digital world when several hundred channels are expected to be available. In fact, TCI just acquired the TV Guide magazine and will re-brand its current preview channel as the TV Guide channel. "Prevue of TCI's future: The TV Guide Channel," Electronic Media, June 18, 1998. TCI plans to expand the information available to viewers on its new TV Guide channel and by doing so, intends to play an even stronger role in influencing viewer choices in the market.

At the time the Commission adopted the Rule in 1975, no one could have predicted that a single entity could assemble the web of interests that TCI has acquired. In Chicago, TCI is clearly a force to be reckoned with competing (directly or indirectly) on every level in the media marketplace, from local advertising revenue to local sports programming rights to the exhibition rights of the most popular entertainment programming. TCI's amazing collection of interests in the Chicago market, combined with the major television competitors described above, conclusively establish that Tribune's ownership of a newspaper/AM/TV combination poses no threat to diversity or competition in the market.

In February 1998, seventeen basic cable networks earned at least a 1 share of total-day, total-television household viewing in the Chicago DMA. These networks, which outperformed four commercial UHF stations in the DMA that commenced operation after the Rule was adopted, included: **A&E** (2 **share);** American Movie Classics (1); Comedy Central (1); Discovery (1); ESPN (1); Family Channel (1); Fox Sports Chicago (1); FX (1); Lifetime (2); MTV (1); Nickelodeon (3); Sci-Fi (1); The Learning Channel (1); TNT **(2);** Cartoon Network (2); USA (2) and **TBS** (2). Nielsen Media Research, Chicago DMA Total Activity Report (February 1998). In addition, pay cable networks accounted for **6** share points in the February 1998 sweeps, including a 3 **share** for HBO. Id. These results confirm the competitiveness of the cable industry and the outdated nature of the Rule -- **17** basic cable networks out-performed **4** different UHF stations, yet the Rule completely ignores this competition and treats each UHF station as the equivalent of Disney's number 1 rated WLS-TV.

Newspapers: The Chicago market also features intense newspaper competition that includes two metropolitan dailies as well as a number of successful suburban newspapers. The market is served, in whole or in part. by 10 daily newspapers. These daily newspapers include two published by the Hollinger company, a well-financed newspaper publisher. The daily circulation of these two papers, the Chicago Sun Times and the Daily

Southtown, gives the Hollinger Company the same 33 percent share of the daily circulation market earned by the Chicago Tribune.[34]

The market also features several strong suburban dailies including the Daily Herald, which accounts for 8 percent of the daily circulation in the market, and four dailies and one weekly published by the Copley Group. The combined daily circulation of these papers, which include the Aurora Beacon, the Joliet Herald, the News-Sun, the Elgin Courier, and the Naperville Sun (weekly), accounts for 7 percent of the daily circulation in the market. This collection of newspaper competitors, competitors who serve as economic and editorial substitutes for the Chicago Tribune, again refutes any suggestion that Tribune's ownership combination poses a threat to the competition or diversity in this market.

In addition, the Chicago market is served by over one hundred weekly newspapers. These newspapers, which typically feature focused local news coverage and separate editorial pages, have a weekly circulation in excess of 2.4 million in the six-county Chicago market. Three of these weekly newspapers, the Pioneer Press, the Star and the Naperville Sun, have a combined circulation equal to approximately 15 percent of the market's daily circulation volume. This collection of weekly newspapers, which typically provide very localized coverage of communities within the market, provide yet another important source of news and information in the market.

[34] All reported circulation figures are from 1997 Audit Bureau of Circulations.

Radio Stations: As of December 1996. there was a total of 125 commercial and non-commercial radio stations in the Chicago television metro market.[35] These 125 stations were owned, operated and controlled by 91 separate entities or individuals. These stations collectively broadcast over 40 different formats, including ethnic adult rock, classic rock, alternative rock, progressive rock, jazz, adult contemporary, children's programming, oldies, country, Spanish, Polish, contemporary Christian, classical, blues and religious. In addition, there is a variety of non-music formats serving the markets including two all-news stations (both owned by CBS/Westinghouse), 3 sports-talk stations. 1 talk station, 2 talk-music stations, 1 news talk station, 1 urban talk station and 1 ethnidlesbian-gay station. The radio advertising market is dominated by two large group owners, CBS/Westinghouse and Chancellor Media, which collectively own 10 FM and 5 AM stations and control approximately 70 percent of the market's radio advertising revenue.

Internet: Finally, Internet penetration in the market is estimated at approximately 30 percent as of the beginning of 1998.[36] The Commission has already recognized that the Internet "puts a vast universe of information and opinions on local, national, and world issues at the user's fingertips, and it is accessible within the home."[37] The Internet most certainly competes with over-the-air television for the attention of viewers and, as the Commission is aware, is already an alternative delivery mechanism used for entertainment programming. The

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[35] Stockholders of Infinity Broadcasting Corp., 12 FCC Rcd. 5012, ¶ 31 (1996).

[36] Scarborough Report, Chicago, February 1997 - January 1998.

[37] Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rule Making ("Television Further Noti::"), 10 FCC Rcd. 3524 ¶ 64 n. 89 (1995).

Internet can also be easily customized by the user to provide incredibly detailed local information pages from weather to traffic to school lunch information maintained **by** an ever growing list of local organizations, from governments to small and large local businesses.

<u>**Tribune's Operation** of the Commonly-Owned Entities</u>: **The** —— m, WGN-TV and WGN(AM) do not speak with one voice in the market. Each is **run** as a separate, stand-alone **business unit** with decisions regarding programming and editorial policy, including news and public affairs programming, **left** to the discretion of the individual business unit managers. **As** indicated in the attached declaration of Jack Fuller, the President of Tribune Publishing, Tribune allows the operators of each media franchise to hire their own professional journalists and to select programming or content that is appropriate for their audience. Declaration of Jack Fuller, ¶ 3 (attached hereto as Attachment 1).

In sum, as the Commission recognized in approving a permanent one-to-a-market waiver permitting CBS/Westinghouse to own **2** ***AMs*** (both 50.000-watt all-news stations), **2** FMs and a VHF television station, there is "robust competition and diversity" in the Chicago media market." The market features: (i) intense competition between major media companies that each control, directly or indirectly, multiple outlets to the home, (ii) TCI and its dominant cable cluster, (iii) real newspaper competition, **(iv)** numerous independently **owned** radio stations offering a wide **variety** of formats, including several public affairs (news/talk) options and (v) significant and growing Internet penetration. **In** this marketplace setting, the FCC's concerns

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[38] <u>Stockholders of Infinity</u>, at ***5052*** **¶ 88.**

about Tribune's common TV-AM-newspaper ownership seem as outdated as the Rule itself. This combination clearly presents no meaningful threat to "robust" competition and diversity in the Chicago market.

B. The South Florida Marketplace.

In South Florida, Tribune owns the Sun-Sentinel, a daily newspaper published in Fort Lauderdale and, pursuant to a temporary waiver of the Rule, WBZL(TV) (formerly WDZL), Channel 39, Miami, Florida.[39] In August 1996, Tribune submitted detailed documentation of the competitive landscape in this market, which includes Dade. Broward and Palm Beach counties.[40] This competition, which has only increased in the ensuing 20 months, clearly refutes any suggestion that Tribune's television-newspaper combination could exercise any form of market power or monopolize the marketplace of ideas.

Television Competition: The South Florida television market is intensely competitive. Its two largest counties are part of the Miami-Ft. Lauderdale DMA which in 1994 had the lowest HHI of any of the top 50 television markets based on average all-daypart ratings. Review of the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules, Report and

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39 Stockholders of Renaissance Communications Corp., 13 FCC Rcd. 4717 (MMB, March 6, 1998).

40 Unless otherwise noted, the source for the South Florida market information discussed herein is Transferee's Exhibit C-3, "Request for Permanent Waiver of the Newspaper-Broadcast Cross-Ownership Rule, filed with FCC Form 315, Application for Consent to Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License," filed by Renaissance Communications Corporation ("Renaissance") and Tribune Company on August 1, 1996, which is incorporated here by reference.

Order ("PTAR Report and Order"), 11 FCC Rcd. 546, Table D-1. The Miami-Ft. Lauderdale DMA is currently the 16th largest DMA in the country in terms of permanent residents and the 9th largest in terms of advertising revenue.[41]

WBZL is an independent UHF station that broadcasts programming distributed by the WB Network. WBZL competes against a number of well-financed stations owned by experienced broadcast groups, including VHF affiliates of the Big-Four networks. Most of these stations have well-established news departments that produce multiple hours of local news programming. The competing stations include:

- WPBT, channel 2: One of Miami's two PBS stations that airs the standard range of PBS news and informational programming. this station commenced operation in 1955. In November 1997, WPBT earned a total day, total television household share of 2, with an average weekly circulation of 37, results that placed it ninth among television stations assigned to the DMA.

- WFOR, channel 4: Owned by CBS/Westinghouse, this station, which ranked fourth in November 1997 audience ratings, commenced operation in 1949 and currently airs 29 hours a week of local news programming. In November 1997, it earned total day, total television household share of 10, with an average weekly circulation of 76.

- WTVJ, channel 6: Owned by NBC (and its parent, General Electric), this station, which ranked third in audience ratings, commenced operations in 1967 and currently airs 21 hours a week of local news programming. In addition to WTVJ, NBC also has ownership interests in and programs two cable channels with significant penetration in the market: CNBC and MSNBC. In November 1997, WTVJ earned a total day, total television household share of 11 with an average weekly cume of 75. CNBC itself earned a total day, total television household share of 1 with an average weekly circulation of 7 while MSNBC had an average weekly circulation of 2.

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[41] The difference in the size of the rankings is attributable to several factors, one of which is the statistical exclusion of non-full time residents by A.C. Nielsen from its population count.

- WSVN, channel 7: Owned by Sunbeam Television Corp., a well-financed group owner, this station, which ranked fifth in audience ratings, is an affiliate of the Fox network and commenced operations in 1956. It boasts one of the highest-rated, prime-time news broadcasts of any Fox affiliate and currently airs 38.5 hours per week of local news programming. In November 1997, WSVN earned a total day, total television household share of 10 with an average weekly circulation of 78.

- WPLG, channel 10: Owned by the Post-Newsweek Company, this station, which earned the highest ratings in November 1997, is affiliated with the ABC network and commenced operating in 1961. It currently airs 17 hours per week of local news programming. In November 1997, WPLG earned a total day, total television household share of 13 with an average. weekly circulation of 80.

- WLTV, channel 23: Ultimately owned by Univision and affiliated with its Spanish-language network, this station, which ranked second in audience ratings, commenced operating in 1967 and currently airs 7 hours per week of local news programming. In November 1997. WLTV earned a total day, total television household share of 12 with an average weekly circulation of 31.

- WBFS, channel 33: Ultimately owned by Viacom and affiliated with its UPN, this station, which tied for sixth in audience ratings, commenced operating in 1984 and does not currently air local news programming. In November 1997, WBFS earned a total day, total television household share of 7 with an average weekly circulation of 61,

- WSCV. channel 51: Ultimately owned by Telemundo and its two minority partners -- TCI and Sony, the station is affiliated with the Telemundo Spanish-language network and ranked eighth in audience ratings. It commenced operations in 1968 and currently airs 5 hours per week of local news programming. In November 1997, WSCV earned a total day, total television household share of 3 and an average weekly circulation of 23.

Three other UHF commercial stations assigned to the Miami DMA that provide coverage to the Miami-Ft. Lauderdale area registered less than a 1 share in 1997. These stations, WAMI, WPXM and WHFT, all commenced operation after the Rule was adopted. No fewer than 12 basic cable networks (and 1 pay cable network) earned higher total day, total television household shares than these three commercial over-the-air stations, Fort Lauderdale and Broward County, the home county of the Sun-Sentinel, also receive over-the-air television service from stations licensed to communities in Palm Beach County. Station WFLX (channel 29), a Fox affiliate licensed to Malrite Communications Group, provides Grade A service to FOR Lauderdale and is carried on most Broward County cable systems. Over ten percent of WFLX's total recorded viewing in 1996 came from the Miami DMA. Similarly, WPTV (channel 5), an NBC affiliate licensed to Scripps Howard Broadcasting, and WPEC (channel 12), a CBS affiliate licensed to Freedom Communications, also provide Grade A service to Fort Lauderdale and had in excess of 4 and 2 percent respectively of their total recorded viewing in July 1997 from the Miami DMA.[42]

This combination of stations presents an incredibly competitive local television market – one that does not have a single dominant station and collectively produces and airs over 80 hours of local news programming each week. No fewer than five stations earned total day, total television household shares of 10 or higher in 1997. For its part, WBZL earned a total day, total household share of 7 with an average daily circulation of 65. This result placed it in a virtual tie for sixth place (with WBFS) behind all four VHF network affiliates and the Spanish-language Univision station and only slightly ahead of one of the two PBS stations in the market.

[42] A number of the stations assigned to the Miami-Ft. Lauderdale DMA are carried on cable systems in Palm Beach County. These stations collectively earn as much as 25 percent of the recorded viewing of various dayparts in the southern half of Palm Beach County.

Recent developments only underscore the intense competition in the local Miami television market. First, WLVT, the Spanish-language station owned by Univision. placed first in the February and May 1998 Nielsen sweeps for the Miami-Ft. Lauderdale DMA, surpassing all six English language stations. See "Spanish TV Nets a Win; Univision Tops Miami's Nielsen Ratings," Washington Post, April 24, 1998 at AI. WLTV's February sweeps win represented the first time that a station broadcasting in a language other than English in a major U.S. city finished with the highest sign-on to sign-off ratings in a Nielsen month long sweeps period. Id. In explaining these results, the article noted that these Miami ratings illustrated an important national trend, a trend Tribune urges the FCC to recognize in this proceeding: "a once-simple television culture, overwhelmingly dominated by three networks -- CBS, ABC and NBC -- has splintered into scores, even hundreds of pieces." Id

Second, two of the stations that did not attract enough audience to earn a 1 share in the Nielsen ratings could change that status soon. First, WAMI (formerly WYHS) which commenced operations in 1988 on channel 69, recently dropped its Home Shopping Network format to debut "City Vision," a new local lifestyle television format that is the brainchild of former Fox Television pioneer Barry Diller. See "Wacky WAMI in Miami, Edgy Diller station goes hyper-local." Electronic Media, June 15, 1998 at 4. The station will feature a new local newscast described as "The New York Post [of local newscasts]," which one USA Broadcasting official described as follows: "[i]t's not the news, it's what people talk about as news." Id. City Vision will also feature a variety of locally oriented programming including Barcode, a dance show that features DJs at local clubs and the music they select; Ocean Drive, a video version of a local South Beach fashion magazine; and live cameras at bus stops and other locations throughout the Miami area. See "Miami's WAMI Beams Unique Local Shows Toward a Fragmented Audience," Sun-Sentinel, June 14, 1998 at IF. The new format has definitely caught the attention of national and local advertisers – the station is already airing some direct response and paid programming -- and internal USA Broadcasting estimates apparently project that the station will earn a 5 share within 18 months of the launch of City Vision. Id.

Third, WPXM, which operates on channel 35 and commenced operations in 1992, was recently acquired by Paxson Communications and will debut the new Pax Net Network in September 1998. Pax Net, which will feature off-network programming including "Touched by an Angel," and "Dr. Quinn, Medicine Woman," appears likely to further splinter the audience ratings in the already competitive market.

Tribune submits that a review of competition in the South Florida television market demonstrates the absurdity of the suggestion that common ownership of WBZL and the Sun-Sentinel creates or could lead to market dominance. This local television competition, which includes 4 UHF stations that were not operating at the time the rule was adopted (including WBZL itself), has led to a widely dispersed distribution of audience driven by the great variety of programming options available -- options that continue to increase. It is impossible to imagine how the common ownership of WBZL and the Sun-Sentinel could harm such a competitive landscape.

Radio Stations. As of August 1996, the Miami-Ft. Lauderdale market was served by a total of 69 radio stations, 49 of which were separately owned. At least 15 of these stations (approximately 22 percent) signed on after the Commission adopted the Rule in 1975. These stations collectively broadcast over 30 different formats, including jazz, Christian pop, Latin pop, religious, alternative rock, classic rock. oldies, country, Caribbean and public radio. In addition, there is a variety of non-music formats serving the market, including 3 talk stations, 3 news-talk stations, 2 Spanish news talk stations, 2 financial-talk stations, 1 talk-variety station, 1 motivational-health-talk station, 1 Spanish talk station and 1 news-sports-talk station. Sixty percent of the radio advertising market is split by the following four large group owners: Clear Channel (which owns 5 FMs and 3 AMs), Cox Communications (which owns 2 FMs), Beasley Broadcast Group (which owns 2 FMs and an AM) and Jefferson-Pilot (which owns 2 FMs). The Heftel Broadcast Group, which owns four Spanish-language stations (2 FMs and 2 AMs), separately accounts for the overwhelming majority of Spanish-language advertising billings, which account for approximately 30 percent of the radio advertising revenue in the market.

<u>Cable Television Systems</u>. As of the end of 1997, cable penetration in Broward County was 81 percent. Cable penetration in Dade County was 63 percent. Cable penetration in Palm Beach County was 84 percent. 1997 AC. Nielsen DMA summary. As of August 1996, Dade and Broward Counties were served by 9 and 11 cable companies, respectively, that provided a minimum of 39 channels and a maximum of 81 channels, with an average of 62 channels of programming. Palm Beach County is served by 15 cable television systems, seven of which carried WBZL. These cable systems had a minimum of 36 channels and a maximum of 71 channels, with an average of 45 channels of programming. Since August 1996, a significant amount of cable system trading has occurred. This trading culminated in the recent announcement by MediaOne (formerly Continental Cablevision/US West) that, following a swap

of systems with TCI in Chicago, MediaOne will have a cluster in the Miami DMA covering approximately 642,000 cable subscribers representing 46 percent of the DMA's television households. This cluster, which will be completed in late 1998 or early 1999, clearly will enhance MediaOne's ability to compete with local television stations for advertising revenue.

In 1997, eleven basic cable networks, including Nickelodeon, ESPN, CNN, A&E, USA and TNT, and 1 pay cable network (HBO) earned a 1 or greater share of total day, total television household viewing in the Miami DMA. 1997 A.C. Nielsen Diary County/Coverage Study, Miami DMA. As noted above, these networks each exceeded the shares of three commercial over-the-air stations assigned to the Miami DMA. Collectively, pay and basic cable networks accounted for twenty percent of the total day, total television household viewing in the Miami DMA. Id. No fewer than 35 basic or pay cable networks received reportable audience viewing during 1997. Id.

Newspapers. The market is served by six local daily newspapers with significant circulation overlap, five of which are separately owned. In addition to Tribune, these companies include two other well-financed, national media companies, Knight-Ridder and Cox Enterprises, and two smaller, regional or local companies, Community Newspaper Holdings, Inc. and Diario Las Americas. These six newspapers and their 1997 daily circulations are:

Daily Newspaper	Dade	Broward	Palm Beach	Total
Sun-Sentinel	2,622	192,600	64,169	259,391
Miami Herald	244,000	94,800	6,449	345.249
Palm Beach Post	--	354	150,281	150,635
Boa Raton News	-	264	15,300	15,564
El Nuevo Herald	101,100	--	--	101,100
Diario Las Americas	57,028	--	--	57,028

As these figures demonstrate, the Sun-Sentinel is not the dominant newspaper in the South Florida market. In fact. the Sun-Sentinel faces significant competition from the region's dominant newspaper, the Miami Herald, even in its home county, Broward County.

As of August 1996, the market was also served by over 20 publishers of weekly community newspapers. These publishers collectively published well over 100 weekly newspapers for different communities within the South Florida market. These newspapers typically feature super-local coverage of a particular community, have small but separate news staffs and many also have editorial pages. As of August 1996, these weekly newspapers collectively had a circulation of at least 967,547 in Dade County, at least 1,090,772 in Broward County, and at least 412,000 in Palm Beach County -- totaling more than 2.5 million people in the South Florida market. As of 1996, the South Florida market also was home to an extensive number of weekly and monthly periodicals, with in excess of 250 different magazines, community newspapers, specialty publications, and other consumer periodicals published in the market.

Competitive Market Analysis. In analyzing the impact of Tribune's ownership of **WBZL** and the Sun-Sentinel in the South Florida market, Tribune submits that the relevant advertising product market includes television stations. radio stations, cable television systems, daily newspapers, weekly newspapers, magazines, yellow pages, direct mail, billboards and the Internet. **As** early as 1991, the **FCC** staff recognized that advertising alternatives to the video market include not only radio and newspapers, but also "magazines, direct mail, yellow pages, and outdoor advertising." **See** OPP Working Paper No. 26, Broadcast Television In A Multichannel Marketplace, DA 91-817, 6 **FCC** Rcd. 3996,4083 (1991). Tribune is resubmitting an updated expert economic analysis from Roger D. Blair, a Professor of Economics at the University of Florida, originally done in August 1996, demonstrating that the relevant product market includes advertising revenues from broadcast stations, cable systems, newspapers, magazines, yellow pages, direct mail, billboards and the Internet. **See** Report of Roger D. Blair, Attachment 2, at 10 ("————"). The Blair Report also demonstrates that the relevant geographic market for the analysis of the impact of Tribune's ownership of **WBZL** and the **Sun-Sentinel** includes Dade, Broward and Palm Beach counties. **Blair Report** at *22-25.*[43]

The **Blair Report** notes that while the actual advertising revenue numbers may have changed since his August 1996 analysis, nothing has come to **his** attention suggesting that the qualitative analysis he performed **is** inappropriate today or that the numerical relationships he identified are materially different. Professor Blair's analysis of advertising revenue allocations in the South **Florida** market confirmed what is detailed above, namely that **the** market is competitive **and** that Tribune's ownership of WBZL and the **Sun-Sentinel** will not impede competition. **See Blair Report** at 25-30. Out of a total of more than $2 billion spent on

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[43] Professor Blair **also** separately analyzed statistics for Broward and Dade Counties, excluding Palm Beach County which is in another DMA. *As* demonstrated **in** the report, the exclusion of Palm Beach County does not significantly impact the HHI calculations reported.

advertising in 1995 in the South Florida market, only 1.642 percent of those dollars was spent with WBZL and 12.336 percent of those dollars was spent on the Sun-Sentinel publications Id. at Exhibit H. Excluding figures from Palm Beach County, WBZL earns 2.154 percent of advertising revenues in Dade and Broward counties, while the Sun-Sentinel publications earn 12.509 percent of advertising revenues in those two counties. Id.

The Herfindahl-Hirschman Index ("HHI") calculations similarly reflect an unconcentrated market both before and after Tribune's ownership of WBZL is accounted for. The HHI is used by the Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") to measure concentration in a market. The HHI for all relevant advertising dollars in the South Florida market was 841 and only rose 40 to 881 after Tribune's acquisition of WBZL. Id. at 26. Even if only broadcast station, cable system and newspaper advertising revenue is considered, the HHI was 832 and only rose 80 points to 912 after Tribune's acquisition of WBZL. Id. at 27.[44] These HHI figures reflect an unconcentrated market, with a change produced by Tribune's ownership of WBZL and the Sun-Sentinel that does not result in statistical evidence of market power.

If, however, the Commission were to accede to the narrower, media-specific definition of the relevant advertising market adhered to by the DOJ, the decision to

[44] Even if Palm Beach County statistics were eliminated, the HHI for the broad advertising market in Dade and Broward counties was only 994, and rose 54 to 1048. See Blair Report at 27. For these two counties, considering only broadcast station, cable system and newspaper revenue, the HHI was only 1098, and rose 107 to 1205. Id. at 28. As Professor Blair's report demonstrates, neither of these HHI figures raises competitive concerns under traditional antitrust analysis. Id.

eliminate or liberalize the Rule would be even easier. The DOJ -- which shares principal responsibility for enforcing the nation's antitrust laws -- has repeatedly taken the position that each type of media comprises its own market for purposes of assessing competition for advertising revenue. For example, at the DOJ's urging, a District Court recently held that "local daily newspapers compete with each other, not the other media, which are not reasonably interchangeable for the same purposes." Community Publishers, Inc. v. Donrey, 892 F. Supp. 1146, 1156 (W.D. Ark. 1995); see also Times-Picayune Publ'g Co. v. United States, 345 U.S. 594, 611-12 & n.31 (1953) (defining the relevant advertising market to be newspaper advertising. as distinct from "other mass media"); Community Publishers, Inc. v. DR Partners, 139 F.3d 1180, 1184 (8th Cir. 1998) (affirming district court's decision to limit product market to local daily newspapers).[45] More recently, then Acting Assistant Attorney General Joel I. Klein reaffirmed the DOJ's media-specific definition of the relevant advertising market in antitrust cases: "Given the differences between the various media and the way they are looked at, or listened to, as well as the differences in prospective customers -- young. old, have cable, don't -- a claim of perfect (or even close to perfect) substitutability across different media simply isn't convincing." DOJ Analysis of Radio Mergers, Address by Joel I. Klein, Feb. 19, 1997 at ANA Hotel, Washington, D.C. (emphasis added).

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[45] Similarly, courts have held that other media form their own advertising markets. See, e.g., Ad-vantage Tel. Directory Consultants, Inc. v. GTE Directories Corp., 849 F.2d 1336, 1342 (11th Cir. 1987) (affirming jury's finding that yellow pages advertising is unique and is not interchangeable with other forms of advertising, such as newspapen, magazines, or business publications); Omni Outdoor Adver., Inc. v. Columbia Outdoor Adver., 891 F.2d 1127, 1140-42 (4th Cir. 1989) (affirming district court's finding that billboard advertising market was distinct from newspaper, television. and radio markets), rev'd on other grounds sub nom., City of Columbia v. Omni Outdoor Adver., Inc., 499 U.S. 365 (1991).

If the Commission were to follow the DOJ's lead in defining the relevant advertising market, the elimination or liberalization of the Rule would not implicate any competitive concerns because, according to the DOJ's position, advertisers do not consider television stations and local daily newspapers to be interchangeable media for purposes of advertising. Thus, the common owner of a television station and a local daily newspaper in the same geographic area would be unable to exert advertising market power because its media properties compete in totally separate markets.

In sum, the South Florida media market has: (i) significant newspaper competition; (ii) high cable penetration; (iii) intense competition among over-the-air television stations owned by large, well-financed group owners; (iv) several large radio station group owners and a wide variety of radio formats; and (v) significant Internet penetration. The suggestion that Tribune's common ownership of WBZL and the Sun-Sentinel poses a meaningful threat to competition in this market clearly fails.

VI. EVEN IF THE COMMISSION CHOOSES TO RELY ON DIVERSITY INTERESTS IN REVIEWING THE RULE, IT MUST AT LEAST LIBERALIZE THE RULE OR ITS WAIVER POLICY IN THE LARGEST MARKETS

Despite the statutory language directing it to focus on competition, should the Commission nonetheless decide to review the Rule based on its diversity concerns, it must still act to liberalize the Rule or its related waiver policy in the largest media markets. As demonstrated more fully below, the Commission's key diversity policy underlying the Rule – the preservation and enhancement of viewpoint diversity in local news and public affairs programming -- is no longer served by the Commission's mechanical, near absolute, prohibition of newspaper-television combinations, especially in the largest markets where the number of media outlets and level of competition has dramatically increased since the Rule was adopted nearly 23 years ago.

A. The Commission's Only Appropriate Diversity Interest is in Programming Diversity, not Ownership Diversity.

Among the questions posed in the NOI is what type of "diversity" should be the Commission's focus. NOI, ¶ 6, Separate Statement of Commissioner Powell. Tribune submits that the FCC's only legitimate diversity interest is in assuring programming diversity. Accordingly, any attempt to regulate ownership must be based on a clear, empirical link between the particular ownership restriction and the programming received by the viewing or listening public; absent such a link, the FCC has no independent interest in who owns particular media outlets.

The Commission's asserted interest in diversity is based on its interpretation of the Federal Communications Act's directive that the Commission regulate broadcast in the "public interest, convenience, and necessity." 47 U.S.C. § 309(a). However. the use of the words "public interest" in a regulatory statute "is not a broad license to promote the general public welfare;" rather, these words "take meaning from the purposes of the regulatory legislation." NAACP v. Federal Power Comm'n, 425 U.S. 662,669 (1976). Consonant with the underlying purpose of the Communications Act, the Commission's ownership regime has always been explicitly tied to the impact of ownership on viewpoint diversity in programming. Thus, when the

Supreme Court originally upheld the Rule, it did so on the basis that "the Commission acted rationally in finding that diversification of ownership would enhance the possibility of achieving greater diversity of viewpoints." FCC v. NCCB, 436 U.S. at 796. Similarly, the majority in the Supreme Court's decision in Metro Broadcasting focused on the fact that the FCC's minority ownership policies were intended "to promote programming diversity" and found that the minority preference at issue was permissible in part because "[t]he FCC has determined that increased minority participation in broadcasting promotes programming diversity," Metro Broad., Inc. v FCC, 497 U.S. at 566, 569. The dissent in Metro Broadcasting also focused on the FCCs intent to encourage programming diversity but found that the Commission's showing was inadequate to demonstrate "the existence of a tightly bound 'nexus' between the owners' race and the resulting programming," id. at 626 (O'Connor, J., dissenting). These opinions illustrate that diversity of ownership standing alone is not a legitimate Commission interest.

In a recent ruling that favorably quoted the Metro Broadcasting dissent, the D.C. Circuit struck down the Commission's application of its EEO policy, directed at encouraging minority hiring, to the owner of an AM-FM combination. Lutheran Church-Missouri Synod v. FCC, 141 F.3d 344, 356 (D.C. Cir. 1998). The Court confirmed that the Commission's only legitimate interest was "communication service" or "programming" and struck down the EEO Policy because the Court failed to find a sufficient link between the FCC's "broad employment regulation and the Commission's avowed interest in broadcast [programming] diversity." Id.

In light of the changes in the media marketplace and the likelihood that those changes will lead to a more demanding standard of judicial review than applied under Red

Lion, Tribune submits that the linkage between ownership diversity and programming diversity will similarly need to be stronger and more developed than the Commission has previously established. As discussed below, the Rule's exclusive focus on preserving ownership diversity no longer enhances the diversity of viewpoints in programming received by the public.

B. The Commission Has Itself Recognized that Its Broadcast Ownership Rules Are Structural Rules Designed to Ensure Diversity of Viewpoints in Programming.

The cases discussed above are entirely consistent with the Commission's past pronouncements on the purpose of maintaining ownership diversity. The Commission itself has consistently recognized that all of its broadcast ownership rules, including the newspaper-broadcast cross-ownership rule, are indirect, structural measures aimed at "ensuring diversity of viewpoints in the material presented over the airwaves." Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rulemaking, ("Television Further Notice") 10 FCC Rcd. 3524 ¶ 57 (1995). While the Commission may have recognized other diversity concepts. such as ownership and source diversity that it believed lead to enhanced programming diversity, these other diversity concepts are only subsidiary tools designed to create or enhance the ultimate goal of programming diversity.

The discussion of diversity in the NOI reflects some confusion on this crucial issue. While the NOI seems to recognize that diversity of viewpoints in programming "is the other important part of the Commission's public interest mandate," the NOI indicates that "[o]ur diversity analysis focuses on the ability of broadcast and non-broadcast media to advance the three types of diversity (i.e., viewpoint, outlet and source) that our broadcast ownership rules have attempted to foster." NOI ¶ 6.[46] Contrary to the implicit suggestion in this passage, as discussed above, outlet and source diversity are not separate, independent policy objectives but are instead subsidiary concepts designed to ensure diversity of viewpoints in the programming material presented to the public.

The Commission undertook an extensive review of the history of its diversity policies in the Television Further Notice. At the very outset of that review, the Commission confirmed that its traditional diversity goal was to ensure "diversity of viewpoints in the material presented over the airwaves." 10 FCC Rcd. at 3547, ¶ 57. The Commission observed that it had used both direct and indirect methods to ensure this diversity objective

The direct method involved regulations and policies specifically designed to encourage the provision of certain types of programming to the public. Id. ¶ 58 (citing various programming statements and guidelines typically applied by the Commission in considering license renewal applications).[47] The Commission noted that its indirect method used structural rules,

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[46] The NOI then attempted to explain the three concepts: "[v]iewpoint diversity refers to the helping to ensure that the material presented by the media reflect a wide range of diverse and antagonistic opinions and interpretations. Outlet diversity refers to a variety of delivery services (e.g., broadcast stations, newspapers, cable and DBS) that select and present programming directly to the public. Source diversity refers to promoting a variety of program information producers and owners." Id.

[47] Ironically, in a conclusion that Tribune submits is entirely appropriate for the outcome of this proceeding reviewing the continued appropriateness of the Rule, the Commission noted that the direct technique for regulating viewpoint diversity had "fallen out of favor" due to "changes in the marketplace – chiefly the large increase in the number of broadcast stations and in competition with broadcasting – and to heightened concern over First Amendment issues." Id ¶ 59.