

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Applications for Consent to the)	MB Docket 07-119
Transfer of Control of Tribune)	
Company from Shareholders of)	
Tribune Company to Samuel Zell)	

PETITION TO DENY

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
SUMMARY	ii
I. THE PETITIONERS	2
II. FACTUAL BACKGROUND	4
A. The Newspaper/Broadcast Cross-Ownership Rule	4
B. The Local Station Ownership Rule	6
C. The Proposed Transaction	7
1. Chicago	7
2. South Florida	7
3. New York	8
4. Los Angeles	9
5. Hartford	9
a. Initial Temporary NBCO and TV Ownership Waivers	10
b. 2002 Extension of NBCO Waiver	11
c. Unsuccessful Request For Permanent NBCO Waiver	11
d. Grant of Retroactive Temporary Waiver	12
e. New Request For Retroactive Permanent Waiver	14
III. TRIBUNE’S APPLICATION MUST BE DISMISSED BECAUSE FOUR OF ITS TV STATION LICENSES HAVE EXPIRED AND THERE IS NO AUTHOR- IZATION WHICH CAN BE TRANSFERRED	15
IV. TRIBUNE IS NOT ENTITLED TO WAIVER OF THE NBCO RULE	16
A. Tribune’s Waiver Requests Must Be Denied Because They Advance No Public Interest Objectives	17
B. Tribune’s Request for Waiver Based on the Pendency of a Rulemaking Is Prohibited Under Clear FCC Policy and Precedent	17
C. Tribune Has Failed to Meet its Burden of Demonstrating That its Request Will Further the Purposes of the Commission’s NBCO Rule	21
D. Tribune Rejected <i>Bona Fide</i> Bids Which Would Have Advanced Commission Policy by Effectuating Partial or Full Divestiture of its Cross-Ownerships .	23
1. “Self-help” Spin-off	23
2. Chandler Family Transaction	24
3. Burkle/Broad Offers	24
4. Carlyle Group	24
5. David Chase	25
6. Frank Zarb	25
E. Tribune Utilizes Incorrect Market Data in Attempting to Demonstrate the Existence of Competition and Diversity	25

1.	Chicago	25
	a. Tribune Misrepresents the Impact on Diversity by Incorrectly Relying on the Entire Chicago DMA Instead of the Newspaper and Broadcast Areas of Overlap	25
	b. The Benefits to Diversity of Common Ownership Alleged by Tribune Are Insufficient to Outweigh the Reduction in Viewpoint Diversity	31
2.	Miami	
	a. Tribune Misrepresents the Impact on Diversity by Incorrectly Relying on the Entire Miami-Ft. Lauderdale DMA and West Palm Beach-Ft. Pierce DMA Instead of the Newspaper and Broadcast Areas of Overlap	32
	b. The Benefits to Diversity of Common Ownership Alleged by Tribune Are Insufficient to Outweigh the Reduction in Viewpoint Diversity	38
3.	Hartford	39
	a. Tribune Misrepresents the Impact on Diversity by Incorrectly Relying on the Entire Hartford and New Haven DMAs Instead of the Newspaper and Broadcast Areas of Overlap	40
	b. The Benefits to Diversity of Common Ownership Alleged by Tribune are Insufficient to Outweigh the Reduction in Viewpoint Diversity	44
4.	New York	
	a. Tribune Misrepresents the Impact on Diversity by Incorrectly Relying on the Entire New York DMA Instead of the Newspaper and Broadcast Areas of Overlap	47
	b. Tribune’s Common Ownership of a TV Station and Two Dominant Daily Newspapers Reduces Viewpoint Diversity in the Stamford and Greenwich Communities	50
	c. The Benefits to Diversity of Common Ownership Alleged by Tribune Are Insufficient to Outweigh the Reduction in Viewpoint Diversity	52
5.	Los Angeles	
	a. Tribune Misrepresents the Impact on Diversity by Incorrectly Relying on the Entire Chicago DMA Instead of the Newspaper and Broadcast Areas of Overlap.	
	b. Tribune Has Failed to Show Any Public Interest Benefits that Would Counterbalance the Loss of Diversity.	57
V.	TRIBUNE IS NOT ENTITLED TO A “FAILING STATION” WAIVER IN HARTFORD	58
VI.	IF THE COMMISSION NONETHELESS DETERMINES TO GRANT ANY WAIVER RELIEF TO TRIBUNE, IT SHOULD REQUIRE TRIBUNE TO PLACE ITS HOLDINGS IN TRUST	58
	CONCLUSION	59

benefit for the public. Instead, Tribune's demand for a waiver pending the outcome of the Commission's rulemaking proceeding is based entirely on a claim that a waiver is needed to minimize burdens on Tribune.

The Commission is charged with taking action in the public interest, not with protecting the private interests of those who volunteer to be Commission licensees and agree to accept those licenses with all the restrictions that accompanying them. The Commission should dismiss the applications or designate them for hearing.

I. THE PETITIONERS.

The Office of Communication of the United Church of Christ, Inc. ("UCC") is a not-for-profit corporation of the United Church of Christ working to promote justice in media through legal challenges, policy advocacy, grassroots organizing, and public education. The UCC is active in the efforts to ensure diversity of ownership, production, decision-making, and employment in the media. The UCC has filed comments in proceedings involving the newspaper-broadcast cross-ownership ("NCBO") rule,² and has petitioned to deny Tribune's TV license renewal applications and associated waiver requests in Hartford and New York, based on Tribune's non-compliance with the NCBO rule. UCC has also petitioned the Commission for reconsideration of the 2005 grant to Tribune of a temporary waiver of the NBCO rule in the Hartford market.³

Media Alliance is a 30 year-old media resource and advocacy center for media workers, non-profit organizations, and social justice activists. Its mission is excellence, ethics, diversity, and accountability in all aspects of the media in the interests of peace, justice, and social respon-

²*Cross-Ownership of Broadcast Stations and Newspapers*, Comments of United Church of Christ, et al., MM Dkt. No. 01-235, filed Dec. 3, 2001; Reply Comments of United Church of Christ, et al., MM Dkt. No. 01-235, filed Feb. 15, 2002; *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Comments of United Church of Christ, et al., MB Dkt. No. 06-121, filed Oct. 23, 2006; Reply Comments of United Church of Christ, et al., filed Jan. 16, 2007.

³*Petition for Reconsideration In re United Church of Christ In re Counterpoint Communications Inc. and Tribune Television Company*, File No. BTCCT – 19991116AJW, filed on May 11, 2005 ("UCC Petition for Reconsideration").

sibility. One of Media Alliance's goals is to prevent concentrated and noncompetitive media markets. To advance that objective, it filed a *Petition to Deny* the renewal of Tribune's KTLA license and the associated NBCO waiver request. In the past, Media Alliance filed comments with the FCC in *Cross-Ownership of Broadcast Stations and Newspapers*, MB Docket Number 01-235, one of the proceedings consolidated into the 2002 Biennial Review. Media Alliance also filed a *Petition for Review* of the FCC's 2002 Biennial Review Order in the US Court of Appeals for the Ninth Circuit, which was transferred to the Third Circuit and consolidated with *Prometheus Radio Project v. FCC*. Media Alliance filed a brief jointly with the other Citizen Petitioners in that case. Media Alliance was a signatory to the comments and reply comments in Docket 06-121 filed by the UCC, *see n. 2, supra.* and continues to be active in organizing hearings and other events to publicize the need for greater diversity and competition in the media.

As described in the attached Declarations, Media Alliance has members in Los Angeles who would be harmed both in their capacity as citizens and as professionals by the loss of diversity and competition that would result if Tribune were permitted to continue to own commonly both the *LA Times* and KTLA-TV. Its members have been and would continue to be harmed by the reduction in the number of independent sources of local news and public affairs. Because of Tribune's common ownership, KTLA-TV and the *LA Times* cooperate rather than compete in newsgathering. They do not provide the same degree of diversity as would separately owned media outlets in what news stories they cover, the manner in which stories are reported, or the perspectives provided. Additionally, due to Tribune's common-ownership, other media outlets have faced increased pressure to provide media coverage to communities that lack access to the *LA Times* and KTLA-TV.⁴

UCC and Media Alliance are "parties in interest" to Tribune's transfer applications pursuant to 47 U.S.C. §309(d) (2007). As stated in the attached Declarations, the United Church

⁴See Declarations of David Adelson and Jay Levin, attached to November 1, 2006 *Petition to Deny* renewal of KTLA-TV.

of Christ has members in each of the affected service areas, who would be harmed by the loss of diversity that would result if the Commission permitted Tribune to continue to commonly own TV stations and the daily newspaper in the same area. See Declaration of Robert Chase, (Attachment A), Declaration of Lourinda Hafner (Attachment B), Declaration of Mark Lukens (Attachment C), Declaration of Mark Biglow (Attachment D). The declaration of Jeff Perlstein (Attachment E) shows that Media Alliance has members in Los Angeles area who would be similarly harmed.

II. FACTUAL BACKGROUND.

Tribune Company is a national media company based in Chicago, Illinois, that operates 11 daily newspapers, 23 broadcast TV stations, a local cable news channel in Chicago, a nationally available cable TV network, and a Chicago radio station, as well as many internet websites.⁵

Tribune currently owns newspaper/broadcast combinations in five cities. Although fundamental FCC policy requires that such cross-ownerships be divested upon transfer of the broadcast license, Tribune instead seeks extraordinary waivers to continue all these cross-ownerships while control of the company is transferred. It also seeks a permanent waiver of the local-TV ownership rule to retain ownership of two Hartford TV stations and *The Hartford Courant*.

A. The Newspaper/Broadcast Cross-Ownership Rule.

On its face, the proposed transaction is impermissible under the NBCO rule, which requires that the five Tribune newspaper/broadcast cross-ownerships be broken up upon sale of the parent company. However, Tribune seeks extraordinary waivers to permit each of the cross-owned properties to be transferred without regard to the NBCO rule pending “final action” on the Commission’s review of its broadcast ownership rules in Dockets 06-121, *et al.* “Final action” could well be three or more years away.

The FCC’s NBCO rule prohibits grant of applications which allow creation or perpetuation of non-grandfathered common ownership of a broadcasting station and daily newspaper

⁵See “About Tribune,” Tribune Company, <http://www.tribune.com/about/index.html>.

serving the same community. Thus, the owner of a daily newspaper may not ordinarily acquire a broadcasting station in the same market. Since FCC consent is not necessary for the owner of a broadcast property to acquire a newspaper, the NBCO rule operates by prohibiting renewal of the broadcast license.

The Commission's prospective prohibition on creating or transferring cross-owned newspapers and broadcast properties was first adopted in 1974 in one of the most exhaustive rule-makings in the Commission's history. Its action was unanimously affirmed by the Supreme Court of the United States. *Second Report and Order*, 50 FCC2d 1046, *aff'd sub nom. FCC v. NCCB*, 436 U.S. 775 (1978). The central purpose of the *Second Report and Order* was prospective achievement of diversity of media ownership. *Second Report and Order*, 50 FCC2d at 1074-1076.

Although the Commission had originally proposed that all NBCO cross-ownerships be divested, it ultimately decided that it would require divestiture in only a handful of "egregious" cases. It reasoned that other existing cross-ownerships would disappear over time as jointly owned properties were sold to different purchasers, thus increasing diversity. It stated its core holding as follows:

We think that any *new licensing should be expected to add to local diversity*. Accordingly, the rules will bar combinations that do not do so.

Second Report and Order, 50 FCC2d at 1075 (emphasis supplied). As applied here, the NBCO rule "prohibit[s] the creation of new newspaper-broadcast cross-ownerships in the same area and the perpetuation of...existing combinations through voluntary assignments or transfers to a single party." *Washington Star Communications, Inc.*, 54 FCC2d 669, 672 (1975).

The Commission's choice to forgo wholesale, forced divestitures in favor of the more gradual accomplishment of diversity was specifically addressed and affirmed by the Supreme Court. *FCC v. NCCB*, 436 U.S. at 814-815. This objective, the Commission said,

is a worthwhile goal which does not depend on its being urgent to be justified.... [D]iversity can be fostered through prospective rules without the fundamental disruption that would occur with altering all current ownership patterns.

Second Report and Order, 50 FCC2d at 1076.

The Commission does not lightly grant waivers. “An applicant for waiver faces a high hurdle even at the starting gate.” *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). Thus, in considering requests for waiver of the NBCO rule, the Commission has said that it will afford relief, but only when such actions meet the tests enunciated in the *Second Report and Order*, and

palpably advances the rules’ diversification objectives by increasing the number of mass media voices, particularly in a market characterized by newspaper-broadcast cross-ownership....

Crosby N. Boyd, 57 FCC2d 475, 484 (1975). Temporary waivers are granted only to the minimum extent necessary to facilitate the fastest divestiture which is reasonably attainable. The duration of the waiver is thus related to the time required to divest the property, and not to whether a waiver should be granted. *Stauffer Publications, Inc.*, 66 FCC2d 653, 655 (1977).

B. The Local Station Ownership Rule.

FCC rules prohibit the operation of a television station “duopoly” (*i.e.*, ownership of two stations in a market) in markets such as Hartford. 47 CFR §73.3555(b) and Note 7. *See Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCCRcd 12903 (1999). As is relevant here, the Commission generally prohibits common ownership of two TV stations in a market where there are fewer than eight independently owned and operated television “voices.” Because the Hartford-New Haven DMA does not contain the requisite eight voices, Tribune may operate both stations only if the rule is waived.

As further explained below, Tribune has also sought and received a permanent waiver of the duopoly rule under the so-called “failing station” exemption. *Counterpoint Communications*, 16 FCCRcd 15044 (2001). The criteria for grant of such waivers are that one of the stations must have a low audience share, that the financial condition of one of the stations is poor, that the transaction will produce public interest benefits and that the proposed purchaser is the only reasonably available candidate to acquire the station. These waivers are not transferrable. Tribune now seeks

a permanent waiver to allow the transferees to operate both Hartford stations.

C. The Proposed Transaction.

Tribune seeks transfer of *de jure* control to the Tribune Employee Stock Ownership Plan, EGI-TRB, LLC and Samuel Zell. The entire series of transactions is mind-numbingly complex, but the result would be that *de facto* control would be held by Samuel Zell, a new investor who will contribute some 300 million dollars and will receive board representation and warrants for 40% of the outstanding common stock Tribune. (For purposes of convenience, the transferees will also be referred to herein as “Tribune.”)

1. Chicago

Tribune’s newspaper/broadcast cross-ownership of WGN, WGN-TV and *The Chicago Tribune* is grandfathered under the NBCO rule. Although FCC rules require that the cross-ownership be divested upon transfer, Tribune seeks a temporary waiver to permit the transfer of WGN and WGN-TV pending “final action” on the Commission’s pending proceedings in Docket 06-121, *et al.*

2. South Florida

Tribune’s common ownership of station WSFL(TV), Miami and the *South Florida Sun-Sentinel* is permitted under a special, one-of-a-kind temporary waiver granted in 1998 by the FCC staff. *Renaissance Communications Corporation*, 13 FCCRcd 4717 (MMB 1998). Although FCC rules require that the cross-ownership be divested upon transfer, Tribune seeks a temporary waiver to permit the transfer of WSFL(TV) pending “final action” on the Commission’s pending proceedings in Docket 06-121, *et al.*

Tribune originally requested a permanent waiver of the NBCO rule to maintain common ownership of the two properties. The Commission’s action denying that request and instead granting a 12 month temporary waiver, *Renaissance Communications Corporation*, 12 FCCRcd 11866 (1998), was affirmed by the U.S. Court of Appeals. *Tribune Company v. FCC*, 133 F.3d 61 (D.C. Cir. 1998). After the judicial affirmation, the Commission staff ruled that the unusual

circumstances of the case warranted grant of a waiver which will run until six months after the Commission completes its then-forthcoming 1998 *Biennial Review* proceeding. Because the Commission effectively continued that proceeding, which is now encompassed in Docket 01-235, the waiver was subsequently extended through the conclusion of the currently pending 2006 Biennial Review, and remains outstanding today, more than nine years later.

In that decision, the staff noted that there had been confusion created by an unpublished staff action, *Letter to Joel Rosenbloom*, Ref No. 1800E1-DB (Mass Media Bureau, October 24, 1996), and said that “In light of this confusion, we believe it would be unduly harsh for Tribune not to receive some further interim relief.” *Renaissance Communications Corporation*, 13 FCCRcd at 4718. Because grant of this waiver was motivated by the “substantial equitable considerations,” the staff decision stressed that the case presented “highly unusual circumstances....” It emphasized, moreover, that

[W]e think it should now be clear that the mere initiation of a proceeding stating that the rule would be examined, or merely the fact that such a proceeding was on the horizon, would not be sufficient to warrant an interim waiver.

Id., 13 FCCRcd at 4719. The limited nature of this grant was later ratified by the full Commission. *1998 Biennial Review*, 13 FCCRcd at 11295, n. 90 (“That action was based on special circumstances....”). The point was reiterated when the Commission created what is now Docket 01-235. *1998 Biennial Regulatory Review-Review of Commission's Broadcast Ownership Rules*, 15 FCCRcd 11058, 11109-10 (2000).

3. New York

Tribune’s acquisition of Times-Mirror in 2001 created impermissible cross-ownerships of Long Island’s *Newsday*, the *Stamford Advocate* and the *Greenwich Time* and Tribune’s New York station WPIX-TV. Under the NBCO rule, Tribune had until the end of its current license term (on June 1, 2007) to divest its newspaper or broadcast properties. It has failed to do so, instead filing a *post hoc* request for waiver, which UCC has challenged as part of its *Petition to Deny* the

WPIX-TV renewal.⁶

Although FCC rules require that the cross-ownership be divested upon transfer, Tribune seeks a temporary waiver to permit the transfer of WPIX pending “final action” on the Commission’s pending proceedings in Docket 06-121, *et al.*

4. Los Angeles

The acquisition of Times-Mirror also created an impermissible cross-ownership of *The Los Angeles Times* and Tribune’s Los Angeles TV station KTLA-TV. Under the NBCO rule, Tribune had until the end of its current license term (on December 1, 2006) to divest its newspaper or broadcast properties. It has failed to do so, instead filing a *post hoc* request for waiver, which Media Alliance has challenged as part of its *Petition to Deny* the KTLA-TV renewal.

Although FCC rules require that the cross-ownership be divested upon transfer, Tribune seeks a temporary waiver to permit the transfer of KTLA-TV pending “final action” on the Commission’s pending proceedings in Docket 06-121, *et al.*

5. Hartford

Tribune currently owns two TV stations and the dominant daily newspaper in Hartford. The extended history of Tribune’s efforts to obtain and continue these cross-ownerships through repeated waiver requests and concerted non-compliance with Commission divestiture mandates is especially important here, as it casts doubt on Tribune’s motives in requesting temporary waivers in its other cross-owned markets as well.

As is more fully described below, Tribune currently has a permanent non-transferrable waiver of the Commission’s local TV ownership rules allowing it to own both TV stations. It also has a non-transferrable temporary waiver of the NBCO rule allowing it to own both WTXX and the *Hartford Courant*. Under the NBCO rule, Tribune had until the end of its current license term

⁶Tribune represents that it has contracted for the sale of the *Advocate* and the *Time*. See *Application for Transfer of WPIX(TV), Section IV, Question 8(b), Transferee’s section* at 2 n. 2. However, Tribune has more recently announced that the proposed divestiture has been cancelled. See Tribune Company, <http://www.tribune.com/pressroom/releases/2007/05252007.html>

(on April 1, 2007) to divest either the *Courant* or its other TV station, WTIC-TV. It has failed to do so, instead filing a *post hoc* request for waiver, which UCC has challenged as part of its *Petition to Deny* the renewal of WTIC-TV and WTXX.

Although FCC rules require that the both newspaper/broadcast cross-ownerships be divested upon transfer, Tribune seeks a temporary waiver of the NBCO rule to permit the transfer of WTIC-TV and WTXX pending “final action” on the Commission’s pending proceedings in Docket 06-121, *et al.* Tribune also seeks a new permanent waiver of the local TV ownership rule to permit continued ownership of both WTIC-TV and WTXX.

a. Initial Temporary NBCO And TV Ownership Waivers.

Tribune’s extended efforts to escape application of the Commission’s media ownership rules in Hartford began on November 16, 1999, when Counterpoint Communications, Inc. requested that the Commission permit the transfer of its WTXX television station license to Tribune.⁷ Because Tribune already owned WTIC-TV, which is licensed to Hartford, and there would not be eight remaining independently owned and operated television stations remaining following the proposed merger, Tribune sought a permanent waiver of the of the local television rule, on the grounds that WTXX was a “failing” station.

On June 12, 2000, while the WTXX transfer application was pending, Tribune purchased the *Hartford Courant*, the dominant daily newspaper in Hartford. The purchase triggered application of the NBCO) rule; Tribune therefore amended its WTXX transfer application to request a two-year waiver of the NBCO rule to “permit it sufficient time to pursue a transaction that will allow it to achieve compliance” with the Commission’s rules.

On August 3, 2001, the FCC approved the transfer of the WTXX broadcast license by giving two waivers to Tribune. *Counterpoint Communications, Inc.*, 16 FCCRcd 15044, 15047 (2001). The first was a permanent waiver to own both TV stations because WTXX was a “failing

⁷See *Application For Consent To Transfer Control Of Entity Holding Broadcast Station Construction Permit Or License of Counterpoint Communications, Inc.*, File No. BTCCT – 19991116AJW, filed on Nov. 16, 1999.

station.” However, the Commission denied Tribune’s request for a two-year NBCO rule waiver, holding that the lack of diversity in the Hartford market precluded any such grant. Instead, it gave Tribune only a six-month temporary waiver of the NBCO rule to own WTXX and the *Hartford Courant* on the basis of its conclusion that this would afford Tribune “a reasonable period of time to bring its Hartford media assets into compliance with our rules.” *Id.* Commissioners Tristani and Copps concurred, stressing that their acquiescence was predicated on the requirement that Tribune exercise “best efforts” to sell one or more of its properties. *Id.*, 16 FCCRcd at 15050 (Tristani, concurring). Commissioner Copps noted that the public interest was served here by only “the barest of margins” and that an important factor for him was that the decision required Tribune to divest the necessary properties to come into compliance within six months and that he “would expect the company’s divestiture efforts to begin immediately.” *Id.*, 16 FCCRcd at 15051 (Copps, concurring).

b. 2002 Extension of NBCO Waiver.

Six months passed, during which time Tribune did *not* divest either property. Instead, just as its waiver period was to end in February 2002, Tribune asked the FCC for a six-month extension of the NBCO rule waiver, claiming that it was unable to sell WTXX. Tribune made no representation that it had attempted to achieve compliance by selling the *Courant*. Although the Commission granted Tribune an additional six-month waiver on February 11, 2002, its action came with a warning that the FCC “expect[ed] Tribune to continue to exercise its best efforts and to expand its current efforts if needed to sell the necessary assets to come into compliance with the rule” by the expiration of the waiver on August 19, 2002. *Counterpoint Communications, Inc.*, 17 FCCRcd 3243, 3244-45 (2002).⁸

c. Unsuccessful Request For Permanent NBCO Waiver.

Nonetheless, six months after the Commission granted the second temporary waiver Tri-

⁸Commissioner Copps issued a concurring decision expressing reluctance granting Tribune an extension and warning that “[a]sking the Commission to go beyond this extension would, I think be asking too much.” *Id.*, 17 FCCRcd at 3247.

bune was still in violation of the NBCO rule. On August 6, 2002, Tribune filed yet another waiver request of the NBCO rule for its common ownership of WTXX and the *Hartford Courant*, and for the first time asked the Commission for a **permanent** waiver of the rule. Alternatively, Tribune requested a temporary waiver of the NBCO rule until December 2006, when the WTXX license renewal application was due to be filed, or “until a reasonable period after the Commission’s current pending rulemaking concerning the [NBCO] Rule is finalized.”⁹ The August 2002 waiver request revealed that Tribune had given no thought to divesting WTIC and had made no efforts at all to sell the *Hartford Courant*.¹⁰

The Commission did not respond to Tribune’s August 2002 waiver request before the previous waiver expired on August 19, 2002, and took no action to enforce its prior directives. In June 2003, the FCC completed the 2002 Biennial Regulatory Review of media ownership rules, and promulgated new rules on cross-media ownership under which Tribune’s common ownership of the *Hartford Courant*, WTXX, and WTIC-TV would have been permissible. However, that change never went into effect because of a judicial stay, *see Prometheus Radio Project v. FCC*, 2003 WL 22052896 (3rd Cir.), and was vacated by the U.S. Court of Appeals for the Third Circuit. *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004). It is of particular relevance that Tribune then asked the Court of Appeals to modify its stay to enable the Commission’s new “cross-media” limits to come into effect in markets with nine or more television stations.¹¹ However, the Third Circuit **rejected** Tribune’s motion and maintained the stay of the revised cross-ownership rule.¹²

⁹*Counterpoint Communications, Inc., Request for Waiver*, File No. BTCCT – 19991116AJW, at 38, filed on Aug. 2, 2002 (“*Tribune 2002 Waiver Request*”).

¹⁰*Id.* at 19 (stating that it is not practical to sell the *Courant* because of tax liability); *Id.*, at 39 (“If the license renewal of WTIC requires divestiture of WTIC or the newspaper to come into compliance with the Rule, Tribune’s most likely course would be to attempt to sell WTIC and WTXX as a combination.”).

¹¹*Motion of Petitioner Tribune Company for a Partial Lifting of this Court’s Stay of the FCC’s Cross-Ownership Rules*, 3d Cir. Nos. 03-3388 (filed July 22, 2004).

¹²*Prometheus Radio Project v. FCC*, Nos. 03-3388 (unpublished *Order*)(September 3, 1004).

d. Grant Of Retroactive Temporary Waiver.

Notwithstanding Tribune's continuing defiance of the Commission's directives, the Commission took no action to enforce its earlier decisions. Instead, on April 13, 2005, the FCC finally responded to Tribune's August 2002 waiver request by denying Tribune's request for a permanent waiver but granting it a "temporary extension [to] afford Tribune additional time for divestiture of both Stations, if that is the course Tribune chooses to come into compliance with our rules." *Counterpoint Communications, Inc.*, 20 FCCRcd 8582, 8587 (2005).¹³

The Commission rejected Tribune's argument that alleged difficulties in finding a buyer for WTXX justified a permanent waiver, finding that "Tribune has not demonstrated--and we have no basis to assume--that market or economic conditions will not improve, or that the value of station will not be enhanced by Tribune's efforts such that it will become more attractive to potential buyers in the future." *Id.*, 20 FCCRcd at 8589.

The Commission also expressly considered and rejected Tribune's request for a temporary waiver which would last until the completion of the rulemaking proceeding. It found:

[T]he public interest is better served by extending the waiver of the newspaper-broadcast cross-ownership rule as applied to the *Courant*-WTXX combination to coincide with the renewal cycle for the licenses of both WTXX and WTIC-TV. This should enhance the likelihood that Tribune can sell one or both of the Stations on commercially reasonable terms, and thus provide the best hope that WTXX will remain on the air and as a source of news, information, and entertainment for citizens in the Hartford DMA.

Id., 20 FCCRcd at 8584. The Commission found the circumstances justifying the waiver to be exceptional, and warned that

In extending Tribune's waiver, we again emphasize that we are doing so only temporarily, and based only on the unique circumstances present here.

Id., 20 FCCRcd at 8589.¹⁴ The Commission stressed that

¹³This was a clear reminder that Tribune could also come into compliance with the NBCO rule by selling the *Courant*.

¹⁴ Commissioners Capps and Adelstein "reluctantly concur[red]" in the result. They fully supported the Commission's rejection of Tribune's permanent waiver request, stating: "Tribune has simply not made the case for permanent waiver. We would also point out that through this decision, the Commission implicitly recognizes that a permanent waiver for the Hartford matter has

At the end of the extension period, should Tribune not be in compliance with the rules then in effect, the Commission will have a fuller range of options available to it to resolve any continuing problems.

Id.

UCC's timely-filed *Petition for Reconsideration* of the FCC's decision granting a third temporary waiver to Tribune has remained pending before the Commission for more than two years.¹⁵

e. New Request For Retroactive Permanent Waiver.

Instead of coming into compliance, Tribune allowed the period of its waiver to run. It then filed yet another, even more extraordinary, waiver request as part of its renewal applications for its Hartford stations. Notwithstanding its continuing failure to obey the Commission's prior directives and despite the Commission's repeated admonitions to eliminate its Hartford cross-ownership by the end of its license term on April 1, 2007, Tribune once more asked the Commission to grant Tribune a permanent waiver of the NBCO rule. Moreover, unlike the previous waiver requests, which only concerned WTXX and the *Hartford Courant*, Tribune's most recent waiver request asked the Commission to permit it to permanently own the *Courant* and **both** TV stations. In the alternative, Tribune sought a temporary waiver of the rule, to last until the Commission finalizes its review of the media ownership rules. Tribune did not argue that it needs more time to divest either both TV stations or the newspaper. Indeed, Tribune did not even sug-

the clear potential to undermine localism, competition, and diversity." *Id.*, 20 FCCRcd at 8591-92.

¹⁵In seeking reconsideration, UCC argued that the Commission erred in failing to provide for notice and comment on Tribune's waiver request, that the Commission's conclusion that Tribune met the waiver standard is not supported by the record, that the FCC had failed to conduct the balancing required under the fourth waiver criterion which permits a waiver where the purpose of the rule, that is, promoting diversity and competition, would be disserved by its application, and that the Commission improperly took into account "benefits" alleged by Tribune that are irrelevant and or would be present in any cross-ownership situation. UCC also argued that the Commission acted arbitrarily and capriciously in failing to consider alternatives to granting an additional waiver. Under longstanding precedent, the Commission could have placed the television license in a trust while it conducted the proceedings necessary to find a new licensee. *Petition for Reconsideration of Office of Communication of the United Church of Christ, Inc., In re Counterpoint Communications, Inc.*, File No. BTCCT – 19991116AJW (May 11, 2005).

gest that it intended to continue efforts to sell the stations or to make any efforts to sell the newspaper.

On March 1, 2007, UCC filed a *Petition to Deny* renewal of WTIC-TV and WTXX, in which it also opposed grant of any further waiver to Tribune with respect to the Hartford market.

III. TRIBUNE’S APPLICATION MUST BE DISMISSED BECAUSE FOUR OF ITS TV STATION LICENSES HAVE EXPIRED AND THERE IS NO AUTHORIZATION WHICH CAN BE TRANSFERRED.

As set forth above, UCC and Media Alliance have challenged the renewals of Tribune’s TV licenses in Los Angeles, Hartford and New York because, *inter alia*, Tribune’s applications violate the NBCO rule on its face and cannot be granted. The NBCO rule provides that

[n]o license for a...TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper” if the grant of the license will result in “[t]he Grade A contour of a TV station...encompassing the entire community in which such newspaper is published.

47 CFR §73.3555(d) (2002). Thus, since Tribune owns newspapers in each of those markets and its licenses have expired, Tribune has no licenses to be renewed, and its applications for renewal are not grantable. So, too, Tribune has nothing to transfer.¹⁶

It is fundamental FCC policy that a licensee which has become unqualified to operate a broadcast station has nothing to transfer or assign. *Jefferson Radio Co. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964); *G. A. Richards*, 14 FCC 429, 430 (1950) (“[T]he Commission has...refused to permit transfers by licensees who have been found to be unqualified and has regarded the resolution of outstanding questions concerning the qualifications of licensee-transferors as a condition precedent to consideration of a transfer application.”).

As the Supreme Court has reaffirmed, “[i]f a license applicant does not qualify under standards set forth in [FCC] regulations, and does not proffer sufficient grounds for waiver or

¹⁶Because the proposed transaction is for control of the parent company, Tribune’s applications for assignment of its Chicago and South Florida broadcast properties are not severable and may not be separately granted.

change of those standards, the Commission may deny the application without further inquiry.” *FCC v. NCCB*, 436 U.S. at 793. Accordingly, the applications for transfer should be dismissed.

IV. TRIBUNE IS NOT ENTITLED TO WAIVER OF THE NBCO RULE.

Even if the applications were to be considered on the merits, they cannot be granted. The current waiver requests amount to an escalation of a strategy that Tribune has followed for at least nine years. Simply put, Tribune has “gamed” the Commission’s regulatory process to obtain a series of temporary waivers in Hartford and South Florida and taking advantage of a provision in the Commission’s NBCO rule which allows creation of new, but explicitly temporary, cross-ownerships in Los Angeles, New York and Hartford. Additionally, in Hartford, Tribune has repeatedly ignored deadlines for divestiture of its impermissible TV duopoly and then sought retroactive extensions of temporary waivers.

Tribune is now operating outside of FCC rules in three markets, having allowed its license terms to expire.¹⁷ Its after-the-fact requests for retroactive waivers in those instances is consistent with the pattern it has followed over the last decade of obtaining waivers, failing to comply with them and then requesting retroactive relief. Having thus managed to maintain five cross-ownerships and a duopoly in this manner, Tribune now seeks a ruling which would undermine the very centerpiece of the Commission’s prospectively-oriented NBCO policy - the expectation that existing cross-ownerships will be broken up over time as broadcast properties are sold.¹⁸

In considering whether to grant a “fourth prong” waiver such as the one requested here, the Commission must weigh the public interest benefits which would result from grant or denial of the waiver. In particular, the Commission considers whether, “for whatever reason,...the purposes of the [NBCO] rule would be disserved...” *Second Report and Order*, 50 FCC2d at 1085

¹⁷As explained above, the Chicago holdings are grandfathered until transferred, and Tribune has a one-of-a-kind waiver in South Florida.

¹⁸*See, e.g., Crosby N. Boyd*, 57 FCC2d at 485 (“Moreover, we further stress that we would not be disposed to grant waiver in these circumstances had applicants not firmly committed themselves to a complete and prompt dispersal of cross-owned properties.”)

(footnote omitted). It is highly relevant to this assessment that Tribune has recently considered divesting its cross-ownerships by means of a stock offering and that there have been several concrete offers for Tribune's properties which would have resulted in divestiture. Thus, although it is clear that it would have been possible to sell Tribune's television properties separately, and thereby fulfill the purposes of the NBCO rule, Tribune rejected those bids and actively discouraged others even from bidding. *See pp. 23-25, infra.* Tribune has similarly discouraged several deep-pocketed investors who have expressed interest in purchasing *Newsday* and the *Los Angeles Times*.

A. Tribune's Waiver Requests Must Be Denied Because They Advance No Public Interest Objectives.

To grant any broadcast application, the Commission must find that such grant is in the public interest. *See 47 U.S.C. §309(d).* As shown below, Tribune advances absolutely nothing even purporting to demonstrate that grant of its requested waivers will benefit the public. The waivers will undermine and contravene established FCC rules and policies and will set adverse precedent for what will surely be countless copycats. Its motive for seeking these waivers is entirely self-serving; Tribune rejected *bona fide* offers to sell itself because it preferred a particular tax favored restructuring that maximized benefits for its existing shareholders.

The FCC's job is not to intervene in the market to protect the interests of FCC licensees. Rather, its job is to enforce its rules and policies designed to promote the public interest. In this case, that means that it must deny Tribune's applications.

B. Tribune's Request for Waiver Based on the Pendency of a Rulemaking Is Prohibited Under Clear FCC Policy and Precedent.

Despite clear and unambiguous Commission policy and precedent to the contrary, Tribune nonetheless persists in asking for five waivers of the NBCO rule which would permit the transferees to maintain Tribune's newspaper/broadcast cross-ownerships pending finality of the Commission's pending review of its broadcast ownership rules. Grant of this request would undoubtedly generate a flood of demands for similar relief, and thereby entirely undermine the

legitimacy of the Commission's processes and, indeed, the very rule of law.

The Commission has unequivocally denied precisely the same relief to Tribune in Hartford. *Counterpoint Communications, Inc.*, 20 FCCRcd 8582, 8587 (2005). See pages 11-12, *supra*. Indeed, the only precedent Tribune can muster on its behalf is the waiver Tribune itself obtained for WSFL from the Commission staff. *Renaissance Communications, supra*. However, as thoroughly discussed above, the Bureau Chief went out of his way in that case to emphasize that his action in that case was based on unique equitable circumstances. Shortly thereafter, the Commission ratified that distinction, and expressly disavowed the earlier unpublished staff letter which might have been read to the contrary. *1998 Biennial Review*, 13 FCCRcd at 11296, n. 90.

The full Commission has been consistent at all times in holding to this precedent. See *Mobilemedia Corporation*, 14 FCCRcd 8017, 8026 (1999) ("The mere possibility that a rule may be reexamined does not by itself warrant grant of a waiver.") In a case closely resembling this one, Fox Television Stations sought a waiver of the NBCO rule pending the outcome of the very same proceeding still underway. Like Tribune, Fox claimed that the Commission's *1998 Biennial Review Notice of Inquiry* somehow served as precedent to permit, rather than, deny such an expansive waiver request.¹⁹ The Commission flatly rejected this argument. Yet again, the Commission explained that the waiver granted in *Renaissance*

was predicated on the unusual circumstances that led to extension of the waiver;...In a subsequent Tribune proceeding, however, we cautioned future applicants that it "should now be clear that the mere initiation of a proceeding stating that the rule would be examined,...would not be sufficient to warrant an interim waiver. Consequently we will not grant [Fox] an "interim" waiver as requested.

UTV of San Francisco, Inc., 16 FCCRcd 14975, 14988 (2001)(footnotes omitted)

Nor is there any reason for the Commission to overrule itself or otherwise depart from this well-established precedent. As the D.C. Circuit has said,

[t]he very essence of waiver is the assumed validity of the general rule, and also the applicant's violation unless waiver is granted.

¹⁹See *Fox Television Stations, Inc., Application for Assignment of WWOR-TV, Exhibit 4, Section III (Assignee), Question 6a (September 2000)* at 26 and n. 40.

WAIT Radio v. FCC, supra, 418 F.2d at 1158. This principle should not be a surprise to Tribune, as the DC Circuit rejected an essentially similar claim from Tribune itself, stating that “it is hornbook administrative law that an agency need not-indeed should not-entertain a challenge to a regulation, adopted pursuant to notice and comment, in an adjudication or licensing proceeding.” *Tribune Company. v. FCC*, 133 F.3d at 68.

Tribune’s argument that the Third Circuit’s *Prometheus* decision somehow compels grant of the requested waiver is especially inapt, inasmuch as it is premised on a profound mischaracterization of the Third Circuit’s holding. The heart of Tribune’s case is the assertion that “[t]he Commission, affirmed by the court, found that the blanket prohibition ‘is not necessary to protect diversity,’ especially in the nation’s largest markets.” *Application for Transfer of WPIX(TV), Section IV, Question 8(b), Transferee’s section* at 3.²⁰ It reasons that this means that the Commission is virtually certain to authorize all five of Tribune’s newspaper/broadcast cross-ownerships in its pending proceeding on remand from the Third Circuit.

It is not an accident that Tribune’s use of the phrase “in the nation’s largest markets” is not part of the quotation from the Court. In fact, contrary to Tribune’s assertion, the *Prometheus* Court never rejected the reimposition of cross-ownership restrictions “in larger markets...,” and it made clear that “[t]he Commission’s [2003] finding that a blanket prohibition of newspaper/broadcast cross-ownership is no longer in the public interest does not compel the conclusion that no regulation is necessary.” *Prometheus v. FCC, supra*, 373 F.3d at 400. The Court explained in great detail that the “diversity index” adopted by the Commission was flawed because the Commission gave too much weight to the Internet as a media outlet and “irrationally assigned outlets of the same media type equal market shares.” *Id.*, 373 F.3d at 403. The Court further held that the FCC had “inconsistently derived” new rules from its diversity index results. *Id.*

Contrary to Tribune’s suggestion, the *Prometheus* Court did **not** compel repeal of the NBCO rule. Rather, the Court held that, based on the record compiled in the 2002 Biennial

²⁰All five of the Tribune NBCO rule waiver requests are essentially identical in their arguments.

Review, the Commission could have reasonably concluded that the NBCO's blanket ban could be modified. Moreover, Tribune's inference that the Court implicitly accepted the output of the "diversity index," and the cross-ownership rules based thereupon, for larger markets is wholly erroneous. The Court held no such thing, and its critique of the "diversity index's" rationale of the "diversity index" did not differentiate or segment among relative market sizes.

Thus, there is absolutely no basis for Tribune's assumption that it is virtually certain that the Commission will adopt new rules that will permit it to retain its cross-ownership. Rather, it is entirely possible that the new, and much more extensive record being compiled in the current 2006 Quadrennial Review will justify retention of the current NBCO rule in its current form.²¹

Moreover, even if the Commission were to decide to modify the current blanket ban, there is no reason to expect that it would bless any of Tribune's cross-ownerships, much less all of them.²² The Court's criticism of the Commission's rationale pointed to no empirical break point or methodological difference between larger and smaller media markets.²³ Tellingly, in demonstrating the "absurd results" of the Commission's 2003 decision, the Court used the very largest market - New York - as an example. 373 F.3d at 408.

In light of the flaws in the "diversity index," the Commission has tentatively ruled that it will not utilize similar methodology in its current review of broadcast ownership rules. 2006 *Quadrennial Regulatory Review*, 21 FCCRcd 8834, 8848 (2006). Thus, it is quite possible that

²¹Several parties have filed extensive comments showing flaws in the Commission's earlier analyses and providing substantial new evidence to support retention of the current rule. *See, e.g., 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Comments of Consumers Union, Consumer Federation of America and Free Press MB Dkt. No. 06-121, filed Oct. 23, 2006.

²²As is discussed below, each of the five Tribune cross-ownerships create significant obstacles to diversity and competition, and there is strong reason for the Commission to prohibit them prospectively.

²³For example, the Commission unreasonably assumed equal market shares for all outlets; this, the Court said, "negates" both the fact that "all media are [not] of equal importance" for viewpoint diversity and the objective of "measur[ing] the actual loss of diversity from consolidation." *Id.*, 373 F.3d at 408. "[N]o reasonable explanation underlies [the FCC's] decision to disregard actual market share." *Id.*, 373 F.3d at 420. This flaw applies to all markets.

if the Commission were to wish to modify its NBCO rule, it might focus on the ranking of stations in a market. For example, it might prohibit cross-ownership of VHF stations and newspapers; this would preclude relief for Tribune in New York, Los Angeles and Chicago. Or, following the pattern used involving the Commission's TV duopoly rules, the Commission might prohibit cross-ownership of the "top 4" stations in a market; this would preclude relief for Tribune in Chicago and Hartford.

Tribune's misplaced reliance on *Prometheus* is further underscored by the fact that the Court refused to grant a stay to Tribune. Tribune made essentially the same argument to the Court that it makes here.²⁴ The Third Circuit panel unanimously denied Tribune's motion, stating that

Inasmuch as we held in our Opinion and Judgment of June 24, 2004 that the cross-ownership rules proposed by the Federal Communications Commission...are not supported sufficiently as required under the Administrative Procedure Act, 5 U.S.C. §706(2), and §202(h) of the Telecommunications Act of 1996, the foregoing motion...is denied.

Prometheus Radio Project v. FCC, Nos. 03-3388 (unpublished *Order*)(September 3, 1004).

C. Tribune Has Failed to Meet its Burden of Demonstrating That its Request Will Further the Purposes of the Commission's NBCO Rule.

Not only has Tribune failed to justify its extraordinary request for a waiver to run for the duration of the Commission's pending Quadrennial Review wholly unjustified, but it has not even shown that it is entitled to a waiver of any duration. No precedent exists to justify the relief Tribune seeks.

Tribune's request for a waiver must be considered under the so-called "fourth prong" of the Commission's NBCO waiver standard,²⁵ under which Tribune has the burden of establishing

²⁴In its July 22, 2004 *Motion for a Partial Lifting of this Court's Stay of the FCC's Cross-Ownership Rules*, 3d Cir. Nos. 03-3388, (filed July 22, 2004). Tribune argued that the Court had "definitively rejected... reimposition of cross-media restrictions" in what it called "the nation's largest and most diverse markets." *Id.* at 6. Tribune argued that the Court's remand permitted the Commission to do nothing more than reevaluate the diversity index and that such revision "could not plausibly" result in any cross-ownership limits in large markets. *Id.*

²⁵This is a sale at full market value. Obviously, then, with the exception of WTXX, there is no issue about inability to sell at a fair price, or about whether the properties cannot operate as

that “the purposes of the rule would be disserved by divestiture.” *Second Report and Order*, 50 FCC2d at 1085. The core objective of the NBCO rule is achieving ever greater diversity through prospective operation of the prohibition on creating or transferring cross-ownerships.

The Commission has never before waived its NBCO rule in the absence of a finding that the result of the action would be greater diversity. In every prior waiver the Commission has granted, one of two circumstances has applied. In each of the four permanent waivers the Commission has granted, there has been a threatened media voice such as a UHF TV station, *see, e.g., Field Communications Corp.*, 65 FCC2d 959 (1977), or a newspaper. *See, e.g., Fox Television Stations, Inc.*, 8 FCCRcd 5341 (1993). Thus, the Commission’s action results in more diversity than would be the case if the waiver were denied. In prior temporary waivers, there has been a finite date for compliance, at the end of which time a divestiture will take place and there will then be greater diversity. *See, e.g., Multimedia, Inc.*, 11 FCCRcd 4883, 4885 (1995) (when “mergers or transfers of multiple stations are involved, in general we believe that the benefits derived from such transactions support grant of a reasonable waiver period to effectuate the merger and permit time to come into compliance with our rules.”). There, too, the outcome is more voices than would otherwise have been the case.

By leaving the existing ownership pattern in place the waiver Tribune seeks does not advance Commission policy goals. The Commission has

made clear that “once a sale is to take place, the rule would require a split in an existing [grandfathered] combination” and “will apply to all applications for assignment or transfer” [*Second Report and Order*, 50 FCC2d] at 1076. Upon reconsideration we reaffirmed this requirement, *Second Report and Order Recon.*, 53 FCC 2d at 591 n. 6 (“If existing combinations are voluntarily sold, it must be to separate buyers.”), and it has been upheld by the Supreme Court and subsequently reiterated by the Commission. *See FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978); *see also Fox Television Stations, Inc.*, 8 FCC Rcd at 5347-48 (The rule was thus crafted ... to apply prospectively to new ownership patterns however created, whether by initial application and construction or by acquisition through assignment or transfer of control.”)

* * * *

stand-alones.

[T]his “change in the Commission's policy toward new licensing offered the possibility of increasing diversity without causing any disruption of existing service,” and held that, “[i]n light of these considerations, the Commission clearly did not take an irrational view of the public interest when it decided to impose a prospective ban on new licensing of co-located newspaper-broadcast combinations.” *FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. at 797.

Capital Cities/ABC Inc., 11 FCCRcd 5841, 5885-5886 (1995).

Moreover, the Commission has specifically rejected Tribune’s argument, *see Application for Transfer of WPIX(TV), Section IV, Question 8(b), Transferee’s section* at 37-40, that the public is benefitted by the efficiencies of cross-ownership which would purportedly be preserved through grant of a waiver.

“[I]n *Hopkins Hall Broadcasting*, where the applicant discussed the efficiencies flowing between each entity from the other commonly owned entities, we rejected this argument, noting that the Commission considered and rejected arguments concerning improved news coverage, expertise and operating efficiencies as justification for waivers in the rule-making that led to the passage of this rule. [*Hopkins Hall Broadcasting*,] 10 FCC Rcd [9764,] 9765-66 [1995]; *Second Report and Order*, 50 FCC 2d at 1064-65. Because the Commission stated that in waiver cases it would not relitigate issues that were settled by the *Order*, we do not consider this argument a justification for granting these waivers. *Id.* at 1085.

Capital Cities/ABC Inc., 11 FCCRcd at 5894.

D. Tribune Rejected *Bona Fide* Bids Which Would Have Advanced Commission Policy by Effectuating Partial or Full Divestiture of its Cross-Ownership.

In seeking waivers which undermine Commission policy, Tribune does not even attempt to advance public interest justification for its action or argue that it was somehow forced to sell itself in the manner it has chosen to do so. Indeed, Tribune has had numerous opportunities to enter into transactions which would have advanced Commission diversification goals.

1. “Self-help” Spin-off.

Tribune actively considered, and quite nearly effectuated, a plan to spin off its broadcast properties through a stock offering. On February 12, 2007, the *Wall Street Journal* reported that “the plan is widely expected to involve spinning off the company's broadcast division and borrowing money to pay out a one-time cash dividend to shareholders. “Tribune Likely to Forgo Bids And Set ‘Self-Help’ Plan,” *Wall Street Journal*, February 12, 2007, p. B5. *See also* “Bid-

ding War Brews for Tribune,” *Business Week Online*, April 2, 2007, viewed at 2007 WLNR 6238830; “Tribune to Toss Aside Bids of Carlyle, Others,” *Washington Business Journal*, February 12, 2007; “Tribune’s Perceived Debt Risk Falls on Spinoff Report,” February 12, 2007.

2. Chandler Family Transaction.

The restructuring of Tribune’s holdings was in large part a reaction to demands by the Chandler family, until recently Tribune’s largest shareholder. In an effort to cash out its interests, the Chandlers reportedly “sent a letter to the board offering to divide Tribune into a newspaper company and a television station company in a tax free deal that values the company at about \$32 a share,...” *New York Times*, January 19, 2007, p. C2. See also “Tribune Co. Gets Buyout Offer from Top Shareholder,” *Marketwatch*, January 18, 2007, 1/18/05 Thompson Financial News 12:50:00.

3. Burkle/Broad Offers.

Investors Eli Broad and Ron Burkle made several offers to purchase Tribune between January and March, 2007. See, e.g., “Tribune Sale Doesn’t End Talk of Bids,” *New York Times*, April 4, 2007, p. C1; “Eleventh Hour Bid,” *New York Times*, March 31, 2007, p. C2. It was widely reported that their proposal involved trading cross-owned TV stations for smaller market TV stations. See, e.g., “Regulatory Hurdles Face Tribune, \$8.2 Billion Deal to Go Private,” *Communications Daily*, April 3, 2007, p. 3; “Variety of Bids Gives Tribune Negotiating Leverage” *Wall Street Journal*, January 19, 2007, viewed on *Wall Street Journal* website June 8, 2007).

4. Carlyle Group.

The Carlyle Group, one of the world’s leading private equity firms made at least one firm offer to purchase Tribune’s broadcast properties. See, e.g., “Tribune’s Tribulations,” *Business Week*, February 5, 2007, p. 29; “No Clear Cut Path for Tribune’s Board,” *New York Times*, January 19, 2007, p. C2.

5. David Chase.

A representative of the Chase family, which has owned many media properties in the

Hartford area, has reportedly expressed interest in purchasing the *Hartford Courant*. See, e.g., “Tribune Sale Doesn’t End Talk of Bids,” *New York Times*, April 4, 2007, p. C1; “Tribune Gets Initial Bids from Bain, Thomas H. Lee,” *Bloomberg News*, October 28, 2007, viewed on *Bloomberg* web site, June 8, 2007.

6. Frank Zarb.

There are numerous reports that Frank Zarb, former Chairman of NASDAQ, has attempted to purchase Newsday. See, e.g., “Zarb Might Eye Newsday,” *Newsday*, April 7, 2007, p. A7; See, e.g., “Tribune Sale Doesn’t End Talk of Bids,” *New York Times*, April 4, 2007, p. C1; “Billionaire Suitor For Tribune,” *Newsday*, November 14, 2006, p. A66.

E. Tribune Utilizes Incorrect Market Data in Attempting to Demonstrate the Existence of Competition and Diversity

Tribune states that it should be granted a waiver because the presence of diversity, competition, and public interest benefits within the affected markets supports a waiver allowing for common ownership of newspapers and broadcast properties within those markets without experiencing any adverse effects. However, as discussed more fully below, Tribune’s analysis of the presence of media diversity and public interest benefits within the affected markets exaggerates the actual level of diversity, competition, and public interest benefits available in those markets. In general, the analysis incorporates media outlets outside of the relevant geographic and relies on an inaccurate competition analysis, and ignores the problem of media consolidation in those media markets.

1. Chicago

a. Tribune Misrepresents the Impact on Diversity by Incorrectly Relying on the Entire Chicago DMA Instead of the Newspaper and Broadcast Areas of Overlap.

Tribune’s diversity analysis utilizes the entire Chicago DMA. Under FCC precedent, this is inappropriate because “many county newspapers and many broadcast stations licensed to distant communities...do not contribute to coverage of issues of local concern...issues that are at the heart of the Commission’s concern with diversity.” *Hopkins Hall Broadcasting, Inc.*, 10

FCCRcd 9764, 9766 (1995). The appropriate relevant geographic market for a diversity analysis is the common area served by the newspaper and the Grade A contour of the television station, rather than the entire broadcast DMA. *See, e.g., Columbia Montour Broadcasting Co., Inc.*, 13 FCCRcd 13007, 13014-15 (1998); *Hopkins Hall Broadcasting, Inc.*, 10 FCCRcd at 9766.

In this instance, the relevant geographic area should be where circulation of the *Chicago Tribune* overlaps with WGN-TV's Grade A contour.²⁶ This area is substantially smaller than the entire DMA, and use of the entire DMA grossly exaggerates the number of diverse voices available to the Chicago market. WGN's Grade A Contour includes all of Cook and DuPage counties, portions of Lake (IL), Kane, Will, Lake (IN) and Porter counties, and extremely small portions of McHenry and Kendall counties. Encompassing WGN's coverage area is the *Chicago Tribune's* circulation area, which is Cook, DuPage, Lake, Kane, McHenry, Kendall and Will counties in Illinois and Lake and Porter counties in Indiana. Therefore, the relevant geographic area does not include any part of the counties of DeKalb, Grundy, Kanakee, La Salle, Jasper, La Porte, Newton.

Even looking at the entire DMA, Tribune improperly inflates the number of television stations and independent voices that contribute to viewpoint diversity in Chicago. Tribune identifies twelve broadcast television stations in Chicago that are relevant to its diversity analysis, since it provides only a list of those stations with a one share or greater. *See Application for Transfer of WGN-TV, Transferees' Exhibit 18 ("Chicago Request for Waiver")* at 18. Of those, Universal and Fox Television Stations both own two stations. *Id.* Thus, there are ten licensees that control these twelve stations. More importantly, there are nine independent voices providing local news programming.²⁷ Additionally, two of the stations, WSNS, a Telemundo affiliate, and

²⁶With respect to WGN(AM), the relevant geographic area should be where circulation of the *Chicago Tribune* overlaps with WGN(AM)'s Grade A contour. However, Tribune fails to provide a diversity analysis for WGN(AM) and therefore fails to meet its burden for a waiver with respect to WGN(AM).

²⁷The nine voices are CW, NBC, Telemundo, ABC, CBS, PBS, Fox, Window to the World and Univision. *See BROADCASTING & CABLE YEARBOOK 2007* at B129; WMAQ (NBC) website, <http://www.nbc5.com/index.html>; WFLD (FOX) website,

WGBO, a Univision network affiliate, broadcast in Spanish and therefore do not provide viewpoint diversity for non-bilingual residents. *See Amendment of the Television Table of Allotments*, 20 FCCRcd 16854 (2005) (recognizing the distinction between English-language and Spanish-language viewing markets).

Tribune further argues that the availability of cable TV stations contributes to the diversity of viewpoint and programming. *Chicago Request for Waiver* at 21-22. Although Tribune does provide examples of channels available on MVPDs, it fails to list a single channel that independently contributes to viewpoint diversity by providing local news. While CLTV does provide local news on cable, it is controlled by Tribune and partners with the *Chicago Tribune*, WGN-TV, and WGN(AM). *See* <http://cltv.trb.com>. Thus, it can hardly be said that CLTV contributes to viewpoint diversity. Also among its examples of the availability of cable channels, Tribune includes Fox News Channel, which does focus on news. However, it is commonly owned with Fox's Chicago station WFLD, and in any event it provides national rather than local news. Moreover, even if the Commission were to consider non-news MVPD channels, the number of channels is not a true reflection of diversity since many cable channels are owned by the major media companies.²⁸

Tribune also claims that the availability of broadcast and satellite radio service contributes to a diverse market. *Chicago Request for Waiver* at 25. It states that the Chicago DMA contains 167 commercial and non-commercial AM and FM radio stations. However, of the 167 radio stations cited by Tribune as contributing to diversity within the Chicago market, 42 fall

<http://www.myfoxchicago.com/myfox>, WBBM (CBS) website <http://cbs2chicago.com>; and Univision website, <http://corporate.univision.com/corp/en/utg.jsp>.

The YEARBOOK lists four stations that provide news programming: WGN-TV (CW), WLS-TV (ABC), WSNS (Telemundo), and WTTW (PBS). The WMAQ (NBC), WFLD (FOX), and WBBM (CBS), and Univision websites reveal that they also provide local news programming. WCPX (ION), WPWR (MyNetworkTV), WCIU-TV (Independent), and WYCC (PBS) do not provide local news programming.

²⁸For example, The Walt Disney Company owns ABC and ESPN. General Electric owns NBC, and USA Network. Peter Ahlberg, Emily Biuso & Sarah Goldstein, *10th Anniversary: The National Entertainment State*, 283 *The Nation* 1, Jul. 3, 2006 at 23-26.

outside of the relevant geographic area.²⁹ Of the remaining stations, 8 are foreign language stations (7 Spanish, 1 Polish) and 6 share common ownership, that is, three owners control 6 stations.³⁰ BROADCASTING & CABLE YEARBOOK 2007 at D170-187. Moreover, only 16 of these stations have news formats, one of which is Spanish language. BROADCASTING & CABLE YEARBOOK 2007 at D-172.

The presence of 16 local news radio stations does not necessarily contribute significantly to the diversity of the Chicago market, especially since most viewers still depend on broadcast television stations and newspapers for local news programming. See, e.g., *Prometheus Radio Project v. FCC*, 373 F. 3d at 405-07; see also *2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Comments of Consumers Union, Consumer Federation of American, and Free Press, Mark Cooper (“Quadrennial Review Comments”), *Media Usage: Traditional Outlets Still Dominate Local News and Information* (“Media Usage Study”) at 126-128, MB Dkt. No. 06-121, Filed Oct. 23, 2006.³¹ Additionally, although 4 of the 16 stations report having news formats, the 4 stations also have a sports format, so it is likely the news provided on those station is related to sports. More importantly, oftentimes the news formats discuss only national, not local, issues. See *2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Comments of United Church of Christ, et al. (“UCC Quadrennial Review Comments”), MB Dkt. No. 06-121, filed Oct. 23, 2006. Finally, Tribune erroneously relies on the availability of over 130 channels on satellite radio since these channels do not

²⁹Stations were excluded if the community of license of the station did not fall within any of the counties in the relevant geographic area.

³⁰WGCI(FM) and WGRB(AM) are both owned by Clear Channel. Both WJMK(FM) and WSCR(AM) are owned by CBS Radio. WLS(AM) and WZZN(FM) are both owned by Citadel.

³¹Only 8 percent of respondents indicated that radio is their most important source of local news, and only 6 percent indicated that radio is their most frequently used source of news. In comparison, 34 percent of respondents indicated that daily newspapers were their most important source of local news and 30 percent responded that local television was their most important source for local issues.

provide any local news programming.

Tribune also claims that the *Chicago Tribune* faces a competitive market. *Chicago Request for Waiver* at 22-24. Although Tribune admits the *Chicago Tribune* is the largest circulation daily in Chicago, it attempts to diminish the fact that the *Chicago Tribune* is by far the dominant daily newspaper in Chicago. *Id.* It argues competition exists because *Chicago Sun-Times* and *Arlington Heights/Daily Herald* attract significant readers. However, while the *Chicago Tribune* has a daily circulation of 579,079, the combined circulation of the *Chicago Sun-Times* (382,796) and *Arlington Heights/Daily Herald* (151,112) at 533,908 still is less than that of the *Chicago Tribune*. *Id.* at 23.³²

Tribune further argues that there are 23 other available daily newspapers published or distributed in the Chicago DMA. *Id.* However, only 12 of these newspapers are published in the *Chicago Tribune's* circulation area.³³ Of these 12 newspapers, 9 newspapers have common ownership. Thus there are only 5 independent daily newspaper voices in the Chicago market.³⁴

Finally, Tribune attempts to inflate the competitive numbers by including weekly publications in its analysis. However, inclusion of weekly newspapers is not relevant. The FCC specifically chose to exclude weekly newspapers from its cross-ownership regulations because it deemed them “a relatively unimportant fraction of the media mix in a particular area.” *Second Report & Order*, 50 FCC2d at 1072.

³²The 2006 *Editor & Publisher International Yearbook* (86th ed. 2006) (“*Editor & Publisher Yearbook*”) reports the *Chicago Tribune's* daily circulation at 586,122. I-100.

³³The Audit Bureau of Circulations reports that the *Chicago Tribune's* circulation area includes Cook, DuPage, Kane, Kendall, Lake, McHenry, and Will counties in Illinois and Lake and Porter counties in Indiana. Thus, this excludes the following newspapers that Tribune listed as applicable: *Chesterton Tribune* (Porter County), *The Daily Chronicle* (DeKalb County), *The Daily Journal/Sunday Journal* (Kankakee County), *The Daily Times* (La Salle County), *Hillsdale Daily News* (Hillsdale County, Michigan), *La Porte Herald Argus* (La Porte County), *Morris Daily Herald* (Grundy County), *The News Dispatch* (La Porte County), *News Tribune* (La Salle County), *The Rensselaer Republican* (Jasper County), *The Times* (La Salle County). See *Editor & Publisher Yearbook* at I-96-I113.

³⁴The Sun-Times Media Group owns *The Beacon News*, *Chicago Sun-Times/Sunday Sun-Times*, *The Courier News*, *Daily Southtown*, *The Herald News*, *The News-Sun*, and *Post-Tribune*. See *Chicago Waiver Request* at Appendix 2. Shaw Newspapers owns *Kane County Chronicle* and *The Northwest Herald*. *Id.*

Although circulation of weeklies has doubled since then, rising from 35.9 million to 81.6 million, the total number of weeklies has increased only moderately. *Cross-Ownership of Broadcasting*, 16 FCCRcd 17283, (2001) (citing Newspaper Association of America, Petition for Rule-making, at 24 (filed Apr. 28, 1997)). There was also a significant decrease from 2004 to 2006 in the reliance and importance of weeklies, according to recent studies. Quadrennial Review Comments, Media Usage Study at 126-129 (displaying data from a 2004 survey by the Consumer Federation of America/Consumers Union and a 2006 survey by Consumer Group).

Moreover, recent research indicates that daily newspapers and local television remain “by far the most important and frequent sources of news” with respondents mentioning each of those three times as frequently as local weeklies. *Id.* at 117 (recording “most important” and “most frequent” sources of news based on survey responses). Besides being less important and less frequently used than dailies, weekly newspapers tend to cover very localized issues and as a result are not widely circulated, with most “only available in a restricted area.” Quadrennial Review Comments, *Building a Reasonable Measure of Market Structure* (“Market Structure Study”) at 410-411, (referring to the narrow issue-coverage as “micro-detail”). Therefore, the existence of weekly newspapers in the area should do little to relieve viewpoint diversity concerns presented by the consolidation of a local broadcast station with a major daily local newspaper.

Finally, Tribune exaggerates the impact of the Internet in creating diversity in the Chicago media marketplace. Chicago Waiver Request at 27-30. Most news gathering reported on the Internet is still conducted by the “old media.” Project for Excellence in Journalism, *The State of the News Media 2006*, available at http://www.stateofthenewsmedia.org/2006/narrative_online_contentanalysis.asp?cat=2&media=4. For example, Tribune asserts that Yahoo.com contributes to the viewpoint diversity of the Chicago Market. Chicago Waiver Request at 27-30. However, a recent visit to the Chicago local portal on Yahoo.com found that much of the content was provided by the *Chicago Tribune*. Of the six local stories displayed, four were links to news

stories provided by *The Chicago Tribune* website and the remaining two were links to CBS News Channel 2.³⁵

This finding is consistent with the observation by the *Prometheus* court that local websites do not contribute much to media diversity because they “merely republish the information already being reported by the newspaper or broadcast station counterpart” and “do not present an ‘independent’ viewpoint and thus should not be considered as contributing diversity to local markets.” *Prometheus Radio*, 373 F.3d at 405-06. Thus, Internet services are primarily used as a supplement to the traditional media on which Americans rely most frequently – newspapers and broadcast TV.

In sum, Tribune’s common ownership of two television stations and the dominant daily newspaper limits the number of diverse sources of local news available to residents of the Chicago market. This diminution of diversity is cause for concern, where contrary to Tribune’s exaggerated claims, the number of independent sources of local news is relatively limited.

b. The Benefits to Diversity of Common Ownership Alleged by Tribune Are Insufficient to Outweigh the Reduction in Viewpoint Diversity.

Since allowing Tribune to own both WGN and the *Chicago Tribune* promotes neither diversity nor competition, the only argument left to support a waiver is that the benefits of common ownership outweigh the reduction in diversity and competition. To overcome the NBCO rule’s presumption that the best way to promote diversity is by diversifying ownership, Tribune was required to “plead with particularity the facts and circumstances which would support deviation” from the rule. *Angelo State University*, 19 FCCRcd 24538, 24539 (2004) (citing *Columbia Communications Corp.*, 832 F.2d at 192). Tribune makes a feeble attempt to argue that its com-

³⁵Yahoo.com, Chicago local portal, as viewed June 7, 2007 at 10:30 a.m. When viewed June 7, 2007 at 11:30 a.m. and June 6, 2007 at 4:17 p.m., the six stories consisted of two from the *Chicago Tribune*, two from CBS News Channel 2 and two from WLS Channel 7, an ABC station. Furthermore, selecting the “More Chicago Area News” link yielded a total of twenty-five sources and stories directly linked to those sources. Seventeen of these sources are newspapers listed in Appendix 2 of *Chicago Request for Waiver*, three are major television networks (ABC, NBC, CBS) and the remaining five are other Chicago-area newspapers. *Id.*

mon ownership of WGN and the *Chicago Tribune* has allowed it to produce in-depth news specials and provide better news coverage. Chicago Waiver Request at 31-34. For example, Tribune states that WGN has expanded its regularly scheduled local news program from 27 to 31.5 hours per week, WGN time shifts newscasts on CLTV, WGN-TV and WGN(AM) rely on *Chicago Tribune's* resources, and all three collaborate on stories. *Id.* Tribune also argues that cross-ownership has allowed CLTV, WGN-TV and WGN(AM) to work together on political debates and promote each other's public service commitments.

... An increase of 4.5 hours per week in local news falls short of the extraordinary benefits that might justify waiving the rules. Moreover, the remaining examples illustrate how common ownership actually decreases the diversity of stories available to the public. By time-shifting newscasts, viewers are simply receiving news from one voice, rather than an independent voice. Moreover, to the extent that there may have been benefits in relying on and collaborating with *Chicago Tribune's* news staff, it is unlikely to continue considering Tribune's downsizing of the Chicago Tribune. Michael Oneale, *Tribune Announces 250 Job Cuts in Chicago and Los Angeles*, CHICAGO TRIBUNE, April 23, 2007, available at <http://www.chicagotribune.com/business/chi-070423trb,0,4816010.story>. Further, by sharing resources and collaborating, instead of reporters deciding what stories to cover and gathering news on their own, they end up reporting the same stories already being covered by the paper or the broadcaster. Moreover, to establish this type of relationship there is no pre-requisite that the two entities be commonly owned. Finally, the various "public service projects," such as promoting events and participating in food drives that many other businesses engage in are simply irrelevant to a waiver analysis. Chicago Waiver Request at 33.

2. Miami

a. **Tribune Misrepresents the Impact on Diversity by Incorrectly Relying on the Entire Miami-Ft. Lauderdale DMA and West Palm Beach-Ft. Pierce DMA Instead of the Newspaper and Broadcast Areas of Overlap.**

Tribune's diversity analysis utilizes the entire Miami-Ft. Lauderdale ("Miami DMA") and

West Palm Beach-Ft. Pierce (“Palm Beach DMA”) DMAs. Under FCC precedent, this is inappropriate because “many county newspapers and many broadcast stations licensed to distant communities...do not contribute to coverage of issues of local concern...issues that are at the heart of the Commission’s concern with diversity.” *Hopkins Hall Broadcasting, Inc.*, 10 FCCRcd at 9766. The relevant geographic market for diversity analysis is the common area served by the newspaper and the Grade A contour of the television station, rather than the entire broadcast DMA. *See, e.g., Columbia Montour Broadcasting*, 13 FCC Rcd at 13014-15; *Hopkins Hall Broadcasting, Inc.*, 10 FCCRcd at 9766.

In this instance, the relevant geographic area should be where circulation of the *Sun Sentinel* overlaps with WSFL’s Grade A contour, which is substantially smaller than the Miami and Palm Beach DMAs. According to the Audit Bureau of Circulations, the *Sun Sentinel*’s circulation area only includes a small portion of Palm Beach County and Broward County.³⁶ *See* <http://abcas3.accessabc.com/readerprofile/released.asp>. Meanwhile, WSFL’s Grade A Contour includes only portions Broward County, Miami-Dade and Palm Beach counties. Thus, the relevant geographic area of overlap for the diversity analysis is portions of Broward and Palm Beach County and does not include any part of the counties of: Indian River, Okeechobee, St. Lucie, Martin, Miami-Dade, and Monroe.

In considering Tribune’s analysis, which appears to only rely on the Miami DMA in analyzing the diversity of voices among the television stations, it becomes apparent Tribune exaggerates the number of television stations and independent voices that actually contribute to viewpoint diversity. Although Tribune states there are 29 broadcast television station in the

³⁶Specifically, the *Sun Sentinels* circulation area includes the following zip codes: Palm Beach County, 33426, 33428, 33431, 33432, 33433, 33434, 33435, 33436, 33437, 33444, 33445, 33446, 33462, 33463, 33467, 33483, 33484, 33486, 33487, 33496, 33498. Broward County, 33004, 33009, 33019, 33020, 33021, 33023, 33024, 33025, 33026, 33027, 33028, 33029, 33060, 33062, 33063, 33064, 33065, 33066, 33067, 33068, 33069, 33071, 33073, 33076, 33301, 33304, 33305, 33306, 33308, 33309, 33311, 33312, 33313, 33314, 33315, 33316, 33317, 33319, 33321, 33322, 33323, 33324, 33325, 33326, 33327, 33328, 33330, 33331, 33332, 33334, 33351, 33441, 33442. *See* <http://abcas3.accessabc.com/readerprofile/released.asp>.

Miami and Palm Beach DMAs that contribute to diversity, Tribune appears to find only 13 of the Miami DMA stations relevant to its diversity analysis since it provides only a list of those stations with a 1 share or greater in the Miami DMA. *See Application for Transfer of WSFL-TV, Transferees' Exhibit 18 ("Miami-Ft. Lauderdale Request for Waiver")* at 19-20. Tribune also lists a 14th station in its analysis of local news. Waiver Request at 21. Of the 14 stations, CBS, Univision, and NBC Universal both own 2 stations. *Id.* Thus, there are 10 licensees that control the 14 stations. More importantly, of the 14 stations, only 9 are providing local news programming.³⁷ However, of the 9 stations, 4 of the stations, WSCV, a Telemundo affiliate, WLTV, a Univision affiliate, WAMI, a Telefutera affiliate, and WJAN, an independent station, broadcast in Spanish and therefore do not provide viewpoint diversity for non-bilingual residents. *See supra, Amendment of the Television Table of Allotments.*

Tribune further argues that the availability of cable TV stations contributes to the diversity of viewpoint and programming. *Miami-Ft. Lauderdale Request for Waiver* at 22-23. However, Tribune fails to list a single channel that contributes to viewpoint diversity by providing local news. Tribune does provide examples of channels available on MVPDs, including Fox News Channel and MSNBC. However, MSNBC is commonly owned with NBC's Miami station WTVJ, and in any event, though MSNBC, and Fox News Channel, do focus on news, they provide national rather than local news. Moreover, even if the Commission were to consider non-news cable channels, the number of cable channels is not a true reflection of diversity since many cable channels are owned by the major media companies.³⁸

³⁷The 9 voices are FOX, ABC, NBC, CBS, WJAN, MyNetworkTV, Telemundo, Telefutera, and CW. *See BROADCASTING & CABLE YEARBOOK 2007* at B129; websites of stations WSVN (FOX), <http://www.wsvn.com>, WPLG (ABC), <http://www.local10.com/index.html>, WTVJ (NBC), <http://www.nbc6.net/index.html>, WBFS (MyNetworkTV) <http://cbs4.com/wbfs>, and WJAN (Independent) <http://www.americateve.com>.

The YEARBOOK lists 4 stations that provides news programming: WSFL-TV (CW), WFOR (CBS), WSCV (Telemundo), and WAMI (Telefutera). The WSVN, WPLG, WTVJ, WBFS, and WJAN websites reveal that they also provides local news programming. WPXM (ION), WLRN (PBS), WPBT (PBS), and WHFT (TBN) do not provide local news programming.³⁸For example, The Walt Disney Company owns ABC and ESPN. General Electric owns NBC, and USA Network. *See supra, 10th Anniversary: The National Entertainment State.*

Tribune also claims that the availability of broadcast and satellite radio service contributes to a diverse market. *Miami-Ft. Lauderdale Request for Waiver* at 25. It states that the Miami DMA contains 78 commercial and non-commercial AM and FM radio stations, while the Palm Beach DMA contains 53 additional radio stations, 31 of which are located in the FCC-defined radio market. However, Tribune relies on markets outside of the relevant geographic market. In actuality, the relevant geographic area only incorporates 20 radio stations,³⁹ only two of which have formats that focus on news.⁴⁰ BROADCASTING & CABLE YEARBOOK 2007 at D-120-143.

The presence of 2 radio stations with a news format does not necessarily contribute significantly to the diversity of the market, especially since most viewers still depend on broadcast television stations and newspapers for local news programming. *See, e.g., Prometheus Radio Project*, 373 F.3d at 405-07; *see also* Quadrennial Review Comments, Media Usage study at 126-128.⁴¹ Moreover, often times the news formats discuss only national, not local, issues. *See* UCC Quadrennial Review Comments at 80-82. Finally, Tribune's erroneously relies on the availability of over 130 channels on satellite radio since these channels do not provide any local news programming.

Tribune also claims that the *Sun Sentinel* faces a competitive market. *Miami-Ft. Lauderdale Request for Waiver* at 23-24. It argues competition exists because there are 5 other available

³⁹As discussed above, the relevant geographical area was determined by examining the Grade A Contour of WSFL and *Sun Sentinel's* circulation area. WSFL's Grade A Contour encompasses *Sun Sentinel's* entire circulation area, thus, the community of license for each radio station was compared against the list of zip codes within *Sun Sentinel's* circulation area (provided by Audit Bureau of Circulations). All radio stations whose community of license zip code was not within the *Sun Sentinel* circulation zip code list were excluded.

⁴⁰In addition, two of the 20 stations are broadcast in Spanish. BROADCASTING & CABLE YEARBOOK 2007 at D-125-126, 130.

⁴¹Only 8 percent of respondents indicated that radio is their most important source of local news, and only six percent indicated that radio is their most frequently used source of news. In comparison, 34 percent of respondents indicated that daily newspapers were their most important source of local news and 30 percent responded that local television was their most important source for local issues.

daily newspapers published and distributed in the market. *Id.* at 23-24; Appendix 6. However, only 3 of these newspapers are actually published in the *Sun Sentinel's* circulation area.⁴² Of these 3 newspapers, 2 newspapers have common ownership, thus there are only 2 other independent daily newspaper voices in the market.⁴³

Finally, Tribune attempts to inflate the competitive numbers by including weekly publications in its analysis. However, inclusion of weekly newspapers is not relevant. The FCC specifically chose to exclude weekly newspapers from its cross-ownership regulations because it deemed them “a relatively unimportant fraction of the media mix in a particular area.” *Second Report and Order*, 50 FCC2d at 1072.

Although circulation of weeklies has doubled since then, rising from 35.9 million to 81.6 million, the total number of weeklies has increased only moderately. *See supra*, *Cross-Ownership of Broadcasting*. There was also a significant decrease from 2004 to 2006 in the reliance and importance of weeklies, according to recent studies. Quadrennial Review Comments, Media Usage Study 126-129 (displaying data from a 2004 survey by the Consumer Federation of America/Consumers Union and a 2006 survey by Consumer Group).

Moreover, recent research indicates that daily newspapers and local television remain “by far the most important and frequent sources of news” with respondents mentioning each of those three times as frequently as local weeklies. *Id.* at 117 (recording “most important” and “most frequent” sources of news based on survey responses). Besides being less important and less frequently used than dailies, weekly newspapers tend to cover very localized issues and as a result are not widely circulated, with most “only available in a restricted area.” Quadrennial

⁴²The Audit Bureau of Circulations reports that the *Sun Sentinel's* circulation area includes small portions of Palm Beach and Broward counties. Thus, this excludes the following newspapers that Tribune listed as applicable: *Key West Citizen* (Monroe County), *Okeechobee News* (Okeechobee County), *Palm Beach Post* (West Palm Beach, Palm Beach County), and *Treasure Coast News/Press-Tribune* (Indian River County). *See Editor & Publisher Yearbook* at I-68-I-80.

⁴³McClatchy Newspapers Inc. owns *The Miami Herald* and *El Nuevo Herald*. *See* Waiver Request at Appendix 6.

Review Comments, Market Structure Study at 410-11 (referring to the narrow issue-coverage as “micro-detail”). Therefore, the existence of weekly newspapers in the area should do little to relieve viewpoint diversity concerns presented by the consolidation of a local broadcast station with a major daily local newspaper.

Finally, Tribune exaggerates the impact of the Internet in creating diversity in the Ft. Lauderdale-Miami media marketplace. Miami-Ft. Lauderdale Waiver Request at 27-30. Most news gathering reported on the Internet is still conducted by the “old media.” *See supra, The State of the News Media 2006*. For example, Tribune asserts that Yahoo.com contributes to the viewpoint diversity of the Miami-Ft. Lauderdale area. Tribune Waiver Request at 27-30. However, a recent visit to the local portal for Ft. Lauderdale, where *Sun-Sentinel* headquarters is located, found that of the six local stories, two were links to news stories provided by the *Miami Herald*, two were links to news provided by the *Sun-Sentinel*, and two were links to news provided by WFOR News Channel 4.⁴⁴

This finding is consistent with the observation by the *Prometheus* court that local websites do not contribute much to media diversity because they “merely republish the information already being reported by the newspaper or broadcast station counterpart” and “do not present an ‘independent’ viewpoint and thus should not be considered as contributing diversity to local markets.” *Prometheus Radio*, 373 F.3d at 405-06. Thus, Internet services are primarily used as a supplement to the traditional media on which Americans rely most frequently – newspapers and broadcast TV.

⁴⁴Yahoo.com, Ft. Lauderdale local portal, as viewed June 7, 2007, at 10:40 a.m. Furthermore, the Yahoo.com Ft. Lauderdale local portal is identical to the Miami portal, providing the same local content for users in Ft. Lauderdale as it does for users in Miami. The Yahoo.com Ft. Lauderdale local portal is identical to the Key West portal, again providing the same local content for users in Ft. Lauderdale as it does for users in Key West. Yahoo.com, Ft. Lauderdale local portal, as viewed June 7, 2007, at 10:40 a.m.; Yahoo.com, Miami local portal, as viewed on June 7, 2007, at 10:45 a.m.; Yahoo.com Key West local portal, as viewed on June 7, 2007, at 10:47 a.m. All three local portals were viewed again at June 7, 2007, at 11:45 a.m. again showing two links to the *Miami Herald*, two links to the *Sun-Sentinel*, and two links to WFOR News Channel 4.

b. The Benefits to Diversity of Common Ownership Alleged by Tribune Are Insufficient to Outweigh the Reduction in Viewpoint Diversity.

Since allowing Tribune to own both WSFL and the *Sun Sentinel* promotes neither diversity nor competition, the only argument left to support a waiver is that the benefits of common ownership outweigh the reduction in diversity and competition. To overcome the NBCO rule's presumption that the best way to promote diversity is by diversifying ownership, Tribune was required to "plead with particularity the facts and circumstances which would support deviation" from the rule. *Angelo State University*, 19 FCCRcd at 24539 (citing *Columbia Communications*, 832 F.2d at 192. Tribune makes a feeble attempt to argue that its common ownership of WSFL and the *Sun Sentinel* has allowed it to produce in-depth news specials and provide better news coverage. Miami-Ft. Lauderdale Waiver Request at 30-33. For example, Tribune states that its ownership of WSFL helped to introduce a new newscast on WSFL, which it admits is produced by NBC-owned WTVJ and *Sun Sentinel's* resources have helped to expand WSFL's local and regional news coverage. *Id.* at 30-31.

The introduction of the newscast on WSFL cannot be considered a public interest because viewers are simply receiving news from one voice (in this case NBC), rather than an independent voice. Although Tribune states that it "has ensured that the newscast reflects joint efforts between WSFL and the *Sun Sentinel*," it does so by using coverage from CNN and Tribune's Washington Bureau. While it further states that it has drawn on the resources of the *Sun-Sentinel*, there may be reason to believe that could no longer be the case as Tribune has begun downsizing at its other newspapers. *See supra*, Michael Oneale, *Tribune Announces 250 Job Cuts in Chicago and Los Angeles*, *Newsday Scribes Blast Tribune Cuts*, N.Y. POST, Dec. 12, 2006, available at http://www.nypost.com/seven/12122006/business/newsday_scribes_blast_tribune_cuts_business_keith_j_kelly.htm; David Reich-Hale, *Tribune-owned Newsday Prepares More Job Cuts*, LONG ISLAND BUSINESS NEWS, Nov. 25, 2005, available at http://findarticles.com/p/articles/mi_qn4189/is_20051118/ai_n15847541.

Finally, Tribune asserts that common ownership of the *Sun Sentinel* and WSFL has allowed it to produce in-depth news specials and provide better news coverage. Miami-Ft. Lauderdale Waiver Request at 31-33. However, the news specials and news coverage that Tribune highlights simply involve the sharing of personnel between *Sun Sentinel* and WSFL, a practice that tends to decrease the diversity of stories. Moreover, to establish this type of relationship there is no pre-requisite that the two entities be commonly owned. In addition, Tribune refers to promotional efforts, such as raising awareness and money for the homeless and battered women. *Id.* at 33. These are the types of promotional and charitable activities that many businesses engage in, and while worthwhile, they do not result in diverse programming and cannot possibly justify waiver of the cross-ownership rule.

In sum, Tribune's common ownership of two television stations and the dominant daily newspaper limits the number of diverse sources of local news available to residents of the Ft. Lauderdale area. This diminution of diversity is cause for concern, where contrary to Tribune's exaggerated claims, the number of independent sources of local news is relatively limited.

3. Hartford

Tribune asserts that the media market in Hartford is diverse enough to support Tribune's common ownership of WTXX, WTIC-TV, and the *Hartford Courant* without experiencing any adverse effects on diversity. *See Applications for Transfer of WTIC-TV and WTXX, Transferees' Exhibit 18* ("Hartford Waiver Request") at 15. However, this argument ignores the fact that the Commission has previously determined that the diversity of the Hartford market is not capable of supporting extended common ownership. *Counterpoint Communications*, 16 FCC Rcd at 15047-48. The Commission granted Tribune an initial six-month temporary waiver for WTXX and the *Hartford Courant* instead of the two-year waiver Tribune had requested, because Hartford was a "substantially less diverse market" than those markets where the Commission had previously

granted long temporary waivers.⁴⁵ *Id.* Tribune has once again failed to demonstrate that a waiver is justified.

a. Tribune Misrepresents the Impact on Diversity by Incorrectly Relying on the Entire Hartford and New Haven DMAs Instead of the Newspaper and Broadcast Areas of Overlap.

Tribune's diversity analysis utilizes the entire Hartford and New Haven DMAs. Under FCC precedent, this is inappropriate because "many county newspapers and many broadcast stations licensed to distant communities...do not contribute to coverage of issues of local concern...issues that are at the heart of the Commission's concern with diversity." *Hopkins Hall Broadcasting, Inc.*, 10 FCC Rcd at 9766. The appropriate relevant geographic market for a diversity analysis is the common area served by the newspaper and the Grade A contour of the television station, rather than the entire broadcast DMA. *See, e.g., Columbia Montour Broadcasting*, 13 FCC Rcd at 13014-15; *Hopkins Hall Broadcasting, Inc.*, 10 FCC Rcd at 9766.

In this instance, Tribune has incorrectly defined the relevant geographic area as the entire Hartford and New Haven DMAs, which encompasses the entire state of Connecticut except for Fairfield County. *See BROADCASTING & CABLE YEARBOOK 2007* at B-164, B-186 (2006). Fairfield County, CT is included in the New York DMA. Instead, Tribune should have defined two different geographic areas – those areas where the *Hartford Courant* coverage overlaps, respectively, with WTXX and WTIC-TV. The relevant geographic areas are substantially smaller than the entire DMA, and therefore Tribune's analysis of the media diversity in Hartford is significantly overstated.

Even looking at the entire DMA, however, Tribune's argument that the "abundance of television stations in the DMA alone supports a waiver" overstates the number of television stations and independent voices that contribute to viewpoint diversity in Hartford. *Hartford*

⁴⁵The Commission had previously granted a two-year waiver to Fox Television to own both a newspaper and a TV station in New York, but the Commission would not grant a two-year waiver to Tribune because Hartford was not diverse enough to support common ownership for that long of a period.

Waiver Request at 17. Tribune lists eleven stations in the Hartford and New Haven DMA. *Id.* However, three of these stations are licensed to Connecticut Public Broadcasting. Of the eight commercial stations, Tribune and LIN Television Corporation each own two TV stations. Thus, there are only seven licensees that control these eleven stations.⁴⁶ *See id.* More importantly, there are only six independent voices providing local news programming.⁴⁷ Additionally, one of the Hartford TV stations, WUVN, a Univision network affiliate, broadcasts in Spanish and therefore does not provide viewpoint diversity for non-bilingual residents. *See supra, Amendment of the Television Table of Allotments* (recognizing the distinction between English-language and Spanish-language viewing markets).

Tribune also overstates the viewpoint diversity of the Hartford media market by arguing that television signals broadcast from cities and states outside the DMA, such as New York and Boston, contribute to the viewpoint diversity of the market. *Hartford Waiver Request* at 19. These signals, however, are irrelevant to diversity analysis because they do not provide coverage of local issues. Indeed, Tribune has not shown that these signals contribute to the viewpoint diversity of local Hartford issues.

Tribune also argues that the cable TV stations available in Hartford contribute to the diversity of local viewpoints available to area viewers. *Id.* at 21. However, Tribune does not list a single channel that contributes to viewpoint diversity by providing local news. *See id.* at 22-23 n. 65. While Tribune asserts that there are at least five cable channels providing local program-

⁴⁶The Hartford TV station owners are Meredith, LIN Television Corporation, Entravision Communications, Tribune, Ion, NBC Universal, and Connecticut Public Broadcasting.

⁴⁷The six voices are: MyNetwork TV, CBS, Fox, ABC, NBC, and Connecticut Public Broadcasting. The YEARBOOK lists 4 stations that provide news programming, WCTX (MyNetwork TV), WFSB (CBS), WTIC-TV (Fox), and WTNH-TV (ABC). The WVIT (NBC) website reveals that it also provides local news programming. *See BROADCASTING & CABLE YEARBOOK 2007* at B-130 (2006); WVIT (NBC) Website, <http://www.nbc30.com/index.html>; Connecticut Public Broadcasting Website, <http://www.cpbi.org/>.

WTXX (CW) is not in this number, as it does not provide news programming independent of what it rebroadcasts from WTIC-TV (Fox). Finally, the three Connecticut Public Broadcasting stations all air the same programming, so they are included as one voice.

ming, three are sports networks,⁴⁸ and sports programming, whether local or national, does not contribute to the relevant political and associational viewpoint diversity considered by the Commission. The remaining two cable channels Tribune asserts contribute to local viewpoint diversity are CNN and the Fox News Channel, both of which provide national, rather than local Hartford news.

Tribune also argues that there are 76 radio stations in the Hartford and New Haven DMA that contribute to viewpoint diversity. Hartford Waiver Request at 25. Tribune also asserts that there are 34 radio stations in the Hartford radio market, as defined by the FCC, however, the BROADCASTING & CABLE YEARBOOK lists only 15 stations in the Hartford radio market. BROADCASTING & CABLE YEARBOOK 2007 at D-774. Of these 15 stations, only two have formats which focus on news. *See id.*, Hartford Waiver Request at 26.

The presence of two local news radio stations does not contribute significantly to the diversity of the Hartford market, as most viewers still depend on broadcast stations and newspapers for local news programming. *See, e.g., Prometheus Radio*, 373 F.3d at 405-07; *see also* Quadrennial Review Comments of Consumers Union, Consumer Federation of America, and Free Press, Mark Cooper, Media Usage Study at 126-128.⁴⁹ Additionally, many news stations that do have a news format discuss only national, and not local, issues. UCC Quadrennial Review Comments at 80-82.

Tribune also attempts to diminish the fact that the *Hartford Courant* is the dominant daily newspaper in Hartford. Tribune argues that there are twelve daily newspapers published and distributed in the Hartford DMA. Hartford Waiver Request at 23. However, only five of these

⁴⁸Tribune asserts that the New England Sports Network, the Yankee Entertainment and Sports Network, and ESPN contribute to local viewpoint diversity.

⁴⁹ Only eight percent of respondents indicated that radio is their most important source of local news, and only six percent indicated that radio is their most frequently used source of local news. In comparison, 34 percent of respondents indicated that daily newspapers were their most important source of local news, and 30 percent responded that local TV was their most important source for local issues.

papers are published in the *Hartford Courant*'s circulation area.⁵⁰ Additionally, three of these five newspapers are owned by the same company, which results in only three voices in the Hartford newspaper market.⁵¹ The *Hartford Courant* is by far the dominant newspaper out of the five papers in the central Connecticut area with a daily circulation of 184,254. The closest competitor is the *Manchester Journal-Inquirer*, which has a daily circulation of 40,216 – which is less than a quarter of the *Hartford Courant*'s circulation. *Id.* at 24.

Finally, Tribune exaggerates the impact of the Internet in creating diversity in the Hartford media marketplace. Hartford Waiver Request at 27-32. Most news gathering reported on the Internet is still conducted by the “old media.” *See supra, The State of the News Media 2006.* For example, Tribune asserts that Yahoo.com contributes to the viewpoint diversity of the Hartford market. Hartford Waiver Request at 29-30. However, a recent visit to the Hartford local portal on Yahoo.com found that of the six local stories, four were links to news stories provided by the *Hartford Courant* on Courant.com, and the remaining two were links to WTNH News Channel 8.⁵² This finding is consistent with the observation by the *Prometheus* court that local websites do not contribute much to media diversity because they “merely republish the information already being reported by the newspaper or broadcast station counterpart” and “do not present an ‘independent’ viewpoint and thus should not be considered as contributing diversity to local markets.” *Prometheus Radio*, 373 F.3d at 405-06. Thus, Internet services are primarily used as a supplement to the traditional media on which Americans rely most frequently – newspapers and broadcast TV.

⁵⁰The Hartford Courant's circulation area, as defined by the Audit Bureau of Circulations, is Hartford and Tolland Counties, plus Middlesex County minus the towns of Clinton, Killingworth, and Westbrook. This excludes the following newspapers that Tribune listed as applicable: *Republican-American*, *The Chronicle*, *The Day*, *Norwich Bulletin*, *New Haven Register*, *The Register Citizen*, and *Record-Journal*. *See* Audit Bureau of Circulations, *The Hartford Courant Reader Profile Study for the Period of August 2005-July 2006* (July 2006 Report), available at <http://abcas3.accessabc.com/readerprofile/released.asp#CT>.

⁵¹The Journal Register Company owns *The Bristol Press*, *The Herald*, and the *Middletown Press*. Tribune owns the *Hartford Courant*, and Journal Inquirer Inc owns the fifth paper, the *Journal-Inquirer*.

⁵²As viewed on Feb. 22, 2007 at 6:12pm.

In sum, Tribune's common ownership of two television stations and the dominant daily newspaper limits the number of diverse sources of local news available to residents of the Hartford area. While this diminution of diversity is cause for concern in any size market, it is particularly so in a market the size of Hartford, where contrary to Tribune's exaggerated claims, the number of independent sources of local news is relatively limited.

b. The Benefits to Diversity of Common Ownership Alleged by Tribune are Insufficient to Outweigh the Reduction in Viewpoint Diversity

To overcome the NBCO rule's presumption that the best way to promote diversity is by diversifying ownership, Tribune was required to "plead with particularity the facts and circumstances which would support deviation" from the rule. *Angelo State University*, 19 FCCRcd at 24539 (citing *Columbia Communications*, 832 F.2d at 192). However, the "public interest benefits" cited by Tribune are irrelevant to the purposes of the NBCO because they do not contribute to viewpoint diversity in the Hartford market.

Tribune argues that the common ownership of the two TV stations and dominant daily newspaper has enabled Tribune to provide enhanced news coverage of local issues. Hartford Waiver Request at 36. But the common ownership does not increase viewpoint diversity; it only results in WTXX, WTIC-TV, and the *Hartford Courant* providing homogenous news stories. The *Hartford Courant* provides the research and reporting on local news, which WTIC-TV uses to create a news program, and that same news program is rebroadcast on WTXX. Hartford Waiver Request at 34-36. The local news on each station is not necessarily better or more detailed; the same news is simply provided multiple times. Just because it is easier to produce news in this fashion does not mean it benefits the public.

Tribune claims that it will use the resources of the *Courant* to produce a better newscast. Hartford Waiver Request at 34-36. However, recent events, of which the Commission may take official notice, cast doubt on Tribune's continued ability to rely on the *Courant* in this way. Tribune has cut at least 70 positions— 26% of the current *Courant* staff—in its seven years at the

helm. See Associated Press, *Wealthy Family Interested in Tribune's Hartford Paper*, Chi. Business, Sept. 27, 2006, available at <http://www.chicagobusiness.com/cgi-bin/news.pl?id=22239> (70 positions cut between July 2003 and September 2006). See also Karen Hunter, *Rumors of Paper's Demise Greatly Exaggerated*, Hartford Courant, Oct. 1, 2006, at C3; Paul Fahri, *Under Siege*, Am. Journalism Rev., Feb./Mar. 2006, available at <http://www.ajr.org/Article.asp?id=4043>.

In addition to staff cuts, Tribune has eliminated or reduced valuable content, including by reducing its local sports coverage and by scrapping both the regionally-focused "Northeast" section and the teen-focused student journalism section "MetroBridge." See Karen Hunter, Reader Representative, *Is the Courant Chasing Readers Away?*, Dec. 5, 2006, http://blogs.courant.com/news_opinion_hunter/2006/12/is_the_courant_.html; Ken Kraveske, *Are We Failing Young Journalists?*, Poynter Online, June 2, 2006, http://www.poynter.org/content/content_view.asp?id=101924; Karen Hunter, Reader Representative, *Sports Cuts*, Jan. 19, 2007, http://blogs.courant.com/news_opinion_hunter/2007/01/sports_cuts_1.html. As one *Courant* reporter put it in December, 2005, "Readers know and some on the news staff will admit that the job cuts are getting close to the bone. State agencies and some towns aren't watched as closely as they once were." Karen Hunter, *Impact of Cuts Felt by Staff and Readers*, Hartford Courant, Dec. 18, 2005, at C3. She continued, "There is no way that a news staff that has been reduced by more than 120 people in 10 years can produce the same newspaper it once did." *Id.*

That reporter is not the only one to decry the *Courant's* declining coverage. Former (and yet to be replaced) *Courant* political columnist Michele Jacklin blamed a bout of corruption among Connecticut politicians in part on the *Courant* for not fulfilling its role as a government watchdog due to staff reductions and a changed emphasis. Michele Jacklin, *This Columnist's Last Stand*, Hartford Courant, Dec. 11, 2005, at C3. Where once the *Courant* was Connecticut's leading source of political news, it lost its standing because "there are fewer reporters in the Capitol bureau and many of the state and regional beats have been dismantled." *Id.*

Readers have complained vociferously about the dwindling content. One reader wrote, “Every improvement The *Courant* has made in the last few years results in disappointment. Sports coverage is lacking, national news is reprinted from other sources (a day later), local items are limited to one article a week for most towns, and the Business section barely exists at all...I hope the powers that be realizes they are slowly killing our *Courant*.” *Id.* Another reader wrote, “for several years, I have watched the content of your paper going down the tubes. While the *Courant* was reflecting the opinions and ideologies of your owners, Tribune, your publisher forgot just where the *Courant* is located and the majority opinions of the people it is purported to serve.” Karen Hunter, Reader Representative, *Job Reductions*, Dec. 19, 2005, http://blogs.courant.com/news_opinion_hunter/2005/12/job_reductions.html. The paper’s cuts make it unlikely that the *Courant* has the capacity to enhance the coverage provided by WTXX and WTIC-TV.

Further, Tribune could not reasonably argue that sharing resources with WTIC-TV and WTXX enhances the *Courant*’s coverage. By reducing the *Courant*’s reporting capacity and news coverage and by reproducing that coverage on two of Hartford’s television stations, Tribune has significantly limited not only the diversity of viewpoints, but the number and type of news stories reported in Hartford. Additionally, while Tribune’s special community services – public service announcements and teaching students about news production – may be worthwhile projects for the community, they do not enhance viewpoint diversity and cannot help Tribune demonstrate that common ownership serves the purposes of the NBCO rule.

In sum, Tribune’s continued double violation of the NBCO rule by commonly owning Hartford’s dominant daily newspaper and two broadcast TV stations necessarily reduces the number and diversity of viewpoints that would otherwise be available to the Hartford community. Because of Tribune’s common ownership, WTIC-TV, WTXX, and the *Hartford Courant* cooperate rather than compete in news gathering. Indeed, news available on these three media outlets has been homogenized by common ownership: WTIC-TV produces news programming

by using news stories and research conducted by the *Hartford Courant*, and this news programming is simply simulcast on WTXX. These media outlets do not provide the same degree of diversity in terms of what news stories they cover, the manner in which they report the stories, or the perspectives they provide as they would if separately owned. The Commission should deny the license renewal applications for WTXX and WTIC-TV, because denial would provide the Hartford community with one or two new and distinct viewpoints.

4. New York

a. **Tribune Misrepresents the Impact on Diversity by Incorrectly Relying on the Entire New York DMA Instead of the Newspaper and Broadcast Areas of Overlap.**

Tribune's diversity analysis utilizes the entire New York DMA. Under FCC precedent, this is inappropriate because "many county newspapers and many broadcast stations licensed to distant communities...do not contribute to coverage of issues of local concern...issues that are at the heart of the Commission's concern with diversity." *Hopkins Hall Broadcasting, Inc.*, 10 FCCRcd at 9766. The appropriate relevant geographic market for a diversity analysis is the common area served by the newspaper and the Grade A contour of the television station, rather than the entire broadcast DMA. *See, e.g., Columbia Montour Broadcasting*, 13 FCCRcd at 13014-15; *Hopkins Hall Broadcasting, Inc.*, 10 FCC Rcd at 9766.

In this instance, the relevant geographic area is substantially smaller than the entire New York DMA, which encompasses all of New York City, parts of southern New York State, most of northern New Jersey, Pike County, PA and Fairfield County, CT.⁵³ When diversity is analyzed using the appropriate geographic area, it is clear that Tribune's common ownership of both WPIX and *Newsday* results in a significant reduction in the diversity of viewpoints. *Newsday* is

⁵³The New York DMA is the largest in the country. *See Application for Transfer of WPIX(TV), Transferees' Exhibit 18 ("New York Waiver Request")* at 2. New Jersey counties Bergen, Essex, Hunterdon, Hudson, Middlesex, Monmouth, Morris, Ocean, Passaic, Richmond, Somerset, Sussex, Union, and Warren are included in the New York DMA. BROADCASTING & CABLE YEARBOOK 2007 at B-186, B-186 (2006). New York counties Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester are included in the New York DMA.

by far the dominant source of local news in Long Island. *Editor & Publisher Yearbook* at 254-I. According to both *Editor & Publisher Yearbook* and the Audit Bureau of Circulations, *Newsday* is the only daily newspaper covering Long Island.⁵⁴ See *Editor & Publisher Yearbook* at 254-I; Audit Bureau of Circulations, available at <http://abcas3.accessabc.com/readerprofile/released.asp#NY>.

The Audit Bureau estimates that *Newsday* is read by 50-60% of the adult population in Long Island. See *id.* Tribune attempts to downplay the dominant position of *Newsday* by noting that it “is only the fourth most widely circulated daily newspaper” in the NY DMA, and reaches fewer readers than the *New York Times*, *Daily News* and *New York Post*. New York Waiver Request at 20. It lists all of the daily newspapers published in the “Greater New York City Area (DMA)” in addition to those three New York City newspapers, Newark’s *Star-Ledger*, the *The Wall Street Journal*, a national newspaper, a Spanish-language newspaper, and many suburban newspapers with circulations between 35,000 and 200,000.⁵⁵ New York Waiver Request 21. However, Tribune fails to show that these publications cover local Long Island issues or are subscribed to by many residents of Long Island.

Tribune also overstates the amount of diversity by including cable TV and satellite channels available to the New York DMA. In its list of the “Top 40” cable and satellite channels, however, Tribune does not list a single channel that provides local news to Long Island or even the New York metropolitan area.⁵⁶ *New York Waiver Request* 21. Of these 40 channels, only

⁵⁴While several weekly newspapers are published in Long Island, the Commission stated in its *Second Report and Order* that weekly newspapers and foreign language papers are a “relatively unimportant fraction of the media mix,” and therefore should be disregarded in determining the diversity of views available to the Long Island community. *Second Report and Order*, 50 FCC 2d at 1075.

⁵⁵Tribune lists New York City as the community served by *Newsday*. However this assertion is contradicted by the Audit Bureau of Circulations, the *Newsday* website, and the *Newsday* paper itself. For example, the *Newsday* website places a link to “Long Island News” at the top of its list of links on its homepage and its homepage includes numerous references to local Long Island news stories, and the cover of *Newsday* contains the words “Long Island” immediately below the paper’s name, explicitly recognizing the paper’s ties to the Long Island community. .

⁵⁶Cablevision’s Channel 12 does provide local news programming, however, one channel does not result in a diverse market.

two – Fox News Channel and CNN – even focus on news, and both provide national news rather than local news. Even if the Commission were to consider non-news cable channels, the number of cable channels is not a true reflection of diversity since many cable channels are owned by the major media companies. For example, ABC/Disney has an ownership interest in seven of the top 40 cable channels and Viacom and Time-Warner each have an interest in six.

Tribune also states that there are 237 radio stations with 116 separate owners in the New York DMA that contribute to viewpoint diversity, and that in the New York radio market alone, there are 149 radio stations with 84 separate owners. *New York Waiver Request* at 23. However, once again, Tribune has used the wrong geographic market and counts many stations that probably cannot be received in Long Island, and even if they are available, are unlikely to cover local Long Island news. Long Island is part of a completely different radio market – the Nassau-Suffolk, NY radio market – rather than the New York market. *See BROADCASTING & CABLE YEAR-BOOK 2007* at D-776.

In contrast to the New York radio market, the Nassau-Suffolk market only has 25 radio stations. Moreover, none of these stations have a local news format. Future of Music Coalition, using Arbitron data purchased from BIA Financial Networks. Thus, regardless of the number of radio stations serving the Long Island community, they are not diverse sources of local news programming.

Finally, Tribune exaggerates the impact of the Internet in creating diversity in the Long Island media marketplace. *Tribune Waiver Request* at 25-30. Most news reported on the Internet is still provided by the “old media.” *See supra, The State of the News Media 2006, Content Analysis*. For example, Tribune asserts that Yahoo.com contributes to the viewpoint diversity of the New York market. *New York Waiver Request* at 26. However, a recent visit to the local portal for Melville, NY, where *Newsday* headquarters is located, found that of the six local stories, two were links to news stories provided by the *The New York Times* website, two linked to

Newsday.com, and the remaining two were links to WCBS News Channel 2.⁵⁷ This finding is consistent with the observation by the *Prometheus* court that local websites do not contribute much to media diversity because they “merely republish the information already being reported by the newspaper or broadcast station counterpart” and “do not present an ‘independent’ viewpoint and thus should not be considered as contributing diversity to local markets.” *Prometheus Radio Project*, 373 F.3d at 405-06. Thus, Internet services are primarily an aggregator of traditional media on which Americans already rely – newspapers and broadcast TV – and do not provide an independent viewpoint.

In sum, Tribune’s common ownership of WPIX and the dominant daily newspaper, *Newsday*, limits the number of diverse sources of local news available to residents of the Long Island area. While this diminution of diversity is cause for concern in any size market, it is particularly so in Long Island, where “local” news is already frequently displaced by New York City news, rather than news of particular relevance to the many cities and towns making up Long Island.

b. Tribune’s Common Ownership of a TV Station and Two Dominant Daily Newspapers Reduces Viewpoint Diversity in the Stamford and Greenwich Communities.

Tribune’s current cross-ownership of Stamford and Greenwich’s sole daily newspapers, *The Advocate* and *Greenwich Time*, and a broadcast television station, WPIX, unavoidably diminishes the number of diverse sources of local news that would otherwise be available to these communities. Although Tribune asserts that the New York area is served by numerous daily newspapers, the fact remains that residents of Stamford and Greenwich have only one newspaper

⁵⁷Yahoo.com, Melville local portal, as viewed April 11, 2007 at 11:29 a.m. Furthermore, the Yahoo.com Melville portal is identical to the New York City portal, providing the same local content for users in Long Island and its does for users in New York City. Yahoo.com, Melville local portal, as viewed April 11, 2007 at 11:29 a.m.; Yahoo.com, New York City local portal, as viewed on Apr. 11, 2007 at 11.27 a.m. Likewise, the Long Island local portal on MSNBC.com provides links to four local stories, all provided by *Newsday*. As viewed on April 11, 2007 at 11:46 a.m.

to turn to for “issues of local concern.” *Hopkins Hall*, 10 FCC Rcd at 9766. See *Editor & Publisher Yearbook* at 60-I, 64-I. The communities’ reliance on the newspapers for local news is evident by the high percentage of residents who read the papers. Between 34 and 44 percent of Stamford residents over 18 read *The Advocate* each week, Audit Bureau of Circulations, *The Advocate Reader Profile Study for the Period of September 2005-August 2006* (“*Advocate ABC Report*”), available at <http://abcas3.accessabc.com/readerprofile/released.asp#CT>, and 53 to 56 percent of adults in Greenwich read the *Greenwich Time* each week.⁵⁸ Audit Bureau of Circulations, *Greenwich Time Reader Profile Study for the Period of September 2005-August 2006* (“*Greenwich Time ABC Report*”), available at <http://abcas3.accessabc.com/readerprofile/released.asp#CT>. The limited circulation area of *The Advocate* and *Greenwich Time* reflect the local nature of the news they provide to readers.⁵⁹

As in the case of Tribune’s unlawful cross-ownership in Long Island, neither cable, radio, nor the Internet provides a significant source of local news to residents of the Stamford and Greenwich communities. Both Stamford and Greenwich are included in the Stamford-Norwalk radio market, rather than the New York market. The Stamford-Norwalk market is served by only ten radio stations, four of which are commonly owned. Future of Music Coalition, using Arbitron data purchased from BIA Financial Networks. As was the case for the Yahoo.com local portal for Long Island, the Stamford and Greenwich local portals are identical to that of New York City.⁶⁰ Thus, Tribune’s common ownership of a major television station, WPIX, and the dominant daily newspapers serving the Stamford and Greenwich communities, *The Advocate* and

⁵⁸*The Advocate*’s own website boasts that *The Advocate* and *Greenwich Time* have two to three times the circulation of the next closest daily newspaper in the “Stamford-Greenwich-Darien-New Canaan-Norwalk Market Area.” The *Advocate/Greenwich Times Market Facts*, available at <http://blogs.stamfordadvocate.com/marketfacts/print/circulation.html>.

⁵⁹*The Advocate* has a circulation area of Stamford, New Canaan, Darien and Norwalk, CT. *Advocate ABC Report*. Greenwich, Riverside, and Cos Cob, CT are served by *Greenwich Time*. *Greenwich Time ABC Report*.

⁶⁰Yahoo.com, Stamford, CT local portal, as viewed April 17, 2007 at 9:50 a.m.; Yahoo.com, Greenwich, CT local portal, as viewed April 17, 2007 at 9:51 a.m.; Yahoo.com, New York, NY local portal, as viewed April 17, 2007 at 9:51 a.m.

Greenwich Time, limits the diversity of viewpoints on local news available.

c. The Benefits to Diversity of Common Ownership Alleged by Tribune Are Insufficient to Outweigh the Reduction in Viewpoint Diversity.

Since allowing Tribune to own both WPIX and the newspapers promotes neither diversity nor competition, the only argument left to support a waiver is that the benefits of common ownership outweigh the reduction in diversity and competition. To overcome the NBCO rule's presumption that the best way to promote diversity is by diversifying ownership, Tribune was required to "plead with particularity the facts and circumstances which would support deviation" from the rule. *Angelo State University*, 19 FCCRcd at 24539 (citing *Columbia Communications Corp.*, 832 F.2d at 192). Tribune makes a feeble attempt to argue that its common ownership of WPIX and *Newsday* has allowed it to produce in-depth news specials and provide better news coverage. New York Waiver Request at 30-33. For example, Tribune states that WPIX has expanded its regularly scheduled local news program from 24.5 to 27 hours per week, installed a television camera in *Newsday*'s newsroom, and embedded a WPIX reporter in the *Newsday* newsroom.

An increase of 2.5 hours per week in local news falls short of the extraordinary benefits that might justify waiving the rules. Moreover, the last two examples illustrate how common ownership decreases the diversity of stories available to the public. Instead of WPIX reporters deciding what stories to cover and gathering news on their own, they end up reporting the same stories already being covered by *Newsday*. Moreover, to the extent that WPIX may have benefitted in the past from *Newsday*'s larger staff, it is unlikely to continue considering Tribune's reduction of *Newsday*'s editorial staff by one third and Tribune's downsizing at other large newspapers. Keith J. Kelly, *Newsday Scribes Blast Tribune Cuts*, N.Y. POST, Dec. 12, 2006, available at http://www.nypost.com/seven/12122006/business/newsday_scribes_blast_tribune_cuts_business_keith_j_kelly.htm; David Reich-Hale, *Tribune-owned Newsday Prepares More Job Cuts*, LONG ISLAND BUSINESS NEWS, Nov. 25, 2005, available at <http://findarticles.com/p/arti->

cles/mi_qn4189/is_20051118/ai_n15847541; Michael Oneale, *Tribune Announces 250 Job Cuts in Chicago and Los Angeles*, CHICAGO TRIBUNE, April 23, 2007, available at <http://www.chicagotribune.com/business/chi-070423trb,0,4816010.story>.

Finally, the various “public service projects,” such as promoting Alliance for Lupus events and participating in food drives that many other businesses engage in are simply irrelevant to a waiver analysis. New York Waiver Request at 33. In sum, Tribune has failed to show that waiver of the NBCO would result in greater diversity in local viewpoints than application of the rule to require that the newspaper and television are separately owned. Nor has it shown any substantial public interest benefits that would counterbalance the loss of diversity from the common ownership of these two important local news outlets, much less anything that might be considered to present “exceptional or extraordinary circumstances.” *Renaissance*, 12 FCC Rcd at 11886-88. Thus, the Commission should reject Tribune’s request for a permanent waiver.

5. Los Angeles

a. **Tribune Misrepresents the Impact on Diversity by Incorrectly Relying on the Entire Chicago DMA Instead of the Newspaper and Broadcast Areas of Overlap.**

Tribune’s diversity analysis utilizes the entire Los Angeles DMA. Under FCC precedent, this is inappropriate because “many county newspapers and many broadcast stations licensed to distant communities...do not contribute to coverage of issues of local concern...issues that are at the heart of the Commission’s concern with diversity.” *Hopkins Hall Broadcasting, Inc.*, 10 FCCRcd at 9766. The appropriate relevant geographic market for a diversity analysis is the common area served by the newspaper and the Grade A contour of the television station, rather than the entire broadcast DMA. *See, e.g., Columbia Montour Broadcasting Co., Inc.*, 13 FCCRcd at 13014-15; *Hopkins Hall Broadcasting, Inc.*, 10 FCC Rcd at 9766.

In this instance, Tribune would have the Commission look at the number of outlets in the entire Los Angeles DMA instead of the common area served by the newspaper and the television station. By choosing a broader geographic area, Tribune overstates the true level of diversity

available to the public.

Tribune also exaggerates the extent of diversity in the newspaper market. Tribune asserts that 21 newspapers, controlled by 12 different owners, serve the Los Angeles DMA. However, only four—the *Daily News*, *La Opinion*, *Star Newspapers*, and *The PressEnterprise*—serve the same multi-county geographic area as the *LA Times*.⁶¹ See *Application for Transfer of KTLA-TV, Transferees' Exhibit 18* (“*Los Angeles Waiver Request*”) at 22. One of these, *La Opinion*, is published in Spanish and therefore does not compete with the *LA Times* for non-bilingual residents.

Moreover, in terms of circulation, the *LA Times* is by far the dominant daily newspaper in Los Angeles. Its daily circulation is 851,832. This is 552,000 more than its closest competitor.⁶² *Id.* The *LA Times* is also the most circulated Sunday paper in Los Angeles. *Id.* at 22. Although Tribune argues that the *LA Times*'s recent decrease in circulation provides evidence of increased diversity, *id.* at 22, this argument should be rejected. The newspaper industry as a whole has experienced decreases in circulation. See Anya Sostek, *Newspaper circulation continues slide, Web usage up*, PITTSBURGH POST GAZETTE (May 9, 2006) at <http://www.post-gazette.com/pg/06129/688501-28.stm>. Furthermore, while the *LA Times*'s print circulation has declined, its on-line readership has increased.⁶³ Robert MacMillan, *Online Newspaper Readership Grows*, REUTERS (October 4, 2006) at http://today.reuters.com/news/articlenews.aspx?type=technologyNews&storyID=2006-1004T120658Z_01_N03269191_RTRUKOC_0_US-MEDIA-NEWS-PAPERSREADERSHIP.xml&WTmodLoc=TechNewsHome_C2_technologyNews-4. With the

⁶¹ *Other papers cited by Tribune serve only outlying communities such as the Whittier Daily News, San Gabrielle Valley Tribune, and Inland Valley Daily Bulletin.*

⁶² In addition, Tribune owns two more daily newspapers, aside from the *LA Times*: The News-Press with a daily circulation of 22,052 and the Daily Pilot with a circulation of 22,184.

⁶³ No other Los Angeles paper ranks in the top ten. Additionally, the NAA President and CEO John F. Sturm, recently stated that “not only is the overall audience growing for newspaper websites, but NAA studies have shown that they are often the leading local news sites in their markets. It's clear that newspapers' longstanding position of trust as part of the communities they serve has only strengthened, not weakened, in the Internet era.” *Id.*

number of monthly visitors to newspaper websites rising by nearly a third in the first half of 2006, the *LA Times* decline in circulation can be partly attributed to customers simply changing the form in which they access the paper. *Id.* Among the Los Angeles papers, the *LA Times* website is by far the most read online newspaper site. *Id.*

Third, Tribune also overstates the degree of diversity provided by television stations in the Los Angeles area. Tribune states there are 26 full-service television stations with 21 separate owners. Los Angeles Waiver Request at 16. However, 19 of the 26 stations have a market rating less than 1%. *Id.* Moreover, only six independently owned stations have regularly scheduled news.⁶⁴ *Id.* at 18. KTLA is the fifth-ranked English language station in Los Angeles and the sixth ranked television station overall.⁶⁵ Additionally, it is one of the six stations that airs a significant amount of regularly scheduled local news programming. *Id.* Thus, KTLA-TV, like the *LA Times*, is one of a relatively small number of independent sources of local news.

Tribune attempts to mitigate the negative impact of its cross-ownership on viewpoint diversity by pointing to media outlets such as MVPDs and radio. Los Angeles Waiver Request at 19-21 (cable television); 24-26 (radio). However, these outlets do not reduce the public's reliance on broadcast television and newspapers for local news.⁶⁶ MVPDs generally provide national, not local, news and Tribune does not include any local news cable channels in its list of cable channels. As the Commission and the Third Circuit have recognized, while cable may re-transmit local broadcast signals, it provides a negligible amount of independent local news. *Prometheus Radio Project*, 373 F.3d at 405 (excluding cable from the "diversity index" calculations because of serious doubts as to the extent that it provides independent local news). Although some radio stations do provide local news, these stations tend to have substantially less

⁶⁴Stations that offer at least 17 hours of news programming per week.

⁶⁵ KTLA is the sixth ranked television station, and is the fifth ranked English language station.

⁶⁶Fifty-seven percent of respondents to the Pew study reported using television for news in the last day; 40% reported newspaper use. See *Biennial News Consumption Survey*, Pew Research Center, 1 (July 30, 2006), available at <http://people-press.org/reports/pdf/282.pdf> ("Pew, 2006 Media Study").

reach than a television station or newspaper. *Prometheus Radio*, 373 F.3d at 405-07. Presently, most viewers still depend on broadcast stations and newspapers for local news programming. *Prometheus Radio*, 373 F.3d at 405-07.

Tribune also exaggerates the impact of the Internet in creating diversity in the Los Angeles media marketplace. Los Angeles Waiver Request at 28-33. Virtually all news gathering that ends up on the Internet is still being done by the “old media.” *See supra*, *The State of the News Media 2006*. As observed by the Third Circuit, local websites do not contribute much to media diversity because websites of local newspapers and broadcast stations “merely republish the information already being reported by the newspaper or broadcast station counterpart” and “do not present an ‘independent’ viewpoint and thus should not be considered as contributing diversity to local markets.” *Prometheus Radio*, 373 F.3d at 405-407.

Additionally, while Internet bloggers may offer alternative editorial content, Americans ranked blogging dead last in a list of what they considered to be news sources. RTNDA, *2006 Future of News* at Section 3. These facts coupled with statistics demonstrating that a significant number of Americans, especially minorities, are without broadband Internet access,⁶⁷ demonstrate that online content, especially in an area such as Los Angeles with a large minority population, should be treated as a supplement rather than a competitor of traditional media.⁶⁸ *See* Pew, *2006 Media Study* at 1-2.

b. Tribune Has Failed to Show Any Public Interest Benefits that Would Counterbalance the Loss of Diversity.

Tribune asserts that common ownership of the *LA Times* and KTLA has allowed it to

⁶⁷Less than half (42%) of adult Americans currently have broadband at home. *See* Pew/ Internet, Home Broadband Adoption 2006 at 1 (May 28, 2006). Twenty-seven percent report they do not use the Internet at all. Pew/Internet, Internet Evolution: Internet Penetration and Impact at 3 (Apr. 26, 2006). Blacks, Hispanics, and almost certainly Native Americans use the Internet significantly less than Whites. *See* Leonard M. Baynes, Race, Media Consolidation, and Online Content: The Lack of Substitutes Available to Media Consumers of Color, 39 JOURNAL OF LAW REFORM 199, 211-27 (2006) (discussing America’s “Digital Divide”). Furthermore, broadband penetration in rural areas lags behind the rest of the country. Pew/Internet, Home Broadband Adoption at ii.

⁶⁸Indeed, the Internet has enabled the *LA Times* and KTLA to reach more individuals, who can access their content online.

produce in-depth news specials and provide better news coverage.⁶⁹ Los Angeles Waiver Request at 34-40. However, the news specials and news coverage that Tribune highlights simply involve the sharing of personnel between KTLA and the *LA Times*, a practice that tends to decrease the diversity of stories. Regardless of any benefit in embedding a KTLA reporter with the *LA Times*, to establish this type of relationship there is no pre-requisite that the two entities be commonly owned. Furthermore, it appears that arrangement between the *LA Times* and KTLA has ended. Los Angeles Waiver Request at 34, 36. In addition, Tribune lists various “public service projects,” such as running an annual journalism contest and buying gifts for underprivileged children. *Id.* at 38. These are the types of promotional and charitable activities that many businesses engage in, and while worthwhile, they do not result in diverse programming and cannot possibly justify waiver of the cross-ownership rule.

Although Tribune claims that no harm has resulted from its cross-ownership over the last six years, it has not shown that the quantity and diversity of its local news and public affairs programming is greater than that which *would have been provided* if the newspaper and television were separately owned. Nor has it shown any substantial public interest benefits that would counterbalance the loss of diversity from the common ownership of these two important local news outlets.

V. TRIBUNE IS NOT ENTITLED TO A “FAILING STATION” WAIVER IN HARTFORD.

As noted above, Tribune’s permanent waiver of the Commission’s TV ownership rule for its Hartford TV duopoly is not automatically transferable. *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCCRcd at 12937. Indeed, Tribune cites no cases in which an existing “failing station” duopoly has been transferred, because there is none.

Tribune has not met the burden of establishing that the transferees are entitled to a new permanent waiver of the TV duopoly rule. To receive a failing station waiver, an applicant must establish, *inter alia*, that the buyer is the only reasonably available candidate willing and able to

⁶⁹One of the news specials Tribune touts is entitled “Saving the Homeless.” However, members of Media Alliance have commented that one of the largest problems with the common-ownership of the *LA Times* and KTLA is that issues involving the plight of the impoverished residents of Los Angeles are not provided adequate news coverage.

acquire and operate the station;...” *Id.*

Tribune’s showing in support of this aspect of its waiver request essentially duplicates Tribune’s presentation seeking extension of its Hartford NBCO waiver in connection with its pending license renewal application. Petitioner UCC rebutted that showing in its March 1, 2007 *Petition to Deny* the WTXX renewal and its May 25, 2007 *Reply to Opposition to Petition to Deny*. Petitioners respectfully incorporate those pleadings by reference.

VI. IF THE COMMISSION NONETHELESS DETERMINES TO GRANT ANY WAIVER RELIEF TO TRIBUNE, IT SHOULD REQUIRE TRIBUNE TO PLACE ITS HOLDINGS IN TRUST.

Tribune has repeatedly failed to sell WTXX or the Hartford *Courant* despite the expiration of several temporary waivers of the local TV station rule affording time for divestiture. It has allowed its licenses in Los Angeles, New York and Hartford to expire without divesting its newspaper/broadcast cross-ownerships.

In light of this clear pattern of conduct, if the Commission were disposed to grant any waiver relief to Tribune, it must at the least condition any such grant upon the establishment of strict irrevocable divestiture trusts. *See, e.g., Citadel Broadcasting Company*, 22 FCCRcd 783 (2007); *Shareholders of Univision Communications Inc.*, 22 FCCRcd 5842 (2007); *Shareholders of AMFM, Inc.*, 15 FCCRcd 16062, 16072 (2000); *Shareholders of American Radio Systems Corp.*, 13 FCCRcd 12430 (1998); *Stockholders of Infinity Broadcasting Corp.*, 12 FCCRcd 5012 (1996); *Twentieth Holdings Corp.*, 4 FCCRcd 4052 (1989); *Lorimar Telepictures Corp.* 3 FCCRcd 6250 (1988); *Shareholders of Jacor Communications*, 14 FCCRcd 6867 (1999); *Viacom, Inc.*, 9 FCCRcd 1577, 1578 (1994). *See also KKR Associates (Gillette)*, 2 FCCRcd. 7104 (1987); *J.B. Acquisition Corp.*, 60 R.R.2d 1095, *further considered*, 1986 WL 292155 (1986); *Macfadden Acquisition Corp.*, 104 FCC2d 545, *further considered*, 60 R.R.2d 872 (1986); *Owosso Broadcasting Co.*, 60 R.R.2d 99 (1986). Under established precedent, such a trust can be mandated “specifically to effect compliance with the Commission’s rules for holdings which would violate the rules if held outright.” *Attribution of Ownership Interests*, 97 FCC2d 997, 1023 (1984). The trustees in this instance should be instructed to sell the cross-owned properties before expiration of the waiver period. Tribune should not be permitted to reject an offer deemed

fair by the trustees. *See Twentieth Holdings Corp.*, 4 FCCRcd at 4054.

CONCLUSION

For the foregoing reasons, UCC and Media Alliance request that the Commission dismiss the applications for transfer of control or deny them for the reasons set forth above. In the event the Commission were to grant waivers of any kind, they should be conditioned upon the establishment of an irrevocable divestiture trust. The Commission should also grant all such other relief as may be just and proper.

Respectfully submitted,

/s/

Parul Desai

/s/

Andrew Jay Schwartzman

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Counsel for UCC and Media Alliance

June 11, 2007

**Attachment A:
Declaration of Robert Chase**

DECLARATION

- 1) My name is Robert Chase. I am the Director of Communications of the United Church of Christ (UCC), and as such serve as the Executive Director of the Office of Communication of the United Church of Christ, Inc. and the liaison between the Office of Communication, Inc. and the United Church of Christ. I am based in the denomination's national setting offices at 700 Prospect Avenue, Cleveland, OH, 44115.
- 2) The United Church of Christ (UCC) is a union of Protestant churches, the Congregational Christian Church and the Evangelical and Reform Church, which collectively includes more than 1.2 million people of whom a significant number are racial minorities. UCC has more than 5,500 congregations across the US.
- 3) UCC represents residents throughout the US including residents in Los Angeles, Chicago, Ft. Lauderdale-Miami, Hartford, and the Long Island/ Southern Connecticut area. The UCC and has filed a petition to deny this waiver request on behalf of myself and other members.
- 4) The Office of Communication, Inc. is a not-for-profit corporation of the United Church of Christ charged with responsibility for developing the Church's policies in media advocacy. Since the mid-1960's, the Office of Communication, Inc. has participated in proceedings before the Federal Communications Commission to promote a diversity of viewpoints, a greater role for citizens in Commission regulatory proceedings, and more minority involvement in the electronic mass media industries. For example, the Office of Communication, Inc., has filed comments in FCC's ongoing 2006 Biennial Review (Docket No. 06-121), the 2002 Biennial Review (Docket No. 02-277), the Newspaper-Broadcasting Cross-Ownership proceeding (Docket No. 01-235), and participated in the appeal of the FCC's 2002 Biennial Review decision in *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004).
- 5) UCC has opposed Tribune's cross-ownership of newspapers and television in other areas. UCC petitioned the Commission for reconsideration of the 2005 grant to Tribune of a temporary waiver of the NBCO rule in the Hartford market. UCC filed a Petition to Deny Tribune's license renewal of WITX and WTIC-TV, both serving Hartford, in 2007. Additionally, in 2007, UCC filed a Petition to Deny Tribune's license renewal of WPIX which serves Long Island, NY, Stamford, CT and Greenwich, CT communities.
- 6) I have reviewed the foregoing Petition to Deny Tribune's request for waiver of WGN-TV and the *Chicago Tribune* combination, the *KTLA-TV* and the *Los Angeles Times* combination, the *WPIX*, *NewsDay*, *The Advocate*, and *Greenwich Times* combination, the *WSFL-TV* and the *South Florida Sun-Sentinel* combination, and the *WITX*, *WTIC-TV*, and *Hartford Courant* combination. All of the relevant facts stated in the Petition are subject to official notice by the Federal Communications Commission, as they are drawn from the Commission's own orders, the transfer request itself, Commission and court decisions, or industry publications, or are supported by the attached Declarations.
- 7) I oppose the Tribune requests for waiver of the newspaper-broadcast cross-ownership ("NBCO") rule to permit Tribune's common ownership of the following combinations: the

KTLA-TV and the *Los Angeles Times* combination, the WGN-TV and the *Chicago Tribune* combination, the WFL-TV and the *South Florida Sun-Sentinel* combination, the WTIC-TV, WTTX and *Hartford Courant* combination, and the WPTX, *NewsDay*, *The Advocate*, and *Greenwich Times* combination. A waiver of this rule will harm members of UCC who reside in the metropolitan area where each of these combinations exist (Los Angeles, Chicago, Ft. Lauderdale-Miami, Hartford, and the Long Island/ Southern Connecticut area.) Approving the waiver would reduce the number of independently controlled sources of local news and public affairs that would be available. Members of UCC in each area would be harmed by a permanent loss of diversity and competition that would result if Tribune is permitted to continue holding the aforementioned combinations on either a permanent or temporary basis. All UCC members in the affected communities will be deprived of an independent voice in the media.

8) This Declaration has been prepared in support of the foregoing Petition to Deny.

This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.

Date Executed: June 11, 2007

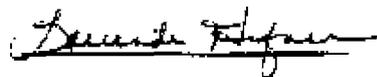


Robert Chase
Executive Director
Office of Communication of the United
Church of Christ, Inc.

**Attachment B:
Declaration of Laurinda Hafner**

DECLARATION OF [NAME]

1. My name is Laurinda Halper and I am a pastor of the United Church of Christ ("UCC"). I am a member of the Coral Gables Congregational Church, located at 3010 De Soto Blvd, Coral Gables, Fla. 33134
2. I reside at 1210 Catalonia Ave, Coral Gables, FL 33134.
3. UCC is a union of Protestant churches, the Congregational Christian Church and the Evangelical and Reform Church, which collectively includes more than 1.4 million people of whom a significant number are racial minorities. UCC has more than 5,500 congregations across the US.
4. UCC represents local Ft. Lauderdale-Miami area residents that are members of the UCC and has filed a petition to deny waiver request on behalf of myself and other members.
5. I am a regular viewer of the television stations serving the Miami metropolitan area, including WSFL-TV.
6. I reside within the circulation area of the *South Florida Sun-Sentinel* and read the newspaper.
7. Tribune's continued common ownership of WSFL-TV and the *South Florida Sun-Sentinel* harms me by sharply reducing the number of independent voices available to me. Unless the FCC denies Tribune's waiver requests, Tribune will continue its common ownership for a significant period of time, either permanently or temporarily.
8. This Declaration has been prepared in support of the foregoing Petition to Deny.
9. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Date Executed: June 5, 2007

[NAME]

Attachment C:
Declaration of Reverend Mark Bigelow

DECLARATION OF REV. MARK BIGELOW

1. My name is Rev. Mark Bigelow and I am a Minister of the United Church of Christ ("UCC"). I serve as a Pastor of The Congregational Church of Huntington, UCC, located at 30 Washington Drive, Centerport, NY 11721
2. UCC is a union of Protestant churches, the Congregational Christian Church and the Evangelical and Reform Church, which collectively includes more than 1.4 million people of whom a significant number are racial minorities. UCC members reside throughout the New York metropolitan area, including Long Island and Southern Connecticut, and in many other communities throughout the United States.
3. UCC represents local Long Island residents that are members of the UCC and has filed a petition to deny this waiver request on behalf of myself and other members.
4. I reside at 66 Little Neck Road, Centerport NY 11721
5. I am a regular viewer of the television stations serving the Long Island area, including WPIX.
6. I reside within the circulation area of *NewsDay* and read the newspaper.
7. Tribune's continued common ownership of WPIX and *NewsDay* harms me by sharply reducing the number of independent voices available to me. Unless the FCC denies Tribune's waiver requests, this combination will continue for a significant period of time, either permanently or temporarily. In addition, WPIX does a poor job of providing news about the Long Island community.
8. This Declaration has been prepared in support of the foregoing Petition to Deny.
9. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Date Executed: June 1, 2007



Rev. Mark Bigelow

**Attachment D:
Declaration of Reverend Mark Lukens**

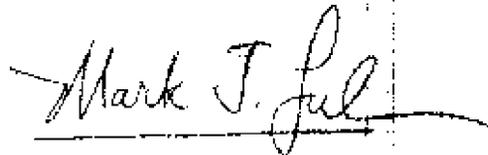
DECLARATION OF REV. MARK LUKENS

1. My name is Rev. Mark Lukens and I am a Minister in the United Church of Christ ("UCC"). I serve as a Pastor of the Bethany Congregational Church, located at 100 Main Street, East Rockaway, NY 11518.
2. UCC is a union of Protestant churches, the Congregational Christian Church and the Evangelical and Reform Church, which collectively includes more than 1.4 million people of whom a significant number are racial minorities. UCC members reside throughout the New York metropolitan area, including Long Island and Southern Connecticut, and in many other communities throughout the United States.
3. UCC represents local Long Island residents that are members of the UCC and has filed a petition to deny this waiver request on behalf of myself and other members.
4. I reside at 37 Rhame Avenue, East Rockaway, NY 11518.
5. I am a regular viewer of the television stations serving the Long Island area, including WPIX.
6. I reside within the circulation area of *NewsDay* and read the newspaper.
7. I think the continued common ownership of WPIX and *NewsDay* harms me by sharply reducing the number of independent voices available to me. Unless the FCC denies this waiver request, this combination will continue for a significant period of time, permanently or temporarily. In addition, WPIX does a poor job of providing news to the Long Island community.

A Declaration has been prepared in support of the foregoing Petition to Deny.

This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Executed: June 1, 2007



Rev. Mark Lukens

**Attachment E:
Declaration of Jeff Perlstein**

DECLARATION OF JEFF PERLSTEIN

- 1) My name is Jeff Perlstein. I am the Executive Director of Media Alliance. Media Alliance is headquartered at 1904 Franklin Street, #500, Oakland, CA 94612.
- 2) Media Alliance is a 30 year-old media resource and advocacy center for media workers, non-profit organizations, and social justice activists. Our mission is excellence, ethics, diversity, and accountability in all aspects of the media in the interests of peace, justice, and social responsibility. Media Alliance educates hundreds of community organizations and activists in media skills and media advocacy techniques. Media Alliance strives to increase public participation in media policy debates and to generate policies that will produce a more competitive and public interest-oriented media system. Media Alliance considers information to be among the most important resources to any society. Media Alliance conducts aggressive grassroots outreach to educate and mobilize popular support for a more competitive, diverse media system.
- 3) Media Alliance has approximately 1900 members throughout California, a significant number of whom reside in Los Angeles, California. This Petition to Deny is filed on behalf of me and these other members.
- 4) A consistent concern of Media Alliance is to prevent concentrated and noncompetitive media markets. Media Alliance filed comments with the FCC in *Cross-Ownership of Broadcast Stations and Newspapers*, MB Docket Number 01-235, one of the proceedings consolidated in the 2002 Biennial Review. Media Alliance also filed a Petition for Review of the FCC's 2002 Biennial Review Order in the U.S. Court of Appeals for the Ninth Circuit, which was transferred to the Third Circuit and consolidated with *Prometheus Radio Project v. FCC*. Media Alliance filed a brief jointly with the other Citizen Petitioners in that case. Media Alliance continues to be active in organizing hearings and other events to publicize the need for greater diversity and competition in the media. Additionally, Media Alliance filed a Petition to Deny Tribune's license renewal of KTLA-TV, serving Los Angeles, in 2006.
- 5) I have reviewed the foregoing Petition to Deny Tribune's request for waiver of the KTLA-TV and the *Los Angeles Times* combination. All of the relevant facts stated in the Petition are subject to official notice by the Federal Communications Commission, as they are drawn from the Commission's own orders, the transfer request itself, Commission and court decisions, or industry publications, or are supported by the attached Declarations.
- 6) I oppose the Tribune request for waiver of the newspaper-broadcast cross-ownership rule to permit Tribune's common ownership of KTLA-TV and the *Los Angeles Times*. A waiver of this rule will harm members of Media Alliance who reside in the Los Angeles metropolitan area. Approving the waiver would reduce the number of independently controlled sources of local news and public affairs that would be available. Members of Media Alliance residing in the Los Angeles area would be harmed by a permanent loss of diversity and competition that would result if Tribune is permitted to continue common ownership of KTLA-TV and the *Los Angeles Times*. Unless the FCC denies Tribune's waiver requests, Tribune will continue its common ownership for a significant period of time, either permanently or temporarily.

7) This Declaration has been prepared in support of the foregoing Petition to Deny.

This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.

Date Executed:

6/10/07



Jeff Perisich
Executive Director
Media Alliance

Certificate of Service

I, Andrew Jay Schwartzman, hereby certify that on this 11th day of June 2007, a copy of the foregoing *Petition to Deny* was served by first-class mail, postage prepaid, upon the following:

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Sidley Austin LLP
1501 K Street, NW
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John R. Feore Jr.
Dow Lohnes PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036

Samuel Zell
Two North Riverside Plaza
Suite 600
Chicago, IL 60606

/s/

Andrew Jay Schwartzman