Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2010 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	)	MB Docket No. 09-182
	)	
Promoting Diversification of Ownership In the Broadcasting Services	)	MB Docket No. 07-294

COMMENTS OF TRIBUNE COMPANY, DEBTOR-IN-POSSESSION ON NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION AND SUMMARY

Since the passage of the Telecommunications Act of 1996,[1] the Federal Communications Commission ("FCC" or "Commission") has committed to make necessary changes to the ban on the common ownership of a daily newspaper and a broadcast station serving the same market (the "NBCO Rule"). Indeed, in 1996, then-Chairman Reed Hundt acknowledged the need to reform the NBCO Rule, noting that it was then "impairing the future prospects of an important source of education and information: the newspaper industry."[2] Now, 37 years after the adoption of the prohibition and more than 15 years after Congress mandated that the FCC periodically "repeal or modify any regulation it determines to be no longer in the public interest,"[3] and despite successive findings that revision is warranted, the Commission has failed to accomplish any meaningful change in the NBCO Rule. Proposals in the current 2010 Quadrennial Review prove no exception.

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, §202(h) (1996) ("Section 202(h)").

[2] *Capital Cities/ABC*, 11 FCC Rcd. 5841, 5906 (1996).

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, §202(h) (1996) ("Section 202(h)").

During the past 15 years, the information age has transformed the nation. The Internet has evolved out of its infancy, and transitioned to the high-speed broadband era. That transformation has increased exponentially the amount and type of news and information available to the average person, as well as the number of ways in which it can be "consumed."[4] Media consumers no longer need to obtain printed copies of newspaper or magazine articles or seek out stationary television sets or even computer monitors to access video or printed words: all can now be accessed on mobile personal devices that bring the world's information to their fingertips at any time. While one of the FCC's highest priorities has been to foster free and facile access to the Internet and fixed and mobile broadband, even the most modest of reforms of the NBCO Rule have been stalled by threadbare theoretical assertions of concentration in the media marketplace – which is now more diverse than at any other time in our nation's history.

At a time when consumers' access to information has never been greater or easier, and traditional media face the strongest competitive challenge, the Commission again has proposed to take meager, if not insignificant, steps to modify the NBCO Rule, not only readopting a proposal that was unreasonably narrow when adopted five years ago but also proposing to expand the geographic baseline for applying the rule. The availability of a multitude of voices from numerous sources in every media market, from television and radio, cable and satellite, and Internet websites and printed newspapers and magazines – all at the choice of the consumer – compels elimination of the NBCO Rule. The time again has arrived for the Commission to fulfill its obligations under Section 202(h) to recognize the diversity of options readily available for news, information and opinion, and to finally and decisively remove the regulatory burden

[4] The term "consumer" is used here to denote consumers of content, and is intended broadly to encompass readers, viewers, Internet end users, and listeners - in short, those who seek out news, information and opinion. It is not intended to equate members of an informed citizenry with purchasers of consumer products and services.

that binds only a very limited segment of that market – publishers of printed daily newspapers and broadcasters. The statute requires no less.

In these Comments, Tribune again demonstrates what has never truly been in doubt – that common ownership of broadcast and printed media benefits the public through the enhanced gathering and dissemination of news, information and opinion.[5] Tribune also reminds the Commission that there is not today, nor was there at the time NBCO Rule was adopted, any probative evidence that such combinations threaten diversity of expression and viewpoint. In Tribune's experience, the contrary is true: commonly-owned properties tend to provide more and better public interest content and programming. Tribune shows that in this broadband age, the public's access to diverse sources of news, information and opinion is unimpaired by combinations of daily newspapers and broadcast stations. Finally, as the Commission should be well aware, newspaper publishers have seen a radical downturn in their ability to achieve a reasonable return on investment; this is particularly challenging given the need for resources used in investigative journalism and the presentation of detailed news and information to the public. Whether or not common ownership will preserve the abilities of the newspaper industry to provide the public with a traditional source of information, the NBCO Rule - a vestige of a prior era - must no longer impair those prospects.

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5 Tribune Company, Debtor-in-Possession ("Tribune"), operates businesses in publishing, digital and broadcasting, including 23 full-service commercial television stations, one commercial radio station, and one full-power satellite station. In addition, Tribune publishes eight major-market daily newspapers, including the *Chicago Tribune*, the *Los Angeles Times*, *The Baltimore Sun*, the Ft. Lauderdale-based *Sun Sentinel,* the *Orlando Sentinel*, the *Hartford Courant, The (Allentown, PA) Morning Call,* and the *(Newport News, VA) Daily Press*, and holds an approximate 3% indirect equity interest in *Newsday (Melville, NY).* In December 2008, Tribune and most of its subsidiaries submitted voluntary petitions for relief under chapter 11 of title 11 of the United States Code to the United States Bankruptcy Court, District of Delaware. On April 12, 2010, Tribune submitted its Plan of Reorganization to the Bankruptcy Court, and after litigation before the court, on November 18, 2011, Tribune submitted its Third Amended Joint Plan. Tribune's reorganization is still pending before the Bankruptcy Court.

Tribune also demonstrates why the "eight voices test," which provides an exception to the local television ownership rules, should be repealed. The eight voices test is a deeply flawed rule which has previously been remanded to the FCC by the D.C. Circuit.[6] The eight voices test arbitrarily restricts counts of media voices in a market to television stations, ignoring other media voices including those that have resulted from the Internet. Tribune also opposes FCC efforts to make sharing agreements attributable because these are valuable tools that improve and expand, rather than restrict, local news coverage. Finally, Tribune supports the elimination of the radio-television cross-ownership rule because, as the FCC acknowledges, maintaining the rule does not support any of the Commission's goals.

II. The NBCO Rule Should Be Repealed Entirely.

A. The Rationale Underlying the 1975 Adoption of the NBCO Rule is No Longer Valid.

The NBCO Rule was first adopted by the Commission in 1975 in a vastly different world, with a media environment that is not comparable to the present day.[7] In 1975, the average American may have received a daily newspaper delivered to their home, or perhaps purchased a daily newspaper from a newsstand. This same individual might have been able to watch one evening newscast in real time, provided they were at home, in front of the television at the exact time scheduled by the broadcaster or network to partake in television news or other programming, on one of three VHF television stations, almost always owned or affiliated with one of three national commercial networks. Perhaps the same individual could obtain news and information by listening to an AM radio station. Newspapers were not widely distributed or

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6 *Sinclair Broad. Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002).

7 *Multiple Ownership of Standard, FM, & Television Broad. Stations*, 50 F.C.C.2d 1046, 1074-78, ¶¶ 100-107 (1975) ("1975 Order").

available outside of their home markets, and news in print or broadcast could not be easily saved, shared or accessed after its initial publication. Besides the morning and evening papers and evening news broadcasts, there were only a few readily available options or sources for news and information about issues of public concern such as a small number of weekly printed news magazines. Total paid daily newspaper circulation was a robust 60,655,000.[8] Most homes received only three VHF television network stations over the air. Other communications media were only in their infancy: there were 192 commercial UHF stations and 514 commercial VHF stations nationwide,[9] and AM radio stations far outnumbered stations still developing on FM spectrum.[10] Cable television systems provided service to less than ten percent of United States homes (9,800,000 subscribers), largely retransmitting broadcast stations by wire to those who could not receive suitable over-the-air reception.[11] Satellite television and radio did not yet exist, and the word "website" was not part of the American lexicon; the Internet was an obscure Department of Defense research project called ARPANET. The acronyms VCR, DVD, PDA, DVR (and many others) held no meaning; cell phones did not yet exist. In such circumstances, over thirty-five years ago, it might have been reasonable to believe that daily printed newspapers and local broadcast stations were Americans' predominant source of news and information.

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8 *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, Steven Waldman and the Working Group in Information Needs of Communities, at 35 (June 2011) (the "Waldman Report").

9 Warren Communications News, *Television & Cable Factbook 2012* at C-1.

10 *See* Broadcast Stations Totals (Index) 1990 to Present *available at* http://transition.fcc.gov/mb/audio/BroadcastStationTotals.html (last visited Mar. 2, 2012) (shows AM stations outnumbering FM stations into the 1990s).

11 Warren Communications, *Television & Cable Factbook 2012* at F-1.

In 1978, the Supreme Court upheld the rationality and constitutionality of the 1975 NBCO Rule. Despite the recognition by both the Commission and the Court that newspaper-broadcast combinations do not necessarily speak with one voice or harm competition, the FCC adopted, and the Court upheld, the NBCO Rule based on the presumptions that such combinations were between unique and dominant sources of local news and information and that banning them could promote ownership and subsequently viewpoint diversity.[12] These actions occurred notwithstanding the acknowledgement by the Commission and the Court of the public interest benefits provided by existing combinations through investigative journalism and the presentation of local news and information.[13] Both have recognized, however, that time, experience, and the development of other media could make the NBCO Rule not only unwise and unreasonable, but unconstitutional.[14]

Today's media landscape is radically different from that of the mid-1970s and the pace of change is continuing to accelerate. Despite population growth, daily newspaper circulation has dramatically declined, falling to 43.4 million, slightly more than two-thirds of daily circulation when the NBCO Rule was adopted and a far smaller share of the total U.S. population.[15] Many other forms of media have developed and prospered since the mid-1970s with entirely new methods of delivering national, regional, local and even "hyper-local" news and information. There are now more than 1,000 UHF broadcast stations (more than five times as many stations as

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[12] *FCC v. N'tl Citizens Comm. For Broad. Comm.*, 436 U.S. 775, 786 (1978) ("*NCCB*").

[13] *Id.* at 783-784; 1975 Order at ¶ 100.

[14] *Id*.

[15] Pew Research Center's Project for Excellence in Journalism, The State of the News Media 2011, Newspapers: By the Numbers ("PEJ 2011 State of the News Media Report") *available at* http://stateofthemedia.org/2011/newspapers-essay/data-page-6/ (last visited Mar. 2, 2012).

existed in 1975),[16] 481 Class A low power television stations,[17] 4,766 AM radio stations and 6,542 FM radio stations nationwide.[18] Every home in the United States has access to a multi-channel video program delivery service, with more than 75% of the nation's homes (77,655,000 subscribers) now receiving a wired television service, with programming scarcely imaginable in 1975.[19] This service is no longer limited to retransmission of a few local broadcast stations, but now offers a seemingly endless variety of channels with diverse, original content, including channels that focus on regional and local issues. Moreover, entirely new media services such as satellite television and satellite radio have come to the market. In 2008, 28 million households received direct broadcast satellite ("DBS") service,[20] and satellite radio now reports a subscriber base of almost 22 million.[21] SiriusXM Radio has over thirty channels it categorizes as "News & Issues," not counting many other channels in other categories that also provide news, information and opinion.[22]

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16 Warren Communications News, *Television & Cable Factbook 2012* at C-2 (1,025 UHF stations licensed).

17 Broadcast Station Totals as of December 31, 2011 *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf (last visited Mar. 2, 2012).

18 *Id*. According to the National Association of Broadcasters, 1,127 HD radio streams are available to consumers, a result of digital technology which did not exist in 1975. *2010 Quadrennial Regulatory Review*, MB Docket 09-182, *Comments of the National Association of Broadcasters*, n. 109 (July 12, 2010).

19 Warren Communications, *Television & Cable Factbook* 2012 at F-1.

20 *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket 06-189, *Thirteenth Annual Report*, ¶ 12 (2009).

21 SiriusXM Radio, Inc. 10-K *available at* http://investing.businessweek.com/research/stocks/financials/drawFiling.asp?docKey=136-000119312512049086-6OHADG9CST36JVN187QIJ43NVE&docFormat=HTM&formType=10-K (last visited Mar. 2, 2012)

22 Channel Lineup, SiriusXM Radio *available at* www.siriusxm.com/channellineup?packedargs=pkg%3DXMESSS%26cat%3Dnews (last visited Mar. 2, 2012)

Most significantly, the development and rapid adoption of the Internet has made all media, from global to hyper-local, available at the touch of one's fingertips. This modern information revolution began with desktop computer access and has shifted to hand-held mobile devices that can stream video or audio and provide immediate access to news and information on the World Wide Web anywhere, any-time. The Commission in countless proceedings has recognized the power of the Internet and broadband delivery platforms, acknowledging that they have transformed the way Americans communicate, access news, information and entertainment content, and participate in public discourse. These developments cannot be ignored.

B. The FCC's Prior Efforts At Restructuring the NBCO Rule Have Been Woefully Inadequate.

In 1996 the Commission and Congress recognized that circumstances had changed dramatically since the 1970s. As noted above, then-Chairman Hundt observed that "the newspaper-broadcast cross-ownership rule, is right now impairing the future prospects of an important national source of education and information: the newspaper industry."[23] Section 202(h) specifically directs the FCC to repeal or relax media ownership restrictions, such as the NBCO Rule, by reviewing them on a biennial, now quadrennial, basis to "determine whether any of such rules are necessary in the public interest as the result of competition."[24] Despite the advent of the new electronic age, the maturation of the Internet, and the broadband revolution – which together have entirely transformed the media landscape – the NBCO Rule still stands in its

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[23] *Capital Cities/ABC*, 11 FCC Rcd. 5841, 5906 (1996) (Statement of Chairman Reed Hundt). *See also Id.*, at 5888, 5895 (Calling for a proceeding on NBCO because the Commission recognizes "that a full review of these policies is warranted").

[24] Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 110-11 (1996) codified at 47 U.S.C. § 303 note.

original 1975 form as an anachronism impeding efforts by a free American press to survive competitive threats.[25]

Even though the Commission concluded in the 2002 Biennial Review that the NBCO Rule did not serve the public interest in the vast majority of markets in the United States,[26] the Commission's efforts at reform have been far too limited given today's radically changed media environment. In fact, despite exhaustive study and express findings in support of repeal or reform, there has been absolutely no change to the NBCO Rule – the 1975 rule remains in place. Absent a realistic and rational approach by this Commission in this quadrennial review, meaningful change will come far too late to permit publishers and broadcasters to have the same access to financial capital and scale that are available to all other media outlets in the digital broadband age.

For the past 10 years, the Commission has recognized that newspaper-broadcast combinations do not adversely affect competition because the media compete in separate service markets; instead, such combinations facilitate the publication and dissemination of local news and information. In its 2002 Biennial Review, for example, the Commission found that the ban on newspaper-broadcast combinations could not be justified on competitive grounds and was therefore no longer necessary; most media markets had sufficient diversity and localism was actually harmed by the ban.[27] The Commission also found that newspaper-broadcast

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25 "[W]ere it left to me to decide whether we should have a government without newspapers or newspaper without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them." – Thomas Jefferson.

26 *2002 Biennial Regulatory Review*, 18 FCC Rcd. 13,620, 13,74-54, 13,760-61, ¶ ¶ 330-342, 356-367 (2003) (the "*2003 Order*").

27 *2003 Order*, ¶¶ 330-342, 356-367. *See also Prometheus Radio Project v. FCC*, 373 F.3d 372, 400-401 (3d Cir. 2004) ("*Prometheus I"*) ("Given the Commission's goal of balancing the public's interests in competition,

combinations create "efficiencies and synergies that enhance the quality and viability of media outlets, thus enhancing the flow of news and information to the public."[28] Despite sinister warnings of media monopolies, the Commission's findings showed improved access to information when newspaper-broadcast combinations were present. Indeed, as the Commission recognized in 2003, "the question confronting media companies today is not whether they will be able to dominate the distribution of news and information in any market, but whether they will be able to be heard at all among the cacophony of voices vying for the attention of Americans."[29]

In the current 2010 Quadrennial Review, the Commission has finally recognized that the media landscape has undergone seismic shift, noting that the "proliferation of broadband Internet and other new technologies has had a dramatic impact on the media marketplace. Consumers are increasingly turning to online and mobile platforms to access news content and audio and video programming."[30] Changes in the marketplace should lead the Commission to recognize that in today's media environment, commonly-owned properties could not measurably harm diversity. The Commission has been clinging to outdated and unrealized fears of media monopoly without a shred of evidence that television broadcast stations and newspaper publishers remain dominant sources of news and information to an extent warranting regulatory intervention. It is ludicrous

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localism, and diversity, it reasonably concluded that repealing the cross-ownership ban was necessary to promote competition and localism…"); *2006 Quadrennial Regulatory Review*, 23 FCC Rcd. 2010, 2021, ¶ 18 ("*2008 Order*") ("[W]e reaffirm the Commission's decision to eliminate the blanket ban on newspaper/broadcast cross-ownership…).

28 *2003 Order*, ¶ 356.

29 *Id.*, ¶¶ 365-67.

30 *2010 Quadrennial Regulatory Review*, MB Docket 09-182, *Notice of Proposed Rulemaking*, ¶ 2 (2011) (the "*2011 NPRM*"). *See also 2010 Quadrennial Regulatory Review*, 25 FCC Rcd. 6086, 6090, ¶ 10 (2010) ("This contraction [in newspapers and broadcasters] is accompanied by an increase in content from Internet and mobile platforms, resulting in dramatic changes in the marketplace for news, public affairs programming, and entertainment programming.").

to suggest that the public is somehow at risk of being deprived of diverse information and opinion on current local issues merely because one broadcaster in the market is commonly owned with a newspaper publisher. As will be demonstrated below, this is certainly not the case in any of Tribune's markets, or in any other market served by the now ubiquitous sources of news, information and opinion from a national to a neighborhood level.

The Commission has correctly recognized that cross-ownership restrictions on radio and television stations no longer serve the public interest.[31] Without a sound basis, however, the Commission has declined to follow suit in the context of the NBCO Rule, and instead has simply proposed nearly the identical rule it adopted five years ago.[32] While this rule offered modest relief from the absolute ban imposed under the 1975 rule, it is patently insufficient and fails to meet the standard set by Section 202(h). The media marketplace is far richer, more competitive and more democratic than it was in 1975, and with the advent of broadband and the Internet, consumers of news and information now can obtain news and information from a wide variety of sources. Merely offering a presumption in favor of common ownership in limited situations in the top twenty markets is not a reasonable modification of the NBCO Rule. Media competition in this electronic age has made *any* retained prohibition flatly contrary to the public interest.

The future of traditional American print and broadcast journalism cannot await one more round of incremental steps that will most certainly end up mired in further litigation. While no one can promise that the appropriate course for the NBCO Rule, total and complete elimination, will be the saving grace for daily newspapers, it will at least provide an unimpeded regulatory

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[31] *Id.* ¶ 119.

[32] The adoption of this proposal was remanded by the Third Circuit based on the Commission's failure to provide adequate notice and opportunity for comment. *Prometheus Radio Project v. FCC,* 652 F.3d 431 (3d Cir. 2011) ("*Prometheus II*").

road to restructuring the printed press and providing it with access to capital that could benefit the public by preserving one valuable alternative of investigative journalism and in-depth coverage of local news and public affairs.

C. Newspaper-Broadcast Combinations Enhance News and Public Affairs Programming.

The Commission has long recognized that newspaper-broadcast cross-ownership enhances the ability of media outlets to achieve desirable scale and produce a higher quantity and better quality of news and information. Even as it first adopted the NBCO Rule, the Commission acknowledged that "joint ownership of newspapers and broadcast stations made possible the early development of FM and TV service."[33] In the 2002 Biennial Review, the Commission held "that combinations can promote the public interest by producing more and better overall local news coverage and that the current rule is thus not necessary to promote our localism goal" but "is likely to hinder its attainment."[34] The Commission also found that "a newspaper-broadcast combination cannot adversely affect competition in any relevant product market" and that nothing in the record demonstrates "that common ownership of broadcast stations and daily newspapers in the same community poses a widespread threat to diversity of viewpoint or programming."[35] The Third Circuit upheld the Commission's findings on appeal, concluding they were reasonable.[36]

[33] 1975 Order at 1064, ¶ 62; *see also NCCB*, 436 U.S. at 786 ("[T]he Commission did not find that existing co-located newspaper-broadcast combinations had not served the public interest, or that such combinations 'necessarily spea[k] with one voice' or are harmful to competition") (internal citations omitted).

[34] *2003 Order*, ¶ 368.

[35] *Id*.

[36] *Prometheus I*, 373 F.3d at 400-401 (3d Cir. 2004) ("Given the Commission's goal of balancing the public's interests in competition, localism, and diversity, it reasonably concluded that repealing the cross-ownership ban was

In this 2010 Quadrennial Review, the Commission again has recognized studies that detail the potential benefits of cross-ownership. The Commission tentatively affirmed its earlier findings that sharing newsgathering resources and realizing other efficiencies of cross-ownership "may improve the ability of commonly owned media outlets to provide local news and information," based upon, among other things, the Waldman Report.[37] That report entitled "The Information Needs of Communities: The Changing Media Landscape In a Broadband Age" found that combinations "could lead to efficiencies and improved business models that might result in more reporting resources."[38] Although the Commission also pointed out the report's caution "that cross-ownership may instead 'simply improve the bottom line of a combined company *without* actually increasing the resources devoted to local newsgathering,'"[39] the fact that such efficiencies may be used to save money that can be reinvested is no reason to presume that it is undesirable or their sole purpose. Moreover, for an industry experiencing financial distress in the face of increasing competition, efficiencies are a matter of economic survival. If the Commission builds structural inefficiencies into its rules, it may undermine both broadcasters' and publishers' abilities to continue to inform the public in the 21st century. As the Commission stated in its *2003 Order*, it is not

> troubling that media properties may allow their news and editorial decisions to be driven by 'the bottom line.' Again, the need and desire to produce revenue, to control costs, to survive and thrive in the marketplace is a time honored tradition in the American media.

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necessary to promote competition and localism…"). The Commission's substantial adjustment to the NBCO Rule in 2003 was not rejected by the Third Circuit because it went too far in recognizing the diversity in the evolved media marketplace, but because the Commission had failed to explain its reasoning (with respect to the impact of the Internet) or tailor its new rule in sufficient detail. More than a decade later, the failure to truly reflect the impact of broadband and the Internet would be a grievous error.

37 *2011 NPRM*, ¶ 89 & n.204.

38 *2011 NPRM*, ¶ 89.

39 *Id.* (emphasis in original).

> Indeed, it was not until newspaper publishers learned to market their papers as tools of commerce that the press became a force in the public debate that led to the framing of our Constitution. Impair the ability of media outlets to profit and you choke off the capital to which their tap roots reach; strangle the press and the balance of our familiar rights and privileges wither and fall.[40]

As Tribune has demonstrated in prior Section 202(h) reviews, and will demonstrate again here, cross-ownership has substantially benefited the public in the five markets in which Tribune has newspaper-broadcast combinations.[41] Tribune's media properties have worked together to improve local news and issues coverage, providing an increased volume of stories with improved analysis and more perspectives than would be the case absent cross-ownership. While these properties remain editorially separate, they collaborate and leverage each other's newsgathering resources in order to enhance the quality of news and public interest content.

One way in which Tribune properties work together to maximize the presentation of local news and information is the manner in which they share information. For example, the Chicago properties have established data links so they can exchange video and audio instantaneously. The Los Angeles properties have a fiber optic link which allows KTLA(TV) to use video cameras in the *LA Times* newsroom for on-air reports, and *LA Times* reporters can upload videos shot while covering their own stories for use by KTLA(TV). The *LA Times*, similarly, can access high definition news video for its website that would not otherwise be accessible to a newspaper.

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40 *2003 Order*, ¶ 353 (2003) (internal footnotes and citations omitted).

41 These markets include Los Angeles, where Tribune has commonly owned KTLA and the *Los Angeles Times* since 2000; Chicago, where Tribune has commonly owned WGN-TV, the *Chicago Tribune*, and WGN(AM) prior to the adoption of the NBCO Rule in 1975; South Florida, where Tribune has owned WSFL-TV (formerly WDZL and WBZL) and the Ft. Lauderdale- based *Sun-Sentinel* since 1996; and Hartford-New Haven, where Tribune has owned the *Hartford Courant* and WTIC-TV since 2000, and WCCT-TV (formerly WTXX) since 2001. In New York City, Tribune owned WPIX and *Newsday* from 2000 to 2008, but now holds only an approximate 3% indirect equity interest (with no operational control) in the parent company of *Newsday's* publisher.

Some Tribune properties are co-located, further enhancing the cooperation that allows more in-depth news coverage. The *Chicago Tribune's* newsroom houses a television studio for WGN-TV and CLTV to produce news segments featuring newspaper reporters. WGN(AM) is located in the same building as the *Chicago Tribune* and can easily utilize the in-depth expertise of the newspaper reporters in interviews and breaking news to supplement radio news coverage or long-form discussions with listeners. In Hartford, WTIC-TV and WCCT-TV are based in the same state-of-the-art facility as the *Hartford Courant*, thereby facilitating collaboration and information sharing.

Discussing story assignments among properties also has helped to ensure that breaking news is disseminated more quickly, resources are more efficiently allocated, more stories are presented, and more and different perspectives are shared. In Chicago each property has its own assignment editor and news manager but they communicate as needed to ensure coverage of breaking stories, thereby improving the news product by their collaboration. The Hartford properties hold separate daily assignment meetings but exchange lists of their assignments and confer on resource allocation to reduce duplication while increasing the overall coverage of diverse stories and perspectives. The Los Angeles properties also exchange lists of newsworthy topics to ensure maximum coverage of various issues.[42]

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[42] Several of Tribune's television stations in cross-owned markets provide their own locally-produced newscasts, giving them a unique status compared to the majority of CW-affiliated stations which do not produce their own news. WGN-TV in Chicago broadcasts 49 hours of local newscasts weekly, a number only feasible due to its relationship with other Tribune media properties. WGN-TV's morning news has ranked in the top two for the market and its midday news ranks second, notwithstanding the fact that the station is not affiliated with one of the four traditional networks. WGN(AM) also has leveraged its relationship with other Tribune properties to improve its programming. Unlike most radio stations, WGN(AM) does not include any syndicated programming and is entirely locally produced, providing far more local news, information and perspective as a result. KTLA(TV) in Los Angeles currently broadcasts 55 hours of local news each week. Since Tribune's purchase of the *LA Times*, which resulted in the cross-ownership in that market, KTLA(TV) has added 30.5 hours of weekly news programming at a time when many stations have reduced news coverage.

Many Tribune properties also work together on recurring news segments, giving subject matter experts an opportunity to present information to a broadcast viewing audience. In Los Angeles, an *LA Times* business reporter appears daily on KTLA(TV) to discuss the day's stock market activity, and an *LA Times* food reporter appears on KTLA's News at 1 PM to discuss cooking in a segment called "Eat Beat." The *Chicago* Tribune's political reporter, Rick Pearson, has appeared frequently on WGN-TV and WGN(AM) to provide in-depth coverage of the presidential campaign and state legislative developments.

Moreover, Tribune properties cooperate on in-depth news stories. In Chicago, a recent joint investigation by WGN-TV and *Chicago Tribune* uncovered extensive abuse of the state pension system. This coverage has led to legislation to reform the state pension system and two federal investigations. Additional joint efforts have included exposés on Chicago-area bars defying a statewide smoking ban, coverage of the invasive Asian carp species, and reports from an embedded WGN-TV reporter in an Illinois National Guard unit stationed in Iraq. In Hartford, Tribune properties worked together to expose failures in the judicial system to protect domestic violence victims and to expose the problem of urban blight.

Cross-ownership also allows for better, more comprehensive coverage of breaking news. In April 2010 a meteorite appeared as a huge fireball over Illinois and other Midwestern states. The story first appeared on Chicagobreakingnews.com at 11:54 p.m. and aired on WGN(AM) at midnight, with updates continuing as the story developed. In December 2009, WGN-TV broke a story about an armed robbery that was picked up by WGN(AM) and then appeared in the *Chicago Tribune*. In Middletown, Connecticut, a February 2010 power plant explosion was covered live by WTIC-TV; reporters and photographers from the *Hartford Courant* contributed on-air reports and video. In May 2009, officials feared a gunman was at large in Middletown, and as part of the coverage of the story and alerts to the community, Tribune's Hartford properties were in constant communication, ensuring that critical information was investigated and reported as quickly and thoroughly as possible.

These examples demonstrate why the Commission has repeatedly found, corroborated by the studies that it has commissioned, that newspaper-broadcast cross-ownership furthers the Commission's goal of improving coverage of local issues. In today's media marketplace, websites break news and provide minute-by-minute coverage. Newspapers, however, not only provide the latest news over their websites, but also offer in-depth examination and analysis, often written by a subject matter expert. When combined with concise video and audio coverage at which broadcasters excel, a news product emerges that enriches and improves the public's understanding of the issues. The Commission's rules should encourage, not stymie innovation and collaboration. The proliferation of competitive news coverage from broadcasters, newspaper and other sources of the Internet eliminates any concern that newspaper-broadcast combinations could adversely impact the public's access to an abundantly diverse and competitive market for news and information.

D. Newspaper-Broadcast Combinations Do Not Have An Adverse Effect on the Public's Access To Diverse and Competitive Sources of Information.

In its 2006 Quadrennial Review, the FCC was presented with substantial evidence that newspaper-broadcast combinations do not have an adverse impact upon the public's access to diverse and competitive sources of news and information.[43] In that proceeding, the FCC commissioned peer-reviewed studies on the effect of its cross-ownership rules from independent scholars. One such study examined, among other things, the concern that commonly-owned

[43] *2008 Order*, ¶¶ 39-46.

media properties like newspapers and broadcast stations might adopt similar editorial points of view or "slants."[44] The Milyo Report tested whether the viewpoint of a newspaper correlated with the viewpoint of its cross-owned television station.[45] Professor Milyo found no statistically significant correlation between the slants of commonly-owned properties, including newspapers and broadcast stations.[46] As Tribune has demonstrated in previous quadrennial filings, its commonly-owned media properties are as likely to take different sides on an issue as they are to take the same side.[47] Because cross-owned entities do not "speak with a single voice" – indeed, they may even speak with slants that are opposed to one another – there are therefore no grounds to believe that cross-ownership results in any significant loss of viewpoint diversity.[48]

Professor Milyo's study reinforced the common-sense and market-based approach that most news organizations adopt in a competitive media environment. As described earlier with respect to Tribune's properties, even commonly-owned media typically have different managers

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44 "The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News," by Jeffrey Milyo, Center for Applied Econ., Univ. of Kansas, School of Bus. and Dept. of Econ. and Truman School of Public Affairs, Univ. of Missouri (Rev. Sept. 2007) (the "Milyo Report"), *2008 Order*, 23 FCC Rcd. 2010, ¶ 42.

45 Milyo Report at 7-8. Milyo used four measures of the slant of a station's local news coverage: (1) the amount of time a candidate is allowed to speak in her own words, (2) the amount of coverage of a candidate, (3) the time devoted to reporting poll results favoring a candidate, and (4) the amount of time devoted to covering stories that favor one party or the other.

46 Milyo Report 23-24.

47 *See, e.g.*, Further Comments of Tribune, MB Docket No. 06-121, filed December 11, 2007; Comments of Tribune, MB Docket No. 06-121, filed October 23, 2006; Comments of Tribune, MB Docket No. 02-277, filed January 3, 2003; Comments of Tribune, filed MM Docket No. 01-235, filed December 3, 2001.

48 The Milyo Report was subjected to two separate peer reviews. Professor Matthew Gentzkow reviewed the Milyo Report and, with the correction of a few data errors that "would not change either the direction or the statistical significance of any of the specifications of interest," he "judge[d] the analysis to be technically correct." Gentzkow Peer Review Evaluation 2. He also found the data to be of "very high quality" and provide a "rich, fine-grained picture of the news coverage of local television stations unlike anything that was available before." *Id.* Professors Goldstein, Hale, and Kaplan also reviewed the study and offered additional criticisms, but the FCC expressly found that "[t]hese criticisms, either in whole or in part, do not invalidate the findings of [the Milyo Report]," noting in particular that Professor Milyo's conclusions were consistent with the findings of the proceeding's other peer reviewed studies. *2008 Order* ¶ 42 n.147.

and editors making independent editorial judgments about what will be presented on each medium and how the issues will be addressed. These media properties do not follow a uniform approach to covering issues of local public importance, much less adopt monolithic "viewpoints" on issues. Rather, local news coverage reflects the efforts of dedicated researchers, reporters and anchors following accepted journalistic standards to present multiple sides of topical issues.

The recent history of presidential endorsements by Tribune-owned newspapers demonstrates that commonly owned newspapers speak with independent voices. Of the ten newspapers Tribune owned in 2000, five endorsed George W. Bush, three endorsed Al Gore, and two declined to endorse. In 2004, three newspapers that had supported George W. Bush in 2000 shifted to John Kerry and one of the papers that did not endorse in 2000 supported Kerry. In 2008, two newspapers that had supported Kerry supported John McCain and one paper that had supported Bush in 2000 and Kerry in 2004 declined to endorse altogether. Only three of the newspapers supported candidates in all three elections from the same political party. The split among Tribune newspapers and the fact that they are not pigeonholed into any single partisan category over time bolsters the point that common ownership does not equal common viewpoint. For their part, Tribune broadcast television stations do not endorse candidates for elective office.

The Milyo Report provided confirming evidence that newspapers and their cross-owned stations do cover local issues, with a statistically significant increase both in time devoted to permitting candidates to speak in their own words and in total time covering state and local candidates, without slanting coverage in one direction or another across a topic.[49] Notwithstanding the findings of the Milyo Report and the Commission's careful discussion

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[49] *See* Milyo Report 22-23.

concluding correctly that newspaper-broadcast combinations have no adverse effect on localism,[50] the FCC nonetheless cited a fear of an "elevated risk of harm" to viewpoint diversity that it said justified continued oversight of all newspaper-broadcast cross-ownership. The Commission said it was "not in a position to conclude that ownership can never influence viewpoint" because it was not "in a position to quantify nontraditional media outlets' contribution to diversity."[51] While openly acknowledging that there were substantial anecdotal examples in the record of cross-owned properties exercising independent editorial judgment,[52] the FCC cited anecdotal examples of "existing media outlets, such as newspapers, introducing a new media outlet into the market, such as an Internet website, but using both outlets to provide the same local content for consumers."[53]

The practice of content repurposing – making content available through multiple platforms to facilitate public access -- does not equate to a lack of editorial independence between commonly-owned media properties. As noted above, Tribune properties do not use shared content to express similar viewpoints or avoid balanced reports. For ever newspaper or broadcast website that provides access to content available once in print or over the air, there are many more independent voices providing diversity and balance. Websites for traditional news media provide many additional benefits. Newspapers have a finite number of pages and a news broadcast has a limited number of minutes to air. Websites allow for many stories that do not make print editions of newspapers or air on broadcasts, blogs by reporters and columnists, as

50 *2008 Order,* ¶¶ 39-46.

51 *Id.* ¶ 49.

52 *Id.* at n.168.

53 *Id.* at n.169.

well as links to other useful information. Websites are also far more conducive to exchanges of sometimes hearted opinions through user comments and other social media.

The Commission's *2011 NPRM* does not cite any significant evidence that commonly-owned newspaper and broadcast stations maintain the same editorial slant, or fail to provide balanced coverage of local issues of public importance. Indeed, several of the studies commissioned by the FCC for the 2010 Quadrennial Review support the conclusions in the Milyo Report. For example, Rennhoff and Wilbur, in Study 1, conclude that "[s]cant evidence is found to indicate that local media ownership affects local media usage or programming."[54] The Vavreck Study, Study 3, notes that while there is variation between different media markets in terms of political engagement and knowledge, such variation cannot be explained by the structural differences in ownership between markets.[55] Rennholf and Wilbur, in Study 8(A), conclude that "associations between viewpoint diversity and ownership variables are . . . very close to zero."[56] And in Study 8(B), George finds "limited evidence that competition and ownership structure influence diversity of local television news programming."[57] In fact, George actually found that "increases in ownership concentration often encourage diversity," with, for example, more politicians receiving coverage as concentration in the market increases.[58] These

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[54] Adam D. Rennhoff & Kenneth C. Wilbur, *Local Media Ownership and Media Quality*, Study 1, at 1.

[55] Lynn Vavreck, Simon Jackman & Jeffrey B. Lewis, *Report to the FCC: How the Ownership Structure of Media Markets affects Civic Engagement and Political Knowledge, 2006-2008*, Study 3, at 2, 73 ("While there may be some hint of relationship between the number of television stations and the fixed effects, these …ownership variables for the most part bear no relationship to what differentiates … the regions in their respondents' ability to recognize local candidates.")

[56] Adam D. Rennhoff & Kenneth C. Wilbur, *Local Media Ownership and Viewpoint Diversity in Local Television News*, Study 8A, at 1.

[57] Lisa M. George, *Diversity in Local Television News*, Study 8B, at 17.

[58] *Id*. at 18.

empirical studies are consistent with the conclusions in the earlier Milyo Report that cross-ownership of media properties would not have any adverse impact on the diversity of viewpoints presented in a media market, and may increase the amount of coverage of local issues, which in George's words, make "existing restrictions on ownership concentration … likely to be welfare-reducing."[59]

Only Brocas, Carrillo & Wilkie, in Study 9, conclude that the concentration of ownership at the local geographic level will impact the quality of local information transmitted and the diversity of viewpoints that are expressed.[60] This study acknowledges that it used a *theoretical* model to examine the effect that ownership structure has on viewpoint diversity, and assumed by definition that "the media owner" has "a preference over the policy outcome. . . ."[61] Employing a theoretical statistical model that assumed that media owners sought particular policy outcomes, the study examined whether the "media market contains different firms with different viewpoints" and whether "concentration of ownership in the local geographic level will impact the quality of local information transmitted and the diversity of viewpoints expressed."[62] Not surprisingly, given the theoretical assumptions about media owner outcome preference and a focus on concentration, Study 9's authors concluded that viewpoint diversity would be diminished and that voters would be better served with diversity of ownership within a market.[63]

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59 *Id*.

60 Isabelle Brocas, Juan D. Carillo & Simon Wilkie, *A Theoretical Analysis of the Impact of Local Market Structure on the Range of Viewpoints Supplied*, Study 9, at 2.

61 *Id*.

62 *Id*. at 2-3.

63 *Id*. at 47.

This theoretical study utterly fails to overcome the weight of empirical, statistical and anecdotal evidence from the past two quadrennial reviews, demonstrating persuasively that common ownership does not adversely impact diversity of viewpoints in real-world media markets. As a preliminary matter, the study adopts a bias that pre-determines the result. Utilizing a theoretical model that assumes that a "media owner" would have "a preference over policy outcome" of course will lead to the conclusion that the media owner will speak with an editorial voice that will encourage the desired outcome. That unfounded and unsupported assumption, once embedded in the model, guarantees that the common ownership will result in less viewpoint diversity. Second, after assuming the motivation to achieve a specific policy outcome, the study ignores the incentive every media outlet has to maintain its credibility and respond to the needs of its consumers for balanced reporting. Finally, the study really focuses on concentrated markets; as shown below, with the multitude of media voices in all of today's media markets, such concentration simply does not exist.

The time has arrived for the Commission to abandon its outdated presumption that media owners have isolated, issue-driven, tunnel-vision approaches to broadcasting or publishing that cause them to produce homogenized "policy-outcome-preferenced" programming addressing news and public affairs. Instead, most media entities today are multi-faceted, diverse organizations striving to meet the needs and interests of their respective audiences: they must present balanced, thorough coverage of the important issues they address – national or local – in order to compete in their markets and maintain credibility with their audiences. The empirical studies and anecdotal evidence that has been supplied to the Commission time and again directly refutes the unsupported presumption underlying the 1975 NBCO Rule: namely that common ownership invariably will lead to less diverse news and information. In today's media markets, where a multitude of other media outlets – almost all available via the Internet – provide the public with access to a "cacophony of voices vying for the attention of Americans,"[64] a media owner must respond to the needs of its audience. Any media owner's attempt to ignore the demands of its audience and jeopardize its reputation for balanced coverage runs the risk of losing its audience share and relevance to other, competing voices.

E. Tribune's Media Markets and Others Throughout the Nation Are Diverse and Not At Risk from Newspaper-Broadcast Common Ownership.

As noted above, Tribune publishes daily newspapers and owns full-service broadcast stations in four markets in the United States: Los Angeles, California; Chicago, Illinois; South Florida (Miami-Fort Lauderdale); and Hartford-New Haven, Connecticut. In New York City, Tribune owns a full-service broadcast station and has an approximately 3% indirect equity interest in a daily newspaper.[65] In rulemaking comments filed in two prior quadrennial reviews and in the Notice of Inquiry in this docket, Tribune provided detailed factual support that demonstrated the evolution of the media marketplace since 1975 and again since 2001.[66] These submissions illustrated the multiple media sources available in each of its cross-ownership markets, showing not only that its newspaper-television station combinations do not dominate public discourse, but also that consumers in these markets have access to substantial, competitive alternative sources for news and information.

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64 *2008 Order*, ¶ 367.

65 *Newsday* was formerly owned and operated by Tribune and now is operated by third-party Cablevision. *See supra* at 14 n.41.

66 *See, e.g.*, Comments of Tribune Company, Debtor-in-Possession, MB Docket No. 09-182, filed July 12, 2010 ("2010 NOI Comments"); Further Comments of Tribune, MB Docket No. 06-121, filed December 11, 2007; Comments of Tribune, MB Docket No. 06-121, filed October 23, 2006; Comments of Tribune, MB Docket No. 02-277, filed January 3, 2003; Comments of Tribune, filed MM Docket No. 01-235, filed December 3, 2001.

Market data, presented in its 2010 NOI Comments, demonstrates that in Tribune's cross-ownership markets, which extend beyond the top 20 television DMAs, newspaper-broadcast combinations do not undermine competition, reduce the availability of diverse viewpoints, or otherwise deprive the public of a vibrant marketplace for discourse.[67] To the contrary, over the course of the Commission's review of the NBCO Rule, the amount, variety and availability of alternative sources of news and information have increased significantly. Given the diversity of available news sources in Tribune's markets and other markets across the country, it is unreasonable for the Commission to prohibit common ownership of media facilities that otherwise better serve the public, adding to the presentation of news and information.

As these "snapshot" summaries and the more detailed showings from which their data are culled demonstrate, there is an abundance of diverse sources in Tribune's cross-ownership markets and other markets nationwide:

New York. New York is the largest media market in the country, with nearly 7.5 million television homes. As detailed in Tribune's 2010 NOI Comments,[68] the New York DMA had 23 television stations owned by 17 owners, 240 radio stations with 119 owners, and 28 daily newspapers with 15 publishers.[69] There also were 337 weekly newspapers published, with 128 different owners. Multichannel Video Programming Distributor ("MVPD") penetration[70] was

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[67] Portions of this data were also provided by BIA and previously submitted in connection with Tribune's applications for the consent to assignment of broadcast station licenses held by Tribune and its subsidiary companies. *See*, MB Docket No. 10-104.

[68] *See* 2010 NOI Comments at 18-28, *also citing* Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428ADP, MB Docket No. 10-104.

[69] As of this filing, CBS is in the process of acquiring WLNY, creating a duopoly, which may affect these totals.

[70] MVPD penetration includes cable as well as Alternative Delivery Systems such as satellite.

96.5% and a number of local cable networks were available including the New York 1/NY1 Noticias 24-hour local news channel, the News 12 24-hour news channels – with separate services in New Jersey, Long Island, Westchester and Connecticut – and the FiOS1 24-hour news channel, among many others. New Yorkers also had access to many independent local news sites. For example, www.gothamist.com had over four million unique visitors in 2009 and three other independent New York-centric sites had more than one million unique visitors during the same timeframe. Eleven other websites had more than 100,000 unique visitors and 10 more had over 50,000 unique visitors over the same course.

Los Angeles. Los Angeles is the second-largest DMA in the country with 5.7 million television homes. As detailed in Tribune's 2010 NOI Comments,[71] the Los Angeles DMA had 27 television stations with 21 separate owners, 196 radio stations with 83 individual owners, and 19 daily newspapers with nine different publishers. There were also 98 weekly newspapers with 54 different owners in the market. MVPD penetration was 86.3% with local offerings that included the California Channel, a statewide version of C-SPAN, and LA City View, a City of Los Angeles government channel. Local independent news websites are viewed by millions of residents including www.laist.com, with almost 3 million visitors in 2009, and five other independent sites with over 100,000 unique visitors over that period. Twelve more websites had between 20,000 and 99,999 unique visitors.

Chicago. Chicago is the nation's third-largest DMA with 3.5 million television homes. As detailed in Tribune's 2010 NOI Comments,[72] the Chicago DMA had 16 broadcast

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[71] *See* 2010 NOI Comments at 29- 38, *also citing* Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428ADV, MB Docket No. 10-104.

[72] *See* 2010 NOI Comments at 38-48, *also citing* Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428AEL, MB Docket No. 10-104.

television stations with 13 separate owners, 166 radio stations with 90 owners, and 24 daily newspapers with 12 different publishers. There were also 172 weekly papers with 50 different owners in the market. MVPD penetration was 88%, and locally focused cable channels include CLTV, Tribune's local cable news channel, and MUTV, the City of Chicago's municipal cable channel. Popular independent local news sites include www.chicagoist.com, which had almost one million unique visitors in 2009. Three other independent sites had more than 150,000 unique visitors and 15 other websites had between 20,000 and 99,000 unique visitors.

South Florida. South Florida has more than 1.5 million television homes.[73] As detailed in Tribune's 2010 NOI Comments,[74] South Florida had 15 broadcast television stations with 12 independent owners, 78 radio stations with 41 owners, and three daily newspaper with three different publishers. There were also 36 weekly papers with 15 different owners in the market. MVPD penetration was 94.4% with local cable offerings such as Telemiami and Miami Latin TV which provide news, information and entertainment. A number of local websites have tens of thousands of unique visitors, including almost 76,000 unique visitors in 2009 to www.coconutgrovegrapevine.blogspot.com, a hyper-local website focusing on the Coconut Grove neighborhood in Miami. During that same period, eight other independent local websites had more than 30,000 unique visitors and 11 other websites had between 5,000 and 29,999 unique visitors.

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[73] Since the study's completion, South Florida has become the sixteenth largest DMA in the country.

[74] *See* 2010 NOI Comments at 48-58, *also citing* Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428ADY, MB Docket No. 10-104.

Hartford-New Haven. The Hartford-New Haven DMA is the nation's thirtieth-largest with over 1 million television homes. As detailed in Tribune's 2010 NOI Comments,[75] there were 11 television stations with seven owners, 77 radio stations with 45 individual owners, and 12 daily newspapers with eight different publishers. There were also 53 weekly newspapers with 15 different owners in the market. MVPD penetration was nearly 96.9%, the second highest in the country. Cable channels of local interest included the 24-hour regional news channel New England Cable News and the Connecticut Network, a statewide version of C-SPAN. Moreover, a variety of websites attracted hundreds of thousands of visitors in 2009. 340,433 unique visitors went to www.newhavenindependent.org during the period. The site provides news and information about New Haven. One other website had more than 100,000 unique visitors and seven other sites had between 20,000 and 99,999 unique visitors in 2009. There were between 10,000 and 19,999 unique visitors to seven additional local and independent sites. And as Tribune has consistently demonstrated, large parts of the Hartford-New Haven DMA also focus on news and information from the New York, Boston, Providence and Springfield communities.

F. The Internet Has Revolutionized Access to News and Information and Has Added Entirely New Sources of Information.

The World Wide Web and all that is available via the Internet and broadband serve as a distribution platform that makes possible access to vibrant and diverse sources of local news, information and opinion. As early as 2003, the Commission readily acknowledged the "important role [of the Internet] in the available media mix" as "a commonly-used source for

[75] *See* 2010 NOI Comments at 58-68, *also citing* Application for Consent to Assignment of Broadcast Station, File No. BALCDT-20100428ADX, MB Docket No. 10-104.

news, commentary, community affairs, and national/international information."[76] In 2008, the agency further recognized that "the Internet has created a vastly improved two-way flow in the sharing of ideas between traditional news gatherers and news consumers."[77] In the *2011 NPRM*, the Commission has again acknowledged the "dramatic impact on the media marketplace" of the "proliferation of broadband Internet and other new technologies."[78] Indeed, more and more consumers are "turning to online and mobile platforms to access news content and audio and video programming."[79] Use of the Internet has displaced the public's reliance on "traditional media" and traditional providers of content delivery, thereby transforming the manner in which people access, use, and otherwise consume information. Despite almost 10 years of recognition by the Commission of the vastly changed circumstances to the media landscape due to the Internet, it continues to support completely outmoded media ownership rules, most notably the NBCO Rule.

In its *2011 NPRM*, despite the rising popularity of the Internet as a platform for access to news and information, the Commission tentatively decided to retain some restrictions on newspaper-broadcast combinations because the American public still views television stations and newspapers as valuable, perhaps the most popular, sources for local news.[80] In support of this proposition, the Commission cited studies that show that three-quarters of Americans obtain news from a local television station, and that despite the decline in newspaper readership, in

76 *2003 Order*, 18 FCC Rcd. at 13,765-66 (¶ 365).

77 *2008 Order*, ¶ 38.

78 *2011 NPRM*, ¶ 2.

79 *Id.*

80 *2011 NPRM*, ¶ 96.

2010, 37% percent of Americans reported reading a newspaper the preceding day.[81] In looking at consumers' use of the Internet, the Commission cited studies that showed that in the fall of 2009, of "the top roughly 200 news websites based on traffic, 67 percent were associated with legacy media, and 48 percent were associated with newspapers in particular."[82] The Commission also cited studies, including Media Ownership Study 6, that claim websites affiliated with television stations and newspapers are among the most popular websites, and that "very little that is not affiliated with a newspaper or television or radio station" is available via the Internet.[83] In a footnote, the Commission did note that "one recent survey found that relative to other news sources, including other online news sources," newspapers and local television stations "do not rank among the top sources that respondents say they rely upon for local news and information."[84] Even the studies that highlight the popularity of newspaper and television station websites note that there are a large amount of other sources of local information available via the Internet.[85]

As Tribune and others have demonstrated, the mere fact that television stations and newspapers are popular providers of news is not evidence of dominance or unique presence that warrants the retention of a newspaper-broadcast prohibition. Nor does it justify limiting any

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81 *Id.*

82 *Id.*, ¶ 97.

83 *Id.*

84 *Id.* ¶ 97 n.227 (citing Pew Research Center's Project for Excellence in Journalism, Pew Internet & American Life Project, and the Knight Foundation, How People Learn About Their Local Community (2011) *available at* http://pewinternet.org/~/media//Files/Reports/2011/Pew%20Knight%20Local%20News%20Report%20FINAL.pdf (last visited Mar. 5, 2012) finding that less than 6% of respondents depended on the website of a legacy news organization, at 5, 27-28).

85 *Id.* ¶ 97.

meaningful relief to the same top 20 markets in the very limited circumstances proposed five years ago. Even the Commission's statistics suggest that one out of every four Americans does not obtain news from local television stations, and that two out of three Americans do not read a newspaper on a daily basis. While newspapers and television stations may maintain popular websites, no one can seriously question that the Internet and other media sources serve as a vibrant and diverse marketplace for national and regional news, information and opinion. Indeed, consumers are able now to access at any-time from anywhere websites from all manner of sources that address these issues – in stark contrast to the time when the 1975 Rule was adopted, and indeed, even in contrast to five years ago when the Commission completed its last quadrennial review.

1. The Internet Makes All News From Everyone Available Anywhere, At Any Time, On Demand.

Historically, when someone wanted to know what was happening locally, nationally or around the world, he or she picked up a daily newspaper or turned on a news broadcast and consumed whatever was presented. The Internet has forever altered that basic formula through search and content aggregation, and by altering the editorial role that traditional media play in selecting and presenting information.

Internet news aggregation now allows users to easily identify and select the news they want to consume. In some cases, Internet users individually visit all of the sites they are interested in from anywhere in the world, picking and choosing content of interest. A student from Madison, Wisconsin living in Austin, Texas and studying international relations can visit her favorite Madison website or blog, read the *Austin American-Statesman* newspaper online, and monitor events in Afghanistan (through State Department websites, international news organizations, non-government websites and other sources), all from the comfort of a dorm room or elsewhere on a tablet or smart phone. In other cases, consumers use news aggregator sites such as GoogleNews or reddit.com to customize searches and subscribe to updates based on their interests. They can select the news items they want to read from a list presenting links to sites across the Internet that can be delivered to their email in-box. User-generated aggregation, through the use of RSS Feeds that stream self-selected website updates or links from social media like Facebook or Twitter, are another source of aggregation.

The Internet makes the news of the world, or a community, available to the average American on demand. In addition to customized searches and aggregation of stories of particular interest, the Internet makes possible immediate access to entirely new media and sources of information. For example, when consumers look for a discrete piece of information, such as a traffic update, weather report or a sports score, for which they used to rely on the local news, they now turn to the Internet. They no longer need to flip through a newspaper or wait through a broadcast. Internet browsers and "apps" now provide instant information. Sports scores, election returns, traffic updates, breaking news, and news about a presidential press conference are all available in this manner, as the consumer's convenience, on demand.[86]

The broad accessibility of the Internet has made information so widely available that information distribution is no longer solely the province of traditional media. For example, a resident interested in a new zoning ordinance would previously have had to visit a government office during business hours to obtain a copy of the ordinance or attend a public

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86 *See, e.g.*, *"Do you have the White House app for your phone?"* *available at* http://www.whitehouse.gov/blog/2011/04/19/do-you-have-white-house-app-your-phone (last visited Mar. 1, 2012).

meeting to obtain information about the proposal. For most people, rather than leave work or their family to get a copy or attend a public meeting, the only information they would have about the ordinance would be whatever the local news chose to report. Now, local governments place many of their documents and proposals online so residents can easily locate and review them from wherever they are at any time.[87] In addition, and just as important, local citizens can access a number of hyper-local websites that discuss the proposed ordinance (from the perspective of business, labor, political, environmental or homeowners' groups) and its impact on the community. Bloggers focused on hyper-local issues also may publish information about this now readily accessible zoning ordinance. Thanks to social media, this information can be easily circulated through Facebook, Twitter, and other services, and in most cases comments and relevant facts will be added by those who desire to provide their own thoughts, creating a virtual town square.

Aggregation and the radical alteration of the filtering function of news and information access points have created an entirely new way of accessing and consuming information that was unthinkable 15 years ago.[88] At the time the NBCO Rule was adopted in 1975, this now-commonplace way of accessing information would have been an element of science-fiction. In reviewing the NBCO Rule, the Commission must account for the current

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[87] 58.5% of Internet users have reported using the Internet to visit local, state or federal government websites and 39% used the Internet to get advice from a government agency about a health or safety issue. John B. Horrigan, *Broadband Adoption and Use in America*, Omnibus Broadband Initiative ("OBI") Working Paper Series No. 1 (Feb. 2010), at 3, 16 ("OBI Working Paper No. 1"), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf (last visited Mar. 1, 2012). These findings were found across all racial categories, with 67% of Black respondents and 61% of Hispanic respondents recently reporting having visited local, state or federal government websites. Joint Center for Political and Economic Studies, *National Minority Broadband Adoption: Comparative Trends in Adoption, Acceptance and Use*, at 21 (March 2010), *available at* http://www.jointcenter.org/publications_recent_publications/media_and_technology/national_minority_broadband_adoption (last visited Mar. 1, 2012) ("Minority Broadband Adoption").

[88] As the Commission is well aware, the FCC's efforts with respect to "net neutrality" have been at the heart of ensuring that the Internet remains the vibrant source of information Tribune has just described.

reality and seemingly endless number and variety of information sources made readily available by the Internet, some of which exist only online. The Internet's accessibility and popularity has made the NBCO Rule obsolete, premised as it is on broadcast and publishing control of both content and the means to distribute it.

2. The Internet is Uniquely Pervasive and Accessible

The Internet and broadband are increasingly available, accessible, and readily utilized by consumers to meet their news, information, entertainment and communications needs. That increase in availability is due in no small part to the work of the current and previous Presidential Administrations,[89] Congress[90] and the Commission.[91] High speed broadband access, combined with the rapid proliferation of new technologies, has vastly increased Internet usage from any location at any-time. The Internet and the information it makes available is mobile, wireless, and ubiquitous. Internet websites have taken on many of the functions the traditional media have historically fulfilled. Breaking news can often be found on Twitter before any traditional media source.[92] Traditional television viewing is now also

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[89] President George W. Bush and President Obama have both called for universal broadband. *Bush Calls for Universal Broadband by 2007*, MSNBC (March 26, 2004) *available at* http://www.msnbc.msn.com/id/4609864/ns/technology_and_science-tech_and_gadgets/t/bush-calls-universal-broadband/#.T0-x7HnOqVo; Arik Hesseldahl, *Obama's Broadband Plan*, BUSINESSWEEK (Jan. 7, 2009) *available at* http://www.businessweek.com/magazine/content/09_03/b4116027365196.htm.

[90] Congress required the FCC to complete a national broadband plan "to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal." *See* American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115 (2009), codified at 47 U.S.C. § 1305(k).

[91] The FCC released the National Broadband Plan in March 2010 and has continuously been working to implement its provisions. FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2009), *available at* http://www.broadband.gov/plan/ (last visited Mar. 1, 2012); FCC, Public Notice, *FCC Announces Broadband Action Agenda* (rel. Apr. 8, 2010).

[92] Eric Deggans, *Twitter Broke Bin Laden News Before TV or the President*, ST. PETERSBURG TIMES (May 2, 2011).

the province of video streaming through sites such as Hulu, Netflix and YouTube.[93] Classified advertising has largely migrated from newspapers to online sources, such as CraigsList and e-bay as well as to some topic-specific websites for job listings, apartment listings, and countless other items sought by the average individual.[94] The Internet also facilitates social interaction and engagement because of its interactivity, with sites such as Facebook and Twitter allowing individuals to comment, share content, join groups, highlight other users' postings, and distribute content, thereby turning any user with an Internet connection into a potential 21st Century media mogul, posting news, information and opinion.

The Internet has become pervasive in American life. Seventy-four percent (74%) of Americans have Internet access at home according to a 2009/2010 FCC study,[95] up from 60% in 2001,[96] and according to 2010 studies, between 63.5% and 67% of U.S. households have high-speed broadband Internet access.[97] According to the FCC's OBI Working Paper No. 1, 65% of adults use broadband at home,[98] a substantial increase from prior years. In June 2000,

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93 *See infra* at 38-40.

94 *See* "Classified Advertising Falls Drastically" and "'Other' Classified Ads More Stable Than Auto, Real Estate and Recruitment," PEJ 2011 State of the News Media Report; *see infra*.

95 OBI Working Paper No. 1 at 3; The National Telecommunications and Information Administration ("NTIA") reports a slightly lower figure, finding that 71% of households now have access to the Internet. U.S. Department of Commerce, National Telecommunications and Information Administration, *Exploring the Digital Nation: Computer and Internet Usage at Home* (Nov. 2011), at 1, *available at http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_computer_and_internet_use_at_home_11092011.pdf* (last visited Mar. 1, 2012) ("Exploring the Digital Nation").

96 The Nielsen Company, *Internet Penetration Reaches 60 Percent in the U.S. According to Nielsen/NetRatings* (Feb. 28, 2001), http://www.nielsen-online.com/pr/pr_010228.pdf (last visited Mar. 1, 2012). More Americans have home Internet connections than subscribe to cable television. *13th Annual Video Competition Report*, 24 FCC Rcd. at 627 (¶ 178) (reporting that 68.2% of Americans have cable television).

97 *See* OBI Working Paper No. 1, at 13 (Reporting 67% of U.S. households have broadband); Exploring the Digital Nation, at 1 (Reporting 63.5% of U.S. households have broadband).

98 *See* OBI Working Paper No. 1, at 13, citing a survey conducted in October and November 2009

home broadband adoption was just 3% and even as recently as May 2008 was only 55%.[99] As Internet access has spread and speeds have increased, the time spent online has increased from 14 hours per week in 2006 to 18.3 hours per week in 2010.[100] The increase in Internet usage has included every age group and extended across racial and ethnic groups.[101]

Broadband availability makes it easier for users to identify and access the amount and type of content they want, and the manner in which they receive it, whether it be smart phone alert, podcast, or a streaming file. Consumers can and do access desired content on demand, no longer relying on broadcast program schedules or a newspaper delivery. Broadband has fueled the growth and popularity of online news and will continue to do so. One study attributed approximately one-quarter of the growth of daily online news consumption between 2002 and 2006 to the increase in residential broadband adoption, numbers that have likely only risen with the increased efforts to expand broadband.[102]

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99 John B. Horrigan, *The Broadband Difference: How Online Americans' Behavior Changes With High-Speed Internet Connections at Home*, at 9 (June 23, 2002), *available at* http://pewinternet.org/~/media//Files/Reports/2002/PIP_Broadband_Report.pdf.pdf (last visited Mar. 1, 2012); John B. Horrigan, *Home Broadband Adoption 2009*, at 3, 9 (June 17, 2009) ("Home Broadband Adoption 2009"), http://www.pewinternet.org/~/media//Files/Reports/2009/Home-Broadband-Adoption-2009.pdf (last visited Mar. 1, 2012). These growth figures are supported by those reported by NTIA, which reflect that in August 2000,4.4% of households had broadband access; by October 2007, that number had grown to 50.8%; and that in October 2009, the household broadband adoption rate stood at 63.5%. *Digital Nation: 21st Century America's Progress Toward Universal Broadband Internet Access, An NTIA Research Preview* (Feb. 2010), at 4, *available at* http://www.ntia.doc.gov/files/ntia/publications/ntia_internet_use_report_feb2010.pdf (last visited Mar. 1, 2012).

100 *Pew Research Center's Project for Excellence in Journalism 2009 State of the News Media Report*, Online, Audience, at 15, *available at* http://stateofthemedia.org/2009/online-intro/audience/#audience (last visited Mar. 1, 2012) ("PEJ 2009 State of the News Media Report") (citing The Digital Future Report 2009, Center for Digital Future, University of Southern California, Annenberg School Survey); USC Annenberg School for Communications and Journalism, "Tenth Study by the Digital Future Project Finds High Levels of Concern about Corporate Intrusion in Personal Lives," at 3 *available at* *http://www.digitalcenter.org./pdf/2011_digital_future_final_release.pdf* (June 3, 2011) (last visited Mar. 1, 2012).

101 Minority Broadband Adoption at 1, 8-9.

102 John B. Horrigan, *Online News*, at 4 (Mar. 22, 2006) ("Online News"), *available at* http://www.pewinternet.org/~/media//Files/Reports/2006/PIP_News.and.Broadband.pdf.pdf (last visited Mar. 1, 2012).

According to a 2010 survey, 75% of adult Internet users reported getting news online.[103] In addition, between 2004 and 2010 the number of Americans reporting that they got news online "yesterday" had increased from 24% to 34%.[104] Pew's Participatory News Consumer study confirms the Internet's appeal as a source of news, finding that on a "typical day" 61% of Internet users access news online while 71% do so "at least occasionally."[105] 2010 was the first year the Internet surpassed newspapers as a news platform choice, and as of that year trailed only local television news, the choice of 50% of Americans.[106] The percentage of Americans who "regularly" get news online is 46%, surpassing daily newspapers (40%), news magazines (8%), weekday morning news (20%), nightly network news (28%), and cable news (39%).[107] No other news source has had a significant upward trend and although more people still watch local news regularly, the percentage of those doing so has actually declined almost continuously for the past 15 years.[108] Forty-one percent (41%) of Americans cite the Internet as the place they go for "most of their news about

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103 Kathryn Zickuhr, *Generations 2010*, *a*t 11 (December 16, 2010), *available at* http://pewinternet.org/~/media//Files/Reports/2010/PIP_Generations_and_Tech10.pdf (last visited Mar. 1, 2012). This represents a significant increase over prior years. In 2009, 70% of adults reported accessing news online. Sydney Jones and Susannah Fox, *Generations Online in 2009*, at 5 (Jan. 28, 2009),, *available at* http://pewinternet.org/~/media//Files/Reports/2009/PIP_Generations_2009.pdf (last visited Mar. 1, 2012). In 2008, 37% of Americans reported receiving news through the Internet regularly compared to 31% in 2006 and 23% in 2000. Pew Research Center for People & the Press, *Pew Research Center Biennial News Consumption Survey*, at 3-4 (Aug. 17, 2008), *available at* http://people-press.org/reports/pdf/444.pdf (last visited Mar. 1, 2012).

104 Ideological News Sources: Who Watches and Why, Americans Spending More Time Watching the News at 1, *available at* http://www.people-press.org/files/legacy-pdf/652.pdf (Mar. 1, 2012) ("Ideological News Sources").

105 Pew Internet & American Life Project, *Understanding the Participatory News Consumer* (Mar. 1, 2010), at 10, *available at* http://www.pewinternet.org/~/media//Files/Reports/2010/PIP_Understanding_the_Participatory_News_Consumer.pdf (last visited Mar. 1, 2012).

106 *Id.*

107 Ideological News Sources at 21.

108 *Id.*

national and international issues," up 17% from the prior year.[109] That is a higher percentage of Americans than those using newspapers to obtain news and national and international issues, and the gap with television is closing.[110]

Americans increasingly are relying on the Internet for local news as well, with 75% of Internet users accessing local or community news online.[111] Another study cited 47% of people using web-only sources to learn about local news and information, which in the study excludes the websites of newspapers and broadcast stations.[112] The trend towards using the Internet is also on the rise. Asked about the sources they rely on for news and information in the local categories of weather, restaurants, politics, community events, and schools, adults between 18 and 39 picked the Internet as the source they rely on for news and information in each category except weather, in which television was narrowly ahead by 3%.[113]

The Internet is a principal destination for political and election news and advocacy. Data from the past three Presidential election cycles demonstrate a steady increase in the percentage of American adults utilizing online sources for news or information about politics or elections,

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109 PEJ 2011 State of the News Media Report, Key Findings, *available at* http://stateofthemedia.org/2011/overview-2/key-findings/ (last visited Mar. 1, 2012).

110 *Id.*, Online: By the Numbers, *available at* http://stateofthemedia.org/2011/online-essay/data-page-7/ (last visited Mar. 2, 2012).

111 OBI Working Paper No. 1, at 3, 16. A previous study had reached similar results. Pew Research Center for the People & the Press, *Many Would Shrug if Their Local Newspaper Closed*, at 9 (Mar. 12, 2009), http://people-press.org/reports/pdf/497.pdf (last visited Mar. 1, 2012) (reporting that 54% of respondents reported getting local news from the Internet either "regularly" (31%) or "sometimes" (23%)).

112 Pew Research Center's Project for Excellence in Journalism, Pew Internet & American Life Project, and the Knight Foundation, How People Learn About Their Local Community 3, 4 (2011) *available at* http://pewinternet.org/~/media//Files/Reports/2011/Pew%20Knight%20Local%20News%20Report%20FINAL.pdf (last visited Mar. 5, 2012).

113 *Id.*, 7.

rising from 18% in 2000, to 29% in 2004, to 44% in 2008.[114] The percentage of Americans citing the Internet as one of their major sources for election news more than doubled from 11% in 2000 to 26% in 2008.[115] In a study of the 2010 midterm elections, Pew found that 73% of adult Internet users (54% of US adults) went online for some type of news or information about the election.[116] Twenty-four percent (24%) of American adults received most of their campaign news and information online, up sharply from 7% during the 2002 mid-term election and 15% in 2006.[117]

The Internet's interactive component also has contributed to its importance as a source of news and information, altering and in some cases eliminating the "filter" role that traditional news media have served. The Internet allows users to sort, select, and share content based on their specific interests. They can also contribute their own information, commentary, opinion, photos, videos and similar material previously provided uniquely by traditional media. According to Pew, "37% of Internet users have contributed to the creation of news, commented on it, or disseminated it via postings on social media sites like Facebook or Twitter."[118] It is

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[114] Aaron Smith, *The Internet's Role in Campaign 2008*, at 48 (Apr. 15, 2009), *available at* http://www.pewinternet.org/~/media//Files/Reports/2009/The_Internets_Role_in_Campaign_2008.pdf (last visited Mar. 1, 2012).

[115] *Id.* at 51.

[116] Pew Research Center, Aaron Smith, "The Internet and Campaign 2010," at 2, *available at* http://pewinternet.org/~/media//Files/Reports/2011/Internet%20and%20Campaign%202010.pdf (last visited Mar. 1, 2012).

[117] *Id.* at 9.

[118] Pew Internet & American Life Project, *Understanding the Participatory News Consumer*, at 2 (Mar. 1, 2010), *available at* http://www.pewinternet.org/~/media//Files/Reports/2010/PIP_Understanding_the_Participatory_News_Consumer.p df (last visited Mar. 1, 2012); *see id*. at 40, 44 (finding that on a typical day, 51% of social networking site users get news from people they follow on sites such as Facebook or MySpace, 23% of this cohort specifically get news from news organizations or individual journalists that they follow on social networking sites, and 17% of Internet users have posted links and thoughts about news on a social networking site); *see also* OBI Working Paper No. 1, at 16 (reporting that 52% of all Internet users use the Internet to access social networking sites); The Nielsen

now typical for traditional media to use cell phone camera pictures and videos provided by the public to bolster their own traditional reporting. A video placed on YouTube which goes "viral" could have a greater impact on an issue of public importance or a politician's reelection than a newspaper editorial.[119] Political movements have used the Internet and social media to jumpstart and organize their activities including the "Green Movement" following elections in Iran, protests across the Arab world during the "Arab Spring," the 2008 Obama campaign, the "Tea Party" as it arose in 2009, the "Occupy" encampments in cities throughout the United States, and the recently successful citizen lobbying effort in opposition to the Stop Online Piracy Act legislation in Congress.

Online video viewing is soaring. According to comScore, over 181 million U.S. Internet users watched nearly 40 billion videos in January of 2012.[120] Due to the dramatic growth of online viewing, particularly through sites such as Hulu, Nielsen has expanded its ratings system to measure online viewership.[121] The Internet is increasingly supplementing and substituting for broadcast television viewing. As of 2008, one-third of Americans, half of Internet users,

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Company, *Social Networking's New Global Footprint* (Mar. 9, 2009), http://blog.nielsen.com/nielsenwire/global/social-networking-new-global-footprint/ (last visited Mar. 1, 2012) (documenting the increase in popularity of social networking sites in general).

[119] Bill Johnston, "It's Official: Bob Ethridge [sic] Will Run for Governor," GOLDSBORO DAILY NEWS (Feb. 29, 2012) ("Ethridge [sic] lost a hotly contested race…A video that went viral was partially to blame for his defeat.").

[120] comScore, *comScore Releases January 2012 U.S. Online Video, available at*http://www.comscore.com/Press_Events/Press_Releases/2012/2/comScore_Releases_January_2012_U.S._Online_Video_Rankings (last visited Mar. 1, 2012).

[121] Joe Mandese, *Nielsen's New Year's Resolution: Find a Way to Measure TV Ads That Are Substituted Online*, MEDIA DAILY NEWS, (Dec. 23, 2010) *available at* http://www.mediapost.com/publications/article/141863/ (last visited Mar. 1, 2012).

regularly watched news video online.[122] In fact, "[n]ews shows are the most popular online programs – watched by about 43% of online TV viewers."[123] Internet content providers and aggregators have recognized this interest and responded: YouTube, the video sharing site now owned by Google, has created a "News Near You" feature which recognizes a user's location, aggregates local video programming and provides the user with potentially relevant local videos.[124] YouTube also made it possible for more than 25,000 news sources aggregated at Google News, many of them local outlets, to create and maintain their own YouTube "channels" online (through which their sources can easily publish video).[125] The trend toward online news sources will no doubt continue, given Americans' preference for news they choose by topic, delivery method and time.

CraigsList, a free online classified site, demonstrates how the Internet has taken on many of the functions long-served by traditional news media. CraigsList serves local interests by offering 710 separate hyper-local geographic sub-domains; it is one of the most popular destinations online. CraigsList leverages filtering and search functions to cater to an individual's particular interest and, along with other online classified advertising services, has

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122 Pew Research Center for People & the Press, *Pew Research Center Biennial News Consumption Survey*, at 21, 25 (Aug. 17, 2008), http://people-press.org/reports/pdf/444.pdf (last visited Mar. 1, 2012).

123 Radio Business Report, Inc., *More Consumers Watch TV Online; Hulu Rising* (Sept. 8, 2009), http://www.rbr.com/media-news/research/16890.html (last visited Mar. 1, 2012) (citing the Consumer Internet Barometer, a quarterly report produced by The Conference Board and TNS based on surveys of 10,000 U.S. households).

124 Brian Stelter, *Now on YouTube, Local News*, N.Y. TIMES, Aug. 3, 2009, *available at* http://www.nytimes.com/2009/08/03/business/media/03youtube.html (last visited Mar. 1, 2012).

125 *Id.* YouTube now hosts individual channels for Tribune's WGN-TV, WPIX(TV), KTLA(TV), WSFL-TV, WTTV(TV), and WTIC-TV, among others. *See* http://www.youtube.com/user/wgn (last visited Mar. 1, 2012); http://www.youtube.com/user/WPIX (last visited Mar. 1, 2012); http://www.youtube.com/user/ktla (last visited Mar. 1, 2012); http://www.youtube.com/user/WSFL (last visited Mar. 1, 2012); http://www.youtube.com/user/WTTV (last visited Mar. 1, 2012); http://www.youtube.com/user/WTIC (last visited Mar. 1, 2012).

contributed to a steep decline in the traditional print classified business. Since 2006, newspaper classified advertising revenue has decreased every year, sometimes significantly. In 2009, the decrease was 38.1% but even prior to the economic recession, in 2007 there was a decrease of 16.5% according to the Newspaper Association of America.[126] Beyond Craigslist, a number of sites which target jobs, automobiles, and real estate have further eroded newspaper classified advertising.[127] In late 2009, 57% of adults who use the Internet reported accessing online classifieds websites.[128] This was a significant increase over just a few months earlier when 49% reported doing so and an even more substantial increase over 2005 when 22% reported doing so.[129] The increasing use of such websites by consumers shows that people are turning to the Internet now more than ever for information previously provided largely by newspapers.

Those who wish to cast doubt upon the usefulness of the Internet as a vibrant source of diverse news, information and opinion will cite Matthew Hindman's *Less of the Same: The Lack of Local News on the Internet* study (Study 6).[130] However, the Commission should recognize that the Hindman Study does not adequately measure the value of hyper-local websites. In assessing the amount of news available in a market, the study used data for

[126] Newspaper Association of America, Annual (All Categories), *available at* http://www.naa.org/Trends-and-Numbers/Advertising-Expenditures/Annual-All-Categories.aspx (last visited Mar. 1, 2012).

[127] *See* "Classified Advertising Falls Drastically" and "'Other' Classified Ads More Stable Than Auto, Real Estate and Recruitment," PEJ 2011 State of the News Media Report, *available at* http://stateofthemedia.org/2011/newspapers-essay/data-page-6/ (last visited Mar. 1, 2012);

[128] OBI Working Paper No. 1, at 16. The Minority Broadband Adoption study showed that 78% of Black and 64% of Hispanic American respondents use the Internet to find information about employment opportunities, significantly outpacing the 48% of Whites who use the Internet for job information. Minority Broadband Adoption, at 20-23.

[129] Pew Internet & American Life Project, Online Classifieds, at 3, *available at* http://pewinternet.org/~/media/Files/Reports/2009/PIP%20-%20Online%20Classifieds.pdf (last visited Mar. 1, 2012).

[130] Matthew Hindman, *Less of the Same: The Lack of Local News on the Internet*, Study 6; 2011 *NPRM*, ¶ 97.

websites contained within DMAs, measuring popularity by hits within that defined market. By defining the relevant market as coextensive with the market of the newspaper or broadcast station, Hindman undervalues or altogether excludes numerous websites that contribute news, information and opinion in the most important market for localism – the hyper-local communities and neighborhoods that seek news about community politics, crime, sports and civic activities. While newspapers and broadcast stations may cover these issues for dozens if not hundreds of counties, cities and neighborhoods within their markets, hyper-local community websites cover these issues with particularity. That these sites and blogs exist, compete with traditional media, and contribute greatly to diversity cannot be ignored by the Commission as it reviews its ownership rules. Google, Facebook, Yahoo, and numerous other aggregators of news and information not only serve as vehicles for obtaining innumerable sources of national and regional information, but also for finding and linking these local and hyper-local websites containing news, information and opinion. Others, such as the Huffington Post, provide both news aggregation and substantial original content.

3. Tribune's Markets Demonstrate That the Internet Is a Vibrant Source of Local News and Information.

In Tribune's markets, the Internet has made available significant media voices that are accessible to the local public at any time they choose.[131] In addition to bringing distant voices to markets, the Internet has spawned numerous uniquely local sources that are used by local consumers. As indicated in the 2010 NOI Comments, in 2009 four independent websites in New York attracted more than one million unique visitors, and 11 other websites had more than 100,000 unique visitors. During that same period, in Los Angeles, one independent website

[131] The data discussed in this section in summarized above, *see supra* at 24-29, and is detailed in Tribune's 2010 NOI Comments, MB Docket No. 09-182, filed on July 12, 2010.

attracted more than one million unique visitors, five such websites attracted more than 100,000 such visitors, and a dozen such websites attracted between 20,000 and 99,999 unique visitors. In Chicago, one independent website also attracted more than one million unique visitors, three such websites attracted more than 150,000 such visitors, and 15 such websites attracted between 20,000 and 99,999 unique visitors. In South Florida, nine independent websites attracted more than 30,000 unique visitors. And in Hartford-New Haven, 15 separate independent websites attracted between 10,000 and 100,000 unique visitors, with three other websites exceeding 100,000 unique visitors. As the data demonstrated, many of these unique visitors returned to these websites repeatedly for their content.[132]

While these statistics steadfastly support the proposition that the Internet provides strong and seriously-presented local news and information, they do not convey the entire picture of the news revolution made possible or facilitated by the Internet. While the statistics measure the value of large and frequently-visited websites, they do not reflect the value of smaller, niche hyper-local websites that may serve the needs of small communities or neighborhoods. These websites may go statistically unnoticed in today's commercial environment, as yet not truly capable of measure, but they are every bit as valuable to the public. For example, the review of websites in the South Florida and Hartford-New Haven DMAs illustrates that city and community websites not only have been established, but garner significant numbers of unique visitors interested in news and information about these communities within the DMA.

[132] *See id*. *See also* Tribune Applications for Assignment of Broadcast Licenses, filed April 28, 2010, MB Docket No. 10-104.

G. **Newspapers Are Facing Severe Financial Pressures And Can Ill Afford Further Delays in Meaningful Regulatory Relief.**

As reported by the Newspaper Association of America ("NAA"), and recognized by the Commission in past reviews, newspapers have steadily lost revenue, due to declining circulation and the loss of display and classified advertising revenue. As NAA statistics reveal, classified advertising revenues for newspapers have fallen consistently for the past five years, resulting in a loss of billions of dollars in revenue industry-wide.[133] Paid circulation also has steadily declined, and is now less than 66% of its 1975 level,[134] with steady declines since the advent of the Internet. While the Commission and others have theorized that the woes of newspaper publishers were the same as most industries during the last five years, data for 2010 demonstrated that newspaper woes are not cyclical, but reflect the basic restructuring of the industry and an urgent need to convert from past sources of revenue (daily circulation and classifieds) to new scales and business. In addition, a drop in classified ads of 16.5% in 2007, before the economic slowdown, demonstrates that the problem is not directly tied to the overall economy.[135]

As the Commission on multiple occasions has acknowledged, the newspaper industry is struggling financially. In the *2011 NPRM*, the Commission observed that new technologies are challenging existing business models and that newspaper circulation and revenues have been decreasing.[136] In the *2008 Order*, which grafted very modest waiver standards onto the NBCO

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133 Newspaper Association of America, Annual (All Categories), *available at* http://www.naa.org/Trends-and-Numbers/Advertising-Expenditures/Annual-All-Categories.aspx (last visited Mar. 1, 2012).

134 *See supra* at 5.

135 *Id.*

136 *2011 NPRM*, ¶ 3.

Rule, the FCC recognized that newspapers were in a downward cycle and that regulatory relief was appropriate.[137] As the agency concluded in its *2008 Order*, "[t]he emergence of new forms of electronic media in recent years has come at the expense of traditional media, and of newspapers in particular."[138] The Commission observed that, although "the population of the country has increased more than 80 percent" during the past 50 years, "the number of daily newspapers being published and their readership have decreased significantly" over this same period.[139] The agency further noted that the recent, substantial drop in newspaper circulation had produced "a cascade of negative impacts on the media industry."[140] Among these was a "sharp reduction in the number of professional journalists employed in the newspaper industry," a trend that had "particular import for the public interest."[141] The FCC further observed that newspaper publishers had experienced a "flatten[ing]"[142] of the advertising revenues that "keep [them] alive" and that "stock prices for many of the major newspaper companies ha[d] fallen."[143]

Conditions in the newspaper industry continue to worsen. Newspapers across the country have reduced their frequency of publication; eliminated print editions in favor of online-only editions; and, in some cases, shut down altogether. Some publishers, like Tribune, have declared

137 2008 Order, ¶ 21.

138 *Id.*

139 *Id.*, ¶ 27.

140 *Id.*, ¶ 28.

141 *Id.*

142 *Id.* at 2029, ¶ 32.

143 *Id.* at 2028 (¶ 30), 2029,¶ 33.

bankruptcy. In addition, publishers have closed domestic and foreign news bureaus[144] and/or trimmed the scope of their news coverage.[145] Virtually all publishers — in both large and small markets across the country — have laid off valued newsroom employees and/or imposed pay reductions in order to stem severe losses.[146]

In 2009, newspapers saw their advertising revenues tumble roughly 26%, followed by an additional loss in 2010 of 6.3%, a total loss since 2006 of 48%.[147] The 2009 rate of decline was more than 50% steeper than in 2008, when the newspaper industry's total advertising revenues declined 16.6%.[148] Even revenues from online advertising on newspaper websites — which often has been hailed as the industry's most promising future growth engine — declined by more than 10% in 2009 and accounted for just 10% of overall revenue.[149] Although slightly recovered

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144 Pew Project for Excellence in Journalism, The State of the News Media (2010) ("PEJ 2010 State of the News Media Report"), Newspapers, News Investment at 29, http://www.stateofthemedia.org/2010/printable_newspaper_chapter.htm (last visited Mar. 2, 2012).

145 For example, The Washington Post eliminated its stand-alone Business Section and did away with the print version of "Book World." Robert MacMillan, Washington Post to Cut Business Section, REUTERS, Mar. 13, 2009, available at http://www.reuters.com/article/newsOne/idUSTRE52C5NP20090314 (last visited Mar. 2, 2012).

146 During one week alone in March 2009, *The New York Times*, *The Boston Globe*, the *Boston Herald*, the *Houston Chronicle*, the *Atlanta-Journal Constitution*, the *Milwaukee Journal Sentinel*, and *The Buffalo News* all announced substantial layoffs and pay cuts. Jennifer Harper, *Newspapers Seek Way Out of Hole*, WASH. TIMES, Mar. 29, 2009, at A03, *available at* http://www.washingtontimes.com/news/2009/mar/29/newspapers-on-defense-nationwide/ (last visited Mar. 2, 2012).

147 PEJ 2011 State of the News Media Report, Newspapers: By the Numbers *available at* http://stateofthemedia.org/2011/newspapers-essay/data-page-6/ (last visited Mar. 2, 2012); PEJ 2010 State of the News Media Report, Executive Summary at 1, 8-9, http://www.stateofthemedia.org/2010/chapter%20pdfs/2010_execsummary.pdf (last visited July 1, 2010) ("Advertising losses, averaging 26% in 2009 (on the heels of a cumulative 23% loss the previous two years) left newspapers downsizing everything — the physical dimensions of the paper, the space devoted to news and, most painfully, their roster of news professionals.").

148 PEJ 2010 State of the News Media Report, Executive Summary at 8, http://www.stateofthemedia.org/2010/chapter%20pdfs/2010_execsummary.pdf (last visited Mar. 2, 2012); *see also* Annual Advertising Expenditures, http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx ("Annual Advertising Expenditures") (last visited Mar. 2, 2012).

149 *See* PEJ 2010 State of the News Media Report, Newspapers, Summary Essay at 2, Economics at 20-21, http://www.stateofthemedia.org/2010/printable_newspaper_chapter.htm (last visited Mar. 18, 2010); *see also*

in 2010, online revenues are still well short of their 2006 peak and do not compensate for the overall ad revenue loss.[150] The current economic downturn has exacerbated this downward trend considerably, as advertisers have cut spending steeply in order to stem their own revenue losses. Among the most pronounced have been cutbacks in automobile advertising due to bankruptcies and financial turmoil in that industry, in real estate advertising due to the real estate bust and subprime mortgage crisis, and in retail due to decreases in consumer spending.[151] Classified advertising revenues, in particular, have trended downward, both because of the poor economy in general and because of consumers' rapid adoption of online alternatives.[152] It is not surprising

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Annual Advertising Expenditures; Erik Sass, Newspapers' Online Strategies Failed in 2009, MEDIA NEWS POST, Dec. 29, 2009, *available at* http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=119834 (last visited Mar. 2, 2012) (observing that "[s]ome of the worst defeats for newspapers in 2009 came in online advertising," and citing Newspaper Association of America data showing that newspapers' online revenues declined 15.5% in the first three quarters of 2009 compared to the same period in 2008); NAA, Nielsen: Newspaper Sites Get 5.5% Rise in '09 Visitors, MEDIA NEWS POST, Feb. 3, 2010, *available at* http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=121745 (last visited Mar. 2, 2012) (noting that "[t]hrough the first three quarters of 2009, the NAA tallied total Internet revenues of about $1.97 billion, representing just under 10% of total revenues of $19.9 billion").

150 PEJ 2011 State of the News Media Report, Newspapers: By the Numbers, *available at* http://stateofthemedia.org/2011/newspapers-essay/data-page-6/ (last visited Mar. 2, 2012).

151 *See* Greg Bensinger and Bob Van Voris, Chicago's Sun-Times Media Seeks Bankruptcy Protection (Update3), Bloomberg.com, Mar. 31, 2009, http://www.bloomberg.com/apps/news?pid=20601087&sid=ajAExsdEoCRs (last visited Mar. 2, 2012) ("Advertisers, particularly auto, retail and classified, have pulled back [in newspaper advertising] as the economy gets worse and worse."); Richard Perez-Pefia, Newspaper Ad Revenue Could Fall as Much as 30%, N.Y. TIMES, Apr. 14, 2009, available at http://www.nytimes.com/2009/04/15/business/media/15papers.html (last visited July 1, 2010) (reporting that, in 2008, "[s]ome of the biggest categories of advertising, like real estate and help wanted, all but evaporated" for newspapers); The declines have showed some signs of leveling off after years of decline in late 2010. PEJ 2011 State of the News Media Report, Newspapers: By the Numbers, *available at* http://stateofthemedia.org/2011/newspapers-essay/data-page-6/ (last visited Mar. 2, 2012).

152 PEJ 2010 State of the News Media Report, Newspapers, Economics at 18, http://www.stateofthemedia.org/2010/printable_newspaper_chapter.htm (last visited Mar. 2, 2012) ("By early 2007, the industry had already lost a significant share of the once-lucrative classified advertising franchise to competitors like Monster, CraigsList and Google search. The recession then made the decade-long swoon worse, with classified falling 40% [in 2009]."); PEJ 2011 State of the News Media Report, Newspapers: By the Numbers, *available at* http://stateofthemedia.org/2011/newspapers-essay/data-page-6/ (last visited Mar. 2, 2012) ("Recruitment has fallen the most sharply, reflecting both a migration to electronic sites like Monster and a persistent employment slump through 2010."); Rick Poynter, Classified Ad Revenue Down 70% in 10 Years, With One Bright Spot, POYNTER ONLINE — THE Biz BLDG, Feb. 1, 2010, http://www.poynter.org/column.asp?id=123&aid=177005 (last visited Mar. 2, 2012) (finding that the overall decline in the newspaper industry's classified ad earnings during the past decade "was a stunning 70 percent — from $19.6 billion in 2000 to roughly $6 billion in 2009").

that these decreases have had a disproportionate impact on newspaper publishers, given the importance of advertising earnings to their business models.[153]

On top of steep losses in advertising revenue, newspaper publishers are facing unprecedented circulation declines. In September 2010, the Audit Bureau of Circulations reported the fifteenth consecutive six-month period of declining circulation with a 5% decline on weekdays and 4.5% decline in Sundays, both lower than the previous year's 10.6% and 7.5% declines, respectively, but still not sustainable and leaving circulation at its lowest point in nearly 70 years.[154] This sharp drop followed declines of 7.1% from October 2008 through March 2009 and 4.1% from April through September 2008.[155] The twofold hit that newspaper publishers have taken as a result of the downturns in advertising and circulation revenues is further reflected in the fact that the stock prices of publicly traded newspaper companies plunged nearly 83% in

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153 TNS Media Intelligence, TNS Media Intelligence Reports U.S. Advertising Expenditures Declined 14.7 Percent In First Nine Months of 2009, Dec. 8, 2009, http://www.tns-mi.com/news/2009-Ad-Spending-Q3.htm (last visited Mar. 2, 2012) (reporting that total measured advertising expenditures in the first nine months of 2009 dropped by 14.7 percent as compared to the same period in 2008, that ad spending during the third quarter of 2009 was down 15.3 percent versus last year, and that newspapers and radio severely lagged the overall ad market during this period); *see also* Erik Sass, Newspapers To Hit Bottom in 2010 . . . Maybe?, MEDIA DAILY NEWS (MediaPost), Dec. 16, 2009, *available at* http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=119282 (last visited July 1, 2010) (citing a survey of newspaper publishers, who agree that advertising revenues will continue to decline in 2010 and that losses will be "spread across classifieds, national, and retail (or local) advertising — in other words, all the major newspaper advertising categories"); Joe Mandese, Nielsen: U.S. Ad Spending Plummets $3.8 Billion, MEDIA DAILY NEWS (MediaPost), June 8, 2009, *available at* http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=107497 (last visited July 1, 2010) (reporting that ad spending in the first quarter of 2009 was down 37.7% in Sunday newspaper supplements, which "experienced the greatest erosion of any major U.S. ad medium," with ad spending in national newspapers close behind at a 27.7% drop); Deborah Yao, Global Ad Spend Still to Fall, Signs of Bottoming, ABC News (Associated Press), July 6, 2009, available at http://abcnews.go.com/print?id=8011994 (last visited July 1, 2010) (reporting drop in advertising spending world-wide, with "U.S. ad spending for newspapers . . expected to fall most steeply").

154 PEJ 2011 State of the News Media Report, Newspapers: By the Numbers, *available at* http://stateofthemedia.org/2011/newspapers-essay/data-page-6/ (last visited Mar. 2, 2012).

155 Barbara Ortutay, Newspaper Circulation Falling Fast, USA TODAY, Oct. 26, 2009, available at http://www.usatoday.com/money/media/2009-10-26-newspaper-circulation_N.htm (last visited July 1, 2010); Shira Ovide, U.S. Newspaper Circulation Falls, WALL ST. J., Oct. 27, 2009, *available at* http://online.wsj.com/article/SB10001424052748703697004574497293992459948.html (last visited July 1, 2010).

2008.[156] Although these prices increased in 2009 over their 2008 levels, 2010 prices were mixed and overall they remain drastically lower than prices in 2005.[157]

This turmoil has been recognized at the highest levels of government; indeed, in March 2009 then-U.S. House of Representatives Speaker Nancy Pelosi sent a letter to Attorney General Eric Holder chronicling the dire financial state of the newspaper industry and suggesting a need to alter the traditional approach to considering transactions involving newspapers in light of the industry's troubled financial condition.[158] The Waldman Report observed that "[n]ewspapers

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156 PEJ 2009 State of the News Media Report, Executive Summary at 10, http://www.stateofthemedia.org/2009/chapter%20pdfs/COMPLETE%20EXEC%20SUMMARY%20PDF.pdf (last visited July 1, 2010).

157 *See* Alan Mutter, News-Stock Surge: Boom or Dead-Cat Bounce?, Reflections of a Newsosaur, Jan. 4, 2010, http://newsosaur.blogspot.com/2010/01/news-stock-surge-boom-or-dead-cat.html (last visited July 1, 2010); PEJ 2010 State of the News Media Report, Newspapers, Summary Essay at 2, 5, Economics at 24, http://www.stateofthemedia.org/2010/printable_newspaper_chapter.htm (last visited July 1, 2010) (reporting that only one newspaper company stock was trading for more than $5 a share and several were in "penny stock territory" in March 2009 and, though stocks had ticked up by the end of the year from "the rock bottom prices of spring 2009," the valuations were still just a small fraction of what they had been in 2005 and 2006); PEJ 2011 State of the News Media Report, Newspapers: By the Numbers, *available at* http://stateofthemedia.org/2011/newspapers-essay/data-page-6/ (last visited Mar. 2, 2012).

158 *See* Letter from Nancy Pelosi, Speaker of the House, to The Honorable Eric J. Holder, Attorney General of the United States (Mar. 16, 2009). On September 24, 2009, the House Joint Economic Committee, chaired by Representative Carolyn Maloney (D-NY), held hearings on the implications of the deterioration of the newspaper industry for the broader economy and explored options for federal government involvement to help strengthen the industry. *See* Ann Sanner, Newspaper Rep Urges Tax Break To Help with Losses, ABC News (Associated Press), Sept. 24, 2009, available at http://abcnews.go.com/Politics/wireStory?id=8667155 (last visited Mar. 3, 2012). Further, in connection with a recent 2010 Quadrennial Review workshop focusing on the current financial and economic conditions and marketplace factors affecting the media industry, lenders appearing on a panel pointed to the "perfect storm" of a down economy that hammered overleveraged broadcasters and Internet competition that continues to drain advertising dollars away from the sector, resulting in a lack of interest in lending to broadcasters. *See* FCC, News Release, Media Bureau Announces Panelists and Agenda for Media Ownership Workshop on Financial and Marketplace Issues, MB Docket No. 09-182 (rel. Jan. 5, 2010); *see also* John Eggerton, Lenders Make Pitch to FCC to Loosen Media Ownership Rules, BROAD. & CABLE, Jan. 12, 2010, available at http://www.broadcastingcable.com/article/443725-Lenders_MakePitchto_FCC_to_Loosen_Media_Ownership_Rules.php (last visited Mar. 3, 2012). Speakers on a second panel about smaller broadcasters were in agreement that additional broadcast bankruptcies are likely due to the financial conditions in the industry. *See* Jonathan Make, Media Deregulation Seen Helping Cash-Strapped Industry, COMM. DAILY, Jan. 13, 2010, at 4-6.

across the country have experienced severe cutbacks during the past decade, which has undermined their ability to perform their role as the nation's watchdog."[159]

The broadcast industry similarly is in the midst of a serious financial retrenchment. As the Project for Excellence in Journalism reported in 2010, "the long-term revenue picture for local stations that produce news is grim."[160] In particular, television stations' advertising revenue is estimated to have dropped 22% in 2009, more than triple the decline of 7% in 2008.[161] Notably, this represents a decrease of 25% from the previous non-election year.[162] Overall revenue has plummeted 46% since 2000.[163] While stations did experience growth in advertising revenue from their websites, these earnings amounted to only 5% of their 2010 revenues.[164] These results have crippled television station budgets and severely strained stations' ability to

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159 *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age,* Steven Waldman and the Working Group in Information Needs of Communities, at 34 (June 2011).

160 PEJ 2011 State of the News Media Report, Local TV: By the Numbers, *available at* http://stateofthemedia.org/2011/local-tv-essay/data-page-3/ (last visited Mar. 2, 2012).

161 PEJ 2010 State of the News Media Report, Executive Summary at 1, http://www.stateofthemedia.org/2010/chapter%20pdfs/2010 execsummary.pdf (last visited July 1, 2010); PEJ 2009 State of the News Media Report, Executive Summary at 20, http://www.stateofthemedia.org/2009/chapter%20pdfs/COMPLETE%20EXEC%20SUMMARY%20PDF.pdf (last visited July 1, 2010); *see also* Television Bureau of Advertising, Broadcast Television Ad Revenues Were Down 22.6% in 3rd Quarter, Dec. 18, 2009, http://www.tvb.orgircentral/AdRevenueTrack/revenue/2009/ad_figures_Lasp (last visited July 1, 2010); PEJ 2010 State of the News Media Report, Local TV, Economics at 10, http://www.stateofthemedia.org/2010/printable_local_tv_chapter.htm (last visited July 1, 2010) (reporting that, in the first nine months of 2009, automobile advertising — the most important advertising category for local television stations — was down 52%, and that revenue from 24 of the top 25 categories of local television advertisers was down sharply during this time period).

162 PEJ 2010 State of the News Media Report, Local TV, Summary Essay at 1, Economics at 9, http://www.stateofthemedia.org/2010/printable_local_tv_chapter.htm (last visited July 1, 2010) ("Ad revenue is always lower in a year without federal elections or the Olympics, but the drop in 2009 was especially severe even with the unexpected bounty of political spending on health care legislation. The last two non-election years, by contrast, recorded much smaller declines: 5% in 2005 and 6% in 2007.").

163 PEJ 2011 State of the News Media Report, Local TV: By the Numbers, *available at* http://stateofthemedia.org/2011/local-tv-essay/data-page-3/#4 (last visited Mar. 2, 2012).

164 PEJ 2011 State of the News Media Report, Local TV: By the Numbers, *available at* http://stateofthemedia.org/2011/local-tv-essay/data-page-3/#4 (last visited Mar. 2, 2012).

deliver local news.[165] Due to the "structural challenge" currently facing the industry, "[s]tations, after years of declines in audience, may be nearing a point where they can no longer add new newscasts or pursue new revenue opportunities. . . ."[166] The newsgathering operations of struggling broadcasters are "getting smaller,"[167] and many have been forced to lay off news staff or implement hiring freezes.[168] Radio stations have similarly been suffering, with 2009 revenues down 18% compared to 2008 revenues.[169]

Although the synergies achieved through newspaper/broadcast cross-ownership have long outweighed any imagined detriment, in the face of declining revenues and dwindling staffs, the need for repeal of the NBCO Rule is immediate. The financial crisis, and the havoc it has wreaked on the media industry, has come at the very same time that the industry is experiencing profound challenges to its business model from the advent of new technologies and the various alternatives they offer advertisers and consumers. The concurrence of these two trends —

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165 PEJ 2010 State of the News Media Report, News Investment, at 17 *available at* http://stateofthemedia.org/2010/local-tv-summary-essay/news-investment/ (last visited Mar. 3, 2012) (citing the latest survey data from 2008 that shows "hefty budget reductions and deep cuts in the newsroom," and stating that news directors at local stations expected their budgets to be even smaller in 2009 than they were in 2008).

166 PEJ 2010 State of the News Media Report, Local TV - Summary Essay at 1, *available at* http://stateofthemedia.org/2010/local-tv-summary-essay/news-investment/ (last visited Mar. 2, 2012). Broadcasters' budgets, furthermore, were already strained over the past years by the mandated capital-intensive digital television conversion.

167 PEJ 2010 State of the News Media Report, Local TV, Summary Essay at 1, http://vvww.stateofthemedia.org/2010/printable_local_tv_chapter.htm (last visited July 1, 2010).

168 *See, e.g.*, Sarah McBride, Clear Channel's Parent Cuts 590 Jobs, WALL ST. *J.*, Apr. 29, 2009, available at http://online.wsj.com/article/SB124095285316665235.html (last visited July 1, 2010) (reporting Clear Channel Communications Inc.'s decision to cut 590 jobs in its second round of mass layoffs in 2009 amid pressure from the recession and evaporating advertising budgets).

169 PEJ 2010 State of the News Media Report, Audio, Summary Essay at 2, http://www.stateofthemedia.org/2010/printable_audio_chapter.htm (last visited July 1, 2010); 2010 saw a 6% increase which is positive but not enough to make up for past declines. PEJ 2010 State of the News Media Report, Audio: By the Numbers, *available at* http://stateofthemedia.org/2010/local-tv-summary-essay/news-investment/ (last visited Mar. 2, 2012).

overall economic decline and precipitous erosion of "traditional media's" financial base — urgently compels elimination of the NBCO Rule.

The benefits of cross-ownership can help existing combinations continue to deliver the high quality and large volume of local news and public affairs programming their communities have come to expect. Immediate repeal will allow standalone properties to combine so they can take advantage of the benefits of cross-ownership. Newspaper and broadcast properties have suffered from the tortuous history of Commission and court review of the NBCO Rule. Expeditious repeal, at this point, would help both newspaper owners and broadcast station owners to respond to the very real financial challenges they confront. Such relief is now more necessary than ever, as common ownership of newspapers and broadcast stations can help keep the costs of producing quality news within reason. At a minimum, repeal of the rule will eliminate a barrier to financing and transactions that otherwise are unavailable to newspaper publishers and broadcast stations.

H. The Commission's Rules Should Permit Cross-ownership.

Given the Commission's core objectives of competition, localism, and diversity, there simply is no rational basis for prohibiting the cross-ownership of broadcast stations and newspapers throughout the United States. First, the Commission has recognized that broadcast stations and newspapers simply do not compete for advertisers in the same service market.[170] Second, as the Commission tentatively has concluded and as Tribune has demonstrated above, cross-ownership fosters localism by providing scale that improves the ability of commonly-

[170] *2011 NPRM*, ¶ 89; *see 2003 Order*, 18 FCC Rcd. 13748-53, at 13748-53, ¶¶ 331-41; *2008 Order*, ¶ 39 n.131.

owned media to provide more and better quality news and information to the public.[171] Third, for numerous reasons, cross-ownership can be permitted without harming diversity of viewpoints in any market. Consistent with the findings in media studies in this and the 2006 Quadrennial Review, there is no reasonable basis to presume that cross-ownership between media properties results in the adoption of similar slants or positions between the cross-owned media; indeed, modern media have every incentive to provide balanced and competitive coverage.[172] Moreover, as summarized in the discussion of Tribune's markets above, the sheer volume of voices available at the touch of consumers' fingertips – whether from the printed daily or weekly press, television or radio stations, cable and satellite channels, or independent electronic websites – provides a sufficiently competitive marketplace for the dissemination of ideas to prevent common ownership from adversely impacting the public's access to vigorous and diverse public information and debate.[173]

Notwithstanding Tribune's conviction that the public is disserved by the continued retention of *any prohibition* on the cross-ownership of local media properties, should the Commission move forward with any effort to continue to prohibit cross-ownership, Tribune comments as follows:

1. The Commission's Proposed Line Drawing Is Arbitrary.

The Commission again has proposed to draw a line at the top 20 markets -- the same line it proposed five years ago.[174] Tribune maintains that limiting the benefits of cross-ownership to

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[171] *Id.* ¶ 89; *see supra* at 12-17.

[172] *See supra* at 17-24.

[173] *See supra* at 24-28; Tribune Comments on NOI, filed July 12, 2010, MB Docket No. 09-182.

[174] *2011 NPRM*, ¶ 90.

the top 20 markets is arbitrary and capricious for a number of reasons. First, as discussed above, given the diversity of the media marketplace in this electronic age, any prohibition on cross-ownership is arbitrary and capricious. Second, the line drawing is arbitrary where it is based upon the Commission's assumptions about the average number of voices that will protect the diversity of a market and accompanying generalized statistical assumptions about where that number of choices can be found.[175] If the Commission is seeking to adopt a "bright line" rule, it should, as it has for many years in the case of the local television ownership rule, identify the number of independent voices that will protect against the (albeit unfounded) fear of a loss of sufficient diversity in a market. In doing so, the Commission must give appropriate recognition not only to television stations and newspapers, but also to independent radio station operations, cable and satellite news channels, weekly newspapers, and websites that cover everything from national to hyper-local news and issues of local importance.

Third, Tribune maintains that in almost every market in the United States, the presence and availability of numerous independent voices sufficiently protect against any risk of a loss of diversity, and ensure that access to news and information is unimpaired. Even the Commission's own statistical counting and averaging suggest that certainly within the top 50, and even through all 210 markets, sufficient voices would exist to protect against any cognizable risk. Counting only television stations and daily newspapers, in the *2011 NPRM*, the Commission acknowledges that, on average, there are "nine major voices" in markets 21-50, and, "on average," "seven major voices" in markets 51-210.[176] As demonstrated above and in Tribune's NOI

[175] *Id.* ¶¶ 101-103.

[176] *2011 NPRM*, ¶ 105.

Comments,[177] in the Hartford-New Haven DMA (Market 30), there are seven different television station operators and eight different publishers -- significantly more than the average "nine major voices" characterizing markets 21 through 50 -- even without radio stations, independent websites (originating from both inside and outside of the market), local or national news and information channels provided by cable or satellite, or weekly publications. In Hartford-New Haven, there are at least 45 separate radio station owners, four independent cable news channels (and four other cable sports channels), along with 18 independent websites that, during 2009, had more than 10,000 unique visitors; three of these websites had more than 100,000 unique visitors.[178] There are also 12 daily newspapers in Hartford-New Haven, significantly more than the much larger South Florida market which only has three daily newspapers. It is difficult to fathom any risk to diversity in this market from newspaper-broadcast cross-ownership given the significant type and variety of voices available within the DMA. And this does not even consider the presence of media located in adjacent markets like New York, Boston, Providence and Springfield which reach into significant portions of the DMA from all sides.

The unreasonableness of any restriction on cross-ownership in markets with seven or more independent sources of news can be highlighted by contrasting such a restriction with the Commission's long-maintained "eight independent voices" test for local television station common ownership. In applying an "eight voices" test for duopoly relief, the Commission attempts to foster competition for advertisers and programming and ensure diversity in the television program market by ensuring that combinations only occur when eight independent

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177 *See supra* at 27-28; Tribune Comments on NOI, filed July 12, 2010, at 58-64.

178 *See id*.

voices remain.[179] With respect to newspaper-broadcast cross-ownership, the Commission's efforts are limited only to protecting against, even if conceded, a theoretical and presumptive risk of loss in diversity (at the cost of benefits to localism). In protecting against that risk, the Commission simply cannot rationally maintain that *more* than eight independent voices are necessary to protect diversity of viewpoints. Moreover, because the Commission is attempting broadly to ensure diversity in the dissemination of news, information and opinion, it must consider the substantial presence of radio stations, cable and satellite channels (national, regional and local), and independent Internet websites.[180] Finally, the diversity of voices in these markets cannot be ignored or minimized merely because in the largest markets, the number of voices is statistically overwhelming. The diversity in these large markets only emphasizes that any continued prohibition on common ownership is unnecessary, not that the cacophony of voices in all other markets is insufficient to overcome any feared risk of loss in diversity.

2. The Commission Should Not Apply Presumptions.

In its proposal to permit cross-ownership for certain limited situations in the top 20 markets, the Commission proposed to retain the use of presumptions.[181] The use of presumptions, however, needlessly injects uncertainty, additional cost and prejudice, thereby undercutting the benefits of any rule. Media owners, investors and lenders deserve the benefits of certainty when approaching a transaction the Commission "presumes" will qualify for permissible cross-ownership, and should not be subject to the uncertainty of a "waiver request"

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[179] *2011 NPRM*, ¶ 25.

[180] *See Sinclair Broadcast. Group v. FCC*, 284 F.3d 148, 165 (D.C. Cir. 2002) (exclusion of non-broadcast media from the eight voices exception to the local television station common ownership rule was not demonstrably necessary in the public interest).

[181] *2011 NPRM*, ¶ 90.

or challenge once the Commission has adopted a "bright-line" rule. If the Commission decides that rather than permit cross-ownership in every market as today's circumstances warrant, it should adopt a "bright-line" rule, it should not seek then to confirm the validity of its conclusion every time a transaction occurs. Rather, the Commission should permit combinations not prohibited by its "bright-line" rule, and then consider the grant of waiver requests in cases that do not meet the "bright-line" rule where an applicant can show that circumstances warrant waiver.[182] As the Supreme Court has stated, "an agency's discretion to proceed in complex areas through general rules is intimately connected to the existence of a "safety valve" procedure that allows the agency to consider applications for exemptions based on special circumstances."[183]

3. The FCC Should Abandon Its Prohibition On Combinations Involving Top-4 Television Stations.

Prohibiting common ownership of daily newspapers and Top-4 rated television stations in a market is neither reasonable nor supported by the record, and would constitute arbitrary line drawing. Unlike the situation with respect to television stations, where the Commission imposes a restriction on top-4 combinations, newspapers and television stations do not compete for advertising or programming and therefore should not be prohibited from combining.[184] The benefits to localism accrue to the public regardless of whether the combined television station is rated in the top four, and regardless of whether the station is a network affiliate. As demonstrated above, common ownership presents opportunities for the two media properties to present more, and more detailed, local news stories. While the Commission might "hope" that

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182 *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 609 (1982), *citing WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) .

183 *Id.*

184 *2011 NPRM*, ¶ 89.

newspapers would be combined with less successful television stations, no record evidence has been presented that would support Commission efforts to force such combinations. Indeed, such combinations could ultimately be self-defeating if one of the parties is not capable of contributing to the quality and amount of local news coverage. Limiting combinations to a certain class of television stations may only work to ensure that newspaper-TV combinations are less effective than they might be.

In essence, the Commission's top-4 restriction has nothing to do with an alleged need to prevent strong competitors from wielding too much market power in programming or advertising, but instead rests on the assumption that "stronger" television stations should not need the potential benefits or savings that common ownership might afford, or that too much independent perspective will be lost among the largest media in a market. While top-4 stations, often network affiliates, are by definition stronger in ratings, that does not by itself suggest that diversity will suffer, or that the public cannot benefit from common ownership. Additionally, given the operational concerns of many newspapers in the current economic and new competitive environment, affiliation with stronger television stations may be a lifeline. For this reason, cross-ownership should be open to all television stations.

4. **The FCC Should Not Evaluate News or News Operations.**

In the *2011 NPRM*, the FCC restated the four criteria adopted in the 2006 Quadrennial Review on which it would assess requests for approval of cross-ownership, including an assessment of the amount of news to be broadcast on a station and the extent to which the combined properties would exercise independent editorial judgment.[185] The Commission should reject these criteria and avoid intruding into any area that requires evaluating, quantifying or even categorizing programming and editorial activities – namely, the presentation of news and information. The Commission must not involve itself in editorial decisions of newspapers or broadcast stations or the assessment of editorial personnel; to do so would be heading full-throttle down the path to evaluating the value of program content and editorial discretion, and therefore fundamentally at odds with the First Amendment of the Constitution.

Any assessment of the amount or quality of news programming, or the allocation of editorial personnel, would give the FCC far more intrusive authority and influence over both a television station and a *newspaper's* newsroom decisions than would be permitted by any rational rule, or the First Amendment. Indeed, by directly proposing to analyze the news provided by broadcast stations and newspapers, as well as the structure of their editorial personnel, the Commission dramatically illustrated the pernicious effects of the prohibition against cross-ownership. By examining these issues, the Commission forces applicants for transfer of control of broadcast licenses to negotiate detailed and specific commitments regarding the types and timing of news programming, and even the topics to be covered, as well as the editorial arrangements that will have to be made at the *newspaper* to ensure "editorial independence" – commitments that give the FCC an impermissible amount of influence and control over local news judgments.

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[185] *2011 NPRM*, ¶ 115. These four criteria generally assessed (1) the amount of news to be provided, (2) the independence of the editorial management of the media, (3) the structure of the market involved, and (4) the financial situation of the media involved.

For example, the factors relating to news and editorial structure allow the FCC effectively to dictate how a newspaper sets up its editorial board and staff. Editorial "independence" is a two-way street, and the FCC would not be able to determine whether a combination's editorial staffs are sufficiently "independent" unless it examines the judgments and interactions of *both* the broadcast station's *and* the newspaper's editors. Under such restrictions, editors at either property will inevitably second-guess themselves to ensure that their editorial judgment is sufficiently "independent" of the other in order to avoid the wrath of the FCC; reporters who contribute content to both outlets will be significantly chilled in the performance of their tasks.

The FCC does not have the authority to require these types of conditions on broadcast licenses and intrude into newspaper editorial processes. First, the FCC does not have any authority to dictate to broadcast licensees how much time they will devote to local issues; Section 326 of the Act squarely prohibits FCC control over broadcast content, especially news.[186] The FCC also has *no* authority to regulate newspapers. Courts have consistently held that the FCC cannot leverage its authority over broadcasting (or other legitimate objects of its authority) to make rules governing activities that do not constitute "radio or wire communications."[187] A newspaper's decisions about how to set up its editorial staff, what stories and issues it will cover, how much space it will devote to such issues, and how much it will invest in newsroom resources and operations – *none* of those things involve "radio communications" that are within the FCC's statutory authority to regulate.

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186 47 U.S.C. § 326 (prohibiting the FCC from issuing any "regulation or condition" that "interfere[s] with the right of free speech by radio communication"); *MPAA v. FCC*, 309 F.3d 796, 804 (D.C Cir. 2002).

187 *Illinois Citizens Committee for Broadcasting v. FCC*, 467 F.2d 1397, 1400 (7th Cir. 1972) (FCC has no authority to leverage its authority over wire and radio communications to support direct regulation of services that do not involve such communications); *GTE Services Corp. v. FCC*, 474 F.2d 724, 735-36 (2d Cir. 1973) (same); *American Library Ass'n v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005) (same).

5. **The Commission Cannot Extend the NBCO Rule to Cover an Entire DMA.**

The Commission's proposal to apply the NBCO Rule on a DMA-wide basis rather than on a contour overlap basis is arbitrary and capricious and improperly expands the geographic application of the NBCO Rule beyond where it was presumed necessary when adopted. This is an ironic result given that the NBCO Rule has twice been found by the Commission to no longer be necessary under the standards of 202(h).[188] If any cross-ownership rule is retained to protect against the feared risk of a loss of diversity, the FCC must adopt a narrowly-crafted standard that focus on the nexus between the actual service areas of the printed newspaper and the television station. Where there is no overlap between the community in which the newspaper is published and the primary service area of a broadcast station, a ban on common ownership would be arbitrary and capricious, regardless of any potential for waiver of a rule that has no basis for application in the first place. Many newspapers and television stations serve the public in DMAs where their respective service areas are not only not coextensive with the DMA, but also without overlap. The Commission's rules still provide technical limits for the over-the-air service signal of a broadcast station, and any prohibition should reflect those rules.

If the FCC does adopt revisions that geographically expand application of the NBCO Rule, thereby rendering existing combinations that were permissible under the 1975 prohibition now impermissible, at a minimum, existing combinations that are permissible under the current rule should be grandfathered.[189] The Commission's commitment to adopt a cross-ownership restriction that is rational in the current media environment should not, and cannot, be used to

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188 *2011 NPRM*, ¶ 99.

189 *See id*, ¶ 100.

require the divestiture of properties that have survived for many years without violating even the current overbroad NBCO Rule.

6. Grandfathered and Approved Combinations Should Be Freely Transferable.

The Commission should permit the assignment and transfer of commonly-owned media properties that are permissible under the NBCO Rule or that already have been approved by the Commission. The need for continuing approvals every time that a commonly-owned property is the subject of a sale or reorganization is costly, inefficient, and will likely discourage investment by introducing significant uncertainty. Not only does such a requirement serve as a significant disadvantage in securing financing for ongoing operations but it also can punish media owners for making investments in programming that bring success and approval in the market. Where common ownership of properties results in improved station programming and thus higher ratings, the successful investments in programming should not be punished by extensive proceedings to determine whether to force divestiture of the newer, successful common properties. Station personnel, investors, new lenders and creditors should not be put at risk where combinations that already have received Commission approval merely seek to retain the same cross-ownership under new or restructured ownership. Absent the creation of an additional cross-ownership or multiple ownership interest that implicates the Commission's prohibitions, existing cross-ownerships should be transferable so as not to unduly restrict or discourage investment in, and financing of, media ventures.

III. Given The Public's Easy Access to the Internet and the Multitude of Independent Sources Available Through the Internet, Any NBCO Rule Is Unconstitutional.

As Tribune has described above, the public's access to the Internet – and the resulting cacophony of voices on issues ranging from hyper-local to global available at any time and place

– make the retention of any restriction on the cross-ownership of newspapers and broadcast stations unreasonable. In light of the public's access to media in this new electronic age, the Commission should recognize, as numerous lower court judges and a Supreme Court Justice have already, that the constitutional underpinnings of the NBCO Rule have become extremely dubious and almost certainly could not be sustained today. At a minimum, and following the guidance of the Telecommunications Act of 1996, the Commission should err on the side of repeal to avoid the grave constitutional issues that today's Supreme Court would undoubtedly take very seriously, notwithstanding the Third Circuit's ruling in *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011) ("*Prometheus II*").[190]

Any NBCO Rule is unconstitutional, and cannot survive the appropriate level of First Amendment review. Courts have rejected First Amendment challenges to the NBCO Rule based solely on the assumed applicability of the "scarcity doctrine." As the Supreme Court has explained, "[w]hen there are substantially more individuals that want to broadcast than there are frequencies to allocate, it is idle to posit an unbridgeable right to broadcast comparable to the right of every individual to speak, write, or publish."[191] Because of this "scarcity" and the necessity of government allocation of these supposedly limited resources among potential users, courts have applied a deferential standard of review under the First Amendment to the FCC's

[190] In *Prometheus II*, the Third Circuit vacated the Commission's 2006 Quadrennial Review changes to the NBCO Rule for failure to provide adequate notice under the APA. As a result, it did not reach the merits of specific challenges to the rule. The Court did reject efforts to overturn the "scarcity" doctrine because the "justification for the scarcity doctrine remains as true today as it was in 2004 – indeed, in 1975 – 'many more people would like to access the [broadcast spectrum] than can be accommodated.'" *Id.*, 464 citing *NCCB*, 436 U.S. at 799.

[191] *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 388 (1969).

regulation of broadcast licensing, permitting restrictions on broadcast ownership and speech that would be blatantly unconstitutional if applied to other media.[192]

The NBCO Rule, unlike other FCC ownership rules, does not currently implicate the scarcity doctrine. As discussed above, the Commission's only rationale for the newspaper rule today is to promote viewpoint diversity.[193] But the newspaper rule has no impact whatsoever on the degree of viewpoint diversity available over the airwaves; it merely identifies a prohibited class of broadcast owners: publishers of daily newspapers. The number of separate owners of broadcast stations within a given market is determined solely by the Commission's other ownership rules: the local television or "duopoly" ownership rule, the local radio ownership rule, and any "one-to-a-market" rule. Whether one of these stations is owned by a newspaper does not change the number of different entities that hold the "scarce" number of licenses within that market. The total number of different licensees, and thus the theoretical degree of diversity of viewpoints represented, is the same either way.

The NBCO Rule is designed to promote viewpoint diversity within a broader class of speakers: the class that includes both broadcast stations and newspapers. But *that* class of speakers *is not characterized by scarcity* in the constitutional sense. Anyone can start a newspaper or website, and the class of speakers encompassing both broadcasters and publishers thus is infinitely expandable.[194] The effort to maintain the prohibition on newspapers and television stations therefore fails to grapple with the fact that the number of platforms on which

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192 *National Broadcasting Co. v. FCC*, 319 U.S. 190, 226-27 (1943).

193 *2011 NPRM*, ¶¶ 84, 89.

194 *See generally Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

opinion can be disseminated is infinite. Indeed, with the advent of the Internet and the World Wide Web, accessible by broadband, individuals have no need to acquire printing presses or broadcast licenses to distribute news, information and opinion. Countless websites distribute news, information, and entertainment, as well as the opinion that follows them. For this reason, the issue of newspaper-broadcast cross-ownership no longer arises in a context in which there are more individuals that want to speak than there are platforms for speech.[195] For First Amendment purposes, anyone who wishes to gain entry into this broader set of speakers may do so.

The NBCO Rule is a content-based regulation aimed at a class of speakers or speaking platforms not characterized by scarcity; therefore, it is subject to strict scrutiny, rather than the deferential standard of *Red Lion*.[196] Outside the scope of the scarcity doctrine, it is well-settled that the "government may [not] restrict the speech of some elements of our society in order to enhance the relative voice of others."[197] There is no constitutionally permissible rationale for attempting to regulate debate in a context in which the opportunity to speak is unlimited. Indeed, a prohibition on combining speakers (broadcast stations and newspapers) where there is an unlimited ability to enter the market of one of the speakers (newspaper publishing) does nothing to enhance viewpoint diversity; it merely arbitrarily restricts the speech rights of those speakers. The NBCO Rule today is thus no more constitutional (or sensible) than a rule aimed at increasing

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195 *Cf. Red Lion*, 395 U.S. at 388.

196 *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). There can be no doubt that the NBCO Rule today is a content-based restriction on speech. Although the Commission originally adopted the NBCO Rule on both diversity and antitrust grounds, *see NCCB*, 436 U.S. at 795-96, the Commission made clear in the *2003 Order* that the *only* basis for the NBCO Rule today is to promote viewpoint diversity. *See 2003 Order*, ¶¶ 354-55.

197 *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976) (per curiam); *see also First National Bank of Boston v. Bellotti*, 435 U.S. 765, 791 n.30 (1978).

"viewpoint diversity" by prohibiting broadcast stations from operating an Internet site, or prohibiting broadcast owners from making public speeches.

If the Commission believes the scarcity doctrine remains applicable, and still supports the result in *NCCB*, it has an obligation to consider whether the explosion in the number and variety of media outlets, including the Internet, has rendered the doctrine inapplicable to the NBCO Rule.[198] As demonstrated above, in the last several years the Internet revolution and adoption of broadband service have ensured that traditional notions of scarcity no longer can serve as the foundation for the NBCO Rule or any other significant restriction on broadcast speech by newspaper publishers (or newspaper speech by broadcasters). In *Red Lion* itself, the Court stated that "if experience with the administration of these doctrines indicates that they have the net effect of reducing rather than enhancing the volume and quality of coverage, there will be time enough to reconsider the constitutional implications."[199] The Commission already has recognized that the NBCO Rule may actually hinder localism because "the opportunity for sharing newsgathering resources and for realizing other efficiencies derived from economics of scale and scope may improve the ability of commonly owned media outlets to provide local news and information."[200] The Supreme Court also long ago stated that, due to the growth of alternative channels of communication, "[s]carcity may soon be a constraint of the past, thus

198 *Tribune Co. v. FCC*, 133 F.3d 61, 68 (D.C. Cir. 1998) (Commission may well "be thought arbitrary and capricious if it refused to reconsider its rule in light of persuasive evidence that the scarcity rationale is no longer tenable").

199 *Red Lion*, 390 U.S. at 393.

200 *2011 NPRM*, ¶ 84.

obviating the concerns expressed in *Red Lion*."[201] When the Supreme Court decided *Red Lion* and *NCCB*, the cable television industry was in its infancy and served mainly as a retransmitter of broadcast programming, and UHF television stations and FM radio stations had yet to mature into providers of news and information. The scarcity identified in Supreme Court decisions of the 1960s and 1970s has disappeared, and the public now accesses and consumes news and information in wholly different ways than it did at the time the NBCO Rule was adopted. The Third Circuit indicated that the scarcity doctrine was still valid, and applied a deferential First Amendment standard in reviewing the NBCO Rule,[202] however, Tribune maintains that in this broadband-based Internet media marketplace, over-the-air television broadcast stations do not qualify as the same "scarce" commodity as may have been the case at the time of the adoption of the NBCO Rule in the last century.[203]

Finally, the newspaper rule violates the equal protection component of the Fifth Amendment. In *NCCB*, the Supreme Court rejected an equal protection challenge to the rule because "the regulations treat newspaper owners in essentially the same fashion as other owners of the major media of mass communications," which at the time included only newspapers and broadcast stations.[204] As Tribune demonstrated in the Third Circuit, the NBCO Rule, and any other blanket prohibition on newspaper-broadcast common ownership, no longer can satisfy the

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201 *Columbia Broad. Sys., Inc. v. Democratic National Comm.*, 412 U.S. 94, 158 n.8 (1973) ("*CBS*") (plurality opinion) ("It has been predicted that it may be possible within 10 years to provide television viewers 400 channels through the advances of cable television.").

202 *Prometheus I*, 373 F.3d at 402 ("[e]ven if we were not constrained by Supreme Court precedent, we would not accept the . . . contention that the expansion of media outlets has rendered the broadcast spectrum less scarce"); *Prometheus II*, 652 F.3d at 464.

203 For this reason, and the likelihood of Supreme Court review of any continued restrictions on the speech of newspaper publishers, Tribune has presented this issue for Commission review.

204 *NCCB*, 436 U.S. at 801.

NCCB test, because it unconstitutionally singles out newspapers among other non-broadcast major media, including cable and satellite programmers and Internet publishers. The Third Circuit rejected this argument in a very brief discussion, in the apparent belief that *NCCB* was dispositive notwithstanding the dramatic change in the status of cable and the Internet. But courts have not been asked that *NCCB* be overruled on this point; a simple and direct *application* of *NCCB* requires repeal of the rule. Newspapers are the only non-broadcast media today that are subject to any restrictions on the ownership of broadcast stations,[205] and many other restrictions on common ownership of broadcast media that were adopted at the time the NBCO Rule was put into place have been either repealed in their entirety or significantly relaxed.

In singling out newspapers for more restrictive prohibitions, the Commission's NBCO Rule now requires heightened scrutiny under more recent Supreme Court decisions decided after *NCCB*. "[L]aws that single out the press, or certain elements thereof, for special treatment 'pose a particular danger of abuse by the State;'" this principle applies directly to government restrictions that distinguish between different classes of media.[206] Even if the restrictions are not content-based, rules that single out a medium for unique restrictions on speech are subject to heightened scrutiny and must be "narrow[ly] tailor[ed]" to and "'no greater than is essential to furtherance'" of a "substantial[]" government interest.[207] Continued enforcement of any prohibition on newspaper-broadcast cross-ownership that does not adequately recognize today's

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205 *Cf. Fox*, 280 F.3d at 1050-53 (vacating ban on cable-broadcast cross-ownership).

206 *Turner I*, 512 U.S. at 640-41.

207 *Id*. at 662; *see also Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 585, 592-93 (1983) (such differential regulation is "presumptively unconstitutional" and "places a heavy burden on the [government] to justify its action").

media marketplace, including the presence of MVPDs and the Internet, cannot survive review under the equal protection standards of *NCCB* or the heightened review standards of later cases.

IV. The Eight Voices Test For Local Television Ownership Should Count Non-Television Voices And Be Modernized.

In the *2011* NPRM, the Commission has proposed only minor, insignificant changes to the local television ownership rule (the "duopoly rule"), although it has asked whether it should alter the voice count in the current rule. The duopoly rule prohibits an entity from owning two television stations in the same DMA[208] unless one of the commonly owned stations is not ranked among the top four stations in the market and at least eight independently owned commercial and non-commercial television stations remain (the "eight voices test").[209] Maintaining the duopoly rule with its current count ignores the modern media landscape where broadcast television stations compete not only with other "independently owned television stations," but also newspapers, radio stations, cable channels, and Internet websites available on desktops, laptops, netbooks, tablets, and smart phones. As a result, the rule as it now exists does not increase diversity, improve competition or enhance localism.[210] In fact, it ignores the substantial number of media outlets already contributing to those goals by presenting different viewpoints, more options for consumers, and more local news and issues through blogs and other online sources.

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[208] There is also an exception to the duopoly rule if there is no Grade B contour overlap between the commonly owned stations. 47 C.F.R. § 73.3555(b)(1). The Commission proposes, through the NPRM, to eliminate this exception, which has the effect of making the rule even more restrictive. *2011 NPRM*, ¶ 37.

[209] 47 C.F.R. § 73.3555(b).

[210] The Commission has previously acknowledged that the duopoly rule does not promote localism and, in fact, may harm it because local ownership combinations could yield efficiencies that lead to programming and service benefits. *2003 Order*, ¶ 155.

Ten years ago, the D.C. Circuit recognized that the eight voices test had not been justified by the Commission because it "excluded all media sources except broadcast television in defining 'voices.'"[211] The D.C. Circuit concluded that the "Commission has failed to demonstrate that its exclusion of non-broadcast media from the eight voices exception is 'necessary to the public interest.'"[212] In the 2002 biennial review, the Commission recognized that "media other than television broadcast stations contribute to viewpoint diversity in local markets," though the Commission did not ultimately propose to broaden the eight voices test to include non-broadcast television media.[213] The Third Circuit upheld this finding, agreeing "with the Commission that broadcast media are not the only media outlets contributing to viewpoint diversity in local markets" but remanded the duopoly rule on other grounds.[214]

Consideration of only broadcast television in the duopoly rule's eight voices test is in complete opposition to the Commission's use of a broader media voices test in determining whether radio-television cross-ownership is permitted.[215] The media voices test counts not just broadcast television stations but also radio stations, newspapers, and cable to determine if there are adequate voices in the market to allow a cross-owned combination.[216] The current media

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211 *Sinclair Broad. Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002).

212 *Id.*, at 165.

213 *2003 Order*, ¶ 171. In the 2002 biennial review the Commission proposed allowing duopolies in markets with 17 or fewer stations and triopolies in markets with 18 or more television stations. *Id*., ¶ 134. Part of the justification for the new rule was the proliferation of other media contributing to viewpoint diversity, but the Commission did not seek to quantify those other media voices as it does broadcast television voices.

214 *Prometheus Radio Project v. FCC*, 373 F.3d 372, 414-415 (3d Cir. 2004).

215 The Commission proposes in the NPRM to eliminate the radio-television cross-ownership rule. *See*, Sec. VI, *infra*. The media voices prong of the rule has been in effect since 1999, so even if it is eliminated it still provides over ten years of experience in looking at broader media, not just broadcast television, voices to meet the Commission's goals.

216 47 C.F.R. § 73.3555(c)(i)-(iv).

voices test is not perfect because it fails to account for the Internet or adequately account for MVPDs such as cable, but it still appraises the competitive media landscape in a more realistic matter than the duopoly rule's very limited television eight voices test.

Even if the Commission continues to narrowly, and improperly, count only broadcast television voices, it should still reduce the number of such voices required to allow a duopoly. The Commission addressed an analogous situation in 2001 when it sunset the spectrum aggregation limit ("spectrum cap").[217] The spectrum cap was a limit put in place in 1994 on the amount of spectrum a commercial mobile radio service ("CMRS") licensee could have in a single geographic area and included attribution rules where a licensee did not actually control the spectrum ownership interest.[218] In sunsetting the cap the Commission looked at "one basic indicator of meaningful economic competition:" whether "most Americans have a choice of obtaining CMRS from several different providers of service."[219] The Commission found that ninety-one percent of U.S. residents had three or more different service options and seventy-five percent had five or more different service options. That represented a major increase in service options compared to when the spectrum cap was first enacted in 1994, when most U.S. residents had only two options. The increase in competitive options was a significant factor in sunsetting the spectrum cap.[220] In the media context, the FCC continues to use a high number of voices to determine if a market is competitive or diverse -- numbers far greater than it has used in other, similar situations. Eight voices, particularly when restricted to broadcast television, offers no

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[217] *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, WT Docket 01-14, *Report and Order* (2001).

[218] *Id.*, ¶¶ 9-12.

[219] *Id.*, ¶ 31.

[220] *Id.*

more meaningful advantage to competition or other Commission goals than would four, five or six voices.

In today's media marketplace a prohibition on duopoly ownership cannot be justified merely because there are fewer than eight independently owned broadcast television stations operating in a market. The policy has not been shown to improve diversity or competition. The Commission should amend the rules to include other types of media and reduce the quantity of additional voices required.

V. The Commission Should Not Make Shared Services Or Local News Service Agreements Attributable.

The Commission also seeks comment on the potential attribution of certain types of sharing agreements, specifically whether shared services agreements ("SSAs") or local news service ("LNS") agreements should be made attributable.[221] Critics of sharing agreements misunderstand their purpose and function, treating them as though they reduce competition, diversity and localism, whereas instead, they maintain and, in many cases, enhance these goals. As the Commission recounts in the *2011 NPRM*, local news and other services are generated by these agreements that would not otherwise be possible.[222] Sharing agreements allow for efficiencies and cost savings, which enable stations to make other investments beneficial to the public, such as multicast programming streams.[223] As the Commission has recognized, some broadcast stations would not be able to provide significant local news without sharing

221 *2011 NPRM*, ¶ 204.

222 *2011 NPRM*, ¶ 201.

223 *Id.*

agreements; others have expanded their local news programming as a result of the agreements.[224] The Commission has previously "recognized that the use of common facilities to gather news, traffic and weather information can be of public benefit…because the use of common personnel and facilities to gather news, traffic and weather information reduces costs and makes such vital information available to the public through a greater number of outlets."[225]

SSAs and LNS agreements bear none of the aspects that traditionally require attribution of interests for purposes of applying the FCC's media ownership rules. LNS agreements typically function as press pools, where instead of having multiple news crews sent to scheduled events such as press conferences, city council meetings and the like, LNS Agreement members send one video crew to shoot raw footage, and share the footage with each other. Each station's independent news operation, however, edits and uses the video as it sees fit, assigns its own reporter, and writes and produces its own story, if its own news managers decide to cover the event.

SSAs, on the other hand, merely provide for the sharing of non-editorial administrative functions of the station's operations, including maintaining books, processing payroll checks, and conducting other accounting and backroom office functions. None of these types of agreements implicate the independent management and decisions of the licensee with respect to programming, personnel or financial decision making. If these agreements are attributable interests, and thus become prohibited by the Commission's media ownership rules, their attribution likely will not result in more original and local programming as their critics contend,

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[224] *Id.*, ¶ 203.

[225] *Applications of NewCity Communications, Inc. and Cox Radio, Inc.*, 12 FCC Rcd. 3929, 3941 (1997); *see also 2011 NPRM*, ¶ 133, n. 308.

but instead more syndicated reruns or, perhaps no programming at all. Attribution of sharing agreements will unnecessarily limit the opportunities of stations to realize efficiencies and cost savings through consolidating administrative functions, making it more difficult for them to serve the public while not furthering the Commission's goals of diversity, competition, or localism.

As long as these sharing agreements do not impermissibly transfer control over programming, personnel and financial operations of the licensee, the FCC's concerns over diversity and competition are met. The Commission, as it has done for many years, can continue to handle allegations that certain agreements impermissibly transfer too much control over station operations and create, as a result, de facto duopolies or triopolies. But such concerns should be addressed on an individualized basis. The Commission should not curtail an accepted practice that promotes efficiency and keeps diverse and competitive stations operating and independently providing local programming.

If the Commission insists on making sharing agreements attributable, it should at a minimum provide for the grandfathering of existing agreements. Grandfathering agreements has multiple benefits. First, it provides certainty to broadcasters so they do not need to rush to identify and acquire alternative programming, modify business arrangements or even divest their stations. Second, it would not be fair to penalize broadcasters who entered into sharing agreements compliant with the Commission's Rules, only to find the rules changed midstream.

When the Commission made certain Local Marketing Agreements ("LMAs") attributable in 1999, it grandfathered agreements that had been entered into before November 5, 1996 until, at a minimum, the 2004 biennial review.[226] During that period, parties to the LMA could "renew and/or transfer the term of LMA that remains in the five year period."[227] Conversely, when the Commission made radio Joint Sales Agreements ("JSAs") attributable it gave stations two years to come into compliance and did not allow JSAs to be transferred during that period.[228] The Commission should not make sharing agreements attributable at all because of the well documented benefits such agreements bring. If the Commission decides to ignore this substantial evidence and make sharing agreements attributable, it should adopt a grandfathering policy similar to the LMA policy and allow broadcasters to maintain current agreements.

VI. The FCC's Cross-Media Restrictions Should Be Eliminated.

Tribune supports the Commission's proposal to eliminate the radio-television cross-ownership rule -- a welcome and important deregulatory reform in a quadrennial review that otherwise only tinkers around the edges.[229] The Commission has properly recognized that, on balance, cross-ownership between radio stations and television stations does not impair competition because most advertisers do not consider television and radio as good substitutes for their advertising needs and consumers do not switch between them based on programming content.[230] The Commission has also found that the rule is not necessary to achieve its localism

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[226] Congress amended Section 202 in 2004 to make the media ownership reviews quadrennial and not biennial, so no 2004 review took place. Consolidated Appropriates Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 100.

[227] *Review of the Commission's Regulations Governing Television Broadcasting*, MM Docket 91-221, *Report and Order* ¶ 12 (1999). The grandfathering deadline of November 5, 1996 was based upon an earlier FCC proposed rulemaking issued on that date which provided notice to those entering LMAs of the potential FCC rulemaking. *Review of the Commission's Regulations Governing Television Broadcasting,* MM Docket 91-221, *Second Further Notice of Proposed Rulemaking,* ¶ 89 (1996).

[228] *Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, MB Docket 04-256, *Notice of Proposed Rulemaking,* ¶ 10, n. 26 (2004).

[229] *2011 NPRM*, ¶ 119.

[230] *Id.*, ¶¶ 123, 124.

goal and one of its sponsored studies even found that radio-television combinations can marginally increase local news.[231] Finally, the Commission determined that the rule was no longer necessary to promote diversity because the media ownership studies found little evidence of cross-ownership affecting diversity.[232]

The Commission's conclusions are correct, and the radio-television cross-ownership rule should be eliminated. Cross-ownership of radio and television properties offers many benefits, particularly to localism. In Chicago, Tribune's WGN-TV and WGN(AM) share a "tip line" so that the public can provide news stories and tips to both properties, allowing each to better cover local stories from more perspectives. In February 2008, for example, WGN(AM) and WGN-TV worked collaboratively to cover a shooting at Northern Illinois University in DeKalb, Illinois, covering different aspects of the shooting which left six dead. Ending this rule, as the Commission proposes, would increase these types of circumstances and improve local news coverage. The Commission should, however, go even further and apply these conclusions to other media cross-ownership rules that should also no longer be maintained because they similarly hinder local news coverage.

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[231] *Id.*, ¶¶ 127, 129.

[232] *Id.*, ¶ 132.

CONCLUSION

Due to the vastly changed media landscape and the evolution of the Internet, the Commission should repeal the NBCO Rule and embrace other reforms to the media ownership rules consistent with the abundant evidence demonstrating a cacophony of voices now serves the American public.

Respectfully submitted,

TRIBUNE COMPANY,
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