

**AMENDMENT TO EXHIBIT 16**

## **I. INTRODUCTION AND SUMMARY**

On April 28, 2010, certain subsidiaries of the Tribune Company (“Tribune”) filed FCC applications seeking approval of the assignment of licenses in connection with Tribune’s anticipated emergence from bankruptcy as a reorganized entity (the reorganized Tribune Company is hereinafter referred to as “Reorganized Tribune,” and the applicants as the “Reorganized Licensees”). Five of those applications, including the instant application, requested waivers of the newspaper/broadcast cross-ownership rule (“NBCO Rule”) to permit the continued common ownership of newspaper and broadcast combinations held by Tribune (the “Initial Waiver Requests”).<sup>1</sup> The purpose of this amendment is to address the Third Circuit’s decision in *Prometheus Radio Project v. FCC* (“*Prometheus II*”)<sup>2</sup> and the FCC’s Notice of Proposed Rulemaking in its 2010 Quadrennial Review (“*2011 NPRM*”),<sup>3</sup> both of which were

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<sup>1</sup> Reorganized Licensees are seeking waivers of the NBCO Rule for the following combinations: (1) WGN-TV, WGN(AM), and the *Chicago Tribune* (FCC File No. BALCDT-20100428AEL); (2) KTLA(TV) and the *Los Angeles Times* (FCC File No. BALCDT-20100428ADV); (3) WSFL-TV and the *Sun Sentinel* (FCC File No. BALCDT-20100428ADY); (4) WTIC-TV, WCCT-TV (formerly WTXX(TV)), and the *Hartford Courant* (FCC File Nos. BALCDT-20100428ADQ, BALCDT 20100428ADX); and (5) WPIX(TV) and the *New York Daily News* (FCC File No. BALCDT-20100428ADP).

<sup>2</sup> 652 F.3d 431 (3d Cir. 2011) (“*Prometheus II*”), *reh’g denied*, Order (3d Cir. Sept. 6, 2011). Multiple petitions for writ of *certiorari*, including one in which Tribune joined, were filed in late 2011, have been opposed, and remain pending. See *Tribune Co., et al. v. FCC, et al.*, No. 11-696 (filed Dec. 5, 2011); see also *Media General, Inc. v. FCC, et al.*, No. 11-691 (filed Dec. 5, 2011); *Nat’l Ass’n of Broad. v. FCC, et al.*, No. 11-698 (filed Dec. 5, 2011).

<sup>3</sup> 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, Notice of Proposed Rulemaking, FCC 11-186, MB Docket Nos. 09-182, 07-294 (rel. Dec. 22, 2011) (“*2011 NPRM*”).

issued after the Initial Waiver Requests were filed, and to provide updated information in support of the requested waivers.<sup>4</sup>

As discussed further below, the Third Circuit in *Prometheus II* vacated the revised standards for waivers of the NBCO Rule that the FCC adopted in 2008 on the ground that those standards had not been subject to sufficient notice and comment under the Administrative Procedure Act (“APA”).<sup>5</sup> In the *2011 NPRM*, however, the FCC has stated that it “continue[s] to believe . . . that a blanket prohibition on newspaper/broadcast combinations is overly broad and does not allow for certain cross-ownerships that may carry public interest benefits” and has tentatively concluded that it should replace the absolute ban on cross-ownership with a presumptive waiver standard that would generally incorporate most elements of the 2008 rule.<sup>6</sup>

In its Initial Waiver Request, the Reorganized Licensee demonstrated that the grant of a permanent waiver of the NBCO Rule would have been appropriate under the modified waiver standards that were adopted by the FCC in 2008, and is also appropriate under the standards that the FCC had applied to such requests since the NBCO Rule’s inception in 1975.<sup>7</sup> The Reorganized Licensee also demonstrated that, in the alternative, a temporary waiver of the NBCO Rule until 18 months after completion of pending proceedings to revise the NBCO Rule

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<sup>4</sup> The applications are concurrently being amended to reflect additional developments that have occurred since their initial filing, including the submission of a Third Amended Plan of Reorganization to the Bankruptcy Court.

<sup>5</sup> *Prometheus II*, 652 F.3d at 449-54.

<sup>6</sup> *2011 NPRM*, ¶¶ 89-90, 101-102.

<sup>7</sup> See Initial Waiver Request Section IV.

is warranted.<sup>8</sup> The Reorganized Licensee further explained that the grant of a waiver of the NBCO Rule is required under the APA and the Constitution, as well as the FCC's settled policy of affording comity to the bankruptcy process.<sup>9</sup>

In support of its Waiver Request, the Reorganized Licensee presented extensive showings concerning the extremely high level of public service that the co-owned properties have long provided to the market that they serve and established that the grant of a NBCO Rule waiver is necessary to allow these benefits to continue.<sup>10</sup> The Reorganized Licensee emphasized that the grant of a waiver would simply preserve the *status quo* with respect to this existing combination, and as a result would, by definition, have no impact on existing levels of competition in the local market.<sup>11</sup> In addition, the Reorganized Licensee established that the market served by the newspaper/broadcast combination is in any event remarkably diverse and competitive—both in terms of traditional media outlets and additional new media such as Internet sources—and that allowing continued common ownership would thus have no adverse impact on competition.<sup>12</sup> To the contrary, the Reorganized Licensee showed that failure to grant the requested relief would have adverse public interest effects.<sup>13</sup>

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<sup>8</sup> See *id.* Section V.

<sup>9</sup> See *id.* Sections III.D-E.

<sup>10</sup> See *id.* Section III.A.

<sup>11</sup> See *id.* Sections III.E.3, IV.

<sup>12</sup> See *id.* Section III.B.

<sup>13</sup> See *id.* Section III.C.

As explained below, the Reorganized Licensee is entitled to a permanent waiver of the NBCO Rule. In the period since the filing of the Initial Waiver Request, the marketplace has only become more competitive, while newspapers and broadcast stations have continued to face increasingly severe economic challenges. Furthermore, the properties have continued to deliver consistently outstanding and diverse local public service benefits that would not be possible absent common ownership. And, as Tribune's bankruptcy proceedings have now extended for more than three years, the interest in comity has taken on added significance.

Accordingly, under any reasonable waiver standard, the Reorganized Licensee is entitled to a permanent waiver of the NBCO Rule that would allow continued common ownership by the Reorganized Licensee, as well as subsequent sale of the properties in tandem. At the very least, the FCC should grant the Reorganized Licensee a temporary waiver until 18 months after the Commission completes its review of the NBCO Rule and that action becomes a final order no longer subject to judicial review.

**II. THE NEWSPAPER AND BROADCASTING INDUSTRIES CONTINUE TO FACE SEVERE ECONOMIC CHALLENGES AND CONSTANTLY INCREASING COMPETITION.**

In its Initial Waiver Request, the Reorganized Licensee demonstrated the unprecedented negative effects that the recent economic crisis has had on the newspaper and broadcasting industries, including Tribune's resultant filing for bankruptcy protection in December of 2008.<sup>14</sup> The Initial Waiver Request also documented the substantial and ever growing competition that traditional media, including the commonly owned outlets, face in the contemporary information

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<sup>14</sup> See *id.* Section II.C.

marketplace.<sup>15</sup> Since the filing of the Initial Waiver Request, the marketplace has only become more competitive, and the newspaper and broadcasting industries have continued to face severe economic challenges.

Indeed, in the *2011 NPRM*, the Commission recognizes that “[t]he proliferation of broadband Internet and other new technologies has had a dramatic impact on the media marketplace,” and that “[c]onsumers are increasingly turning to online and mobile platforms to access news content and audio and video programming.”<sup>16</sup> Moreover, in June 2011, the FCC’s Future of Media Working Group, led by former journalist Steve Waldman, released a comprehensive report that not only provides a detailed analysis of the current media landscape and examines how media is serving the information needs of citizens, but also reaffirms the troubling economic trends faced by newspapers and broadcasters.<sup>17</sup> As the FCC explains in the *2011 NPRM*, the Working Group’s *Report* “finds that the Internet has created more diversity and

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<sup>15</sup> See *id.* Section III.B.

<sup>16</sup> *2011 NPRM*, ¶ 1; see also, e.g., *id.* ¶ 15 (“As a result of the growing availability of the Internet and the proliferation of wireless technology, consumers are accessing news and public affairs programming through their computers and electronic devices.”); *id.* at ¶ 133 (citing *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*, Notice of Inquiry, 25 FCC Rcd 6086, 6088 ¶ 6 (2010) (citing Kristen Purcell, *et al.*, Pew Research Center’s Project for Excellence in Journalism, *Understanding the Participatory News Consumer: How Internet and Cell Phone Users Have Turned News Into a Social Experience* (2010), available at [http://www.journalism.org/sites/journalism.org/files/Participatory\\_News\\_Consumer.pdf](http://www.journalism.org/sites/journalism.org/files/Participatory_News_Consumer.pdf) (last visited Mar. 15, 2012))).

<sup>17</sup> Steve Waldman & the Working Group on Information Needs of Communities, *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age* (June 2011) (“*Future of Media Report*” or “*Report*”), available at [http://transition.fcc.gov/osp/inc-report/The\\_Information\\_Needs\\_of\\_Communities.pdf](http://transition.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf) (last visited Mar. 15, 2012).

choice in news and information, and that most communities have seen a rise in the number and diversity of outlets, as well as more diversity in commentary and analysis.”<sup>18</sup>

Further, the *2011 NPRM* recognizes that “the growth of these new technologies both challenges established business models and provides opportunities to reach new audiences and generate new revenue streams,” resulting in a situation in which “[b]roadcast and newspaper consumption in traditional forms is in decline, and advertising revenues have been shrinking in recent years.”<sup>19</sup> Similarly, the *Future of Media Report* observes that “[a]s technology offered consumers new choices, it upended traditional news industry business models, resulting in massive job losses—including roughly 13,400 newspaper newsroom positions in just the past four years.”<sup>20</sup> The *Report* confirms that the newspaper industry faces a broad array of challenges in an information marketplace that is increasingly dominated by the Internet, accurately depicting—at best—a bleak picture of the current state of the newspaper industry:

Newspapers 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. Ad revenue dropped nearly 48 percent between 2005 and 2010, and with it the industry’s annual spending on reporting and editing capacity dropped by \$1.6 billion, from 2006 to 2009, a reduction of more than 25 percent. . . . The number of full-time journalists at daily newspapers fell from a peak of about 56,900 in 1989 to 41,600 in 2010, a level not seen since before the Watergate era.<sup>21</sup>

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<sup>18</sup> *2011 NPRM*, ¶ 133 (citing *Report* at 119-20).

<sup>19</sup> *Id.* at ¶ 3.

<sup>20</sup> *Future of Media Report* at 5.

<sup>21</sup> *Id.* at 34 (citations omitted).

The Internet has dramatically undercut newspaper revenues, contributing in large part to the newspaper industry's economic woes—in 2000, newspaper print advertising revenue totaled \$48.7 billion, but ten years later it plummeted more than 50% to \$22.8 billion.<sup>22</sup> Although newspapers have gained audience on the Internet, their online advertising revenue has not even come close to making up the loss in advertising dollars from print editions.<sup>23</sup>

As detailed in the Initial Waiver Request, the sharp drop in newspaper advertising revenue resulted in cutbacks in operations—numerous newspapers stopped publishing print editions, some switched to online-only editions, and many ceased to exist in any form.<sup>24</sup> The *Future of Media Report* confirms these trends.<sup>25</sup> The 2011 NPRM and the Report similarly

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<sup>22</sup> *Id.* at 39 (citation omitted); *see also id.* at 128 (observing that “in 2010, advertisers spent more money online than in print newspapers”); *Inside Radio News Ticker...Newspaper Spending Falls Again*, INSIDE RADIO (Sept. 2, 2011) (“Advertisers spent less on print for the 20th consecutive quarter dating back to 2006, and fresh Newspaper Association of America data shows no sign of a reversal of fortune. Despite an 8% gain in digital dollars, NAA says overall newspaper revenue fell 7% during second quarter.”).

<sup>23</sup> *Future of Media Report* at 39 (“Online ad revenue for the entire newspaper industry grew by a billion between 2005 and 2010. But print advertising lost \$24.6 billion. This led to the saying in the newspaper world that ‘print dollars were being replaced by digital dimes.’ That turns out to be a rather cheerful way of phrasing it. More accurately: each print dollar was being replaced by four digital pennies.”). The *Future of Media Report* notes that classified advertising was “hit the hardest, as consumers and advertisers found themselves with an array of much cheaper, faster, and more efficient alternatives,” including popular online alternatives such as Craigslist, Google, and numerous specialty websites for posting information on jobs, cars, and real estate. *Id.* at 39-40. Between 2000 and 2010, newspapers’ revenue from advertisements for employment, real estate, vehicles, and smaller items and services fell an astonishing 71 percent from \$19.6 billion (when it accounted for 40 percent of newspapers’ total print advertising revenue) to \$5.6 billion (amounting to just 25 percent of newspapers’ total print advertising revenue). *Id.* (citation omitted). Significant declines in national and retail advertising dealt newspapers a “double whammy”—“just as classified advertisers migrated to the Internet, national advertisers cut spending and shifted some resources to other media, including cable television, niche publications, and the Internet.” *Id.* at 40 (citation omitted). In 2010, newspapers’ national advertising revenues were \$4.2 billion, down from a high of \$8 billion in 2004, while newspapers’ retail advertising revenues were \$12.9 billion, down from a high of \$22 billion in 2005. *Id.* at 39-40 (citation omitted).

<sup>24</sup> *See* Initial Waiver Request Section II.C.

<sup>25</sup> *Future of Media Report* at 40-41 (providing a comprehensive list of newspapers that have closed or eliminated a newsprint edition between 2007 and 2010); *see also id.* at 42 (“In 2009 alone, the website Paper Cuts counted 34



corroborate that staffing cutbacks have been widespread; the *2011 NPRM* recognizes that “[s]ome broadcast and newspaper outlets have contracted the size of news staffs in response” to the proliferation of new media outlets,<sup>26</sup> and the *Report* concludes that “[t]he loss of revenue precipitated a more than 25 percent reduction in newsroom staffs, affecting reporters, editors, online producers, photographers, artists, and videographers.”<sup>27</sup> The *Future of Media Report* concludes that these dramatic cutbacks “appear to have caused genuine harm to American citizens and local communities,” as fewer newsrooms can afford to work on labor-intensive, investigative stories and newspapers have had to eliminate or reduce coverage of important areas such as state government, municipal government, crime and criminal justice, health, and education.<sup>28</sup> As shown in the Initial Waiver Request and in Section III, *infra*, however, Tribune has continued to invest in newsroom operations and provide such coverage despite its economic difficulties.

The *2011 NPRM* and the *Future of Media Report* also confirm, as demonstrated in the Initial Waiver Request,<sup>29</sup> that the television broadcast industry faces similar challenges from cable, satellite, and other MVPDs as well as the rapidly increasing availability of competitive video content via the Internet. The *2011 NPRM* acknowledges increases in subscribership

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papers that had laid off more than 100 employees each. Meanwhile, journalists across the country who managed to hang onto their jobs often were forced to accept unpaid furloughs, pay cuts, or both.”) (citations omitted).

<sup>26</sup> *2011 NPRM*, ¶ 3.

<sup>27</sup> *Future of Media Report* at 40 (citation omitted).

<sup>28</sup> *Id.* at 44-55, 57.

<sup>29</sup> See Initial Waiver Request Sections II.C., III.B.

reported by satellite television companies, as well as the widespread availability of online video content.<sup>30</sup> Similarly, according to the *Report*, the television broadcast industry has been suffering economic declines as “[t]he broadcast audience continue[s] its drift to cable, satellite, and the Internet.”<sup>31</sup> In particular, “[t]he economic changes from 2005 to 2008 hit local news-producing stations especially hard.”<sup>32</sup> Citing statistics from the National Association of Broadcasters, the *Report* indicates that local television news pre-tax profits dropped 56.3% between 1998 and 2008.<sup>33</sup> Further, local television stations have had to make staffing cuts or undertake other cost-saving measures, even where they are producing more newscasts and news content; nearly two-thirds of local television news directors reported staff cuts in 2009, and the median full-time staff of stations dropped from 32 in 2006 to 29 in 2009.<sup>34</sup>

These trends can only be expected to continue, and, even if the industry were to make a dramatic recovery, broadcast television would still face vibrant competition for viewers and advertising dollars from cable and satellite television and the Internet. Indeed, the *Report*

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<sup>30</sup> 2011 NPRM, ¶ 2.

<sup>31</sup> *Future of Media Report* at 73 (providing chart which shows that, in 2010-2011, ad-supported cable had a 60 percent household primetime share level as compared to 36 percent for television broadcasters); see also *id.* at 102 (stating that “the audience is shifting away from broadcast television to cable and the Internet, both of which are drawing off viewers and advertisers”).

<sup>32</sup> *Id.* at 74.

<sup>33</sup> *Id.* (citation omitted).

<sup>34</sup> *Id.* at 79 (citations omitted). The *Report* also concludes that television revenues rose in 2010 and that “the economic prospects for local broadcast stations and their news operations remain brighter than the outlook for local newspapers.” *Id.* at 74. However, television revenues still have not returned to their pre-downturn levels and are unlikely to do so given the ever-expanding competition for advertising dollars from the Internet and other new media.

indicates that the number of cable subscribers has increased steadily since its inception, with 62 million subscribers in 2009, and direct broadcast satellite (DBS) has also become a “significant provider of video services,” with DirecTV serving 19.2 million subscribers and DISH Network serving 14.3 million subscribers.<sup>35</sup> Moreover, “as IPTV (Internet TV) becomes a more common form of TV watching, local TV stations may suffer, too,” as “the higher ad rates charged on traditional media will likely be undercut by the lower ad rates on the Internet.”<sup>36</sup>

Further, the *2011 NPRM* and the *Future of Media Report* confirm, as demonstrated in the Initial Waiver Request,<sup>37</sup> that the radio broadcast industry faces competitive pressures from a variety of sources, including satellite-delivered and online audio content. Although the radio industry has generally fared better than the newspaper and television broadcast industry, the *Future of Media Report* observes that “radio revenues declined in 2008 and 2009 due to the recession.”<sup>38</sup> Broadcast radio faces competition from satellite radio, which saw its subscriptions grow 7.5% to 20 million and its revenue rise 12% to \$2.8 billion in 2010, as well as Internet radio, which is predicted to have its revenue increase from \$552 million in 2010 to \$1 billion in 2015.<sup>39</sup> With respect to local advertising, broadcast radio is increasingly competing with online radio, which “can place ads on websites that target local listeners without necessarily offering

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<sup>35</sup> *Id.* at 109, 114 (citations omitted).

<sup>36</sup> *Id.* at 270.

<sup>37</sup> See Initial Waiver Request Sections II.C., III.B.

<sup>38</sup> *Future of Media Report* at 61.

<sup>39</sup> *Id.* at 68, 70 (citations omitted); see *2011 NPRM*, ¶ 1 (noting that satellite radio companies have reported increases in subscribership).

local content”—a development that the *Report* finds “may be good for local businesses but could harm the business models of local radio.”<sup>40</sup> Indeed, based on many of these factors, the *2011 NPRM* expressly requests comment on whether it should *eliminate* restrictions on newspaper/radio combinations entirely, and acknowledges, consistent with the Commission’s previous findings, that “radio stations are not the primary outlets that contribute to local viewpoint diversity.”<sup>41</sup>

As highlighted above and in the Initial Waiver Request,<sup>42</sup> the Internet is vying with traditional media sources for consumers and advertising. As the number of Americans with Internet access (and high-speed Internet access in particular) rises, the importance of the Internet as a source of news and information is also growing. A recent study by the Pew Research Center and the Knight Foundation found that: “The [I]nternet has already surpassed newspapers as a source Americans turn to for national and international news. The findings from this survey now show its emerging role as a source for local news and information as well.”<sup>43</sup> The fact that more people are turning to the Internet for local topics “poses a major challenge to more traditional news providers, especially newspapers, which have often aspired to be a relatively

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<sup>40</sup> *Future of Media Report* at 69.

<sup>41</sup> *2011 NPRM*, ¶ 112.

<sup>42</sup> See Initial Waiver Request Sections II.C., III.B.

<sup>43</sup> Pew Project for Excellence in Journalism, Pew Internet & American Life Project & Knight Foundation, *How People Learn About Their Local Community* (Sept. 2011) at 22, available at [http://www.knightfoundation.org/media/uploads/publication\\_pdfs/Pew\\_Knight\\_Local\\_News\\_Report\\_FINAL.pdf](http://www.knightfoundation.org/media/uploads/publication_pdfs/Pew_Knight_Local_News_Report_FINAL.pdf) (last visited Mar. 15, 2012) (“*Pew Community Information Study*”); see also *id.* at 22 (noting that the Internet is either the most popular source or tied with newspapers as the most popular source among all adults for five of the 16 local topics covered by the survey, and that the Internet is an even more significant source for local news and information among the 79 percent of Americans who are online).

comprehensive source of information on all of these topics.”<sup>44</sup> Although the survey found that newspapers are one of the most relied upon sources for a wide range of local topics, it found that 69% of Americans believe that the death of their local newspaper would have *no impact or a minor impact* on their ability to get local information.<sup>45</sup> Similarly, another study—this one conducted by Arbitron and Edison Research—found that a mere 5% of respondents believe that newspapers are the “most essential” media, as compared to 42% who stated that the Internet is “most essential” to their lives.<sup>46</sup> And nearly half of the respondents in the Pew/Knight Foundation survey indicated that they expect newspapers to *disappear* in the future due to the Internet.<sup>47</sup>

The rise of the Internet and the increasing adoption of broadband are likely only to continue to diminish the position of traditional media. As the *Future of Media Report* observes, “[a]lthough increased broadband penetration has tremendous benefits it will also create further dislocation for traditional media business models in the short run,” as broadband eventually will reach the 22 percent of Americans who are not Internet users (as well as the 35 percent who do

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 14 (also noting that 75% of younger adults (age 18-29) and 74% of home broadband users say their ability to get local information would not be affected in a major way by the absence of their local paper).

<sup>46</sup> Arbitron Inc. & Edison Research, *The Infinite Dial 2010: Digital Platforms and the Future of Radio* 11, 14 (2010), available for download at [http://www.arbitron.com/study/digital\\_radio\\_study.asp](http://www.arbitron.com/study/digital_radio_study.asp) (last visited Mar. 15, 2012). This study also found that the Internet is now just as important as television across all respondents, and that for younger consumers the Internet is more important than television. *Id.* at 12-13.

<sup>47</sup> *Pew Community Information Study* at 14.

not use broadband Internet at home) and who, thus, currently rely on traditional media sources.<sup>48</sup> Indeed, the Commission itself has found that “[m]any Americans now turn to the Internet to obtain news,” and that “the Internet has become a *major source* of news and information, which forms the basis for informed civic discourse.”<sup>49</sup> At the same time, these developments should not be viewed as a sign that newspapers should simply be permitted to die a slow death. To the contrary, newspapers are an important part of the “rich[] and . . . nuanced ecosystem of community news and information”<sup>50</sup> on which people rely and traditional media, including newspapers, remain most often the sources of breaking news stories,<sup>51</sup> which renders the requested waiver all the more appropriate.

**III. TRIBUNE’S CONTINUED OWNERSHIP OF THE MIAMI-FT. LAUDERDALE PROPERTIES WILL SERVE THE PUBLIC INTEREST.**

During the past 14 years of Tribune’s common ownership of WSFL-TV and the *Sun Sentinel*, these properties have provided myriad public interest benefits to residents of the Miami-Ft. Lauderdale DMA. As demonstrated in the Initial Waiver Request and as expanded upon

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<sup>48</sup> *Future of Media Report* at 269 (citing Gordon Crovitz, former publisher of *The Wall Street Journal*, who says his research over the years “has shown an ‘inverse correlation between broadband penetration and newspaper profitability’”).

<sup>49</sup> *Preserving the Open Internet; Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17,905, 17,912 (¶ 15) (2010) (emphasis added).

<sup>50</sup> *Pew Community Information Study* at 1; *see id.* at 16 (noting important “implications about what could happen if a newspaper in town were to disappear” because people turn to newspapers for information that they are not able to get from other sources).

<sup>51</sup> *See, e.g.,* Pew Project for Excellence in Journalism, *How News Happens: A Study of the News Ecosystem of One American City* (Jan. 2010) at 2, *available at* [http://www.journalism.org/analysis\\_report/how\\_news\\_happens](http://www.journalism.org/analysis_report/how_news_happens) (last visited Mar. 15, 2012) (finding that “of the stories” available from a variety of news sources in Baltimore, Maryland during a sample week, 95 percent of those that contained “new” information “came from traditional media—most of them newspapers”).

below, joint efforts between these media properties have made it possible for WSFL-TV to establish a local news operation and measurably improved each one's ability to deliver in-depth coverage of news events and to contribute to the community's awareness and understanding of important local, national, and international issues.<sup>52</sup> Through its common ownership with the *Sun Sentinel*, WSFL-TV, as of the filing of the Initial Waiver Request, provided programming and local public interest benefits that no similarly situated television station in the market could offer on its own. In the last couple of years, WSFL-TV has drawn even more on the resources of the *Sun Sentinel* to overcome financial challenges and bring news to the community. These benefits flow directly to the public; they would have been exceedingly difficult to attain absent common ownership and Tribune's firm commitment to locally oriented news and public affairs programming.

*Facilities, Operations and Employees.* The manner in which the facilities, operations, and employees of Tribune's properties in South Florida are organized helps them work together to serve the local community without compromising the ultimate editorial independence of each property. In May 2008, WSFL-TV and the (Ft. Lauderdale-based) *Sun Sentinel* co-located their operations under one roof, a process that was completed in September 2008. This co-location allowed WSFL-TV to launch its first-ever self-produced daily local newscast on April 13, 2009. On December 12, 2011, WSFL-TV and the *Sun Sentinel* moved together to a new location at 500 E. Broward Boulevard in Ft. Lauderdale.

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<sup>52</sup> See Initial Waiver Request Section III.A.1.

Prior to Tribune's acquisition of WSFL-TV, which is now an affiliate of the CW network, the station did not broadcast any news programming. Shortly after Tribune's acquisition, and because it was then subject to a regulatory "hold separate" condition prohibiting joint operations of WSFL-TV and the *Sun Sentinel*,<sup>53</sup> the station began broadcasting a news program produced by and purchased from an in-market competitor, NBC-owned WTVJ(TV) in Miami – an ironic situation for a station co-owned with a newspaper. The condition was lifted in 2002,<sup>54</sup> but it was only with the May 2008 move of WSFL-TV's facilities to the *Sun Sentinel*'s location that Tribune was able to originate its own news programming for WSFL-TV and produce entirely original news content for the station.

Inauguration of WSFL-TV's own daily newscast in 2009 resulted in increased employment at WSFL-TV at a time when broadcast industry layoffs and staff reductions were rampant. Before the station began planning for its own local newscast, it had 40 employees. As of the end of the first quarter of 2010, the station had 62 total employees, 30 of whom worked in the station's news department, and it was seeking to fill additional news department positions. As of the same point in time, the *Sun Sentinel* employed 1,326 employees, 192 of whom worked in editorial or news-gathering positions, serving as a critical resource for WSFL-TV's news programming efforts.

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<sup>53</sup> See *Renaissance Commc'ns Corp.*, 13 FCC Rcd at 4718-19 (¶¶ 4-5) (granting request for extension of waiver subject to requirement that "during th[e] further period of common ownership, Tribune will operate the *Sun Sentinel* and WDZL(TV) [now WSFL-TV] separately").

<sup>54</sup> See *Tribune Company*, 17 FCC Rcd 15,526 (2002) (eliminating condition based in part on the possibility that Tribune could – as it ultimately did – establish a new local newscast on WSFL-TV).



Without Tribune's backing and the resources of the *Sun Sentinel*, WSFL-TV likely never would have been able to enter the highly competitive local news arena. Unfortunately, WSFL-TV's ambitious morning news program ultimately proved unsustainable, and the station has had to scale back its efforts. The program was launched in a highly competitive market in which all of the big-four network affiliates and both of the stations affiliated with Spanish-language networks Telemundo and Univision had established local or national news programs. After airing for over 15 months, and operating at a loss in the range of approximately \$125,000 per month, the morning news program earned an average audience share of only 1.4. Due to competitive pressures, the very marginal audience success, and the cost of production, Tribune had no choice but to cease production of the morning news program as of August 4, 2010. At that point, however, Tribune increased the number of daily newsbreaks aired during regularly scheduled programming from five to seven times a day.

As of the end of Tribune's fiscal year 2011 (December 25, 2011), the station had 25 full-time employees, two of whom were dedicated to news, as well as two employees who assisted in preparing news content. As of the end of fiscal year 2011, the *Sun Sentinel* employed 941 employees, 140 of whom worked in editorial or newsgathering positions, serving – as has been true since the Initial Waiver Request's filing – as a critical resource for delivery of news on WSFL-TV.

*News Coverage.* From April 13, 2009 through August 8, 2010, WSFL-TV broadcast 20 hours per week of self-produced local news, with newscasts airing from 5:00 am to 9:00 am Monday through Friday. This amount far exceeded the quantity of news provided by many

stations in the market and distinguished WSFL-TV from other CW affiliates, the vast majority of which do not originate their own local newscasts.<sup>55</sup> As noted above, on August 4, 2010, with the discontinuation of the morning news program, WSFL-TV increased the number of newsbreaks offered throughout the day.

In addition, as of the filing of the Initial Waiver Request, WSFL-TV broadcast a weekly public affairs program titled *South Florida Voices*, which aired at 6:00 am on Sunday mornings. Tribune broadcast this program for many years. On September 5, 2010, WSFL-TV replaced *South Florida Voices* with *Inside South Florida*, another half-hour locally produced weekly public affairs show, which airs on Sundays at 6:00 am and is rebroadcast the following Saturday at 6:00 am. *Inside South Florida* regularly features *Sun-Sentinel* reporters as experts on issues of public concern.

Tribune also has continued its local news efforts notwithstanding the financial challenge of doing so. For example, on October 31, 2011, WSFL-TV began airing *Eye Opener*, a Tribune-produced news and entertainment program, from 6:00 am to 8:00 am Monday through Friday. Each hour of the program is formatted for four three-minute local cut-ins per hour (for a total of eight cut-ins during each morning's program). In conjunction with *Sun Sentinel* news gathering

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<sup>55</sup> It also distinguished WSFL-TV from other comparably ranked stations. WSFL-TV is ranked seventh in the Miami DMA in terms of all day (9 am to midnight) share as of the February 2012 Nielsen sweeps period. It was ranked eighth when Tribune filed the Initial Waiver Request. See Miami DMA TV Stations and Audience Ratings and Shares (Attachment 3 to the Initial Waiver Request). As the FCC has recognized, stations ranked fifth and below are far less likely to carry local news than higher-ranked stations. See 2011 NPRM, ¶ 41 (“there is generally a drop off between the fourth- and fifth-rated station in the market in the amount of local news broadcast”); 2008 Order, 23 FCC Rcd at 2045-46 (¶ 62), 2050-51 (¶ 70) (“[T]elevision stations ranked fifth and below in their DMAs are less likely to carry local news, and therefore hold the potential, as a result of a merger with a newspaper, to provide additional news programming to the local community.”). Indeed, the Commission previously found that more than 60% of stations ranked fifth or below provide no local news at all. 2008 Order, 23 FCC Rcd at 2046 n.204 (¶ 62 n.204).

staff, WSFL-TV currently produces two original cut-ins for the show per day, which are rotated throughout the two-hour program. WSFL-TV is currently exploring increasing the number of daily news cut-ins it produces. As of the end of last year, WSFL-TV also airs four thirty-second newsbreaks at 6:29 pm, 6:59 pm, 10:29 pm and 10:59 pm. In addition to this programming, WSFL-TV produces public service announcements, including “Life Victories: Inspirational Breast Cancer Stories” and other announcements highlighting the work of local charities.

By working together under one roof, WSFL-TV, whether through the production and airing of newscasts or newsbreaks, and the *Sun Sentinel* have covered more news events and stories than either outlet could have presented working alone. To facilitate coordination, the television station and newspaper have maintained a single assignment desk, which during broadcast of the morning news program was staffed by assignment editors from each of the two properties. These editors worked hand-in-hand to ensure that when a story broke, a reporter from at least one property covered it. The joint assignment desk also allowed each property to take advantage of news tips received by the other, thereby enhancing the depth and breadth of news coverage. WSFL-TV now utilizes the *Sun Sentinel* assignment desk, reporters, and photographers/videographers in news gathering for the station’s newsbreaks. The anchor and producer of WSFL-TV’s newbreaks regularly confer with *Sun Sentinel* staff in determining the latest developments and breaking news for the content of each evening newsbreak. WSFL-TV also relies on the *Sun Sentinel* assignment desk, reporters and photographers/videographers in news gathering for the station’s local news cut-ins in *Eye Opener*. With the reduction in the

station's newsgathering resources, cross-ownership has become even more critical to ensuring the provision of news and local information on WSFL-TV.

Each of the *Sun Sentinel*'s photographers carries cameras capable of shooting broadcast-quality video, which is made available for use in WSFL-TV newsbreaks. The newsbreak videos are, in turn, made available to the *Sun Sentinel* for posting on the newspaper's website. The station and the *Sun Sentinel* follow the same protocol for the production of WSFL-TV's *Eye Opener* cut-ins.

The *Sun Sentinel* operates an on-line Breaking News Center, providing area residents with the latest breaking news updates around the clock. The Breaking News Center is managed and edited by *Sun Sentinel* employees and includes links with each property's independent website. WSFL-TV makes its video newsbreaks and *Eye Opener* cut-ins available to the Breaking News Center and the WSFL-TV technical staff provides support for live streaming (such as during the Casey Anthony trial) and pre-produced segments on the *Sun-Sentinel*'s website.

*Sun Sentinel* reporters frequently appeared as experts on WSFL-TV's newscasts, and they continue to be a part of WSFL-TV's newsbreaks. Prior to its cancellation, the following *Sun Sentinel* reporters regularly appeared on WSFL-TV's morning news show:

- Anne Vasquez on business and family issues with reports Wednesday mornings in the 8 o'clock hour.
- Consumer reporter Dan Vasquez on Tuesday mornings in the 8 o'clock hour to discuss condo-related topics (his specialty) and general consumer issues.
- Former *Sun-Sentinel* sports reporter Ethan Skolnick appeared on Wednesday or Thursday mornings at 6:45 am to bring viewers the latest Miami sports news.

In addition to these regularly scheduled reports, at least 10 other *Sun Sentinel* reporters periodically contributed to WSFL-TV's morning news program when news broke in their areas of expertise. Among the *Sun Sentinel* reporters that contributed to the station's newscasts have been former local political correspondent Josh Hafenbrack; investigative and enterprise reporter Ihosvani Rodriguez; former consumer issues and travel trends reporter Jaclyn Giovis; high school sports reporter Dave Brousseau; weather, FAA, and public safety reporter Ken Kaye; consumer issues and child safety reporter Diane Lade; and analyst and social commentator Mike Mayo. Today this cooperative tradition continues. *Sun Sentinel* reporters contribute to WSFL-TV's newsbreaks; recent examples include Paul Owers on housing topics, Andy Reid on weather and drought issues, Nick Sortal on casino gaming issues, and Rod Hagwood on local theatre and fashion shows. *Sun-Sentinel* reporters also appear regularly as featured experts on WSFL-TV's public affairs program, *Inside South Florida*.

The *Sun Sentinel* has long had a very strong reputation for investigative journalism. With the common ownership of the newspaper and WSFL-TV and the elimination of the "hold separate" condition, the station's news programming has been enhanced by the station's access to this expertise. WSFL-TV and the *Sun Sentinel*, for example, have worked together on a number of stories related to consumer and public safety issues, including the following:

- In 2009, *Sun Sentinel* reporters investigated lead levels in toys sold in "secondary markets," such as bargain stores and gas stations. Working together, WSFL-TV and the newspaper tested a number of products and discovered that children's toys containing illegal lead levels continued to be available in Florida stores despite adoption of tougher new legal standards for such products. Both the newspaper and the television station reported the story, and WSFL-TV's coverage included on-air appearances by *Sun Sentinel* reporter Diane Lade.

- Following the drowning death of a South Florida boy who was pulled into a spa drain, the *Sun Sentinel* commenced an in-depth investigation of pool safety issues and pending legislation. WSFL-TV also reported on the story, providing tips for consumers on how to stay safe. WSFL-TV's coverage included an on-air interview with one of the *Sun Sentinel* reporters who had investigated the story.
- WSFL-TV covered a *Sun Sentinel* investigation of children's crib recalls, using the *Sun Sentinel's* reporting as a source and developing an on-air report that included an interview with the newspaper reporter who had conducted the investigation.
- Reporters from the television station and the newspaper worked together on a joint investigation of instances in which convicted felons have been allowed to work in daycare centers and elderly care facilities in Florida. In September 2009, the *Sun Sentinel* ran a three-day series on the results of this investigation, which showed a lack of state oversight of these convicted felons and documented many cases of abuse in elderly care facilities. WSFL-TV broadcast a number of companion reports during its newscasts.

Common ownership with the *Sun Sentinel* has also helped WSFL-TV improve its national and international coverage. Tribune's ownership allows WSFL-TV access to the company's Washington, D.C. bureau, enhancing the station's coverage of national issues. For several years, the *Sun Sentinel* maintained a correspondent in Havana to report on issues in Cuba, many of which are very important to the large Cuban-American population in the Miami area. Because WSFL-TV did not have the financial resources to maintain an international correspondent of its own, its coverage benefited from access to the newspaper's Cuban correspondent. In April 2009, for example, WSFL-TV aired two live phone interviews in which this correspondent discussed the deterioration of historic buildings in Havana and the concerns of many Cubans now living in Miami that the country is losing these landmarks due to negligence.<sup>56</sup>

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<sup>56</sup> Due to budgetary constraints, the *Sun Sentinel* in June 2009 was forced to eliminate the position of the Cuban correspondent.

Not only are *Sun Sentinel* reporters part of WSFL-TV's news, but WSFL-TV reporters have contributed to the newspaper as well. In July 2009, for example, WSFL-TV reporter Eugene Ramirez authored a story in the *Sun Sentinel* on a police investigation of a fatal shooting at a Miami car wash. In March 2009, the *Sun Sentinel* published a story by a WSFL-TV reporter on an abandoned house in Hollywood, Florida that had been declared a public nuisance.<sup>57</sup>

Although WSFL-TV and the *Sun Sentinel* frequently cooperate on news, the station and the newspaper maintain editorial independence. Even though access to *Sun Sentinel* reporters has been critical to the success of WSFL-TV's news programming, the station has also used a variety of other news sources and experts, some of whom represent the *Sun Sentinel*'s competitors. For instance, notwithstanding the common ownership of and cooperation between the Tribune properties, reporters from rival newspaper *The Miami Herald* were regularly asked to appear on WSFL-TV's morning newscasts to comment on various news stories. The *Herald* and the *Palm Beach Post* occasionally provide source material for newsbreaks and news cut-ins. WSFL-TV producers select the topics for newsbreaks, and *Eye Opener* segments and scripts are reviewed by *Sun-Sentinel* staff for accuracy only – not for content approval.

In addition, recently retired *Sun Sentinel* television critic Tom Jicha's sometimes scathing reviews of WSFL-TV's CW network programming underscore the editorial independence of the

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<sup>57</sup> WSFL-TV won two local Emmys awards in 2009 for public service announcements ("PSAs"), including one for "Free to Be Heard," a PSA celebrating Black History Month and featuring poetry relevant to the commemoration. The *Sun Sentinel* is a frequent recipient of journalistic awards. Attachment 2-A1 hereto is a list of awards that the *Sun Sentinel* received from 2007 to 2011. It supersedes Attachment 2-A filed with the Initial Waiver Request.

commonly owned properties.<sup>58</sup> Mr. Jicha has been highly critical of the CW's attempts to program Sunday nights, which efforts included numerous scheduling changes, calling the network's decisions "calamitous" and "a historic debacle" and opining that the station's new network programming was "worse than the old." When the CW network announced in May 2009 that it was returning the Sunday night time period to local affiliates, Mr. Jicha called that decision a "conclusion it should have arrived at a long time ago." When the CW withheld its new series *90210* from critics before its premiere, Mr. Jicha again was highly critical, writing that the network's actions "self-identified" the show as the "first disaster of the TV season." In perhaps the most striking instance of "gloves off" between the two properties, the *Sun Sentinel* in July 2010 broke the news of the DUI arrest of WSFL-TV's morning news anchor.

*Political Coverage.* The combined efforts of the *Sun Sentinel* and WSFL-TV have resulted in improved coverage of political stories both in print and on the television station, as the following examples show:

- *Sun Sentinel* and WSFL-TV reporters investigated and reported on whether wealthy business owners paid for a number of private jet flights taken by former Florida Governor Charlie Crist. Newspaper reporters investigated flight tracking data and other records to identify the owners of many of the planes used by the governor, and a WSFL-TV reporter followed Crist and shot video and photographs of one of his secret flights. Both outlets then reported the story, which was later picked up by television stations and newspapers unaffiliated with Tribune throughout the state.
- The *Sun Sentinel* and WSFL-TV also worked together to break a similar story involving failure by Florida's former lieutenant governor Jeff Kottkamp to reimburse the state for private use of state-owned airplanes. *Sun Sentinel*

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<sup>58</sup> In a May 2009 review, for example, Mr. Jicha characterized a network program scheduled to air on WSFL-TV as having "no redeeming trait."



investigative reporter Megan O'Matz and a WSFL-TV videographer tracked down the lieutenant governor to confront him and get his side of the story. The newspaper's and television station's reporting of this story led to an ethics investigation and prompted the lieutenant governor to reimburse the state.

- The station and the newspaper also collaborated on an investigation of state legislators who did not live in the districts that they represented. Reporters from both outlets worked together to gather information for this story, and the results of the investigation were broadcast by WSFL-TV and published in the *Sun Sentinel*.
- Between September 2011 and February 2012, WSFL(TV) aired several newsbreaks updating Florida voters on campaign events and news preceding the state's Republican Party Presidential primary.

As noted above, despite their collaboration, both WSFL-TV and the *Sun Sentinel* continue to make independent editorial decisions regarding news coverage. The *Sun Sentinel* maintains an independent editorial board. Although WSFL-TV has no role in the decisions of this board, its members have occasionally appeared on-air on WSFL-TV to debate members of the public on topics within their areas of expertise. Most recently, the newspaper's editorial board members have appeared on episodes of *Inside South Florida* to discuss state legislation and topics such as redistricting with the show's host. WSFL-TV does not have a similar board or committee and does not routinely offer editorial commentary.

*Weather.* Both WSFL-TV viewers and *Sun Sentinel* readers have received improved weather coverage because of Tribune's cross-ownership. Prior to August 2010, WSFL-TV meteorologist Jeff Mielcarz provided local forecasts for the Miami edition of the newspaper as well as for WSFL-TV's and the *Sun Sentinel*'s websites. Newspaper and television station staff also collaborated on an annual hurricane preparedness guide that was distributed to area residents. Mr. Mielcarz's reporting was featured prominently in the guide. *Sun Sentinel* reporter Ken Kaye,

an expert on hurricane forecasts, coverage, and tracking, appeared on WSFL-TV's morning newscasts to provide the latest hurricane news and information. More recently, he has appeared on *Inside South Florida* to report on hurricane preparedness.

To facilitate coverage of breaking weather events, WSFL-TV and the *Sun Sentinel* have jointly developed internal plans and protocols to ensure that South Florida residents receive the latest news and critical information in the event of a weather emergency. During severe storms, the *Sun Sentinel* historically has found it necessary to close its main building in Fort Lauderdale for safety reasons and to temporarily relocate its operations to a hurricane bunker approximately 14 miles north at the newspaper's printing facility in Deerfield Beach. Tribune has established a backup facility for WSFL-TV at that location, which will allow the station to continue to broadcast in severe weather emergencies.

*Sports.* Because budgetary constraints have prevented WSFL-TV from hiring a dedicated sports reporter, the station's access to the *Sun Sentinel*'s sports reporters has been essential to the station's delivery of sports news to Miami area residents. As noted earlier, *Sun Sentinel* reporters routinely appeared on WSFL-TV's morning newscasts to provide sports news to viewers.

Over the past two years, WSFL-TV, working with *Sun Sentinel* sports writers, has produced and aired "Countdown to Kickoff," a live pre-game (and in one case pre-recorded) show broadcast as a lead-in to NFL games simulcast from ESPN on WSFL-TV. The shows, which aired in October and November 2010 and September and October 2011, featured *Sun Sentinel* sports reporters and included recorded interviews relevant to the games.

*Community Service.* Common ownership of WSFL-TV and the *Sun Sentinel* also has enhanced each property's ability to reach out to their local communities, both individually and together. Relevant examples, which by no means represent the full extent of their common efforts in South Florida, include the following:

- Both WSFL-TV and the *Sun Sentinel* sponsor the program "Kids of Character," a community effort to recognize exceptional students at local schools. This program selects and features a different outstanding student each week. The *Sun Sentinel* has long been involved in this program, and it has historically featured the selected student in its print edition. With the recent involvement of WSFL-TV in the program, selected students were also profiled on-air in the station's Friday morning newscasts, and they now receive a promotional mention on *Inside South Florida*.<sup>59</sup>
- The newspaper and television station have partnered with the March of Dimes Foundation, Broward Division to increase awareness of birth defects and their prevention. Through 2009, the outlets teamed up on a week-long multimedia program called "Life's Littlest Champions," which featured the stories of children who had benefited from the March of Dimes. These stories were presented in the *Sun Sentinel* and were featured in segments in WSFL-TV's morning news and in public service announcements.<sup>60</sup>
- Both WSFL-TV and the *Sun Sentinel* promote the "Sun Sentinel Children's Fund," a non-profit fund of the McCormick Foundation that awards grants to non-profit agencies serving children and families in South Florida. WSFL-TV promoted this fund through segments in the station's morning newscasts and continues to air public service announcements. Prior to filing of the Initial Waiver Request, *Sun Sentinel* columnists and WSFL-TV on-air personalities teamed up at a local "celebrity baggers" event at a local supermarket to help raise donations for the Fund.
- The *Sun Sentinel*'s "Matters of the Heart" program, in recognition of National Heart Month each February, brings awareness to coronary disease – the number

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<sup>59</sup> Attachment 2-B to the Initial Waiver Request is a letter from the School Board of Broward County expressing its appreciation for the joint participation of WSFL-TV and the *Sun Sentinel* in this program.

<sup>60</sup> Attachment 2-C attached to the Initial Waiver Request is a letter from the March of Dimes received in July 2009 expressing its appreciation for the combined efforts of the newspaper and the television station.

one cause of death in the United States. As part of this program, survivors of heart disease are profiled in the newspaper the week of Valentine's Day. WSFL-TV previously provided on-air promotion and support for the program.

- Each October, WSFL-TV and the *Sun Sentinel* promote National Breast Cancer Awareness Month with a campaign called "Life Victories: Inspirational Breast Cancer Stories." The television station and the newspaper have worked together to support this effort, with profiles of breast cancer survivors running in the *Sun Sentinel*, in the television station's morning news program through August 2010, and thereafter in promotional spots airing on WSFL-TV.

**IV. THE REORGANIZED LICENSEE IS ENTITLED TO A PERMANENT WAIVER OF THE NBCO RULE.**

In its Initial Waiver Request, the Reorganized Licensee demonstrated that it is entitled to a permanent waiver of the NBCO Rule that would allow continued common ownership of the properties by the Reorganized Licensee, as well as subsequent sale of the properties in tandem.<sup>61</sup> Although the Initial Waiver Request addressed the modified NBCO Rule waiver standards which the FCC adopted in 2008 and which the Third Circuit vacated in *Prometheus II*, the Reorganized Licensee also explained that even if those modified standards were found not to be applicable to the Waiver Request for some reason (including potential developments in the Third Circuit litigation), a permanent waiver would be appropriate under prior waiver standards.<sup>62</sup>

When the Commission first adopted the absolute ban on newspaper/broadcast cross-ownership in 1975, it acknowledged that waivers of the rule should be available when "*for whatever reason*, the purposes of the rule would be disserved by divestiture" and those purposes

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<sup>61</sup> See Initial Waiver Request Section IV.

<sup>62</sup> See *id.*

“would be better served by continuation of the current ownership pattern.”<sup>63</sup> The Initial Waiver Request demonstrated that grant of a waiver under this standard was warranted because the evidentiary record here not only satisfies the waiver test on its face, but also contains a factual showing that is at least as compelling as prior situations in which the agency has granted such relief.<sup>64</sup> The Reorganized Licensee’s initial showing of entitlement to a waiver under the 1975 standard is even more compelling now, particularly given the ever-expanding competition and media diversity and growing economic pressures that newspaper and broadcast stations currently face as well as the co-owned properties’ continuing record of outstanding local service—a record that would be unlikely to be maintained if the FCC were to compel separation of the properties at issue.<sup>65</sup>

Furthermore, it is notable that the *Future of Media Report* correctly concluded that allowing combinations of newspaper and broadcast properties can produce synergies that result in increases in the quantity and improvement in the quality of news and other information available to consumers in the local marketplace. Indeed, the *Report* correctly observes that a greater number of independent media outlets in a market “*is not necessarily better*,” thus undermining the central premise behind the NBCO Rule itself: “The nature of the ‘diversity’ calculus may have changed. In an earlier day, it was reasonable to assume that a diversity of ‘voices’ indicated general media health. Now, a media market can simultaneously have a

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<sup>63</sup> *Multiple Ownership of Standard, FM & Television Broad. Stations*, Second Report and Order, 50 F.C.C.2d 1046, 1085 (¶ 119) (1975), *aff’d FCC v. Nat’l Citizens Comm. for Broad.*, 436 U.S. 775 (1978).

<sup>64</sup> See Initial Waiver Request Section IV.

<sup>65</sup> See *supra* Sections II-III.

diversity of voices and opinions and yet a scarcity of journalism.”<sup>66</sup> In addition, the *2011 NPRM* acknowledges that “[c]ompulsory divestiture is disruptive to the industry and to individual owners,” an acknowledgment with particular relevance here given that all of the combinations at issue have been under common ownership for a number of years.<sup>67</sup>

Finally, it bears reiteration that the requested waiver would not create a new media combination and thus necessarily would not result in any diminution in diversity or competition, a factor which the FCC has relied on in numerous prior cases in which it has granted permanent waivers of the media ownership rules.<sup>68</sup> As a result—and particularly in view of the duration of Tribune’s bankruptcy proceedings and the need for the Commission to afford comity to the bankruptcy process—a permanent waiver of the NBCO Rule is appropriate.

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<sup>66</sup> *Future of Media Report* at 312; *see also id* at 26.

<sup>67</sup> *2011 NPRM*, ¶¶ 100, 114.

<sup>68</sup> *See, e.g., AMFM, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 16,062, 16,069 (¶ 15) (2000) (allowing transfer of an existing combination and recognizing that such a transfer “do[es] not increase the combined advertising revenue shares of ... existing groups or result in increased levels of ownership concentration”); *EWS News Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 20,243, 20,247 (¶ 15) (1997) (awarding permanent waiver and stating that “since 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”); *see also Solar Broad. Co.*, Memorandum Opinion and Order, 17 FCC Rcd 5467, 5475 (¶ 24) (2002); *Am. Radio Sys. Corp.*, Memorandum Opinion and Order, 13 FCC Rcd 12,430, 12,437-48 (¶ 11) (1998); *Houston H. Harte*, Memorandum Opinion and Order, 12 FCC Rcd 13,418, 13,422-23 (¶ 16) (1997); *Paso Del Norte Broad. Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 6876, 6882 (¶¶ 13-14) (1997); *River City License P’ship*, Memorandum Opinion and Order, 12 FCC Rcd 4993, 4997-98 (¶ 13) (1997); *Kelso Partners IV, L.P.*, Memorandum Opinion and Order, 11 FCC Rcd 8764, 8768-69 (¶ 11) (1996). *Accord United States Department of Justice and Federal Trade Commission Horizontal Merger Guidelines* (Aug. 19, 2010) at 19, available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html> (last visited Mar. 15, 2012) (stating that transfers that do not increase ownership concentration are “unlikely to have adverse competitive consequences and ordinarily require no further analysis”).

V. **AT A MINIMUM, THE REORGANIZED LICENSEE IS ENTITLED TO A TEMPORARY WAIVER PENDING PROCEEDINGS TO REVISE THE NBCO RULE.**

In its Initial Waiver Request, the Reorganized Licensee established that, if the Commission were for some reason to conclude that a permanent waiver of the NBCO Rule is not appropriate, the agency should at a minimum grant a temporary waiver of the rule until 18 months after the pending proceedings to revise it become final.<sup>69</sup> As explained therein, the FCC has previously granted such waivers when the public interest would be served, and particularly in the face of “protracted rulemaking proceedings” in which there is “a substantial record on which to base a preliminary inclination to relax or eliminate a rule.”<sup>70</sup> The Initial Waiver Request demonstrated that Commission precedent supports grant of a waiver involving such proceedings where an application also “falls within the scope of the proposals in the proceeding, and a grant of an interim waiver would be consistent with the goals of competition and diversity.”<sup>71</sup> As the FCC has emphatically stated, “[w]hat is important is whether the public interest would be served by a grant of a waiver”; here, there can simply be no dispute that it would.<sup>72</sup>

Since the filing of the Initial Waiver Request in 2010, the proceedings to revise the NBCO Rule have only become more “protracted” and the record supporting its relaxation or elimination even more “substantial” (particularly when considering the findings of the *Future of*

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<sup>69</sup> See Initial Waiver Request Section V.

<sup>70</sup> 1998 Biennial Regulatory Review, Notice of Inquiry, 13 FCC Rcd 11,276, 11,294 (¶ 56) (1998) (“1998 Biennial Review NOF”).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 11,294-95.

*Media Report*); it has only become more clear that an interim waiver would comport with the FCC's goals of promoting diversity, localism, and competition; and, all the while, the requested waiver has remained within the scope of the proposals in the proceedings to revise the rule.

Indeed, the Commission is now well into the second decade of proceedings to revise the rule.<sup>73</sup> The FCC recently released its *2011 NPRM*, having received comments on a Notice of Inquiry in the summer of 2010 and completed and publicly released eleven research studies in the summer of 2011. This 2010 Quadrennial Review proceeding is the *fifth* successive periodic review to be conducted pursuant to § 202(h) of the Telecommunications Act of 1996 and the seventh proceeding to consider reform of the NBCO Rule when a 1996 *Notice of Inquiry* and 2001 *Notice of Proposed Rulemaking* focused solely on the NBCO Rule are taken into account.<sup>74</sup> As an initial matter, there can be little doubt that the record assembled in response to the *2011 NPRM* will further support repeal, or at least substantial relaxation, of the rule, particularly in light of the continued marketplace changes that are documented above.<sup>75</sup> In addition, the FCC itself has now found, on *three separate occasions*, that maintenance of the absolute ban cannot be justified.<sup>76</sup> Most recently, in the *2011 NPRM* the FCC states that it “continues to believe . . . that a blanket prohibition on newspaper/broadcast combinations is overly broad and does not

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<sup>73</sup> See Initial Waiver Request Section V.

<sup>74</sup> *Newspaper/Radio Cross-Ownership Waiver Policy*, Notice of Inquiry, 11 FCC Rcd 13,003 (1996); *Cross-Ownership of Broad. Stations and Newspaper*; *Newspaper/Radio Cross-Ownership Waiver Policy*, Order and Notice of Proposed Rulemaking, 16 FCC Rcd 17,283 (2001).

<sup>75</sup> See *supra* Section II.

<sup>76</sup> See Initial Waiver Request Section V.



allow for certain cross-ownership that may carry public interest benefits.”<sup>77</sup> The Third Circuit expressly *upheld* the FCC’s previous determination on this issue in *Prometheus I*.<sup>78</sup> And, the remand in *Prometheus II* was based not on any substantive disagreement with the Commission’s bottom-line conclusion that the rule was ripe for at least some relaxation, but on the ground that the agency had failed to comply with the APA’s notice and comment requirements as to the specific standards adopted in 2008.<sup>79</sup> Given these rulemaking determinations that an absolute ban on newspaper/broadcast cross-ownership should not be enforced, a failure to grant the requested waiver would be arbitrary and capricious. And, there is certainly no arguable basis on which to conclude that the proceedings concerning the NBCO Rule are not “protracted” or that there is not a “substantial record . . . on which to base a *preliminary* inclination to relax or eliminate” the NBCO Rule.<sup>80</sup>

The requested waiver is also clearly within the scope of the proposals for revision that have been set forth in these protracted proceedings. The Initial Waiver Request documented compliance with the 2008 waiver standards, which the Commission largely proposes to reinstate in the *2011 NPRM*.<sup>81</sup> The Initial Waiver Request demonstrated, moreover that the Reorganized

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<sup>77</sup> *2011 NPRM*, ¶ 89.

<sup>78</sup> *Prometheus Radio Project v. FCC*, 373 F.3d 372, 398-400 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005) (“*Prometheus I*”).

<sup>79</sup> *Prometheus II*, 652 F.3d at 449-54.

<sup>80</sup> *1998 Biennial Review NOI*, 13 FCC Rcd at 11,294 (¶ 56) (emphasis added).

<sup>81</sup> See Initial Waiver Request Sections IV, V.

Licensee would have been entitled to a waiver under the 2003 version of the NBCO Rule, a demonstration which similarly remains relevant to the instant showing.<sup>82</sup>

Finally, the grant—at a minimum—of a temporary waiver remains consistent with the Commission’s diversity, localism, and competition goals. The combination’s outstanding record of public service has, as shown above, continued since the filing of the Initial Waiver Request, while the market has become even more diverse and competitive.<sup>83</sup> Here again, because this transaction involves only the transfer of *existing* ownership interests, allowing continued cross-ownership by definition cannot have any adverse impact on existing diversity or competition levels.<sup>84</sup>

In sum, under these circumstances, and as the Reorganized Licensee established previously, it would be arbitrary and capricious, inequitable, inconsistent with the FCC’s policy of affording comity to the bankruptcy process, and wholly contrary to the public interest for the Commission to require the instant combination to be disassembled. At the very least, a temporary waiver pending conclusion of proceedings to revise the NBCO Rule is warranted on this record.

## **VI. CONCLUSION**

For the reasons set forth above and those provided in the Initial Waiver Request, the FCC should grant the Reorganized Licensee a permanent waiver of the NBCO Rule permitting the

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<sup>82</sup> See *id.* Section V.

<sup>83</sup> See *supra* Sections II, III.

<sup>84</sup> See *supra* note 68.

continued common ownership of the properties at issue and also permitting a subsequent sale of those properties in tandem. At the very least, the FCC should grant a temporary waiver extending until 18 months after the Commission completes its pending review of the NBCO Rule and that action becomes a final order no longer subject to judicial review.

**Journalism Awards Received by the *Sun Sentinel* (2007 - 2011)**

**2011 Journalism Awards**

**Sunshine State Awards**

**Breaking sports reporting**

First place: Christy Cabrera Chirinos, Dave Brousseau, Peter Holehan, Robyn Sortal.

**Religious reporting**

Second place: Lois Solomon, Arnold Rosenberg, Robert Duyos

**Blogging**

Second place: Chan Lowe

**Sports action photography**

Second place: Robert Duyos

Third place: Joe Cavaretta

**Information graphics**

Second place: Cindy Jones-Hulfachor, Karsten Ivey, Belinda Long-Ivey

**Special page design**

Third place: Cindy Jones-Hulfachor, Karsten Ivey, Belinda Long-Ivey

**Enterprise sports reporting**

Third place: Christy Cabrera Chirinos, Robyn Sortal

**Editorial cartoons**

Third place: Chan Lowe

**Breaking news photography**

Third place: Joe Cavaretta

**Environmental reporting**

Third place: David Fleshler, Dana Williams

**Multimedia package**

Third place: Amy Beth Bennett, Susan Stocker, Wladimir Moquete (WSFL-TV employee)

**Magazine cover design**

First place: Anderson Greene

**Special interest publication**

Second place: Mark Gauert, Elyse Ranart, Anderson Greene for City & Shore

**2010 Journalism Awards**

**Sunshine State Awards, Florida Chapter, Society of Professional Journalists.**

Christy Cabrera Chirinos, Dave Brousseau, Peter Holehan, Robyn Sortal, first place, breaking sports reporting.

Anderson Greene, first-place, magazine cover design.

Lois Solomon, second place, religion reporting

Robert Duyos, second place, sports action photography.

Mark Gauert, Elyse Ranart, Anderson Greene, second place, special interest publication.

Cindy Jones-Hulfachor, Karsten Ivey, Belinda Long-Ivey, second and third place awards, informational graphics and special page design.

Chan Lowe, second place, blog The Lowe Down; third place for editorial cartoons.

Joe Cavaretta, two third place awards, breaking news and sports action photography.

David Fleshler, Dana Williams, third place, environmental reporting.

Amy Beth Bennett, Susan Stocker and Wladimir Moquete, third place, multimedia package.

**2009 Journalism Awards**

**Green Eyeshade Award**

Sally Kestin, Peter Franceschina, John Maines, Best of Show, for "Trust Betrayed" series, which also took first place in the investigative and public service categories.

Carey Wagner, first place, online videography.

Cindy Jones-Hulfachor, Belinda Long-Ivey, Karsten Ivey, Len DeGroot, Tim Frank swept first, second and third in print graphics.

**Sunshine State Awards, Florida Chapter, Society of Professional Journalists**

The South Florida Sun Sentinel took home 19 Sunshine State Awards, including four first-place finishes. The big winners were:

Chan Lowe, first place, Editorial Cartooning,

Ron Reid and photo department, first place, breaking news photography.

Lindsay BuBois, Karsten Ivey, Len DeGroot, Tim Frank, first place, Web Design.

Karsten Ivey, Len DeGroot, first place, Information Graphics/Special Page Design.

Sally Kestin, Peter Franceschina, John Maines, second place, James Batten Award for Public Service.

**International Center for Journalists**

Journalists from El Sentinel, The Roanoke Times, and Real Atlanta won the first McGraw-Hill Personal Finance Journalism Awards.

**The Society of American Business Editors and Writers (SABEW)**

Harriet Brackey Johnson was one of three business journalists at mid-sized papers across the country named best columnist in its annual Best in Business contest.

**National Press Photographers Association**

Lou Toman won the prestigious Joseph Costa Award for Courtroom Photography for his picture of Teah Wimberly during her murder trial.

**Positive Coaching Alliance (PCA) and the Institute for International Sport (IIS)**

Nick Sortal was recently named a Sports Ethics Fellow by PCA and IIS in honor of National Sportsmanship Day.

**Society for News Design**

The Sun Sentinel won 13 Awards of Excellence in the Society for News Design's 30th annual competition.

Winners for the overall newspaper redesign category were Deputy Managing Editor for Visuals Tim Frank; Design Director Paul Wallen Jr.; News Design Director Chris Mihal; Business Design Director Rebekah Monson; Sports Design Director Tim Ball; Features Design Director Nuri Ducassi and Senior Designer Angie Brennan. The recognition resulted from the paper's redesign, which launched in August 2008.

The Sun Sentinel staff won in an additional seven design categories as well as awards in three photography categories and two informational graphic categories.

## **2008 Journalism Awards**

### **Green Eyeshade**

The Sun Sentinel received two awards in the 59th annual Green Eyeshade contest, which honors journalistic excellence in 11 Southern states.

Staff writers won first place in the Consumer Reporting category for "**Danger at the Mall**" and third place for "**Florida Gas Prices**," according to an announcement this month by the Society of Professional Journalists.

### **Sunshine State Awards**

The South Florida Sun Sentinel took home 12 Sunshine State Awards, including four first-place finishes, the South Florida chapter of the Society of Professional Journalists announced late Saturday.

Capturing two first-place awards for feature photography was Carey Wagner for the image "When This First Happened," and for the series "She Made a Promise," about a woman caring for her husband after two strokes left him nearly immobile, virtually blind and barely able to speak.

Robert Duyos also won first place in the sports action photography category for "Up, Up and a Wade," an image of Miami Heat player Dwyane Wade in action during a game.

The Sun Sentinel's fourth, first-place award was in the informational graphics/special page design category. Cindy Jones-Hulfachor, Karsten Ivey, Len DeGroot and Tim Frank won for "Amendments: Voice of the People." Judges said it gave "valuable perspective on state government told in an inventive way keyed to nine initiatives set to be voted on in last November's elections."

Andy Reid and Megan O'Matz won a second-place Gene Miller Award For Investigative Reporting for "Officials' Air Time Costs Taxpayers."

Also earning second-place awards: Sun Sentinel staff in criminal law reporting for "Danger at the Mall;" Mike Clary in international reporting for "Out of Cuba;" and Carline Jean in feature photography for "Tender Moment."

Third-place finishes went to: Bob LaMendola in medical/health care/science reporting for "How Competent is Your Doctor;" Chan Lowe in editorial cartooning; Andrew Innerarity in feature photography series for "Haiti Prison;" and Anthony Man, Scott Wyman, Brittany Wallman and Russell Small in affiliated blogs for Broward Politics.

### **National Federation of Press Women at-large contest**

Charlyne Varkonyi Schaub, Sun Sentinel Home editor, has won five first place awards in the National Federation of Press Women at-large contest. The competition includes entrants from seven states.

Best Section: The "In shape to sell" section of April 19, 2008, which gave advice on the home fix-up jobs that will bring in the most at resale; and the "Don't miss a trick" section of July 18, 2008, which gave five easy re-decorating ideas that won't break the bank. Other staff members who contributed to the section



include: Nuri Ducassi, Paul Owers, Steve McGrath, Laura Kelly, Ben Crandell, Doreen Christensen and Belinda Long-Ivey.

Feature: "Double trouble," a story that pointed out despite government safety regulations, injuries have continued.

Personality profile: "Arresting talent," a story on Michael Verdugo, a Hollywood policeman who was a finalist on HGTV's Design Star.

Special articles — gardening: "Blossoming career," a story on Grame Teague's photographic fascination with flowers.

Special article —home: "The trip to beautiful," a story on how a Pompano Beach couple transformed their home from frumpy to fabulous in five months; and "Taming the toys," a story on how to get and keep your children's rooms organized.

## 2007 JOURNALISM AWARDS

### ASIAN AMERICAN JOURNALIST ASSOCIATION

Belinda Long, first place, Informational Graphics

### ASSOCIATED PRESS SPORTS EDITORS

Sun-Sentinel selected as one of the 10 best sports sections in the nation

Sunday Section and Special Section,  
honorable mention

Dave Hyde, finalist, Feature Writing

Harvey Fialko, finalists, Explanatory Writing

Ed Hinton, finalist, Explanatory Writing

### COUNCIL ON CONTEMPORARY FAMILIES

Tim Collie, Outstanding Coverage for Family Diversity,  
AIDS Orphans

### FLORIDA PRESS CLUB

Tim Collie, first place, Health Writing

Ian Katz, first place, Business Writing

Chan Lowe, first place, Editorial Cartoon

Stacy Hicklin, second place, Sports Feature Writing

Joel Hood, second place, Environmental Writing

Joel Hood, second place, Sports Writing

Lois Solomon, second place, Religion Writing

Leon Fooksman, Maria Herrera, Ivette Yee, third  
place, Breaking News

Patty Pensa, third place, Serious Feature Writing

Rhonda Miller, third place, Community News Writing

Rick Stone, third place, Commentary Writing

### FLORIDA SOCIETY OF NEWSPAPER EDITORS

Tim Collie, first place, Explanatory Reporting

Dave Hyde, first place, Sports

Sean Piccolo, first place, Criticism

Belinda Long, first place, News Graphics

Staff, first place, Beat Reporting

Steve McGrath, first place, Headline Writing

Chan Lowe, first place, Editorial Cartoon

Staff, first place, Special Sections Sports

Omar Vega, Kristian Rodriguez, first place, Illustration

Kathy Bushouse, first place, Business

Chris Mihal, Rebekah Monson, first place,

News/Business Page Design

John White, Akilah Johnson, first place,

Special Sections/General

Daniel Vasquez, first place, Columns

Jonathan Boho, first place, Sports Page Design

Joe Amon, first place, Body of Work/Photography

Luis Enrique Flor, first place, Enterprise Reporting,  
el Sentinel

Gail Gedan, second place, Headline Writing

Staff, second place, Daily Deadline

Mike Stocker, second place, Feature Photography

Staff, second place, Page One Design

Vanessa Cordo, second place, Feature Page Design

Jonathan Boho, second place, Illustration

Robert Duyos, second place, Sports Photography

Jamie Malernee, third place, Explanatory Reporting

Sally Kestin, third place, Public Service

Sally Kestin, third place, Investigative Reporting

### GOLF WRITERS ASSOCIATION OF AMERICA

Randall Mell, first place, Daily Special Projects

### JAMES ARONSON AWARD FOR SOCIAL JUSTICE JOURNALISM

AIDS Orphans

### NATIONAL ASSOCIATION OF BLACK JOURNALISTS

Tim Collie, Mike Stocker and Joe Amon, first place,  
AIDS Orphans

### NATIONAL FEDERATION OF PRESS WOMEN, AT-LARGE COMMUNICATIONS CONTEST

Charlyne Varkonyi Schaub, first place, Editing

Charlyne Varkonyi Schaub, first place, Feature Story

Charlyne Varkonyi Schaub, first place, Specialized

Personal Column

Charlyne Varkonyi Schaub, second place, Home  
Interior Decoration

### ROBERT F. KENNEDY JOURNALISM CONTEST

Mike Stocker, Joe Amon, International Photography  
Award

### SIDNEY HILLMAN FOUNDATION CONTEST

Mike Stocker, Joe Amon, Photojournalism

### SOCIETY OF AMERICAN BUSINESS EDITORS AND WRITERS

Business Section, Best in Business

### SOCIETY FOR NEWS DESIGN

Belinda Long, Award of Excellence, Individual  
Graphics Portfolio

Belinda Long, Award of Excellence, Non-breaking  
News/Feature Graphic

### SOCIETY OF PROFESSIONAL JOURNALISTS SUNSHINE STATE AWARDS

AIDS Orphans, first place, Public Service/Online  
Journalism

Dave Hyde, first place, Sports Commentary

Jamie Malernee, first place, Feature Reporting

Gail Gedan Spencer, first place, Headline Writing

Mark Gauert, second place, Humorous Column  
Writing/Commentary

City & Shore magazine, first place, Best Special  
Interest Publication