Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of	)	
	)	
Tribune Company and its Licensee Subsidiaries, Debtors in Possession, *et al.*	))	MB Docket No. 10-104
	)	
For Consent to Assignment of Licenses Pursuant to a Plan of Reorganization	))	

Attention: Media Bureau

REQUEST FOR EXTENSION OF TEMPORARY WAIVERS

TRIBUNE COMPANY

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November 12, 2013

SUMMARY

The Media Bureau's order approving Tribune's reorganization plan reauthorized Tribune's existing ownership interests in newspapers and broadcast stations in the New York, Los Angeles, Miami-Fort Lauderdale, and Hartford-New Haven markets for a period of one year from the date of the order. The order also provided that, if the Commission adopts a new NBCO Rule within that one-year period pursuant to the 2010 Quadrennial Review, Tribune may seek to demonstrate compliance with the new rule under the criteria and within the timeframe applicable to other holders of temporary waivers of the NBCO Rule. The Commission has not yet adopted a new NBCO Rule pursuant to the 2010 Quadrennial Review.

Since Tribune's emergence from four years of Chapter 11 bankruptcy protection on December 31, 2012, the company has acted diligently and taken substantial steps to satisfy the requirements of the Bureau's order, including:

- January 2013: The reorganized company's board of directors directs its new management team to develop a plan to separate its publishing and broadcasting businesses.
- February 2013: Tribune consults advisors regarding strategic considerations and options in connection with the separation of the businesses.
- Spring 2013: Tribune evaluates options for most effectively separating the businesses, engages in separation planning, and fields expressions of interest from potential buyers of some or all of the newspaper assets.
- July 10, 2013: Tribune publicly announces plans to separate its publishing and broadcasting businesses by pursuing a spinoff of the publishing business into an independent, publicly-traded company, expected to be called Tribune Publishing Company. Upon completion of the spinoff, Tribune Company and the new Tribune Publishing Company each will have its own distinct board of directors and senior management team.
- Summer-Fall 2013: Tribune works to implement the many complex organizational, commercial, legal and regulatory steps required in

> order to effectuate the spinoff transaction by its projected completion date of mid-2014.

Notwithstanding these efforts and the measurable progress made to date, the separation of Tribune's publishing and broadcasting businesses is a complex, multi-faceted undertaking -- both legally and operationally -- that cannot be completed within the one-year period provided in the order. Accordingly, Tribune hereby requests an extension of the pending temporary waivers for a period of twelve months. In addition, and consistent with the order, Tribune requests that if, during that period, the Commission adopts a new NBCO Rule, it be permitted to demonstrate compliance with the new rule under the criteria and within the timeframe applicable to other holders of temporary waivers of the rule.

Grant of the requested relief would enable Tribune to complete an orderly separation of its publishing and broadcasting businesses, while affording it the opportunity, along with other similarly-situated media companies, to demonstrate compliance with a new rule should the Commission adopt one. Meanwhile, because an extension would preserve the *status quo* with respect to the existing interests subject to temporary waivers, it would not adversely affect competition or diversity.

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Attention: Media Bureau

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Tribune Company ("Tribune" or the "Company") respectfully requests a 12-month extension of the four temporary waivers (the "Temporary Waivers") of Section 73.3555(d) of the Commission's Rules, the "Newspaper Broadcast Cross Ownership Rule" ("NBCO Rule"), granted pursuant to the Media Bureau's Memorandum Opinion and Order in the captioned proceeding.[1] Further, in the event the Commission modifies the NBCO Rule within the 12-month extension period pursuant to the pending 2010 Quadrennial Review of the multiple ownership rules (the "2010 Quadrennial Review")[2] or other rulemaking proceedings

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[1] *See Tribune Co.*, 27 FCC Rcd 14239 (rel. Nov. 16, 2012) (the "Emergence Order"). The Emergence Order reauthorized Tribune's ownership of attributable interests in KTLA(TV), Los Angeles, and the *Los Angeles Times*; WSFL(TV), Miami, and the South Florida *Sun Sentinel*; WTIC-TV, Hartford, Connecticut, WCCT-TV, Waterbury, Connecticut, and the *Hartford Courant*; and WPIX(TV), New York, and *Newsday*. Tribune owns an approximately 3 percent equity interest in Newsday Holdings LLC ("NHLLC"), the parent company of *Newsday*'s publisher, Newsday LLC. Cablevision Systems Corporation ("Cablevision") owns approximately 97 percent of NHLLC and exercises editorial and operational control of *Newsday*. Tribune has no material involvement in the day-to-day operations of Newsday LLC or the newspaper.

[2] *See 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, Promoting Diversification of Ownership in the Broadcasting Services*, 26 FCC Rcd 17489 (2011) ("2011 NPRM").

relating to the multiple ownership rules, Tribune requests that it have the opportunity to demonstrate compliance with the new rule subject to the criteria and within the timeframe applicable to other similarly-situated media companies that have been granted temporary waivers of the NBCO Rule.

The limited relief requested here is consistent with Commission precedent and would serve the public interest. *First*, it would enable Tribune to complete the steps necessary for the orderly separation of its publishing and broadcasting businesses, already underway. *Second*, it would preserve regulatory parity between Tribune and other similarly-situated media companies whose temporary waivers of the NBCO Rule continue to be extended on a limited, conditional basis until the conclusion, and subject to the outcome, of the 2010 Quadrennial Review Proceeding.[3] Failure to do so would inequitably and arbitrarily disadvantage Tribune vis-à-vis its similarly-situated competitors.

I. TRIBUNE'S DILIGENT EFFORTS TO COMPLY WITH THE REQUIREMENTS OF THE EMERGENCE ORDER, AND THE LIKELY HARMS OF A FORCED DIVESTITURE OF ITS NEWSPAPER ASSETS, WARRANT EXTENSION OF THE TEMPORARY WAIVERS.

The Commission will consider waiving the NBCO Rule to authorize common ownership interests in collocated newspaper and broadcast outlets where (1) there is an inability to dispose of an interest in order to conform to the rule; (2) the only sale possible is at an artificially depressed price; (3) separate ownership and operation of the newspaper and the broadcast station could not be supported in the locality; or (4) for whatever reason, the purposes of the rule would be disserved by its application.[4] Under the last, "catch-all" category, the

[3] The Commission is continuing to consider a modification of the NBCO Rule that would permit common ownership of daily newspapers and broadcast stations in circumstances applicable to certain of the Tribune markets that are subject to the Temporary Waivers.

[4] *Renaissance Commc'ns Corp.*, 12 FCC Rcd 11866, 11879 (1997).

Commission examines "any 'special circumstances' advanced by the party as having a bearing on the appropriateness of granting a waiver."[5]

Extension of the Temporary Waivers is warranted under these criteria and would serve the public interest. Tribune believes two factual circumstances, in particular, justify the relief requested here: Tribune's plan, announced in July, to separate its publishing and broadcasting businesses by way of a spinoff transaction, and the inherent difficulty and potentially adverse consequences of a piecemeal sale of the interests (three newspapers and a 3 percent indirect equity interest in a fourth) subject to the Temporary Waivers. Furthermore, as discussed at Section II below, the relief requested here occurs in the context of a protracted proceeding in which the rule at issue is under active reconsideration and which, if modified as proposed, could obviate the need for divestiture.

A. Tribune Has Acted Diligently to Satisfy the Requirements of the Emergence Order.

The last six weeks of 2012 (the period immediately following release of the Emergence Order) were devoted to preparing for and effectuating Tribune's reorganization plan, which had been approved by the Bankruptcy Court on July 23, 2012.[6] Tribune emerged from bankruptcy on December 31, 2012, under new ownership and with a newly constituted board of

[5] *Id*. at 11879-80 (quoting *Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order*, 50 F.C.C. 2d 1046, 1085 n.47 (1975), *recon.*, 53 F.C.C. 2d 589 (1975), *aff'd sub nom.* FCC v. National Citizens Comm. for Broadcasting, 436 U.S. 775 (1978)).

[6] *In re Tribune Co.*, 476 B.R. 843 (Bankr. D. Del. 2012). Tribune structured its emergence to maximize flexibility and to facilitate the separation of its publishing and broadcasting businesses should the reorganized company seek to do so. For example, Tribune arranged exit financing that would allow it to use potential proceeds from the disposition of the newspaper business to return capital to its shareholders, rather than to pay down the loan principal.

directors.[7] The board met for the first time in January 2013 and, among other things, appointed a new Chief Executive Officer and directed management to develop a plan to separate the Company's publishing and broadcasting businesses.

Tribune's board of directors and management team developed and evaluated a variety of strategic options intended to maximize shareholder value and position the Company for long-term growth. The Company consulted with JPMorgan Chase & Co. and Evercore Group LLC to advise in developing strategic options, and retained PricewaterhouseCoopers LLP to undertake accounting activities and prepare related financial documents.

The question of how best to separate Tribune's publishing and broadcasting businesses required careful consideration of myriad factors, including, for example, the unusual size and geographic scope of the newspaper business (eight daily newspapers spread across the United States), the challenging secular trends in the newspaper business, and the potential tax consequences of a sale transaction. As a result of this evaluative process, on July 10, 2013, the Tribune board of directors authorized management to effectuate the separation of the Company's publishing and broadcasting businesses by a spinoff of the publishing business as an independent company -- to be called Tribune Publishing Company -- and the tax-free distribution of shares in that company to the stockholders of Tribune.[8] The board determined that a spinoff transaction would maximize shareholder value while affording each business greater financial and operational focus, the ability to tailor its capital structure to its specific business needs, and an independent management team dedicated to pursuing strategic growth opportunities with

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[7] *See In re Tribune Co.*, No. 08-13141 (Bankr. D. Del. Dec. 31, 2012), Docket No. 12939 (setting effective date of December 31, 2012, for Tribune's emergence from bankruptcy); *see also In re Tribune Co.*, 476 B.R. 843 (order approving the Fourth Amended Joint Plan for Reorganization of Tribune Company).

[8] *See* Press Release, Tribune Company, Tribune Announces Intent to Pursue Separation of Broadcast and Publishing Businesses (July 10, 2013), http://corporate.tribune.com/pressroom/?p=5765.

maximum flexibility. Following the spinoff, Tribune Publishing Company will own and operate the Company's publishing business, while Tribune will continue to own and operate the broadcasting business.[9] It is expected that each company will have revenues in excess of $1 billion and significant operating cash flow.

Tribune Publishing Company will be incorporated in Delaware and will have its own board of directors and senior management team. Management of the two companies will address technical and operational details of the separation.

Tribune's efforts to effectuate the separation are proceeding apace. Thus, for example,

- Tribune is working to document and prepare for the multiple complex internal reorganization transactions that will be undertaken to facilitate the transfers of entities and the related assets and liabilities necessitated by the spinoff.

- In August 2013 Tribune requested a private letter ruling from the Internal Revenue Service that the spinoff will qualify as a tax-free distribution. The request is pending.

- Tribune is preparing a Form 10 registration statement and related materials on behalf of Tribune Publishing Company, anticipated to be filed with the Securities and Exchange Commission in December 2013, with follow-on filings anticipated in early 2014.

- Following its formation, Tribune Publishing Company will negotiate credit facilities to be entered into in connection with the separation transaction.

Assuming completion of these and other prerequisites to the transaction, it is anticipated that the formal separation will be effectuated by the summer of 2014. Shares in

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[9] Three of the four newspapers subject to the Temporary Waivers -- the *Los Angeles Times*, the *Sun Sentinel*, and the *Hartford Courant* -- will be among the properties assigned to the new Tribune Publishing Company in connection with the spinoff transaction. The fourth newspaper, *Newsday*, is 97 percent owned and controlled by Cablevision. *See* note 1. Tax considerations may require Tribune to retain its indirect 3 percent interest in *Newsday*. The extension requested here will afford Tribune time to address the appropriate disposition of the *Newsday* interest.

Tribune Publishing Company will be distributed to Tribune shareholders on a *pro rata* basis, and substantially all of the shares of Tribune Publishing Company common stock will be eligible for immediate resale in the public market, subject to certain exceptions under the securities laws. The Company anticipates that significant amounts of Tribune Publishing Company common stock will be sold in the open market following the consummation of the separation.

The path being undertaken by Tribune, *i.e.*, separating its publishing and broadcasting businesses by creating a new publicly-traded company, extends far beyond the scope of the waivers granted in the Emergence Order. As demonstrated above, Tribune is working diligently to complete the separation process as expeditiously as practicable. But the multiple complex organizational, commercial, legal and regulatory steps that must be accomplished before the spinoff can be consummated cannot be completed within the one-year period provided in the Emergence Order.

B. A Forced Sale Would Put the Newspapers at Risk and Disserve the Public Interest in Diversity and Competition.

Requiring the immediate divestiture of the newspaper assets subject to the Temporary Waivers would undermine the very rationale for the NBCO Rule: to preserve diversity, to encourage competition, and to promote localism. An extension will ensure that the residents of the waiver markets will continue to be served by the high quality journalism produced by the newspapers and television stations subject to the Temporary Waivers. All operate in markets that the Commission previously has determined are "diverse, competitive markets."[10] And, as the Commission has noted, because an extension would "preserve the *status quo*,"[11] *i.e.*, it would reauthorize only already-existing commonly-held interests and would not

[10] *Emergence Order*, 27 FCC Rcd at 14253.

[11] *Id.*

result in the creation of any new ones, the temporary relief requested here would not adversely affect diversity or competition.

1. The Duration of a Temporary Waiver Must Be Sufficient to Permit the Completion of an Orderly Divestiture.

The duration of a temporary waiver of any of the multiple ownership rules depends on the circumstances presented. Relevant factors include prevailing market conditions and the size and complexity of the divestiture transaction. As a general rule, the Commission has observed, a divestiture period of twelve months "provides ample time to locate potential purchasers and to negotiate purchase agreements."[12]

The circumstances confronting Tribune as the waiver period began, however, were extraordinary. When the Emergence Order was released, Tribune had yet to emerge from a four-year-long bankruptcy proceeding[13] during which the Company's focus and underlying legal obligation were to preserve the assets of the bankruptcy estate for its creditors and to position the Company for as smooth a transition to new ownership and management as possible, while dealing with the complex litigation with creditors inherent in the bankruptcy process generally, and ancillary litigation unique to Tribune's case. Clearly these circumstances -- a protracted, costly, and disruptive bankruptcy proceeding, culminating in Tribune's transition less than a year ago to new ownership and with a new board of directors, and turnover in its executive management team -- are not appropriate for application of a "general rule." By themselves they justify extension of the Temporary Waivers.

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[12] *Multimedia, Inc.*, 11 FCC Rcd 4883, 4885 (1995).

[13] The Commission has marked the 12-month window as beginning "from the date of consummation of a merger or other multiple-station transaction." *Multimedia, Inc.*, 11 FCC Rcd at 4885. In this case, the twelve-month waiver period began running some six weeks before Tribune emerged from bankruptcy and effectuated its reorganization plan -- the functional equivalent of "consummation" of the transaction.

Furthermore, the Commission is sensitive to the importance -- for reasons both pragmatic and equitable -- of facilitating an "orderly disposition" of assets subject to divestiture and avoiding conditions that could lead to a fire sale.[14] The Commission has warned repeatedly of the potential public and private harms of forcing an immediate sale.[15] These harms include eliminating potential buyers without immediate access to the necessary capital, artificially restricting the value of the assets to be sold, and -- especially applicable in this case -- undoing efforts that have been made toward an orderly divesture.[16] "Even under normal market conditions," the Commission has stated, "we disfavor forced sales because they restrict the value of the station(s) to be divested and artificially limit the range of potential buyers."[17]

The Commission has held that even a net loss of diversity during a temporary waiver period would be "outweighed by the benefits of permitting an orderly sale to a qualified buyer,"[18] especially if that would avoid the "substantial risk of a forced sale."[19] Further, the

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[14] *Multimedia, Inc.*, 11 FCC Rcd at 4891 (granting a 12-month waiver of the NBCO Rule and other media ownership rules where there is "no reason to believe that an undue concentration of the media would occur during this temporary period" and where "[w]e . . . do not believe that the purposes of diversity would be served by forcing an immediate sale . . . because of the risk of eliminating potential buyers without immediate access to the necessary capital"). *See also Renaissance Commcn's Corp.*, 12 FCC Rcd at 11890 (granting 12-month waiver to permit "orderly divestiture"); *Counterpoint Commcn's, Inc.*, 17 FCC Rcd 3243, 3245 (2002) (granting 6-month extension of 6-month temporary waiver of NBCO Rule when owner has demonstrated "best efforts" to achieve compliance and needs additional time). *Cf. WDRQ, Inc.*, 12 FCC Rcd 11671 (MMB 1997) (granting request for a 4-month temporary waiver of the NBCO Rule to authorize common ownership of WDRQ(FM) and the *Oakland Press & Reminder* when applicant had entered into a contract to sell the newspaper and had received the necessary antitrust clearances).

[15] *See* note 14.

[16] *See* note 14; see also *Midwest Commcn's, Inc.*, 7 FCC Rcd 159, 160 (1991) (granting 18-month waiver because a "forced" sale "could unnecessarily restrict the value of the station" and would "present[] no offsetting public benefit"); *Telemundo Commcn's Group, Inc.*, 17 FCC Rcd 6958, 6978 (2002) (granting 12-month waiver because, in complex transactions, "the overall benefits of allowing time for an orderly divestiture will outweigh any temporary impact on diversity and competition from common ownership").

[17] *Telemundo*, 17 FCC Rcd at 6978.

[18] *UTV of San Francisco, Inc.*, 16 FCC Rcd 14975, 14989-90 (2001).

Commission has noted that the grant of a waiver that, as here, authorizes an existing combination to continue but does not result in the creation of a new one will not be deemed to reduce diversity.[20]

The complexity and duration of Tribune's bankruptcy proceeding, and its emergence into a challenging marketplace, are special circumstances that warrant an extension of the Temporary Waivers. The requested relief would enable Tribune to complete the separation of its publishing and broadcast businesses in an orderly manner that would, in turn, help to preserve the value of its newspapers and the service they provide to readers.

2. Because Tribune's Publishing Operations in Certain of the Temporary Waiver Markets Are Integrated With Those in Other Markets, A Forced Sale Would Be Disruptive and Impair Value.

Tribune's publishing unit currently operates eight major-market daily newspapers and related businesses, distributes preprinted insert advertisements, provides commercial printing and delivery services to other newspapers, distributes entertainment listings and syndicated content, and manages the websites of the daily newspapers. In addition to three of the four newspapers subject to the Temporary Waivers,[21] the Company publishes the *Chicago Tribune*; the *Orlando Sentinel*; the *Baltimore Sun*; the *Morning Call* (serving Pennsylvania's Lehigh

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[19] *Id.* The Commission has determined that an extension of a temporary waiver of the NBCO Rule would serve the public interest where it would afford the owner additional time to dispose of the newspaper "without being concerned about forfeiting [its] investment as a result of closing the newspaper or by a forced sale of a media interest at an artificially depressed price." *K. Rupert Murdoch*, 24 FCC Rcd 5824, 5827 (2009).

[20] *K. Rupert Murdoch*, 24 FCC Rcd at 5828-29 (granting temporary waiver of NBCO Rule involving an internal corporate restructuring that "does not create any new media combinations," and therefore "does not reduce the diversity of voices" in the market). *See also E.W.S. News Corp.*, 12 FCC Rcd 20243, 20247 (MMB 1997) ("[S]ince grant of this application will preserve an existing combination, we do not believe that continued joint ownership of the stations will decrease the level of diversity and competition in the market.").

[21] In a series of transactions consummated in July 2008, Tribune contributed certain assets of *Newsday* to Newsday, LLC, a subsidiary of NHLLC. NHLLC is 97 percent owned and controlled by Cablevision. Tribune has a 3 percent equity interest in NHLLC. Tribune is not materially involved in the day-to-day operations of the newspaper.

Valley); and the *Daily Press* (serving the Virginia Peninsula). The Company's newspaper operations share significant resources in the areas of national advertising sales and back office administration and have implemented significant regionalization and integration strategies. The extent of integration of Tribune operations among the waiver and non-waiver markets would present significant hurdles to a piecemeal sale of the newspapers subject to the Temporary Waivers, potentially depressing their value and disrupting service to readers.

Indeed, all American newspapers are operating in a climate as challenging as any they have faced in the last century, buffeted by declining revenue, changing readership habits, online competition, and advertiser erosion. A dozen metropolitan dailies have closed in recent years,[22] and many others now publish on a reduced schedule. Legendary newspapers are being sold for less than one-tenth their value as little as twenty years ago.[23] But while newspapers are selling at depressed prices today, their combined readership -- print and online -- is higher than ever, and those with vision realize that newspapers still have value. That is why John Henry bought the *Boston Globe* and why Jeff Bezos bought the *Washington Post*.[24] And that is one

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[22] *See* Newspaper Death Watch, http://newspaperdeathwatch.com/ (last visited Nov. 10, 2013).

[23] For example, earlier this year the New York Times Company sold the *Boston Globe* for $70 million, after having bought the *Globe* for $1.1 billion in 1993. The transaction also included the *Worcester Telegram & Gazette*, which the Times bought for $295 million in 1999. *See* Christine Haughney, *New York Times Company Sells Boston Globe*, N.Y. Times, Aug. 4, 2013, at A15, http://www.nytimes.com/2013/08/04/business/media/new-york-times-company-sells-boston-globe.html. *The Philadelphia Inquirer* and *Daily News* were sold in April 2012 for $55 million by a group of investors that had bought them for $515 million in 2006. *Id.* Jeff Bezos bought the *Washington Post* for $250 million this fall, a price "that would have been unthinkably low even a few years ago." Christine Haughney, *Bezos, Amazon's Founder, to Buy The Washington Post*, N.Y. Times, Aug. 6, 2013, at A1, http://www.nytimes.com/2013/08/06/business/media/amazoncom-founder-to-buy-the-washington-post.html. And late in 2012 Media General sold the *Tampa Tribune* to a hedge fund for $9.5 million. Eric Deggans, *Tampa Tribune sold to Revolution Capital Group for $9.5 million*, Tampa Bay Times, Oct. 8, 2012, http://www.tampabay.com/blogs/media/content/tampa-tribune-sold-revolution-capital-group-95-million.

[24] *See* John Henry, *Why I Bought the Globe*, Boston Globe, Oct. 27, 2013, http://www.bostonglobe.com/opinion/2013/10/27/why-bought-globe/QmFHhvRGFajQh1oMcAJ64M/story.html (stating that pessimistic "predictions about the future of newspapers are going to be wrong").

reason why Tribune elected to pursue the separation of its newspaper and broadcasting businesses by way of a spinoff transaction.

One of the four factors the Commission takes into account in considering the propriety of a waiver extension is whether the only sale possible would be at an artificially reduced price.[25] That would clearly be the case here. A forced sale of the Tribune newspapers subject to the Temporary Waivers not only would risk a fire sale, it also would separate the papers from the array of services they receive from the Company, setting them adrift in uncertain waters.[26] An extension would serve the public interest by anchoring the papers, preserving their value, allowing them to maintain their commitment to quality journalism, and ensuring continuity of operation and service to their communities.

3. The Television Stations and Newspapers Subject to the Temporary Waivers Serve Their Communities with High Quality Journalism.

The four newspapers subject to the Temporary Waivers -- the *Los Angeles Times*, *Newsday*, the South Florida *Sun Sentinel*, and the *Hartford Courant* -- are essential sources of news and information in their communities. Tribune's requests for waivers of the NBCO Rule in connection with its bankruptcy reorganization plan (the "Exit Applications")[27] included voluminous exhibits, incorporated herein by reference, describing the high quality of journalism produced by the Tribune television stations and newspapers in the affected markets.[28] An

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[25] *Renaissance Commcn's Corp.*, 12 FCC Rcd at 11879.

[26] There is no market for Tribune's 3 percent interest in *Newsday's* ultimate parent, NHLLC, a private company that is 97 percent owned and controlled by Cablevision.

[27] Tribune Co., Request for Cross-Ownership Waiver, FCC File No. BALCDT-20100428ADV ("KTLA Application"), Exhibit 16; FCC File No. BALCDT-20100428ADP ("WPIX Application"), Exhibit 16; FCC File No. BALCDY-20100428ADP ("WSFL Application"), Exhibit 16; FCC File No. BALCDT-20100428ADQ ("WTIC Application"), Exhibit 16.

[28] *See id.*

extension of the Temporary Waivers would allow Tribune to complete an orderly divestiture of the newspapers it owns and publishes in Los Angeles, South Florida and Hartford, while enabling the papers to continue the essential coverage they provide to their communities. An immediate, forced sale of the newspapers, especially if it placed them in the hands of owners lacking the significant financial wherewithal required to sustain them as standalone properties, would risk a disruption of service to the public and the very survival of the newspapers.[29]

4. The Temporary Waiver Markets are Highly Competitive

An extension of the Temporary Waivers would not harm the NBCO Rule's objective of preserving and enhancing diversity and competition. When grant of a waiver "preserve[s] an existing combination," then it does not "decrease the level of diversity and competition in the market."[30] The Media Bureau concluded in the Emergence Order that the four Temporary Waiver markets are "diverse, competitive markets."[31] New York and Los Angeles are the first and second largest markets in the country, respectively, while Miami-Fort Lauderdale is ranked 16th and Hartford-New Haven is 30th.[32] The diversity and sheer number of print, broadcast, and digital voices in these markets continue to proliferate and would not be adversely affected by the extension requested here. Furthermore, Tribune's approximately

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[29] An immediate forced divestiture of Tribune's 3 percent indirect economic interest in *Newsday* would disrupt Tribune's previous divestiture of 97 percent of its ownership interest in, and operational control of, the newspaper, and deprive Tribune of the financial and tax benefits of the transaction.

[30] *E.W.S. News Corp.*, 12 FCC Rcd at 20247. *See also Solar Broadcasting Co.*, 17 FCC Rcd 5467, 5475 (2002) (reauthorizing an existing radio station combination where it "does not increase ownership concentration" and "is likely to have little or no effect on radio competition" in the market); *Capital Cities/ABC, Inc.*, 2 FCC Rcd 2539, 2539 (1987) (granting waiver for period of six months beyond conclusion of rulemaking proceeding because, among other things, a waiver "would create no reduction in the plethora of media choices available" in a market).

[31] *Emergence Order*, 27 FCC Rcd at 14253.

[32] Nielsen, Local Television Market Universe Estimates, Comparison of 2013-13 and 2013-14 Market Ranks, http://www.nielsen.com/content/dam/corporate/us/en/docs/solutions/measurement/television/2013-2014-DMA-Ranks.pdf (last visited Nov. 10, 2013).

three percent interest in the parent company of *Newsday*'s publisher, which is under day-to-day operational control of its 97 percent owner, Cablevision, poses no risk to diversity or competition in the New York market. The temporary continuation of Tribune's economic relationship to *Newsday* therefore would do no violence to the principles embodied in the NBCO Rule.

The Commission has observed that grant of a temporary waiver to permit common ownership of a newspaper and a television station "serve[s] the purpose of the NBCO rule to preserve competition and existing service to the public by preventing the need for a forced divestiture in a market more than sufficiently competitive to withstand the harms the rule was designed to prevent."[33] Here, too, an extension will preserve competition and existing service by allowing for an orderly separation of Tribune's publishing assets and interests.

Together, the diverse array of voices available to residents of the Temporary Waiver markets, the diligent steps taken by Tribune to separate its publishing business from its broadcasting business, the turbulent state of the newspaper market, and the affected newspapers' tradition of journalistic excellence, all demonstrate that the requested extension of the Temporary Waivers will preserve high quality journalism and save jobs without adversely affecting competition or diversity. The Commission has granted extensions of existing waivers where, as Tribune has done here, a party has used its best efforts to come into compliance and requires additional time to do so.[34] Tribune submits that similar relief is warranted here.

II. TRIBUNE SHOULD BE AFFORDED AN OPPORTUNITY TO DEMONSTRATE COMPLIANCE WITH A MODIFIED NBCO RULE FOLLOWING THE CONCLUSION OF THE 2010 QUADRENNIAL REVIEW.

The Temporary Waivers authorized in the Emergence Order require Tribune to

[33] *K. Rupert Murdoch*, 24 FCC Rcd at 5827.

[34] *See, e.g.*, *Counterpoint Commcn's, Inc.*, 17 FCC Rcd at 3244-45 (granting a six-month extension of an existing waiver where the applicant demonstrated "that it has exercised its best efforts to achieve compliance" with the rule).

come into compliance with the current NBCO Rule within one year following release of the order, *i.e*., by November 16, 2013.[35] "In the alternative," the Emergence Order provided, "if the Commission adopts a new NBCO Rule pursuant to the [the 2010 Quadrennial Review], Reorganized Tribune may seek waivers of the new rule by filing waiver showings *within the timeframe applicable to other holders of temporary NBCO waivers* or to licensees whose waiver requests are pending at that time."[36] Consistent with Commission policy and precedent, as embodied in the Emergence Order itself, that similarly-situated entities be treated equally, Tribune respectfully requests that the Temporary Waivers be extended for the same period of time and under the same conditions as the temporary waivers of the NBCO Rule granted to the parties referred to in the Emergence Order -- Cox Enterprises, Inc., Calvary, Inc., Bonneville International Corporation, The Scranton Times L.P., and Morris Communications Co., LLC (the "Media Parties") -- whose waivers have been extended pending the conclusion of the 2010 Quadrennial Review.[37]

The Commission's iterative consideration of changes to the NBCO Rule over more than a decade is well documented and need not be repeated here.[38] The salient recent history is that the 2006 Quadrennial Review proceeding concluded with an order, released in

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[35] *Emergence Order*, 27 FCC Rcd at 14240.

[36] *Id.* (emphasis added).

[37] Cox Enterprises' combinations are in Atlanta, Georgia (DMA 9), and Dayton, Ohio (DMA 64); Calvary, Inc.'s combination is in Pittsburgh, Pennsylvania (DMA 23); Bonneville International Corp.'s combination is in Salt Lake City, Utah (DMA 33); The Scranton Times L.P.'s combination is in Wilkes Barre-Scranton, Pennsylvania (DMA 54); and Morris Communications Co., LLC's combinations are in Topeka, Kansas (DMA 134), and Amarillo, Texas (DMA 130). *See 2006 Quadrennial Regulatory Review*, 23 FCC Rcd 2010, 2056-57, nn.257-258 (2007) (the "2006 Quadrennial Review Order"), *aff'd in part, vacated in part, remanded by* Prometheus Radio Project v. FCC, 652 F.3d 431 (3d Cir. 2011), *cert. denied*, 133 S. Ct. 64 (2012).

[38] *See* Tribune Co. Exit Applications, Form 314, at 9-17 (Apr. 28, 2010); *Emergence Order*, 27 FCC Rcd at 14246-49.

2008, announcing a modest relaxation of the rule[39] based on the Commission's finding that the "retention of a complete ban [on newspaper-broadcast cross ownership] is not necessary in the public interest as a result of competition, diversity, or localism."[40] The Commission found evidence that (1) significant changes in the media marketplace since 1975, when the rule took effect, justified a recalibration; (2) the largest media markets contain such a substantial number of media outlets and viewpoints that diversity and competition would not be adversely affected by permitting certain newspaper-broadcast combinations; and (3) newspaper-broadcast combinations can create positive synergies that result in more and higher quality news services for consumers.[41]

At the time the 2006 Quadrennial Review Order was released, requests for waiver of the NBCO Rule were pending before the Commission on behalf of Tribune and each of the Media Parties. Pursuant to the order, the Commission afforded each of the Media Parties (but not Tribune) "90 days after the effective date of this order to either amend its waiver/renewal request or file a request for permanent waiver."[42] The Commission addressed Tribune's waiver requests in a separate order released in late 2007 approving the transfer of control of Tribune's broadcast licenses to Sam Zell and the Tribune Employee Stock Ownership Plan.[43] In the Transfer Order, the Commission granted Tribune six-month temporary waivers of the NBCO Rule with respect to its New York, Los Angeles, South Florida, and Hartford interests -- the

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[39] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2056.

[40] *Id.* at 2021.

[41] *Id.* at 2021-22.

[42] *Id.* at 2056.

[43] *See Tribune Co.*, 22 FCC Rcd 21266 (2007) ("Transfer Order").

same interests at issue here.[44] But, noting that the Commission would soon be voting on a revised NBCO Rule, the Commission held that, "[c]onsistent with the bedrock principle that similarly situated regulated entities should be treated in a similar manner," Tribune "should be able to take advantage of any revised NBCO rule that may emerge in the imminent future."[45] In other words, Tribune was afforded the same opportunity as its Media Party counterparts to demonstrate compliance with a new rule.[46]

The United States Court of Appeals for the Third Circuit subsequently vacated and remanded the portion of the 2006 Quadrennial Review Order pertaining to the NBCO Rule for the Commission's failure to comply with the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*[47] The court stated that it expected the FCC to comply with the remand in the context of the 2010 Quadrennial Review.[48] In response, the Commission proposed to modify the NBCO Rule in order to create a rebuttable presumption in favor of common ownership of a newspaper and one television station in the top-20 markets,

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[44] *Id.* at 21276.

[45] *Id.* at 21278.

[46] The Commission afforded Tribune three paths to comply with a new rule: (1) the six-month clock for coming into compliance would not start running until January 1, 2008; (2) should the Commission adopt a revised NBCO Rule before January 1, 2008, Tribune would have two years to come into compliance with the new rule; and (3) if Tribune challenged the Transfer Order in court, the temporary waiver would remain in effect until the later of two years or six months after the conclusion of the litigation. *Id.* at 21278-79. Tribune did challenge the Transfer Order in the U.S. Court of Appeals for the D.C. Circuit. *Tribune Co. v. FCC*, No. 07-1488 (D.C. Cir. filed Dec. 3, 2007). The court has held the case in abeyance pending reconsideration of the Transfer Order by the Commission. *See id.* (May 7, 2008). Because the Commission has not acted on reconsideration, the temporary waiver granted pursuant to the third criterion set out in the Transfer Order remains in effect. The Bureau noted the pendency of the reconsideration proceeding in the Emergence Order. *See Emergence Order* at 14241.

[47] *Prometheus Radio Project v. FCC*, 652 F.3d 431, 453 (3d Cir. 2011), *cert. denied*, 133 S. Ct. 64 (2012).

[48] *Id.* at 453-54.

and a generally negative presumption, also rebuttable, with respect to markets below the top 20.[49] The 2010 Quadrennial Review proceeding is pending.

The Media Parties, meanwhile, sought an extension of the deadline for amending their waiver requests to demonstrate compliance with the new rule until "no later than 60 days after the Commission's release of its report and order in the 2010 Quadrennial Review."[50] The Media Bureau granted the extension, but mandated that the 60-day filing requirement would be enforced notwithstanding any administrative or judicial challenges to the forthcoming order.[51] The 2010 Quadrennial Review remains pending, and the temporary waivers granted to the Media Parties, as extended, will remain in effect until the Commission releases an order resolving the proceeding.

Fundamental fairness and the doctrine announced in *Melody Music, Inc. v. FCC*[52] mandate that Tribune continue to be afforded the same opportunity as the Media Parties to demonstrate its compliance with a new NBCO Rule at the conclusion of the current quadrennial review proceeding. The D.C. Circuit in *Melody Music* was clear that the Commission must justify disparate treatment of similarly-situated applicants.[53] There is no basis in the facts or the law to continue to afford the Media Parties an opportunity to come into compliance with a

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[49] *See 2011 NPRM* at 17526.

[50] Motion for Extension of Time, at 4, *In re Cox Radio, Inc., et al.*, MB Docket No. 06-121 (Media Bureau Sept. 10, 2012).

[51] *2006 Quadrennial Regulatory Review*, 27 FCC Rcd 11113 (Media Bureau 2012).

[52] 345 F.2d 730 (D.C. Cir. 1965) (remanding denial of renewal application where the renewal application of another applicant engaging in similar behavior had been granted). *See also Arnold L. Chase*, 6 FCC Rcd 7387, 7412 (1991) (citing *Melody Music* for the proposition that "similar factual situations must be treated similarly under FCC's rules"); *Applications of American Broadcasting Cos.*, 7 F.C.C. 2d 245, 260 (1966) (Commission "must apply [the] same principles to all licensees").

[53] 345 F.2d at 733. *See also Anderson v. U.S. Sec'y of Agriculture*, 30 C.I.T. 1742, 1749 (2006) (observing that "there exist some circumstances where it is impermissible for a rule to arbitrarily distinguish between similarly situated individuals").

modified NBCO Rule while subjecting Tribune to immediate compliance with the current rule and a possible forced divestiture of either its publishing or television interests in the four Temporary Waiver markets.

Subjecting Tribune to a different standard than the Media Parties also would be inconsistent with the Commission's established criteria for grant of conditional waivers pending a rulemaking. The Commission has made clear that it is not in the public interest to compel compliance with rules that are under active consideration for revision.[54] And conditional waivers are most likely to be appropriate "where protracted rulemaking proceedings are involved and where a substantial record exists on which to base a preliminary inclination to relax or eliminate a rule."[55] That is precisely the situation presented here, where the Commission has proposed modifications of the NBCO Rule in each of the 2002, 2006 and 2010 Quadrennial Review proceedings but the proposed changes have yet to take effect. Indeed, the Bureau's approach in the Emergence Order indicates that it expected the Commission to have adopted a modified NBCO Rule within the 12-month period following release of the order, and that it intended to afford Tribune and the Media Parties an equal opportunity to satisfy the requirements of the new rule.[56]

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[54] *See NextWave Personal Commcn's Inc.*, 12 FCC Rcd 6543, 6548 (WTB 1997) ("[E]nforcing NextWave's compliance with the conditions of its license when such conditions may be modified is unduly burdensome and would not be in the public interest"); *Request of Spanish Int'l Network for Waiver of § 73.658(i)*, 3 FCC Rcd 2746, 2752 (1988) (finding that "the public interest would be served by permitting the waiver of the network representation rule" during the pendency of a rulemaking); *Taft Broadcasting Co.*, 2 FCC Rcd 6622, 6623 (1987) (granting a partial waiver of multiple ownership rules during a pending rulemaking).

[55] *1998 Biennial Regulatory Review*, 13 FCC Rcd 11276, 11294 (1998). *See also Capital Cities/ABC, Inc.*, 2 FCC Rcd at 2539 (granting temporary waiver pending conclusion of rulemaking proceeding in which "the Commission has raised a question as to whether the public interest is better served by permitting common ownership" of the type of combination subject to the waiver request).

[56] One significant factual development during the Commission's ongoing consideration of changes to the rule is that Tribune has divested itself of 97 percent of the ownership and of operational control of *Newsday*. *See* note 21. The (continued…)

Precedent and fairness warrant extension of the Temporary Waivers. The interests at issue here, like the interests of the Media Parties, fall "within the scope of the proposals in [a pending] proceeding, and a grant of an interim waiver would be consistent with the Commission's goals of competition and diversity."[57]

III. CONCLUSION

The Temporary Waivers should be extended in order to allow Tribune to complete an orderly separation of its publishing and broadcast businesses without the risk of a forced sale and the attendant possibility of irreparable harm to the communities served by the Tribune newspapers. Further, Tribune should be afforded the same opportunity as its similarly-situated Media Party competitors to demonstrate its compliance with any modified NBCO rule that might be adopted at the conclusion of the 2010 Quadrennial Review proceeding.

Respectfully submitted,

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process of rationalizing the Company's newspaper and broadcasting interests is continuing as it prepares to effectuate the spinoff transaction.

[57] *1998 Biennial Regulatory Review*, 13 FCC Rcd at 11294.