

WSFL-TV, Miami, FL  
FCC Form 314  
Exhibit 16

**REQUEST FOR CROSS-OWNERSHIP WAIVER**

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## **I. INTRODUCTION AND SUMMARY**

The instant application seeks consent to the assignment of licenses held by Channel 39, Inc., Debtor-in-Possession (“Channel 39-DIP”), including that for television station WSFL-TV, Miami, Florida, to Channel 39, Inc. (“Reorganized Channel 39”). This proposed assignment is part of the reorganization of Channel 39-DIP’s ultimate parent company, Tribune Company, Debtor-in-Possession (“Tribune”),<sup>1</sup> and most of Tribune’s subsidiaries, in which, subject to the approval of the Bankruptcy Court, certain of Tribune’s current lenders will acquire equity interests and Reorganized Tribune will emerge from bankruptcy and thereafter become a publicly traded company. In connection with this application, Reorganized Channel 39 requests a permanent waiver of Section 73.3555(d), the newspaper/broadcast cross-ownership rule (the “NBCO Rule”), to permit the continued common ownership of WSFL-TV and the Ft. Lauderdale-based *Sun Sentinel* (“*Sun Sentinel*”), which Tribune has owned in common for approximately 13 years. In the alternative, Reorganized Channel 39 seeks a temporary waiver of the NBCO Rule until 18 months after pending proceedings to revise the NBCO Rule become final.

The FCC eliminated the prohibition on newspaper/broadcast cross-ownership in 2003, the United States Court of Appeals for the Third Circuit upheld the elimination of the ban in 2004, and the FCC reaffirmed its 2003 holding that the NBCO Rule in its 1975 form no longer serves the public interest in December 2007.<sup>2</sup> That decision was challenged in several Courts of

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<sup>1</sup> We will refer to the post-bankruptcy reorganized company herein as “Reorganized Tribune” and, where appropriate, that term will be used to include Reorganized Channel 39 as well. The term “Tribune,” as noted above, will be used to refer to Tribune Company, Debtor-in-Possession and also, where appropriate, will be used to refer to the Debtor-in-Possession’s corporate predecessor.

<sup>2</sup> See *infra* Section II.A.3.

Appeals, and the cases were ultimately transferred to the Third Circuit.<sup>3</sup> In March 2010, that court lifted a stay that it had first put in place in September of 2003 and continued in its 2004 decision and a 2009 order, thus allowing revised standards for waiver of the NBCO Rule to take effect. Under these modified waiver standards, Reorganized Tribune's Miami-Ft. Lauderdale combination presumptively is entitled to a permanent NBCO waiver.

Just a month before its December 2007 media ownership decision, the Commission determined that it was appropriate for Tribune to receive a temporary waiver of the NBCO Rule in Miami.<sup>4</sup> Since that decision, the country has experienced a dramatic economic downturn that has been particularly severe in its impact on the newspaper and broadcast industries – already devastated by changes in the advertising market and increasing competition from Internet and other sources of news, information, and entertainment. The effects of that downturn ultimately resulted in the filing of petitions for bankruptcy by Tribune and nearly all of its subsidiaries, including the licensee of WSFL-TV.<sup>5</sup>

Tribune has been a fixture in the South Florida community since purchasing the *Sun Sentinel* in 1963. The *Sun Sentinel* primarily serves the Ft. Lauderdale area. Tribune entered the broadcasting business in this market with the purchase of WSFL-TV, a UHF television station

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<sup>3</sup> The Judicial Panel on Multidistrict Litigation consolidated the appeals originally filed in the United States Courts of Appeals for the First, Third, Sixth, Ninth, and District of Columbia Circuits and determined by random selection that the case would be heard in the Ninth Circuit. *In re: Federal Communications Commission, In the Matter of 2006 Quadrennial Regulatory Review*, RTC No. 95 (J.D.P.M.L. Mar. 11, 2008). The Ninth Circuit Court of Appeals subsequently transferred the case to the Third Circuit. *Media Alliance v. FCC*, Nos. 08-70830, *et al.* (9th Cir. Nov. 4, 2008).

<sup>4</sup> See *Shareholders of Tribune Co.*, Memorandum Opinion and Order, 22 FCC Rcd 21,266 (2007), *appeal pending sub nom. Tribune Co. v. FCC*, Nos. 07-1488, 07-1489 (D.C. Cir. filed Dec. 3, 2007).

<sup>5</sup> See *In re Tribune Company, et al.*, Nos. 08-13141, *et al.* (KJC) (Bankr. D. Del. filed Dec. 8, 2008).

licensed to Miami, in 1996. These properties are local institutions, and together provide abundant news and public service.

Although the newspaper and broadcast station exercise independent editorial discretion, access to the combined resources of the properties and the journalistic synergies produced by their common ownership enable each to increase the quantity and timeliness of news that it broadcasts, prints, or publishes on its websites and to deliver a superior news product to local residents. WSFL-TV – which carried no news when Tribune acquired it – currently airs 20 hours per week of local news, and, through cooperation, both properties are able to cover many more news events and stories than either one could cover working alone. In particular, the political coverage provided by each property is greatly enhanced by Tribune’s common ownership. In addition, resource sharing has facilitated the provision of expanded weather coverage, which is critical to South Florida residents.

In addition to working together to produce regularly scheduled newscasts and print stories, Tribune’s Miami properties often collaborate on special projects of particular importance to the local community, including recent investigative reporting on lead levels in children’s toys sold in “secondary markets” such as bargain stores and gas stations, team coverage of hurricanes and development of an annual hurricane preparedness guide at the start of hurricane season, and an investigation of Florida Governor Charlie Crist’s use of private jets belonging to wealthy business owners.

The Miami-Ft. Lauderdale Designated Market Area (“DMA”) in which these properties operate is the seventeenth largest, and one of the most diverse and competitive, markets in the country. The number of sources from which the public can obtain local news and information in the DMA has multiplied exponentially since Tribune acquired the *Sun Sentinel* in 1963 and has

increased at an ever-accelerating rate since the Commission adopted the NBCO Rule in 1975. Common ownership of WSFL-TV and the *Sun Sentinel* has served the public interest and will continue to do so without any diminution of diversity in the sources of news and information or harm to competition in the Miami-Ft. Lauderdale DMA. Thus, under the revised standards for waiver of the NBCO Rule now in effect or under any reasonable standard that takes into account the public interest benefits provided by the combination in question, Reorganized Tribune should be granted a permanent waiver of the NBCO Rule permitting its continued common ownership of the *Sun Sentinel* and WSFL-TV and also permitting a subsequent sale of those properties in tandem following the company's emergence from bankruptcy. Such relief is fully justified in this case given the Commission's prior findings, the exigencies of Tribune's bankruptcy status, and the need for the FCC to ensure comity with the bankruptcy process. At the very least, 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 is appropriate here.

## **II. PROCEEDINGS RELATED TO THE NBCO RULE, TRIBUNE'S SOUTH FLORIDA PROPERTIES, AND THE IMPACT OF THE ECONOMIC DOWNTURN.**

### **A. The NBCO Rule.**

#### **1. Adoption of the NBCO Rule in 1975.**

In 1975, the FCC adopted the NBCO Rule prohibiting ownership of a daily newspaper and a broadcast station serving the same community.<sup>6</sup> In its decision adopting the NBCO Rule, the Commission acknowledged the potential detriments of the prohibition and the very shaky factual foundation upon which it was based.<sup>7</sup> The agency also recognized the pioneering spirit of

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<sup>6</sup> *Multiple Ownership of Standard, FM & Television Broad. Stations*, Second Report and Order, 50 F.C.C.2d 1046 (1975) ("1975 Order"), *aff'd* FCC v. Nat'l Citizens Comm. for Broad., 436 U.S. 775 (1978) ("NCCB").

<sup>7</sup> *Id.* at 1074 (¶ 99), 1078-81 (¶¶ 108-13).

cross-owners and the fact that broadcast stations affiliated with newspapers tended to be superior licensees, particularly in terms of locally oriented service.<sup>8</sup> Despite its recognition of the public interest benefits of cross-ownership, the agency nevertheless adopted the NBCO Rule in reliance on what the agency itself termed a “mere hoped for gain in diversity.”<sup>9</sup> Importantly, however, the Commission concluded that where there was at least one other broadcast station licensed to a community, cross-ownership would be grandfathered because the harm from forced divestiture outweighed any theoretical benefit of separate ownership.<sup>10</sup> The FCC also contemplated processing a “number of waiver requests.”<sup>11</sup> The Supreme Court upheld the FCC’s decision to grandfather most existing combinations and relied heavily on the availability of waivers in affirming the NBCO Rule in 1978.<sup>12</sup> As shown below, application today of the waiver standards

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<sup>8</sup> *Id.*; *see id.* at Appendix C, 50 F.C.C.2d at 1094-98 (recognizing that co-owned stations produce greater amounts of local informational programming).

<sup>9</sup> *Id.* at 1078 (¶ 109).

<sup>10</sup> *Id.* at 1078-86 (¶¶ 108-22).

<sup>11</sup> *Id.* at 1085 (¶ 118). In the *1975 Order*, the Commission first explained that it would consider granting waivers in three types of situations involving financial hardship or distress: (1) an inability to sell a station; (2) a potential sale, but only at an artificially depressed price; or (3) where separate ownership and operation of the newspaper and station could not be supported in the locality. *1975 Order*, 50 F.C.C.2d at 1085 (¶ 119). The Commission also established a fourth and independent basis for waiver: if it can be shown “*for whatever reason* that the purposes of the rule would be disserved by divestiture, if the rule, in other words, would be better served by continuation of the current ownership pattern, then waiver would be warranted.” *Id.* (emphasis added and internal citation omitted). The Commission has subsequently encapsulated its waiver policy as counseling in favor of waivers “if: (1) a combination could not sell a station; (2) a combination could not sell a station except at an artificially depressed price; (3) separate ownership and operation of a newspaper and a station could not be supported in a locality; or (4) for whatever reason, the purposes of the rule would be disserved.” *Cross-Ownership of Broad. Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, Order and Notice of Proposed Rulemaking, 16 FCC Rcd 17283, 17,283, 17,284-85 (¶ 3) (2001) (“*Newspaper/Broadcast NPRM*”). These purposes necessarily must be understood to include the promotion of localism and diversity, the key goals upon which the NBCO Rule is premised.

<sup>12</sup> *See NCCB*, 436 U.S. at 802 n.20.



adopted in 1975 would permit Tribune's continued common ownership of WSFL-TV and the *Sun Sentinel*.<sup>13</sup>

## 2. Proposed Relaxation in the 1990s.

More than a decade ago, clearly recognizing the significant changes that had occurred in the media landscape since 1975, the FCC began calling for changes to the NBCO Rule. In 1996, in explaining its grant of a temporary waiver of the NBCO Rule to Capital Cities, the Commission stated that it would "proceed expeditiously with an open proceeding to consider revising [its] newspaper broadcast cross-ownership policies."<sup>14</sup> Chairman Hundt separately observed that the NBCO Rule "is right now impairing the future prospects of an important . . . source of education and information: the newspaper industry" and stated that the Commission should be able to complete the rulemaking within one year – before the expiration of the waiver granted to Capital Cities.<sup>15</sup> That same year, the agency issued a Notice of Inquiry regarding potential relaxation of its policy for waiving the NBCO Rule as it applied specifically to newspaper/radio cross-ownership.<sup>16</sup>

The very next year (in 1997), Tribune proposed to acquire six stations owned by Renaissance Communications Corp., including one (WDZL(TV), now WSFL-TV), located in the Miami-Ft. Lauderdale market where Tribune already owned a newspaper. After a challenge by

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<sup>13</sup> See *infra* Section IV.

<sup>14</sup> *Capital Cities/ABC, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 5841, 5851 (¶ 6) (1996).

<sup>15</sup> *Id.* at 5906, 5908 (Separate Statement of Chairman Reed E. Hundt). The Commission did not complete the promised proceeding within the year, and Capital Cities was subsequently granted a temporary waiver pending the outcome of the promised rulemaking proceeding. See Letter to Joel Rosenbloom and Alan Braverman from Roy J. Stewart, Chief, Mass Media Bureau (Oct. 24, 1996) ("*Capital Cities Letter Decision*").

<sup>16</sup> *Newspaper/Radio Cross-Ownership Waiver Policy*, Notice of Inquiry, 11 FCC Rcd 13,003 (1996).

Tribune in the D.C. Circuit, the FCC granted Tribune a temporary waiver of the NBCO Rule in Miami pending the outcome of the Commission's anticipated review of the rule in its 1998 biennial review.<sup>17</sup> Both the FCC and the Court recognized the need for modification of the NBCO Rule, but the FCC stated, and the Court agreed, that the promised rulemaking, rather than the Tribune/Renaissance transaction, was the appropriate proceeding in which to effectuate such change.<sup>18</sup>

Also in 1997, the Newspaper Association of America ("NAA") filed a formal Petition for Rulemaking seeking repeal or relaxation of the NBCO Rule.<sup>19</sup> The FCC did not act on that petition. Instead, as required under Section 202(h) of the Telecommunications Act of 1996,<sup>20</sup> the Commission in 1998 undertook its first Biennial Review of its media ownership rules, which it completed two years later in 2000 by issuing the *1998 Biennial Regulatory Review Report*.<sup>21</sup> There, the agency again concluded that the NBCO Rule needed to be modified and promised to initiate a rulemaking proceeding to amend it.<sup>22</sup> The Commission did not, however, open such a

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<sup>17</sup> *Renaissance Commc'ns Corp.*, Order, 13 FCC Rcd 4717 (1998). The FCC initially granted Tribune a finite period to come into compliance with the NBCO Rule, but after review of the D.C. Circuit's opinion in *Tribune Co. v. FCC*, 133 F.3d 61 (D.C. Cir. 1998), extended the waiver until the completion of the anticipated rulemaking.

<sup>18</sup> *Renaissance Commc'ns Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 11,866, 11,888 (¶ 51) (1997), *aff'd sub nom. Tribune Co. v. FCC*, 133 F.3d 61 (D.C. Cir. 1998).

<sup>19</sup> Tribune is a member of NAA.

<sup>20</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h); see also 47 U.S.C. § 161. Section 202(h) requires the Commission to determine whether its media ownership rules remain "necessary in the public interest as the result of competition" and to "repeal or modify any regulation it determines to be no longer in the public interest." The reviews were first required to be conducted every two years, but in 2004 Congress amended Section 202(h) to require reviews on a quadrennial basis. Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99 (2004).

<sup>21</sup> *1998 Biennial Regulatory Review*, Biennial Review Report, 15 FCC Rcd 11,058 (2000).

<sup>22</sup> *Id.* at 11,102 (¶ 83) ("[W]e believe that there may be certain circumstances in which the rule may not be necessary to achieve the rule's public interest benefits. We, therefore, will initiate a

rulemaking. Rather, the agency launched its 2000 Biennial Review, releasing a report in 2001 in which it committed once more to “issue a notice of proposed rulemaking seeking comment on whether [the FCC] need[ed] to modify the daily newspaper/ broadcast cross-ownership rule in order to address contemporary market conditions.”<sup>23</sup>

3. Further Efforts to Revise the NBCO Rule in 2001 and Ensuing Litigation.

More than eight years ago, in September 2001, the Commission finally issued a Notice of Proposed Rulemaking regarding the modification or elimination of the NBCO Rule.<sup>24</sup> After receiving voluminous comments and reply comments, the FCC appeared poised to fulfill its longstanding promise to modify the NBCO Rule. Instead, in 2002 the agency consolidated the *Newspaper/Broadcast NPRM* into an omnibus multiple ownership proceeding tied to the 2002 Biennial Review and its review of two cases related to television ownership rules that had been remanded to it from the D.C. Circuit.<sup>25</sup> The FCC then re-launched the inquiry (the “Omnibus Proceeding”).<sup>26</sup> The agency took further public comment, commissioned a dozen market studies, and held numerous field hearings. Tribune not only filed comments in the Omnibus Proceeding (consistent with its participation in the earlier rulemakings), but Tribune Vice President Shaun

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rulemaking proceeding to consider tailoring the rule accordingly.”). As part of the biennial review, the Commission recognized its prior grant to Tribune of a temporary waiver for its Miami television station pending completion of the rulemaking that it had promised to initiate at the time the waiver was granted, and extended that waiver pending the resolution of the rulemaking promised in the 1998 Biennial Review. *Id.* at 11,109-10 (¶ 96).

<sup>23</sup> 2000 Biennial Regulatory Review, Report, 16 FCC Rcd 1207, 1218 (¶ 32) (2001).

<sup>24</sup> *Newspaper/Broadcast NPRM*, 16 FCC Rcd at 17,283-284 (¶ 1).

<sup>25</sup> See *Sinclair Broad. Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002); *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, *reh’g granted*, 293 F.3d 537 (D.C. Cir. 2002).

<sup>26</sup> 2002 Biennial Regulatory Review – Review of the Comm’n’s Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; Cross-Ownership of Broad. Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broad Stations in Local Markets, Notice of Proposed Rulemaking, 17 FCC Rcd 18,503 (2002).

Sheehan also appeared as a panelist at one of the unofficial field hearings in April 2003.<sup>27</sup> After another year of study, the Commission in June 2003 adopted the *2003 Order* that revised many of the media ownership rules, including the NBCO Rule.<sup>28</sup>

In the *2003 Order*, the Commission found that the NBCO Rule was no longer justifiable under the standard set forth in Section 202(h).<sup>29</sup> The decision was based on an analysis of the three primary public interest objectives that govern the agency's oversight of broadcast ownership: localism, viewpoint diversity, and competition.

With respect to localism, the FCC cited “overwhelming evidence that [newspaper/broadcast] combinations can promote the public interest by producing more and better overall local news coverage.”<sup>30</sup> In this vein, the agency recognized that “television stations that are co-owned with daily newspapers tend to produce more, and arguably better, local news and public affairs programming than stations that have no newspaper affiliation.”<sup>31</sup> Based on the extensive record before it, the agency determined that “the current rule is not necessary to promote our localism goal, and . . . in fact, is likely to hinder its attainment.”<sup>32</sup>

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<sup>27</sup> See Dave McNary, *WGA: Caps Keep News Nets Neutral; Debate on the Consolidation of Congloms Continues*, Variety.com, Mar. 31, 2003, available at <http://www.variety.com/article/VR1117883863.html> (last visited Feb. 22, 2010).

<sup>28</sup> *2002 Biennial Regulatory Review – Review of the Comm’ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; Cross-Ownership of Broad. Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broad. Stations in Local Markets*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13,620, 13,747, 13,767 (¶¶ 327, 368-69) (2003) (“*2003 Order*”), *aff’d in part, remanded in part, Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005).

<sup>29</sup> See *2003 Order*, 18 FCC Rcd at 13,678 (¶ 371); *supra* note 20.

<sup>30</sup> *2003 Order*, 18 FCC Rcd at 13,759 (¶ 354).

<sup>31</sup> *Id.* at 13,802 (¶ 465).

<sup>32</sup> *Id.* at 13,759-60 (¶ 354).

With regard to viewpoint diversity, the agency found that the record did not support the conclusion that “common ownership of broadcast stations and daily newspapers in the same community poses a widespread threat to diversity of viewpoint or programming.”<sup>33</sup> To the contrary, the Commission determined that “the synergies and efficiencies that can be achieved by commonly located newspaper/broadcast combinations can and do lead to . . . diverse viewpoints.”<sup>34</sup> It also found that “relaxing the cross-ownership rule could lead to an increase in the number of newspapers in some markets and foster the development of important new sources of local news and information.”<sup>35</sup> Tribune’s newspaper/broadcast combination in South Florida exemplifies the Commission’s findings as to localism and diversity in particular, with Tribune’s initiation of a new local newscast on WSFL-TV and the combination’s superior performance in providing diverse news and local information to local viewers and readers.

As to competition, the Commission concluded that newspaper/broadcast combinations “cannot adversely affect competition in any relevant product market,” and that the NBCO Rule was thus not necessary to protect competition.<sup>36</sup> Accordingly, the FCC repealed the newspaper/broadcast cross-ownership ban and, based on lingering concerns regarding diversity,

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<sup>33</sup> *Id.* at 13,767 (¶ 368).

<sup>34</sup> *Id.* at 13,761 (¶ 358). The FCC’s conclusions on this issue were supported by independent studies commissioned by the agency. See David Pritchard, *Viewpoint Diversity in Cross-Owned Newspaper and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* (FCC Media Ownership Working Group Report #2), September 2002; Thomas C. Spavins, et al., *The Measurement of Local Television News and Public Affairs Programs* (FCC Media Ownership Working Group Report #7), September 2002; Scott Roberts, et al., *A Comparison of Media Outlets and Owners for Ten Selected Markets (1960, 1980, 2000)* (FCC Media Ownership Working Group Report #1), September 2002.

<sup>35</sup> 2003 Order, 18 FCC Rcd at 13,760-61 (¶ 356).

<sup>36</sup> *Id.* at 13,753 (¶ 341); see also *id.* at 13,748-49 (¶¶ 331-32), 13,752-53 (¶¶ 339-41), 13,767 (¶¶ 368-69).

replaced it with a new set of cross-media limits.<sup>37</sup> The new limits would have permitted common ownership of WSFL-TV and the *Sun Sentinel*.<sup>38</sup>

A number of parties (including Tribune) challenged the *2003 Order*, and the United States Court of Appeals for the Third Circuit affirmed the Commission's decision to repeal the blanket ban on newspaper/broadcast cross-ownership.<sup>39</sup> As the Third Circuit stated, "[t]he Commission's decision not to retain a ban on newspaper/broadcast cross-ownership is justified under § 202(h) and is supported by record evidence."<sup>40</sup> Further, the Court concluded that "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."<sup>41</sup> The Third Circuit recognized that "[n]ewspaper/broadcast combinations can promote localism" and that a wholesale prohibition actually "undermined" this important goal.<sup>42</sup> In addition, the Court agreed with the agency that "[a] blanket prohibition on newspaper/broadcast combinations is not necessary to protect diversity."<sup>43</sup> In this regard, the Third Circuit found that "the Commission reasonably concluded that it did not have enough confidence in the proposition that commonly

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<sup>37</sup> As pertinent here, in "markets with nine or more TV stations ('large markets')," the Commission "impose[d] no cross-media restrictions," reasoning in part that, "[t]o begin with, markets of this size today tend to have robust media cultures characterized by a large number of outlets and a wide variety of owners." *2003 Order*, 18 FCC Rcd at 13,804 (¶ 473).

<sup>38</sup> *See infra* at 107.

<sup>39</sup> *Prometheus Radio Project v. FCC*, 373 F.3d 372, 398 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 398-99.

<sup>43</sup> *Id.* at 399.

owned outlets have a uniform bias to warrant sustaining the cross-ownership ban.”<sup>44</sup> The Court thus upheld the Commission’s finding that retaining the ban was no longer in the public interest. The Third Circuit, however, remanded the *2003 Order* to the FCC for further justification of the specific limits on cross-media ownership that had been adopted to replace the ban.<sup>45</sup>

#### 4. The 2006 Proceeding and Resultant Rule Change.

Approximately two years later, the Commission issued a Notice of Proposed Rulemaking in its 2006 Quadrennial Review (the “*2006 FNPRM*”).<sup>46</sup> That proceeding served the dual purposes of fulfilling the agency’s Section 202(h) periodic review mandate and responding to the issues raised in the Third Circuit’s remand decision. In the *2006 FNPRM*, the Commission asked, among other things, whether it should revise the 2003 cross-media limits, whether it could justify those limits based upon additional evidence or analysis, and whether continuing to restrict newspaper/broadcast cross-ownership was necessary in the public interest at all.<sup>47</sup> The proceeding generated yet another massive record on newspaper/broadcast cross-ownership, with the Commission receiving comments and reply comments, commissioning 10 peer-reviewed studies, and conducting six official field hearings. In addition to Tribune’s submission of comments in the proceeding, Tom Langmyer, Vice President and General Manager of

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<sup>44</sup> *Id.* at 399-400.

<sup>45</sup> While it rejected certain elements of the rationale underlying the cross-media limits, including some components of a “diversity index,” *id.* at 402-11, the Court did not question the FCC’s finding that the public interest benefits that can be realized in larger markets significantly outweigh the impact of a decrease in the count of independently owned properties or voices.

<sup>46</sup> *2006 Quadrennial Regulatory Review – Review of the Comm’n’s Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; 2002 Biennial Regulatory Review – Review of the Comm’n’s Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; Cross-Ownership of Broad. Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broad. Stations in Local Markets; Definition of Radio Markets*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8834 (2006) (“*2006 FNPRM*”).

<sup>47</sup> *Id.* at 8848 (¶ 32).

WGN(AM), participated as a panelist at the September 2007 public hearing in Chicago; Bob Gremillion, President, CEO, and Publisher of the *Sun Sentinel*, participated as a panelist at the April 2007 public hearing in Tampa; Pamela S. Pearson, Vice President/General Manager of Tribune Television Northwest, Inc., participated as a panelist at the November 2007 public hearing in Seattle; and Vincent Malcolm, then-Vice President and General Manager, KTLA(TV), participated as a panelist at the October 2006 public hearing in Los Angeles.<sup>48</sup>

In an order adopted in December 2007 (and released in February 2008), the Commission made new findings and added liberalized waiver standards to the NBCO Rule. Among other things, the Commission found that “[e]vidence in the record continues to support the Commission’s earlier decision that retention of a complete ban is not necessary in the public interest as a result of competition, diversity, or localism.”<sup>49</sup> In particular, the Commission found that (1) “ample evidence in the record” indicates that “marketplace conditions have indeed changed and thus justify a recalibration,” (2) “the largest markets contain a robust number of diverse media sources,” “diversity of viewpoints would not be jeopardized by certain newspaper/broadcast combinations,” and many combinations exercise “independent editorial control,” and (3) “newspaper/broadcast combinations can create synergies that result in more

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<sup>48</sup> See FCC, Public Notice, *FCC Announces Agenda for Public Hearing on Media Ownership in Seattle, Washington* (rel. Nov. 8, 2007); FCC, Public Notice, *FCC Announces Agenda for Public Hearing on Media Ownership in Chicago, Illinois* (rel. Sept. 17, 2007); FCC, Public Notice, *FCC Announces Agenda for Public Hearing on Media Ownership in Tampa-St. Petersburg, Florida* (rel. Apr. 26, 2007); FCC, Public Notice, *FCC Announces Further Details for Public Hearing on Media Ownership in Los Angeles* (rel. Sept. 29, 2006).

<sup>49</sup> 2006 Quadrennial Regulatory Review – Review of the Comm’n’s Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996, Report and Order and Order on Reconsideration, 23 FCC Rcd 1010, 2021-22 (¶ 19) (2008) (“2008 Order”), appeal pending sub nom. *Prometheus Radio Project v. FCC*, Nos. 08-3078, et al. (3d Cir. filed July 15, 2008).



news coverage for consumers,” thus enhancing localism.<sup>50</sup> Under the changes in the *2008 Order*, the general restriction on cross-ownership was retained, with standards for consideration of waiver requests incorporated into the rule and certain presumptions established depending on the size of the market involved and various other factors.

Specifically, under the revised waiver standards, the Commission presumes that combinations of a daily newspaper and a single broadcast station in any of the twenty largest DMAs are in the public interest as long as (1) the broadcast station is a radio station; or (2) if the broadcast station is a television station, (i) at least eight independent “major media voices” remain in the DMA, and (ii) the station is not ranked among the top four stations in the DMA.<sup>51</sup> Combinations also are presumed to be in the public interest if either the newspaper or broadcast station qualifies as “failed” or “failing,”<sup>52</sup> or if a new owner will initiate local news programming of at least seven hours per week on a broadcast station that was not offering local newscasts prior to the combined operations.<sup>53</sup>

In other cases, combinations are presumed not to be in the public interest, but waivers are available under a four-factor test which considers: (1) whether the cross-ownership will significantly increase the amount of local news disseminated through the media properties involved; (2) whether each property will exercise its own independent news judgment; (3) the level of concentration in the DMA; and (4) the financial condition of the newspaper or broadcast property, and if the newspaper or broadcast station is in financial distress, the proposed owner’s

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<sup>50</sup> *Id.* at 2021-22 (¶ 19), 2038-39 (¶ 49).

<sup>51</sup> *Id.* at 2040 (¶ 53).

<sup>52</sup> *Id.* at 2047-48 (¶ 65).

<sup>53</sup> *Id.* at 2049 (¶ 67).

commitment to invest significantly in newsroom operations.<sup>54</sup> As will be shown below, the NBCO Rule as revised in the *2008 Order* permits continued common ownership of WSFL-TV and the *Sun Sentinel* by Reorganized Tribune.<sup>55</sup>

5. Third Circuit Redux and Current Procedural Posture.

The *2008 Order* was challenged by many parties (including Tribune) in various courts of appeal. Preliminary proceedings related to venue resulted in transfer of all of the cases to the Third Circuit, after which advocacy groups Media Alliance, Prometheus Radio Project, Office of Communication of the United Church of Christ, Inc., and Free Press jointly filed a motion to hold the cases in abeyance pending Commission action on a petition for reconsideration that certain other advocacy groups had filed with the agency. The Third Circuit granted that motion in April 2009<sup>56</sup> and, as noted earlier, then ordered that a stay issued in connection with the Court's review of the *2003 Order* remain in effect.<sup>57</sup> The Third Circuit subsequently requested and received filings regarding whether the cases should continue to be held in abeyance and whether the stay should be lifted.<sup>58</sup> In March 2010, the Court issued an order lifting the stay of

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<sup>54</sup> *Id.* at 2049 (¶ 68).

<sup>55</sup> *See infra* Section IV.

<sup>56</sup> Order, *Prometheus Radio Project v. FCC*, No. 08-3078 (3d Cir. Apr. 14, 2009).

<sup>57</sup> *See* Order, *Prometheus Radio Project v. FCC*, No. 08-3078 (3d Cir. June 12, 2009).

<sup>58</sup> *See* Order, *Prometheus Radio Project v. FCC*, No. 08-3078 (3d Cir. Dec. 17, 2009); Order, *Prometheus Radio Project v. FCC*, No. 08-3078 (3d Cir. Nov. 4, 2009). In its response to the Third Circuit's November 4, 2009 Order, the FCC argued in favor of continued abeyance and maintenance of the stay; requested that, in the event that the Court deemed abeyance no longer to be appropriate, the cases be remanded to the agency for further proceedings; and indicated that it did not intend to address the petition for reconsideration outside of the context of the 2010 Quadrennial Review. FCC, Response to the Court's Order of November 4, 2009, *Prometheus Radio Project v. FCC*, No. 08-3078 (3d Cir. filed Nov. 25, 2009).

the 2008 Order, including the liberalized NBCO waiver standards, and set a schedule for briefing on the merits.<sup>59</sup>

In the meantime, the FCC has launched its 2010 Quadrennial Review by holding several workshops. Those workshops have addressed, among other things, the general scope and framework for the review; the Commission's diversity, localism, and competition goals; studies and data-gathering that the agency should undertake in the course of the review; financial and marketplace issues; minority media ownership; local television and radio marketplace issues; and the NBCO Rule, in particular.<sup>60</sup> In addition, the FCC recently launched a separate proceeding on "The Future of Media and Information Needs of Communities," which promises to address issues such as how people get news and information and financial trends affecting newspapers and broadcasters.<sup>61</sup>

**B. Tribune's Existing Newspaper/Broadcast Holdings and Its Miami NBCO Rule Waiver.**

While the 2006 FNPRM was pending, Tribune announced a reorganization that, following FCC approval, resulted in private ownership of the company by the Tribune Employee Stock Ownership Plan ("ESOP"). At the time, Tribune held several newspaper/broadcast

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<sup>59</sup> See Order, *Prometheus Radio Project v. FCC*, No. 08-3078 (3d Cir. Mar. 23, 2010).

<sup>60</sup> FCC, News Release, *Media Bureau Announces Media Ownership Workshop in Tampa, Florida*, MB Docket No. 09-182 (rel. Mar. 17, 2010); FCC, News Release, *Media Bureau Announces February 23, 2010 Media Ownership Workshop in Columbia, South Carolina*, MB Docket No. 09-182 (rel. Jan. 28, 2010); FCC, News Release, *Media Bureau Announces Agenda and Panelists for Minority Media Ownership Workshop*, MB Docket No. 09-182 (rel. Jan. 22, 2010); FCC, News Release, *Media Bureau Announces Panelists and Agenda for Media Ownership Workshop on Financial and Marketplace Issues*, MB Docket No. 09-182 (rel. Jan. 5, 2010); FCC, Public Notice, *Media Bureau Announces Agenda and Participants for Initial Media Ownership Workshops and Seeks Comment on Structuring of the 2010 Media Ownership Review Proceeding*, 24 FCC Rcd 12,584 (2009) ("2010 Quadrennial Review Public Notice").

<sup>61</sup> FCC, Public Notice, *FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age*, GN Docket No. 10-25, DA 10-100 (rel. Jan. 21, 2010) ("Future of Media Public Notice").

combinations, including the Miami-Ft. Lauderdale combination at issue here as well as others in Chicago, Hartford, Los Angeles, and New York.

In the order approving transfer of control of Tribune to the ESOP, the Commission granted the company temporary waivers for its Miami-Ft. Lauderdale, Hartford, Los Angeles, and New York combinations. The Commission also granted Tribune a permanent waiver of the NBCO Rule for its combination in Chicago based on findings that are even more compelling today with respect to the combination of WSFL-TV and the *Sun Sentinel* in Miami-Ft. Lauderdale. In granting the permanent waiver in Chicago, the Commission noted that the “record confirms ‘the myriad public interest benefits that have resulted’” from common ownership.<sup>62</sup> The Commission concluded that “forced separation of the [Chicago properties] would diminish the strength of important sources of quality news and public affairs programming in the Chicago market[,] . . . that any detriment to diversity caused by the common ownership is negligible given the nature of the market,” and that, accordingly, “the purposes of the rule would not be served by divestiture.”<sup>63</sup> As described in detail herein, an analysis of Tribune’s common ownership of WSFL-TV and the *Sun Sentinel* in the Miami-Ft. Lauderdale market today leads to the same conclusion.

The temporary waiver covering Miami allowed Tribune to continue to own WSFL-TV and the *Sun Sentinel* for certain periods of time depending on the occurrence of various events. Given the current pendency of Tribune’s appellate challenge to the order approving the transaction,<sup>64</sup> for example, it now holds a waiver extending until six months after the conclusion

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<sup>62</sup> *Shareholders of Tribune Co.*, 22 FCC Rcd at 21,277-78 (¶ 34).

<sup>63</sup> *Id.* at 21,278 (¶ 34).

<sup>64</sup> *See Tribune Co. v. FCC*, No. 07-1488 (D.C. Cir. filed Dec. 3, 2007).

of Tribune’s appellate litigation.<sup>65</sup> In granting a temporary waiver in Miami-Ft. Lauderdale, the Commission recognized the “unusual and uncertain status of the NBCO [R]ule as well as the harm that applicants would suffer were they forced to divest properties but then win their court challenge.”<sup>66</sup>

The NBCO Rule today indisputably remains in an “unusual and uncertain status.”<sup>67</sup> Further, there can be no doubt that requiring divestiture of WSFL-TV or the *Sun Sentinel* while the status of the rule remains in flux – particularly in a market as diverse and competitive as Miami-Ft. Lauderdale and given the benefits that Tribune’s common ownership has produced – would unnecessarily harm Reorganized Tribune as it emerges from bankruptcy and serve no public interest purpose whatsoever. Thus, while the Tribune combination is entitled to a permanent NBCO waiver, there can be no question that, at the very least, the temporary waiver alternatively requested herein is warranted.

**C. The Effect of the Economic Downturn on the Media Marketplace and the Resulting Tribune Bankruptcy.**

Since the FCC approved the transfer of control of Tribune to the ESOP, the U.S. daily newspaper industry has experienced an unparalleled financial crisis. The turmoil in the industry has been particularly dramatic in the last two years, greatly accelerating the rate of decline in circulation and revenues as compared to the trends that newspaper publishers had been experiencing in previous decades. The impact of these recent trends has been particularly damaging in the markets in which Tribune operates.

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<sup>65</sup> See *Shareholders of Tribune Co.*, 22 FCC Rcd at 21,267 (¶ 3), 21,278 (n.71).

<sup>66</sup> *Id.* at 21,278 (¶ 36).

<sup>67</sup> *Id.*; see *supra* Section II.A; see also *infra* Section V.A.

The Commission has taken these trends into account in its recent decisions affecting the industry. For example, when the FCC released its decision to add liberalized waiver standards to the NBCO Rule in early 2008, following approval of the transfer of control of Tribune to the ESOP, it recognized that newspapers were in a downward cycle and that regulatory relief therefore was particularly appropriate. As the agency concluded in its *2008 Order*, “[t]he emergence of new forms of electronic media in recent years has come at the expense of traditional media, and of newspapers in particular.”<sup>68</sup> The Commission observed that, although “the population of the country has increased more than 80 percent” during the past 50 years, “the number of daily newspapers being published and their readership have decreased significantly” over this same period.<sup>69</sup>

The agency further noted in 2008 that the recent, substantial drop in newspaper circulation had produced “a cascade of negative impacts on the media industry.”<sup>70</sup> Among these was a “sharp reduction in the number of professional journalists employed in the newspaper industry,” a trend that had “particular import for the public interest.”<sup>71</sup> The FCC further observed that newspaper publishers had experienced a “flatten[ing]”<sup>72</sup> of the advertising revenues that “keep [them] alive” and that “stock prices for many of the major newspaper companies ha[d] fallen.”<sup>73</sup>

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<sup>68</sup> *2008 Order*, 23 FCC Rcd at 2023 (¶ 21).

<sup>69</sup> *Id.* at 2026 (¶ 27).

<sup>70</sup> *Id.* (¶ 28).

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

<sup>72</sup> *Id.* at 2029 (¶ 32).

<sup>73</sup> *Id.* at 2028 (¶ 30), 2029 (¶ 33).

Since the Commission made these observations more than two years ago, the state of the newspaper industry has taken a sharp turn for the worse. In 2009 alone, one major market daily newspaper ceased operations entirely,<sup>74</sup> at least two others came dangerously close to following suit,<sup>75</sup> and several folded their print operations and are surviving only as dramatically scaled down online services.<sup>76</sup> In 2008-2009, many newspapers in medium and smaller markets, such

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<sup>74</sup> After posting repeated losses and failing in its efforts to find a suitable buyer, E.W. Scripps in February 2009 shut down the *Rocky Mountain News*, which had been in existence since 1859, leaving *The Denver Post* as the city's sole major daily. Howard Kurtz, *Final Edition: Rocky Mountain News to Shut Down Today*, WASH. POST, Feb. 27, 2009, at D03, available at <http://www.washingtonpost.com/wp-dyn/content/story/2009/02/27/ST2009022701217.html> (last visited Feb. 9, 2010). Less than one year later, the holding company of MediaNews Group, publisher of *The Denver Post* and 53 other daily newspapers, filed for Chapter 11 bankruptcy protection. Emily Chasan, *MediaNews Owner Files Prepackaged Bankruptcy*, REUTERS, Jan. 22, 2010, available at <http://www.reuters.com/article/idUSTRE60M01920100123> (last visited Feb. 9, 2010); Mike Spector & Shira Ovide, *MediaNews Bankruptcy Filing to Come as Soon as This Week*, WALL ST. J., Jan. 18, 2010, available at <http://online.wsj.com/article/SB10001424052748704541004575011630438688308.html> (last visited Feb. 9, 2010).

<sup>75</sup> Facing steep operating losses, the New York Times Company threatened to close *The Boston Globe* last year unless labor unions agreed to concessions on wages and benefits. Howard Kurtz, *N.Y. Times to File Notice It Will Close Boston Globe*, WASH. POST, May 4, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/03/AR2009050300269.html> (last visited Feb. 9, 2010); Richard Pérez-Peña, *Times Co. Said to Consider Closing Boston Globe*, N.Y. TIMES, Apr. 4, 2009, available at [http://www.nytimes.com/2009/04/04/business/media/04globe.html?\\_r=1](http://www.nytimes.com/2009/04/04/business/media/04globe.html?_r=1) (last visited Feb. 9, 2010). The shutdown of the paper was avoided when *Globe* employees accepted a package of pay and benefits cuts in July 2009. See Richard Pérez-Peña, *Boston Globe Workers Agree to Cuts*, N.Y. TIMES, July 21, 2009, available at <http://www.nytimes.com/2009/07/21/business/media/21globe.html> (last visited Feb. 9, 2010). The New York Times Company had intended to sell *The Boston Globe*, but after searching for a buyer for months, in October 2009 the company announced that it had decided not to sell the paper. It had been reported that bids for the paper and another in nearby Worcester, MA were about \$35 million, compared to the \$1.1 billion the company had paid for *The Boston Globe* in 1993. See Richard Pérez-Peña, *Times Co. Will Hold On to Boston Globe*, N.Y. TIMES, Oct. 15, 2009, available at [www.nytimes.com/2009/10/15/business/media/15globe.html?\\_r=1&pagewanted=print](http://www.nytimes.com/2009/10/15/business/media/15globe.html?_r=1&pagewanted=print) (last visited Feb. 9, 2010). Hearst Corporation similarly considered selling or shutting down *The San Francisco Chronicle*, that city's major daily and the nation's 12th largest, if it could not substantially cut costs through newsroom layoffs. Shira Ovide & Russell Adams, *Hearst Plans to Slash, Sell or Shut Paper in Bay Area*, WALL ST. J., Feb. 25, 2009, available at <http://online.wsj.com/article/SB123551803197064061.html> (last visited Feb. 9, 2010).

<sup>76</sup> Hearst Corporation abandoned the print edition of the *Seattle Post-Intelligencer* in March 2009, replacing it with a much less extensive online-only operation. As a result of this major overhaul, the publisher retained just 20 of its 150-plus journalists, leaving nearly 90% of its

as Albuquerque and Tucson, shut down publication entirely or substantially downsized their operations.<sup>77</sup> In addition, nine major newspaper publishers, including Tribune, have declared bankruptcy since December 2008.<sup>78</sup> These newspaper publishers, several of which remain in

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former newsroom employees without jobs. Phillip Meyer, *Let's Not Stop the Presses*, USA TODAY, Apr. 29, 2009, at 9A, available at <http://blogs.usatoday.com/oped/2009/04/lets-not-stop-the-presses.html> (last visited Feb. 9, 2010). Similarly, Detroit daily newspapers *The Detroit Free Press* and *The Detroit News* developed a strategy to end home print delivery four days of the week, making home deliveries on only the most lucrative days – Thursdays, Fridays and Sundays – that account for more than 80 percent of advertising revenue, and directing readers to their websites for online “e-editions” on Mondays, Tuesdays, Wednesdays and Saturdays. Richard Pérez-Peña, *Detroit's Daily Papers Are Now Not So Daily*, N.Y. TIMES, Mar. 31, 2009, available at <http://www.nytimes.com/2009/03/31/business/media/31paper.html> (last visited Feb. 9, 2010).

<sup>77</sup> In February 2008, the *Albuquerque Tribune* published its final edition following unsuccessful efforts by its owner, E.W. Scripps Co., to find a buyer for the newspaper. See “86” for *Albuquerque Tribune – To Close on Saturday*, EDITOR & PUBLISHER (Associated Press), Feb. 20, 2008, available at [http://www.editorandpublisher.com/eandp/news/article\\_display.jsp?vnu\\_content\\_id=1003712778](http://www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=1003712778) (last visited Apr. 14, 2010). Gannett Co., Inc. announced last May that it had decided to cease print publication of the *Tucson Citizen*, but that it would continue to operate its website, citing “[d]ramatic changes in our industry combined with the difficult economy.” Press Release, Gannett Co., Inc., Gannett to Cease Print Publication of the Tucson Citizen (May 15, 2009), available at <http://gannett.com/news/pressrelease/2009/pr051509.htm> (last visited Feb. 9, 2010); see also Yinka Adegoke, *Gannett Shuttters Tucson Citizen's Print Edition*, REUTERS, May 15, 2009, available at <http://www.reuters.com/article/idUSN1535783620090515> (last visited Feb. 9, 2010). The *Ann Arbor News* and the *Coral Gables Gazette* also have transitioned to online-only operations. Katherine Yung, *Ann Arbor News Folds; Web Transition Begins*, DETROIT FREE PRESS, July 24, 2009, available at <http://m.freep.com/BETTER/news.jsp?key=496022> (last visited Feb. 9, 2010); Elaine De Valle, *Coral Gables Gazette Converts to Online Only*, THE MIAMI HERALD, Aug. 12, 2009, available at <http://www.miamiherald.com/news/southflorida/story/1181894.html> (last visited Feb. 9, 2010).

<sup>78</sup> In addition to Tribune, these publishers include (1) Sun-Times Media Inc.; (2) Star Tribune Company; (3) the Journal Register Company; (4) Philadelphia Newspapers, LLC; (5) Freedom Communications, Inc.; (6) Heartland Publications, LLC; (7) Morris Publishing Group; and (8) Affiliated Media Inc., holding company of MediaNews Group. Richard Pérez-Peña, *Sun-Times Files for Bankruptcy*, N.Y. TIMES, Mar. 31, 2009, available at <http://www.nytimes.com/2009/04/01/business/media/01paper.html> (last visited Feb. 9, 2010); David B. Wilkerson, *Minneapolis Star Tribune Files for Bankruptcy*, MARKETWATCH (online), Jan. 16, 2009, available at <http://www.marketwatch.com/story/minneapolis-star-tribune-files-for-chapter-11-bankruptcy> (last visited Feb. 9, 2010); Robert MacMillan, *Chicago Sun-Times Parent Files for Bankruptcy*, REUTERS, Mar. 31, 2009, available at <http://www.reuters.com/article/topNews/idUSTRE52U3OZ20090331?feedType=RSS&feedName=topNews> (last visited Feb. 9, 2010); *Journal Register Seeks Bankruptcy Protection*, N.Y. TIMES (Associated Press), Feb. 22, 2009, available at <http://www.nytimes.com/2009/02/22/business/media/22journal.html> (last visited Feb. 9, 2010); Robert MacMillan, *Philadelphia Papers Owner Files for Bankruptcy Protection*, REUTERS, Feb. 23, 2009, available at <http://www.reuters.com/article/idUSTRE51M1M720090223> (last visited



bankruptcy as of the date of this filing, collectively own more than 130 daily and more than 280 weekly publications.<sup>79</sup> A growing number of publishers have been forced to close domestic and foreign news bureaus<sup>80</sup> and/or to trim the scope of their news coverage.<sup>81</sup> Virtually all publishers

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Feb. 9, 2010); Michael J. de las Merced, *Freedom Communications Files for Bankruptcy*, N.Y. TIMES, Sept. 1, 2009, *available at* <http://www.nytimes.com/2009/09/02/business/media/02freedom.html> (last visited Feb. 9, 2010); Jacqueline Palank, *Heartland Publications Files for Chapter 11 Bankruptcy*, WALL ST. J., Dec. 21, 2009, *available at* <http://online.wsj.com/article/SB10001424052748703344704574610261552846586.html> (last visited Feb. 10, 2010); *Newspaper Publisher Morris Seeks Ch. 11 Protection*, ABC News (Associated Press), Jan. 19, 2010, *available at* <http://abcnews.go.com/Business/wireStory?id=9599225> (last visited Feb. 9, 2010); *MediaNews Group Makes It Official: Files 'Prepackaged' Bankruptcy*, EDITOR & PUBLISHER (Associated Press), Jan. 26, 2010, *available at* [http://www.editorandpublisher.com/eandp/news/article\\_display.jsp?vnu\\_content\\_id=1004061331](http://www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=1004061331) (last visited Feb. 9, 2010).

<sup>79</sup> See Tribune, Tribune Company Business Units and Websites, <http://www.tribune.com/about/webguide/index.html> (last visited Feb. 9, 2010) (listing Tribune's publications); Press Release, Sun-Times Media Group, Inc., Sun-Times Media Group Reports Circulation Performance (Oct. 26, 2009), *available at* <http://ir.thesuntimesgroup.com/releasedetail.cfm?releaseid=417963> (last visited Feb. 9, 2010) (noting Sun-Times Media's publication of the *Chicago Sun-Times*, seven other daily newspapers, and 51 weekly newspapers); The Star Tribune Company, Our Company, <http://www.startribunecompany.com/100> (last visited Feb. 9, 2010) (noting publication of *Minneapolis Star-Tribune*); Journal Register Company, Our Publications, <http://www.journalregister.com/publications.html> (last visited Feb. 9, 2010) (listing publication of 19 daily newspapers and 30 weekly newspapers); Philadelphia Newspapers, Philadelphia Newspapers Reorganization Information, <http://www.philly.com/philly/about/pnl/> (last visited Feb. 9, 2010) (noting Philadelphia Newspaper LLC's publication of *Philadelphia Inquirer* and *Philadelphia Daily News*); Freedom Communications, Inc., Company Information, <http://www.freedom.com/company/> (last visited Feb. 9, 2010) (noting publication of 33 daily newspapers, including the *Orange County Register*, and 77 weekly newspapers); Morris Communications Company, LLC, Morris Publishing Group Daily Newspapers and Nondaily Newspapers, [http://morriscomm.com/divisions/morris\\_publishing\\_group/index.shtml#show\\_map](http://morriscomm.com/divisions/morris_publishing_group/index.shtml#show_map) (last visited Feb. 9, 2010) (listing publication of 13 daily newspapers and 28 weekly newspapers); Press Release, Affiliated Media, Inc., Affiliated Media, Inc. Files Prepackaged Plan of Reorganization (Jan. 22, 2010), *available at* <http://www.medianewsgroup.com/Press/Releases/2010/Press%20Release%20-%20AMI%20Files%20Prepackaged%20Plan%20for%20Reorganization.doc> (last visited Feb. 9, 2010) (listing publication of 54 daily newspapers and more than 100 weekly newspapers).

<sup>80</sup> Pew Project for Excellence in Journalism, *The State of the News Media* (2010) ("PEJ 2010 State of the News Media Report"), Newspapers, News Investment at 29, [http://www.stateofthemediamedia.org/2010/printable\\_newspaper\\_chapter.htm](http://www.stateofthemediamedia.org/2010/printable_newspaper_chapter.htm) (last visited Apr. 17, 2010) (noting that the recession and "accelerating ad losses" forced "[s]tatehouse and Washington bureaus" to be "gutted or closed" at many newspapers in 2009 and early 2010). For example, Cox Newspapers shut down its Washington, D.C. news bureau (which was founded in

1974) along with five international bureaus in April 2009. *Cox Newspapers to Close Washington Bureau*, THE HUFFINGTON POST, Dec. 2, 2008, available at <http://www.huffingtonpost.com/huff-wires/20081202/cox-newspapers/> (last visited Feb. 9, 2010). In March 2009, Media General similarly closed the doors of its Washington, D.C. News Service Bureau, which for 30 years had provided news and feature stories to all of Media General's newspapers, television stations, and websites. John Reid Blackwell, *Media General Closing Washington News Bureau*, RICHMOND TIMES-DISPATCH, Mar. 14, 2009, available at [http://www2.timesdispatch.com/rtd/business/local/article/B-MEDI14\\_20090313-211607/231243/](http://www2.timesdispatch.com/rtd/business/local/article/B-MEDI14_20090313-211607/231243/) (last visited Feb. 9, 2010); *Media General's Washington News Bureau To Close March 27*, Media General News Release, Mar. 13, 2009, available at [http://www.mediageneral.com/press/2009/mar13\\_09\\_WashingtonBureau.html](http://www.mediageneral.com/press/2009/mar13_09_WashingtonBureau.html) (last visited Feb. 9, 2010). In October 2009, *The Wall Street Journal* revealed plans to close its Boston bureau, explaining in a memo to journalists affected by the closure that "[w]e remain in the midst of a profound downturn in advertising revenue and thus must think the unthinkable." Shira Ovide, *Wall Street Journal Closes Boston Bureau*, WALL ST. J., Oct. 29, 2009, available at <http://online.wsj.com/article/SB10001424052748704317704574503480514474764.html> (last visited Feb. 2, 2010); Erik Sass, *Been Town: 'WSJ' Closes Boston Bureau*, MEDIA DAILY NEWS (MediaPost), Oct. 29, 2009, available at [http://www.mediapost.com/publications/index.cfm?fa=Articles.showArticle&art\\_aid=116378](http://www.mediapost.com/publications/index.cfm?fa=Articles.showArticle&art_aid=116378) (last visited Feb. 9, 2010). And, under pressure to cut costs, *The Washington Post* likewise announced in November 2009 that it would close its three remaining domestic bureaus in New York, Los Angeles, and Chicago. Howard Kurtz, *Washington Post Shuttters Last U.S. Bureaus*, WASH. POST, Nov. 24, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/24/AR2009112403014.html> (last visited Feb. 9, 2010); Bill Carter, *Washington Post to Shut U.S. Bureaus*, N.Y. TIMES, Nov. 25, 2009, available at <http://www.nytimes.com/2009/11/25/business/media/25post.html> (last visited Feb. 9, 2010).

<sup>81</sup> Even the nation's largest and most respected dailies have been forced to recognize these harsh realities. *The Washington Post* eliminated its stand-alone Business Section, folding business news stories into the paper's main section on all but one day of the week, and did away with the print version of "Book World," shifting reviews to space within two existing sections of the paper. Robert MacMillan, *Washington Post to Cut Business Section*, REUTERS, Mar. 13, 2009, available at <http://www.reuters.com/article/newsOne/idUSTRE52C5NP20090314> (last visited Feb. 9, 2010); Motoko Rich, *Washington Post's Book World Goes Out of Print as a Separate Section*, N.Y. TIMES, Jan. 28, 2009, available at [http://www.nytimes.com/2009/01/29/books/29post.html?\\_r=1](http://www.nytimes.com/2009/01/29/books/29post.html?_r=1) (last visited Feb. 9, 2010). In similar fashion, *The New York Times* cut its separate Metro News and Sports sections. Russell Adams, *New York Times Sets Plan to Merge Sections*, WALL ST. J., Sept. 6, 2008, available at <http://online.wsj.com/article/SB122066387069906077.html> (last visited Feb. 9, 2010). The *Atlanta Journal-Constitution* also has cut its stand-alone Business Section, merging it with another section. *Atlanta Newspaper to Merge Sections to Cut Costs*, ABC News (Associated Press), Feb. 23, 2009, available at <http://abcnews.go.com/Business/wireStory?id=6939345> (last visited Feb. 9, 2010). See also PEJ 2010 *State of the News Media Report*, Newspapers, News Investment at 29, [http://www.stateofthemediamedia.org/2010/printable\\_newspaper\\_chapter.htm](http://www.stateofthemediamedia.org/2010/printable_newspaper_chapter.htm) (last visited Mar. 18, 2010) (noting that "[s]eparate business and features sections disappear[ed]" in 2009 and early 2010).

In addition, in December 2009, the *Washington Times* announced that it would be implementing a new strategy to focus more narrowly on core coverage areas while slashing its coverage of local news, sports and features "to keep pace with the dynamically changing economics of the news business." Jennifer Harper, *TWT Announces New Structure, Layoffs*, WASH. TIMES, Dec. 3, 2009, available at <http://www.washingtontimes.com/news/2009/dec/03/twt-announces-new->

– in both large and small markets across the country – have laid off valued newsroom employees and/or imposed pay reductions in order to stem severe losses.<sup>82</sup> According to one recent estimate, roughly 15,000 full-time reporting and editing jobs have disappeared during the past three years, falling from 55,000 to roughly 40,000 – a 27% decrease.<sup>83</sup>

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structure-layoffs/ (last visited Feb. 10, 2010); Howard Kurtz, *Washington Times Cuts in Staff, Coverage Cue New Era*, WASH. POST, Dec. 3, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/02/AR2009120203295.html> (last visited Feb. 10, 2010). The paper also announced a new circulation model, moving from subscription-based to a “controlled circulation model” with newspapers distributed free of charge in key Washington locations targeting audiences in the federal government and other institutions and with subscription home delivery offered at a premium price. See *id.*

<sup>82</sup> During one week alone in March 2009, *The New York Times*, *The Boston Globe*, the *Boston Herald*, the *Houston Chronicle*, the *Atlanta-Journal Constitution*, the *Milwaukee Journal Sentinel*, and *The Buffalo News* all announced substantial layoffs and pay cuts. Jennifer Harper, *Newspapers Seek Way Out of Hole*, WASH. TIMES, Mar. 29, 2009, at A03, available at <http://www.washingtontimes.com/news/2009/mar/29/newspapers-on-defense-nationwide/> (last visited Feb. 9, 2010). In October 2009, The New York Times Company announced further layoffs, stating that it would be eliminating 100 newsroom jobs by the end of the year; the following month, it revealed plans to lay off at least 25 editorial employees in February and May 2010. See Richard Pérez-Peña, *New York Times Moves to Trim 100 in Newsroom*, N.Y. TIMES, Oct. 20, 2009, available at [http://www.nytimes.com/2009/10/20/business/media/20times.html?\\_r=1&pagewanted=print](http://www.nytimes.com/2009/10/20/business/media/20times.html?_r=1&pagewanted=print) (last visited Feb. 9, 2010); Richard Pérez-Peña, *New York Times News Service to Cut Jobs and Relocate*, N.Y. TIMES, Nov. 13, 2009, available at <http://www.nytimes.com/2009/11/13/business/media/13times.html> (last visited Feb. 9, 2010). In December 2009, the *Washington Times* decided to cut approximately 40 percent of its total newsroom staff – about 65 of 170 positions. Erik Sass, *Washington Times’ Cuts Staff 40%*, MEDIA DAILY NEWS (MediaPost), Dec. 31, 2009, available at [http://www.mediapost.com/publications/?fa=Articles.showArticle&art\\_aid=119930](http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=119930) (last visited Feb. 9, 2010). Gannett likewise announced in December 2009 that it would be cutting 26 newsroom positions at *USA Today* and that it would be requiring employees of its community publishing division to take a second unpaid furlough in the first quarter of 2010. Ken Sweet, *Gannett Institutes More Furloughs, Layoffs at USA Today*, FOX BUSINESS, Dec. 1, 2009, available at <http://www.foxbusiness.com/story/markets/industries/media/gannett-institutes-week-furloughs/> (last visited Feb. 9, 2010).

<sup>83</sup> *PEJ 2010 State of the News Media Report*, Newspapers, Summary Essay at 1, [http://www.stateofthedia.org/2010/printable\\_newspaper\\_chapter.htm](http://www.stateofthedia.org/2010/printable_newspaper_chapter.htm) (last visited Mar. 18, 2010). All told, 16,000 total newspaper employees lost their jobs in 2008, nearly 14,800 were laid off in 2009, and nearly 1,800 have been laid off in 2010 as of mid-April. See Paper Cuts, <http://papercuts.graphicdesignr.net/> (last visited Apr. 17, 2010) (reporting 1,792 newspaper layoffs as of April 17, 2010); Paper Cuts, *2009 Newspaper Layoffs and Buyouts*, <http://newspaperlayoffs.com/maps/2009-layoffs/> (last visited Apr. 17, 2010) (reporting 14,783 newspaper layoffs in 2009); Paper Cuts, *2008 Newspaper Layoffs and Buyouts*, <http://newspaperlayoffs.com/maps/2008-layoffs/> (last visited Apr. 17, 2010) (reporting 15,992 newspaper layoffs in 2008).

A precipitous drop in advertising revenues, which traditionally have accounted for approximately 80% of newspaper revenues, has been a key impetus for these cutbacks. In 2009, newspapers saw their advertising revenues tumble roughly 26%, bringing the total loss over the last three years to 43%.<sup>84</sup> The rate of decline was more than 50% steeper than in 2008, when the newspaper industry's total advertising revenues declined 16.6%.<sup>85</sup> Even revenues from online advertising on newspaper websites – which often has been hailed as the industry's most promising future growth engine – declined by more than 10% in 2009 and accounted for just 10% of overall revenue.<sup>86</sup> The current economic recession has exacerbated this downward trend

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<sup>84</sup> *PEJ 2010 State of the News Media Report*, Executive Summary at 1, 8-9, [http://www.stateofthemediamedia.org/2010/chapter%20pdfs/2010\\_execsummary.pdf](http://www.stateofthemediamedia.org/2010/chapter%20pdfs/2010_execsummary.pdf) (last visited Mar. 18, 2010) (“Advertising losses, averaging 26% in 2009 (on the heels of a cumulative 23% loss the previous two years) left newspapers downsizing everything – the physical dimensions of the paper, the space devoted to news and, most painfully, their roster of news professionals.”); see also Nat Worden, *Ad Revenue Eludes Papers*, WALL ST. J., Nov. 4, 2009, available at <http://online.wsj.com/article/SB10001424052748703740004574513522033216210.html> (last visited Feb. 3, 2010) (“The reality is that newspapers are suffering severe declines in ad revenue this year on top of the double-digit percentage declines they suffered last year.”); Erik Sass, *No Rest for the Dreary: Newspaper Revs Fall 28%*, MEDIA DAILY NEWS (MediaPost), Nov. 19, 2009, available at [http://www.mediapost.com/publications/?fa=Articles.showArticle&art\\_aid=117749](http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=117749) (last visited Feb. 9, 2010) (noting that total newspaper industry advertising revenues tumbled 28% from third quarter 2008 to third quarter 2009, and that the newspaper industry's total print revenues experienced year-over-year declines for 14 straight quarters, while online revenues fell for 6 straight quarters).

<sup>85</sup> *PEJ 2010 State of the News Media Report*, Executive Summary at 8, [http://www.stateofthemediamedia.org/2010/chapter%20pdfs/2010\\_execsummary.pdf](http://www.stateofthemediamedia.org/2010/chapter%20pdfs/2010_execsummary.pdf) (last visited Mar. 18, 2010); see also *Annual Advertising Expenditures*, <http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx> (“*Annual Advertising Expenditures*”) (last visited Feb. 9, 2010).

<sup>86</sup> See *PEJ 2010 State of the News Media Report*, Newspapers, Summary Essay at 2, Economics at 20-21, [http://www.stateofthemediamedia.org/2010/printable\\_newspaper\\_chapter.htm](http://www.stateofthemediamedia.org/2010/printable_newspaper_chapter.htm) (last visited Mar. 18, 2010); see also *Annual Advertising Expenditures*; Erik Sass, *Newspapers' Online Strategies Failed in 2009*, MEDIA NEWS POST, Dec. 29, 2009, available at [http://www.mediapost.com/publications/?fa=Articles.showArticle&art\\_aid=119834](http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=119834) (last visited Feb. 9, 2010) (observing that “[s]ome of the worst defeats for newspapers in 2009 came in online advertising,” and citing Newspaper Association of America data showing that newspapers' online revenues declined 15.5% in the first three quarters of 2009 compared to the same period in 2008); NAA, *Nielsen: Newspaper Sites Get 5.5% Rise in '09 Visitors*, MEDIA NEWS POST, Feb. 3, 2010, available at [http://www.mediapost.com/publications/?fa=Articles.showArticle&art\\_aid=121745](http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=121745) (last visited

considerably, as advertisers have cut spending steeply in order to stem their own revenue losses. Among the most pronounced have been cutbacks in automobile advertising due to bankruptcies and financial turmoil in that industry, in real estate advertising due to the real estate bust and subprime mortgage crisis, and in retail due to decreases in consumer spending.<sup>87</sup> Classified advertising revenues, in particular, have trended downward, both because of the poor economy in general and because of consumers' rapid adoption of online alternatives.<sup>88</sup> It is not surprising

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Feb. 9, 2010) (noting that “[t]hrough the first three quarters of 2009, the NAA tallied total Internet revenues of about \$1.97 billion, representing just under 10% of total revenues of \$19.9 billion”).

<sup>87</sup> See Greg Bensinger and Bob Van Voris, *Chicago's Sun-Times Media Seeks Bankruptcy Protection (Update3)*, Bloomberg.com, Mar. 31, 2009, <http://www.bloomberg.com/apps/news?pid=20601087&sid=ajAExsdEoCRs> (last visited Feb. 9, 2010) (“Advertisers, particularly auto, retail and classified, have pulled back [in newspaper advertising] as the economy gets worse and worse.”); Richard Pérez-Peña, *Newspaper Ad Revenue Could Fall as Much as 30%*, N.Y. TIMES, Apr. 14, 2009, available at <http://www.nytimes.com/2009/04/15/business/media/15papers.html> (last visited Feb. 9, 2010) (reporting that, in 2008, “[s]ome of the biggest categories of advertising, like real estate and help wanted, all but evaporated” for newspapers); Erik Sass, *No Rest for the Dreary: Newspaper Revs Fall 28%*, MEDIA DAILY NEWS (MediaPost), Nov. 19, 2009, available at [http://www.mediapost.com/publications/?fa=Articles.showArticle&art\\_aid=117749](http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=117749) (last visited Feb. 9, 2010) (noting that newspapers experienced a 43% decline in real estate and automotive advertising revenues in the third quarter of 2009); Wayne Friedman, *Nielsen: U.S. Ad Spend Falls 11.5%*, MEDIA DAILY NEWS (MediaPost), Dec. 10, 2009, available at [http://www.mediapost.com/publications/?fa=Articles.showArticle&art\\_aid=118897](http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=118897) (last visited Feb. 3, 2010) (reporting that overall U.S. advertising spending declined 11.5% during the first nine months of 2009, compared to the same time period a year ago, and noting that many of the same declining advertising categories, including automotive, continue to hurt media sales results).

<sup>88</sup> See *infra* Section III.B.2; see also *Hands Off the Journalist*, Remarks of Commissioner Meredith Attwell Baker Before The Media Institute (Jan. 21, 2010) (observing that “the success of Craigslist and eBay has significantly reduced highly profitable classified ads”); *PEJ 2010 State of the News Media Report*, Newspapers, Economics at 18, [http://www.stateofthemedial.org/2010/printable\\_newspaper\\_chapter.htm](http://www.stateofthemedial.org/2010/printable_newspaper_chapter.htm) (last visited Mar. 18, 2010) (“By early 2007, the industry had already lost a significant share of the once-lucrative classified advertising franchise to competitors like Monster, Craigslist and Google search. The recession then made the decade-long swoon worse, with classified falling 40% [in 2009].”); Rick Poynter, *Classified Ad Revenue Down 70% in 10 Years, With One Bright Spot*, POYNTER ONLINE – THE BIZ BLOG, Feb. 1, 2010, <http://www.poynter.org/column.asp?id=123&aid=177005> (last visited Feb. 9, 2010) (finding that the overall decline in the newspaper industry’s classified ad earnings during the past decade “was a stunning 70 percent – from \$19.6 billion in 2000 to roughly \$6 billion in 2009”).

that these decreases have had a disproportionate impact on newspaper publishers, given the importance of advertising earnings to their business models.<sup>89</sup>

On top of steep losses in advertising revenue, newspaper publishers are facing unprecedented circulation declines. In October 2009, the Audit Bureau of Circulations reported that newspaper sales had plummeted 10.6% on weekdays and 7.5% on Sundays compared with a year earlier – bringing overall circulation to its lowest point in nearly 70 years.<sup>90</sup> This sharp drop followed declines of 7.1% from October 2008 through March 2009 and 4.1% from April through September 2008.<sup>91</sup> Thus, while newspaper circulation has been declining for many years, the

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<sup>89</sup> TNS Media Intelligence, *TNS Media Intelligence Reports U.S. Advertising Expenditures Declined 14.7 Percent In First Nine Months of 2009*, Dec. 8, 2009, <http://www.tns-mi.com/news/2009-Ad-Spending-Q3.htm> (last visited Feb. 9, 2010) (reporting that total measured advertising expenditures in the first nine months of 2009 dropped by 14.7 percent as compared to the same period in 2008, that ad spending during the third quarter of 2009 was down 15.3 percent versus last year, and that newspapers and radio severely lagged the overall ad market during this period); see also Erik Sass, *Newspapers To Hit Bottom in 2010 . . . Maybe?*, MEDIA DAILY NEWS (MediaPost), Dec. 16, 2009, available at [http://www.mediapost.com/publications/?fa=Articles.showArticle&art\\_aid=119282](http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=119282) (last visited Feb. 9, 2010) (citing a survey of newspaper publishers, who agree that advertising revenues will continue to decline in 2010 and that losses will be “spread across classifieds, national, and retail (or local) advertising – in other words, all the major newspaper advertising categories”); Joe Mandese, *Nielsen: U.S. Ad Spending Plummets \$3.8 Billion*, MEDIA DAILY NEWS (MediaPost), June 8, 2009, available at [http://www.mediapost.com/publications/?fa=Articles.showArticle&art\\_aid=107497](http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=107497) (last visited Feb. 9, 2010) (reporting that ad spending in the first quarter of 2009 was down 37.7% in Sunday newspaper supplements, which “experienced the greatest erosion of any major U.S. ad medium,” with ad spending in national newspapers close behind at a 27.7% drop); Deborah Yao, *Global Ad Spend Still to Fall, Signs of Bottoming*, ABC News (Associated Press), July 6, 2009, available at <http://abcnews.go.com/print?id=8011994> (last visited Feb. 9, 2010) (reporting drop in advertising spending world-wide, with “U.S. ad spending for newspapers . . . expected to fall most steeply”).

<sup>90</sup> *PEJ 2010 State of the News Media Report*, Newspapers, Summary Essay at 2, Audience at 8, [http://www.stateofthemediamedia.org/2010/printable\\_newspaper\\_chapter.htm](http://www.stateofthemediamedia.org/2010/printable_newspaper_chapter.htm) (last visited Mar. 18, 2010) (citing data from the Audit Bureau of Circulations and noting that these numbers represent a decline in print audiences of 31.5% and 27% for daily and Sunday circulation, respectively, from peak totals in the last 25 years); Frank Ahrens, *The Accelerating Decline of Newspapers*, WASH. POST, Oct. 27, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/26/AR2009102603272.html> (last visited Feb. 9, 2010).

<sup>91</sup> Barbara Ortutay, *Newspaper Circulation Falling Fast*, USA TODAY, Oct. 26, 2009, available at [http://www.usatoday.com/money/media/2009-10-26-newspaper-circulation\\_N.htm](http://www.usatoday.com/money/media/2009-10-26-newspaper-circulation_N.htm) (last visited Feb. 9, 2010); Shira Ovide, *U.S. Newspaper Circulation Falls*, WALL ST. J., Oct. 27,

recent losses indicate an accelerating trend.<sup>92</sup> The twofold hit that newspaper publishers have taken as a result of the downturns in advertising and circulation revenues is further reflected in the fact that the stock of publicly traded newspaper companies plunged nearly 83% in 2008.<sup>93</sup> Although the stock prices of publicly traded newspaper companies increased in 2009 over their 2008 levels, they remain drastically lower than where they stood in 2005, shedding on average nearly three-quarters of their value in the past four years.<sup>94</sup>

This turmoil has been recognized at the highest levels of government; indeed, as discussed below, U.S. House of Representatives Speaker Nancy Pelosi sent a letter last year to Attorney General Eric Holder chronicling the dire financial state of the newspaper industry and suggesting a need to alter the traditional approach to considering transactions involving

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2009, available at <http://online.wsj.com/article/SB10001424052748703697004574497293992459948.html> (last visited Feb. 9, 2010).

<sup>92</sup> See Richard Pérez-Peña, *U.S. Newspaper Circulation Falls 10%*, N.Y. TIMES, Oct. 27, 2009, available at [http://www.nytimes.com/2009/10/27/business/media/27audit.html?\\_r=1](http://www.nytimes.com/2009/10/27/business/media/27audit.html?_r=1) (last visited Feb. 9, 2010) (noting that “[t]he two-decade erosion in newspaper circulation is looking more like an avalanche” and that “after years of slipping,” circulation has “accelerated sharply downward”); Frank Ahrens, *The Accelerating Decline of Newspapers*, WASH. POST, Oct. 27, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/26/AR2009102603272.html> (last visited Feb. 9, 2010) (noting that “[a]verage daily circulation of all U.S. newspapers has been in decline since 1987”).

<sup>93</sup> Pew Project for Excellence in Journalism, *The State of the News Media* (2009) (“*PEJ 2009 State of the News Media Report*”), Executive Summary at 10, <http://www.stateofthemediamedia.org/2009/chapter%20pdfs/COMPLETE%20EXEC%20SUMMARY%20PDF.pdf> (last visited Feb. 17, 2010).

<sup>94</sup> See Alan Mutter, *News-Stock Surge: Boom or Dead-Cat Bounce?*, Reflections of a Newsosaur, Jan. 4, 2010, <http://newsosaur.blogspot.com/2010/01/news-stock-surge-boom-or-dead-cat.html> (last visited Feb. 18, 2010); *PEJ 2010 State of the News Media Report*, Newspapers, Summary Essay at 2, 5, Economics at 24, [http://www.stateofthemediamedia.org/2010/printable\\_newspaper\\_chapter.htm](http://www.stateofthemediamedia.org/2010/printable_newspaper_chapter.htm) (last visited Mar. 18, 2010) (reporting that only one newspaper company stock was trading for more than \$5 a share and several were in “penny stock territory” in March 2009 and, though stocks had ticked up by the end of the year from “the rock bottom prices of spring 2009,” the valuations were still just a small fraction of what they had been in 2005 and 2006).

newspapers in light of the industry's troubled financial condition.<sup>95</sup> In launching its "Future of Media" initiative in 2010, the Commission similarly acknowledged that "[t]he layoffs of thousands of journalists have prompted concern from a wide variety of independent analysts and groups that we may end up with fewer 'informed communities'" and that "[t]hese trends could have dire consequences for our democracy and the health of communities, hindering citizens' ability to hold their leaders and institutions accountable."<sup>96</sup>

The broadcast industry similarly is in the midst of a serious financial retrenchment. As the Project for Excellence in Journalism recently reported, earnings at local television stations were "in a free fall" in 2009; at the end of the year, "industry revenues had fallen to levels not seen since the mid-1990s."<sup>97</sup> In particular, television stations' advertising revenue is estimated

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<sup>95</sup> See Letter from Nancy Pelosi, Speaker of the House, to The Honorable Eric J. Holder, Attorney General of the United States (Mar. 16, 2009). On September 24, 2009, the House Joint Economic Committee, chaired by Representative Carolyn Maloney (D-NY), held hearings on the implications of the deterioration of the newspaper industry for the broader economy and explored options for federal government involvement to help strengthen the industry. See Ann Sanner, *Newspaper Rep Urges Tax Break To Help with Losses*, ABC News (Associated Press), Sept. 24, 2009, available at <http://abcnews.go.com/Politics/wireStory?id=8667155> (last visited Feb. 9, 2009). Further, in connection with a recent 2010 Quadrennial Review workshop focusing on the current financial and economic conditions and marketplace factors affecting the media industry, lenders appearing on a panel pointed to the "perfect storm" of a down economy that hammered overleveraged broadcasters and Internet competition that continues to drain advertising dollars away from the sector, resulting in a lack of interest in lending to broadcasters. See FCC, News Release, *Media Bureau Announces Panelists and Agenda for Media Ownership Workshop on Financial and Marketplace Issues*, MB Docket No. 09-182 (rel. Jan. 5, 2010); see also John Eggerton, *Lenders Make Pitch to FCC to Loosen Media Ownership Rules*, BROAD. & CABLE, Jan. 12, 2010, available at [http://www.broadcastingcable.com/article/443725-Lenders\\_Make\\_Pitch\\_to\\_FCC\\_to\\_Loosen\\_Media\\_Ownership\\_Rules.php](http://www.broadcastingcable.com/article/443725-Lenders_Make_Pitch_to_FCC_to_Loosen_Media_Ownership_Rules.php) (last visited Feb. 9, 2010). Speakers on a second panel about smaller broadcasters were in agreement that additional broadcast bankruptcies are likely due to the financial conditions in the industry. See Jonathan Make, *Media Deregulation Seen Helping Cash-Strapped Industry*, COMM. DAILY, Jan. 13, 2010, at 4-6.

<sup>96</sup> *Future of Media Public Notice*, *supra* note 61, at 1-2.

<sup>97</sup> *PEJ 2010 State of the News Media Report*, Local TV, Summary Essay at 1, Economics at 9, [http://www.stateofthemedias.org/2010/printable\\_local\\_tv\\_chapter.htm](http://www.stateofthemedias.org/2010/printable_local_tv_chapter.htm) (last visited Mar. 18, 2010).



to have dropped 22% in 2009, more than triple the decline of 7% in 2008.<sup>98</sup> Notably, this represents a decrease of 25% from the previous non-election year.<sup>99</sup> While stations did experience growth in the advertising revenue from their websites, these earnings amounted to only 8% of their 2009 revenues.<sup>100</sup> These results have crippled television station budgets and severely strained stations' ability to deliver local news.<sup>101</sup> Due to the "structural challenge" currently facing the industry, "[s]tations, after years of declines in audience, may be nearing a point where they can no longer add new newscasts or pursue new revenue opportunities. . . ."<sup>102</sup>

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<sup>98</sup> *PEJ 2010 State of the News Media Report*, Executive Summary at 1, [http://www.stateofthemediamedia.org/2010/chapter%20pdfs/2010\\_execsummary.pdf](http://www.stateofthemediamedia.org/2010/chapter%20pdfs/2010_execsummary.pdf) (last visited Mar. 18, 2010); *PEJ 2009 State of the News Media Report*, Executive Summary at 20, <http://www.stateofthemediamedia.org/2009/chapter%20pdfs/COMPLETE%20EXEC%20SUMMARY%20PDF.pdf> (last visited Feb. 17, 2010); see also Television Bureau of Advertising, *Broadcast Television Ad Revenues Were Down 22.6% in 3rd Quarter*, Dec. 18, 2009, [http://www.tvb.org/rcentral/AdRevenueTrack/revenue/2009/ad\\_figures\\_1.asp](http://www.tvb.org/rcentral/AdRevenueTrack/revenue/2009/ad_figures_1.asp) (last visited Feb. 9, 2010); *PEJ 2010 State of the News Media Report*, Local TV, Economics at 10, [http://www.stateofthemediamedia.org/2010/printable\\_local\\_tv\\_chapter.htm](http://www.stateofthemediamedia.org/2010/printable_local_tv_chapter.htm) (last visited Mar. 18, 2010) (reporting that, in the first nine months of 2009, automobile advertising – the most important advertising category for local television stations – was down 52%, and that revenue from 24 of the top 25 categories of local television advertisers was down sharply during this time period).

<sup>99</sup> *PEJ 2010 State of the News Media Report*, Local TV, Summary Essay at 1, Economics at 9, [http://www.stateofthemediamedia.org/2010/printable\\_local\\_tv\\_chapter.htm](http://www.stateofthemediamedia.org/2010/printable_local_tv_chapter.htm) (last visited Mar. 18, 2010) ("Ad revenue is always lower in a year without federal elections or the Olympics, but the drop in 2009 was especially severe even with the unexpected bounty of political spending on health care legislation. . . . The last two non-election years, by contrast, recorded much smaller declines: 5% in 2005 and 6% in 2007.").

<sup>100</sup> *Id.*, Summary Essay at 1 (noting further that there is "little prospect of [online revenues] buoying [local television stations] anytime soon"); see also *id.*, Economics at 10 (noting that on-air advertising revenues represent "\$9 out of every \$10" of TV station revenues).

<sup>101</sup> See *id.*, News Investment at 17 (citing the latest survey data from 2008 that shows "hefty budget reductions and deep cuts in the newsroom," and stating that news directors at local stations expected their budgets to be even smaller in 2009 than they were in 2008).

<sup>102</sup> *Id.*, Summary Essay at 1. Broadcasters' budgets, furthermore, were already strained by the mandated capital-intensive digital television conversion. As discussed below, Tribune has added to its already substantial news programming in Miami-Ft. Lauderdale despite the dismal economic conditions. See *infra* Section III.A.1.

The newsgathering operations of struggling broadcasters are “getting smaller,”<sup>103</sup> and many have been forced to lay off news staff or implement hiring freezes.<sup>104</sup> Radio stations have similarly been suffering, with 2009 revenues down 18% compared to 2008 revenues.<sup>105</sup>

Like other media companies, Tribune has suffered continuing financial difficulties in recent years. Since 2007, the economic and advertising crises have been substantial, and Tribune, like many of its peers, has suffered a material decline in advertising business. In 2008, Tribune’s publishing revenue decreased 12%, primarily due to an 18% decrease in advertising revenue and a 2% decrease in circulation. Tribune’s broadcasting and entertainment revenue decreased 2% in 2008. At December 28, 2008, the consolidated financial statements of Tribune included approximately \$4.4 billion in total assets and approximately \$14.8 billion in total liabilities. At December 27, 2009, the consolidated financial statements of Tribune included

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<sup>103</sup> *PEJ 2010 State of the News Media Report*, Local TV, Summary Essay at 1, [http://www.stateofthemediamedia.org/2010/printable\\_local\\_tv\\_chapter.htm](http://www.stateofthemediamedia.org/2010/printable_local_tv_chapter.htm) (last visited Mar. 18, 2010).

<sup>104</sup> *See id.*, News Investment at 18-19; *see also* Sarah McBride, *Clear Channel’s Parent Cuts 590 Jobs*, WALL ST. J., Apr. 29, 2009, *available at* <http://online.wsj.com/article/SB124095285316665235.html> (last visited Feb. 9, 2010) (reporting Clear Channel Communications Inc.’s decision to cut 590 jobs in its second round of mass layoffs in 2009 amid pressure from the recession and evaporating advertising budgets); Chris Ariens, *Layoffs at ABC News Radio*, TV Newser, Oct. 6, 2009, [http://www.mediabistro.com/tvnewser/abc/layoffs\\_at\\_abc\\_news\\_radio\\_139400.asp](http://www.mediabistro.com/tvnewser/abc/layoffs_at_abc_news_radio_139400.asp) (last visited Feb. 9, 2010) (reporting that about 20 staffers from the editorial, production, and technical staffs at ABC News Radio in New York and Washington, D.C. were let go in October 2009); Glen Dickson & Marisa Guthrie, *ABC Lays Off 31 in Broadcast Operations, Engineering*, BROAD. & CABLE, Jan. 27, 2010, *available at* [http://www.broadcastingcable.com/article/446188-ABC\\_Lays\\_Off\\_31\\_in\\_Broadcast\\_Operations\\_Engineering.php](http://www.broadcastingcable.com/article/446188-ABC_Lays_Off_31_in_Broadcast_Operations_Engineering.php) (last visited Feb. 9, 2010) (reporting that ABC would be cutting 31 positions in its Broadcast Operations & Engineering group); Matea Gold, *CBS News Braces for More Layoffs Next Week*, L.A. TIMES, Jan. 31, 2010, *available at* <http://articles.latimes.com/2010/jan/30/business/la-fi-ct-cbs-news30-2010jan30> (last visited Feb. 9, 2010) (reporting that CBS News is preparing a significant round of layoffs expected to affect every CBS News program and as many as 100 positions, or 7% of CBS News’ 1,400-person staff).

<sup>105</sup> *PEJ 2010 State of the News Media Report*, Audio, Summary Essay at 2, [http://www.stateofthemediamedia.org/2010/printable\\_audio\\_chapter.htm](http://www.stateofthemediamedia.org/2010/printable_audio_chapter.htm) (last visited Mar. 18, 2010); *Second Quarter Revenues Drop 22% – But RAB Sees Bottom*, INSIDE RADIO, Aug. 24, 2009, *available at* <http://www.insideradio.com/article.asp?id=1468449> (last visited Feb. 18, 2010).

approximately \$5.0 billion in total assets and approximately \$14.3 billion in total liabilities. In 2009, Tribune's publishing revenue decreased approximately 19%, with advertising revenue down 26% compared to 2008. Tribune's broadcasting and entertainment revenue decreased 19% in 2009 compared to 2008.<sup>106</sup>

While Tribune's performance is comparable – and in some areas superior – to that of its peers in the newspaper and broadcasting businesses, its operations have been adversely affected by the general deterioration in the newspaper publishing and broadcasting industries and, in particular, the continuing severe decline in advertising revenues that has occurred during the current recession. On December 8, 2008, Tribune and most of its subsidiaries, including those that operate its newspapers and broadcast stations, commenced proceedings under Chapter 11 of the Bankruptcy Code.<sup>107</sup> On April 12, 2010, Tribune and its affected subsidiaries filed a Joint Plan of Reorganization (the "Plan") with the Bankruptcy Court. Under the Plan, which is subject to approval by the Bankruptcy Court, Reorganized Tribune expects to become a publicly traded company, and certain creditors of Tribune and its subsidiaries will receive common stock and/or warrants as provided for in the Plan.

Apart from the positive presumption to which Reorganized Tribune is entitled under the *2008 Order*, overwhelming evidence and compelling policy considerations support a permanent waiver of the NBCO Rule with regard to the Miami-Ft. Lauderdale newspaper/television combination. The Commission must evaluate the instant request within the context of the

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<sup>106</sup> These figures demonstrate that Tribune continues to face serious financial challenges. Moreover, it is significant that since December 8, 2008, when the company and its subsidiaries commenced bankruptcy proceedings, they have been free of any debt service obligations as a result of the automatic stay that applies under the bankruptcy laws, yet Tribune's financial condition has continued to deteriorate; were it not for the current lack of any obligation to service debt, its financial results would surely be far worse.

<sup>107</sup> See *In re Tribune Company, et al.*, *supra* note 5.

tortured history of the NBCO Rule, the fact that the Commission has determined that an absolute ban on cross-ownership does not serve the public interest (a finding affirmed by the Third Circuit), and the prevailing economic conditions of the newspaper and broadcasting industries in general and Tribune in particular. Specifically, the Commission must take account of (1) its 14-year-old commitment to revise the NBCO Rule, (2) the almost nine years that have elapsed since the initiation of proceedings to do so for both radio and television stations, (3) the agency's almost seven-year-old action first repealing the absolute ban and adopting a rule that would have permitted the continued common ownership of WSFL-TV and the *Sun Sentinel*, (4) its two-year-old decision to add liberalized waiver standards to the NBCO Rule that permit continued common ownership of these properties, and (5) the FCC's recognition over two years ago that the same combination at issue here should be permitted to remain intact pending further specified proceedings that are still unresolved. It also must take into account, in these difficult financial times, the inevitable harm to the public interest that would result from breaking up a combination that has served South Florida residents for more than a decade. Further, the Commission must recognize that permitting Tribune to emerge from bankruptcy with its assets intact is the only way to provide the company with a much-needed fresh start and to promote the agency's policy of affording comity to the bankruptcy process.

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

#### **A. Tribune's Miami-Ft. Lauderdale Properties Provide Outstanding And Diverse Local Public Service Benefits To The Community That Would Not Be Possible Absent Common Ownership.**

##### **1. The Common Ownership Of WSFL-TV And The *Sun Sentinel* Delivers Innumerable Public Interest Benefits.**

During the past 13 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. 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. Through its common ownership with the *Sun Sentinel*, WSFL-TV provides programming and local public interest benefits that no similarly situated television station in the market could offer on its own. These benefits flow directly to the public; they would have been exceedingly difficult to attain absent common ownership and Tribune's firm commitment to bringing locally oriented news and public affairs programming benefits to the public.

*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 public 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 in spring 2009.

Prior to Tribune's acquisition of WSFL-TV, which is 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>108</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

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<sup>108</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").

situation for a station co-owned with a newspaper. The condition was lifted in 2002,<sup>109</sup> but it is only with the recent move of WSFL-TV's facilities to the *Sun Sentinel*'s location that Tribune has been able to establish a news department for WSFL-TV and produce entirely original news content for the station.

Inauguration of WSFL-TV's own newscast has increased employment at WSFL-TV at a time when broadcast industry layoffs and staff reductions are rampant.<sup>110</sup> Before the station began planning for its own local newscast, it had 40 employees. As of the end of the first quarter of 2010, it has 62 total employees, 30 of whom work in the station's news department. WSFL-TV is also currently seeking to fill three additional news department positions. As of the same point in time, the *Sun Sentinel* employs 1,326 employees, 192 of whom work in editorial or news-gathering positions, serving as a critical resource for WSFL-TV's news programming efforts.

*News Coverage.* WSFL-TV now broadcasts 20 hours per week of self-produced local news, with newscasts airing from 5:00 am to 9:00 am Monday through Friday. This far exceeds the amount of news provided by many stations in the market and distinguishes WSFL-TV from other CW affiliates, the vast majority of which do not originate their own local newscasts.<sup>111</sup> In addition, WSFL-TV broadcasts a weekly public affairs program titled *South Florida Voices*, which airs at 6:00 am on Sunday mornings. Tribune has broadcast this program for many years.

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<sup>109</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).

<sup>110</sup> See *supra* Section II.C.

<sup>111</sup> See Hours and Audience Shares of Local News – Miami-Ft. Lauderdale DMA (Attachment 1 hereto). WSFL-TV's news total is current as of April 2010.

By working together under one roof, WSFL-TV and the *Sun Sentinel* are able to cover more news events and stories than either outlet could cover working alone. To facilitate coordination, the television station and newspaper currently maintain a single assignment desk staffed by assignment editors from each of the two properties. These editors work hand-in-hand to ensure that when a story breaks, a reporter from at least one property covers it. The joint assignment desk also allows each property to take advantage of news tips received by the other, thereby enhancing the depth and breadth of news coverage.

WSFL-TV and the *Sun Sentinel* jointly operate an on-line Breaking News Center. This web portal provides area residents with the latest breaking news updates around the clock through the resources of both the *Sun Sentinel* and WSFL-TV. Both supply information to the Breaking News Center, which is managed and edited by *Sun Sentinel* employees, and provide links to it from their own independent websites.

Each of the *Sun Sentinel*'s photographers now carries cameras capable of shooting broadcast-quality video, which is made available for airing on WSFL-TV. Similarly, the *Sun Sentinel* is able to use frames from video shot by WSFL-TV videographers to enhance its print and online stories. The *Sun Sentinel* also provides links to WSFL-TV news video on the newspaper's website.

*Sun Sentinel* reporters frequently appear as experts on WSFL-TV's newscasts. For example, the following *Sun Sentinel* reporters regularly appear on WSFL-TV's morning newscasts:

- Anne Vasquez covers business and family issues and provides reports Wednesday mornings in the 8 o'clock hour.
- Consumer reporter Dan Vasquez appears on Tuesday mornings in the 8 o'clock hour to discuss condo-related topics (his specialty) and general consumer issues.

- Sports reporter Ethan Skolnick appears each Wednesday or Thursday morning 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 contribute to WSFL-TV's reporting when news breaks in their areas of expertise. Among the *Sun Sentinel* reporters providing reports on WSFL-TV since the station started its own newscasts have been local political correspondent Josh Hafenbrack; investigative and enterprise reporter Ihosvani Rodriguez; 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.

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 reporting has been enhanced by the television reporters' 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>112</sup>

Not only are *Sun Sentinel* reporters part of WSFL-TV's news broadcasts, 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-

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<sup>112</sup> Due to budgetary constraints, the *Sun Sentinel* in June 2009 was forced to eliminate the position of the Cuban correspondent.

TV reporter on an abandoned house in Hollywood, Florida that had been declared a public nuisance.<sup>113</sup>

Although WSFL-TV and the *Sun Sentinel* frequently cooperate on news coverage, 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 also uses 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* are regularly asked to appear on WSFL-TV to comment on various news stories. In addition, *Sun Sentinel* television critic Tom Jicha's sometimes scathing reviews of WSFL-TV's CW network programming also underscore the editorial independence of the commonly owned outlets.<sup>114</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."

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<sup>113</sup> Because its news programming is so new, WSFL-TV has not yet received any journalistic awards. It did, however, win 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-A hereto includes a list of awards that the *Sun Sentinel* received in 2007, 2008, and 2009.

<sup>114</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."

*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 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 lieutenant governor to reimburse the state for private use of state-owned airplanes. *Sun Sentinel* 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. Both outlets have continued to report on the story as it has developed.
- 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*.

As noted above, despite their collaboration, both WSFL-TV and the *Sun Sentinel* continue to make independent editorial decisions regarding news coverage in general, and political coverage in particular. The *Sun Sentinel* maintains an independent editorial board. Although WSFL-TV has no role in the decisions of this board, its members occasionally appear on-air on WSFL-TV to debate members of the public on topics within their areas of expertise. 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 receive improved weather coverage because of Tribune's cross-ownership. WSFL-TV meteorologist Jeff Mielcarz provides 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 collaborate on an annual hurricane preparedness guide that is distributed to area residents. Mr. Mielcarz's reporting is featured prominently in the guide. *Sun Sentinel* reporter Ken Kaye, an expert on hurricane forecasts, coverage, and tracking, also appears on WSFL-TV's newscasts to provide the latest hurricane news and information.

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 will 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 appear on WSFL-TV's newscasts to provide sports news to viewers.

*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 Friday print edition. With the recent involvement of WSFL-TV in the program, selected students are now also profiled on-air in the station's Friday morning newscasts.<sup>115</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. Each year, the outlets team up on a week-long multimedia program called "Life's Littlest Champions," which features the stories of children who have benefited from the March of Dimes. These stories are presented in the *Sun Sentinel* and are featured in segments in WSFL-TV's morning news and in public service announcements.<sup>116</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 promotes this fund through segments in the station's morning newscasts and public service announcements. In addition, *Sun Sentinel* columnists and WSFL-TV on-air personalities recently 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 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 provides on-air promotion and support for the program.
- WSFL-TV and the *Sun Sentinel* promote National Breast Cancer Awareness Month with a campaign called "Life Victories: Inspirational Breast Cancer Stories." Each October, the television station and the newspaper work together to support this effort, with profiles of breast cancer survivors running in the *Sun Sentinel*, the television station's morning news program, and in promotional spots airing on WSFL-TV.

## 2. Common Ownership Is Necessary To Allow These Benefits To Continue.

As the FCC recognized in 2003 in the course of deciding to repeal the absolute ban on newspaper/broadcast cross-ownership, "[t]he benefits of combined ownership are not likely to be

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<sup>115</sup> Attachment 2-B hereto 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>116</sup> Attachment 2-C hereto 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.

achieved through joint ventures as opposed to combined ownership.”<sup>117</sup> This is true of the benefits delivered by Tribune’s South Florida properties that are described above, benefits that would be jeopardized if common ownership could not be continued. Indeed, as a CW affiliate ranked eighth in the market based on share (9 am – midnight), it is highly unlikely that WSFL-TV ever could have initiated its own locally-produced newscast absent cross-ownership.<sup>118</sup>

The Commission’s conclusion that combined ownership is required to achieve such efficiencies was based on economic analysis, empirical studies, and facts contained in the record. Noting the results of one study, the FCC explained the basis for its finding: “[J]oint ventures confront three classes of issues that hinder their ability to achieve efficient joint production: (1) the costs of reaching the agreement; (2) incentives to withhold private information; and (3) incentives to take actions that are not in the best interests of the joint venture.”<sup>119</sup> Another study in the record noted that full convergence, in which news and other informational content expands and improves, is “extraordinarily difficult to achieve without common ownership” due in part to the need for a comprehensive set of organizational talents and abilities and forceful leadership, elements that are not often present in a joint venture.<sup>120</sup>

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<sup>117</sup> *2003 Order*, 18 FCC Rcd at 13,755-56 (¶ 346) (citing Gannett Comments in MM Docket No. 01-235, Exhibit C (Dec. 3, 2001), Besen and O’Brien, *An Economic Analysis of the Efficiency Benefits from Newspaper/Broadcast Station Cross-Ownership* (“Besen/O’Brien Study”).

<sup>118</sup> See Miami DMA TV Stations and Audience Shares (Attachment 3 hereto). As the Commission itself has recognized, “television 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.” *2008 Order*, 23 FCC Rcd at 2045-46 (¶ 62), 2050-51 (¶ 70). Indeed, more than 60% of stations ranked fifth or below provide no local news at all. *Id.* at 2046 n.204 (¶ 62 n.204).

<sup>119</sup> *2003 Order*, 18 FCC Rcd at 13,755-56 (¶ 346).

<sup>120</sup> See *Statement of Professor James K. Gentry, Ph.D.*, at 10-12, attached as Appendix 4 to Comments of Media General, Inc. in MM Docket No. 01-235 (Dec. 3, 2001) (pages are unnumbered; page 1 begins immediately after the “Summary”).

On the other hand, the study that the FCC cited showed that “joint ownership mitigates these possible hindrances.”<sup>121</sup> First, agreement on the parameters of production is reached without significant cost because common ownership reduces the possibility of disputes and any such disputes can be more easily resolved within a single company.<sup>122</sup> Second, information withholding is reduced or eliminated because it is easier for key decision-makers to obtain the information that they need, senior management can freely monitor the activities of participating divisions, and a central authority figure can, if necessary, specify what information should be shared.<sup>123</sup> Third, while the task of specifying in a joint venture agreement all of the actions that each party will take can be expensive and potentially impossible due to the degree of complexity and foresight involved, “shirking” does not arise in cross-ownerships because of the ease with which a central authority can monitor the actions performed by each element of the enterprise.<sup>124</sup>

Accordingly, just as the extensive resources of Tribune and the *Sun Sentinel* were essential to establishment of WSFL-TV’s local news operation, continued common ownership with the *Sun Sentinel* is critical to sustaining the high-quality news and public service programming that is provided by WSFL-TV, and a waiver is fully justified to achieve that goal.

**B. The Miami-Ft. Lauderdale Market Is Remarkably Diverse And Competitive.**

Miami-Ft. Lauderdale is the seventeenth-largest DMA in the country, with more than 1.5 million television homes.<sup>125</sup> As shown in detail below, the Miami-Ft. Lauderdale media market

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<sup>121</sup> 2003 Order, 18 FCC Rcd at 13,755-56 (¶ 346) (citing Besen/O’Brien Study).

<sup>122</sup> Besen/O’Brien Study at 20.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 21.

<sup>125</sup> TVB Research Central, Market Track, *US TV Households by Market*, [http://www.tvb.org/rcentral/markettrack/us\\_hh\\_by\\_dma.asp](http://www.tvb.org/rcentral/markettrack/us_hh_by_dma.asp) (last visited Feb. 2, 2010) (based on

is diverse and competitive, with 15 commercial and non-commercial television stations owned by 12 separate owners, 79 commercial and non-commercial radio stations owned by 41 separate owners, and three daily newspapers published by three different publishers.<sup>126</sup> Many of the country's major media companies own media properties in the market. Tribune's media properties are venerable institutions in the Miami-Ft. Lauderdale area – the *Sun Sentinel* and WSFL-TV are household names throughout the local community. WSFL-TV, which is not affiliated with one of the Big-four television networks, is ranked only eighth, based on share (9 am – midnight), among its strong group of competitors,<sup>127</sup> and the *Sun Sentinel* faces strong competition from *The Miami Herald* and other daily newspapers in the market. In addition, analysis of the competition among traditional media in the Miami-Ft. Lauderdale DMA necessarily understates the level of competition resulting from the proximity of other traditional media in adjacent, abutting areas. In particular, many people commute between the Miami-Ft. Lauderdale DMA and the West Palm Beach, FL DMA located immediately to the north, and the traditional media in each of the DMAs are available in many places in the other market. As a result, many more competitors than just the properties in the Miami-Ft. Lauderdale DMA compete for the same local audience as well as for local advertisers.<sup>128</sup>

Moreover, these numerous traditional media outlets provide news, information and entertainment and seek advertisers in a market that has been revolutionized by widespread access

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Nielsen Media Research, Inc., Nielsen Station Index (NSI), estimates for the 2009-2010 television season effective September 21, 2009).

<sup>126</sup> See generally Mark R. Fratrik, Ph. D., BIA Financial Network, *Report on the Miami-Ft. Lauderdale, FL Media Market: Media Diversity, Revenue Share, and Concentration Analysis in Support of the Request for Cross-Ownership Waiver for Television Station WSFL-TV*, at 21-22 (Feb. 26, 2010) (“BIA Report”) (Attachment 4 hereto).

<sup>127</sup> See Attachment 3.

<sup>128</sup> See BIA Report, at 2; *id.* at Appendix A-1.



to the Internet and other new media. Broadband, with its exponentially higher speeds, enables interactive uses of the Internet that have transformed the way that people obtain news and information and has made Internet news sources even more powerful forces in the contemporary media marketplace than they were just a few short years ago. In fact, a very recent study by Arbitron and Edison Research found that, for the first time, more people rated the Internet as the media platform that is “most essential” to their lives than any of the traditional media, with 42% choosing the Internet, 37% choosing television, 14% choosing radio, and just five percent choosing newspapers.<sup>129</sup> And now, Americans have access to text and video content while on-the-go through multiple mobile video platforms, with more on the horizon, including mobile digital television. More than ever before, consumers control their access to news, information and entertainment, and Tribune’s traditional media properties in Miami-Ft. Lauderdale are just two of thousands of local outlets competing for their attention. The combination of WSFL-TV and the *Sun Sentinel* has had and will have no significant adverse impact on the incredible diversity of media outlets available in the market, as these marketplace facts show. Economic analysis further reflects decreasing concentration levels, thus evidencing that the Miami-Ft. Lauderdale market has remained, and will remain, vibrantly competitive notwithstanding Reorganized Tribune’s continued common ownership of WSFL-TV and the *Sun Sentinel*.

1. Many “Traditional” Media Sources Serve The Miami-Ft. Lauderdale Market.

- a. Television Stations.

The abundance of television stations in the Miami-Ft. Lauderdale DMA alone supports a waiver permitting continued common ownership of WSFL-TV and the *Sun Sentinel*. WSFL-TV,

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<sup>129</sup> See Arbitron, Inc. and Edison Research, *The Infinite Dial 2010: Digital Platforms and the Future of Radio*, at 11 (Apr. 2010), available at [http://www.arbitron.com/study/digital\\_radio\\_study.asp](http://www.arbitron.com/study/digital_radio_study.asp) (last visited Apr. 17, 2010).

an affiliate of the CW Network, is one of 15 broadcast television stations in the Miami-Ft. Lauderdale area, six more than the nine that were available to local viewers in 1975 when the cross-ownership rule was adopted.<sup>130</sup> Those 15 stations are owned by 12 separate owners.<sup>131</sup> Two of the Big-four networks own stations in Miami-Ft. Lauderdale, and both NBC Universal and CBS own duopolies. As in other markets, broadcast television ratings in Miami-Ft. Lauderdale are generally in decline, a trend that is hardly surprising in light of the emergence of multiple new media outlets since 1975, and even within the current decade. A chart showing these declines is appended hereto as Attachment 3.<sup>132</sup>

The Miami-Ft. Lauderdale television market has grown increasingly diverse and competitive since 1975, notwithstanding Tribune's common ownership of WSFL-TV and the *Sun Sentinel* for more than a decade. A review of the declining audience shares for broadcast television stations in Miami-Ft. Lauderdale demonstrates that diversity and competition are robust, and have increased over time:

- In 1975, the top three stations (WFOR-TV, WSVN-TV, and WPLG-TV) together had an audience share of 87. By 2001, the collective share of the top three stations (WFTS-TV, WFOR-TV, and WPLG-TV) had declined by nearly two-thirds to 30.8. By May 2009, the collective share of the top three stations (WFTS-TV, WSCV-TV, and WPLG-TV) was a mere 21.6, and WSFL-TV's share had decreased from 5.4 in 2001 to just 3.0. Six months later, in November 2009, the top three stations (WFOR-TV, WPLG-TV, and WSVN-TV) had a collective share of only 23.1.<sup>133</sup>
- In 1975, the largest share earned by a television station was 35 (WFOR-TV); by May 2001, the largest share was just 11.3 (WFTS-TV). In May 2009, the largest share earned by a station was even lower at just 8.7 (WFTS-TV), and by

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<sup>130</sup> See BIA Report, at 21; *id.* at Appendix B-1; *see also* Attachment 3.

<sup>131</sup> See BIA Report, at 21; *id.* at Appendix B-1.

<sup>132</sup> See Attachment 3.

<sup>133</sup> See *id.*

November 2009 it had dropped to 8.3 (WFOR-TV). WSFL-TV's share in November 2009 was only 2.9<sup>134</sup>

Audience share data also demonstrate that since 1975, the once-dominant stations have experienced declining shares while other (usually newer) stations have increased their shares over time. Based on May and November 2009 Nielsen 9 am – midnight data, no stations were earning shares of 10 or above, and few earned a 5 share or greater.<sup>135</sup> By comparison, in 2001, one station earned a 10 share, and three did so in 1975.<sup>136</sup> While only six stations had a 1 share or greater in 1975, 13 stations reached that level in 2001, 10 stations did so in May 2009, and 11 achieved a 1 share or greater in November 2009. These data demonstrate that Tribune's common ownership of media properties has not hindered, and will not harm in the future, the growth of diversity and competition in the Miami-Ft. Lauderdale area, where a large number of alternative outlets are available.

While audience shares for the once-dominant stations have declined steadily since 1975, the amount of local news programming produced in the market has increased. As reflected in the table appended hereto as Attachment 1, 10 stations in the Miami-Ft. Lauderdale DMA together broadcast more than 208 hours of local news programming each week, an increase of more than 50 hours over the 156.5 hours per week in 2001. During that time, with the initiation of a wholly new local newscast, WSFL-TV has dramatically increased the amount of news programming it provides to 20 hours per week, despite the loss of audience share to other stations and non-broadcast news providers; it has been able to do so in part due to the synergies and efficiencies of

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<sup>134</sup> *See id.*

<sup>135</sup> *See id.*

<sup>136</sup> *See id.*

common ownership.<sup>137</sup> Competition for the Miami-Ft. Lauderdale news-viewing audience is robust, with the highest-rated evening newscasts in both May and November 2009 earning a 10 share (down from 16 in 1975 and up slightly from 7.3 in 2001).<sup>138</sup> These facts and trends show that while audience ratings for broadcast television have declined, the delivery of news in the Miami-Ft. Lauderdale market is more plentiful and competition is more intense than ever.

In addition to the full-power television stations serving the DMA, there are 14 multicast programming streams available in the market.<sup>139</sup> Broadcasters are embracing the opportunity to bring additional programming options to viewers using these digital multicast channels.<sup>140</sup> Now, in addition to the programming offered on its main channel, a broadcaster can divide its remaining spectrum into one or more subchannels and program these channels to serve the different needs of its viewing audience. Some stations are offering hyperlocal news and information, 24/7 weather, or live traffic information.<sup>141</sup> Still other stations are providing programming options to serve the needs and interests of niche markets within their viewing

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<sup>137</sup> See Attachment 1; *see also supra* Section III.A.

<sup>138</sup> See Attachment 1.

<sup>139</sup> See BIA Report, at 21 n.29; *id.* at Appendix B-2.

<sup>140</sup> See RabbitEars.Info, [http://www.rabbitears.info/search.php?request=network\\_list](http://www.rabbitears.info/search.php?request=network_list) (last visited Feb. 8, 2010) (listing almost 200 programming options for digital subchannels).

<sup>141</sup> See 360north.org, [www.360north.org](http://www.360north.org) (last visited Feb. 8, 2010) (providing Alaska news and information); The Ohio Channel, <http://www.ohiochannel.org/> (last visited Feb. 8, 2010) (providing coverage of state political events); Accuweather Partners, <http://www.accuweather.com/promo-ad.asp?partner=accuweather&traveler=0&dir=aw&page=lawc> (last visited on Feb. 8, 2010) (providing list of stations carrying local weather information on multicast channels); *see also* [http://www.rabbitears.info/search.php?request=network\\_search&network=Traffic+Cameras](http://www.rabbitears.info/search.php?request=network_search&network=Traffic+Cameras) (last visited Feb. 8, 2010) (list of stations with live traffic camera feed offered on a subchannel).

audience, such as multi-lingual news, children's programming, religious programming, local sports programming, or classic movies and television shows.<sup>142</sup>

There are also seven Class A television stations owned by six separate owners in the Miami-Ft. Lauderdale DMA.<sup>143</sup> Each of these Class A stations is required to broadcast an average of at least three hours per week of locally produced programming every quarter.<sup>144</sup> And, there are 28 non-Class A low power television stations owned by 19 separate owners.<sup>145</sup> In total, the Miami-Ft. Lauderdale DMA has 35 Class A and LPTV stations, owned by 21 separate owners.<sup>146</sup> Some of these outlets earn measurable ratings.<sup>147</sup> The Class A and LPTV stations provide additional potential sources of local news and information for viewers.

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<sup>142</sup> For example, stations around the country offer LATV network programming on digital subchannels. The network offers bilingual programming targeted toward the younger Hispanic market. See [www.LATV.com](http://www.LATV.com) (last visited Feb. 8, 2010). The new Estrella TV network, which offers musical-variety, comedy, scripted drama, talk and game shows in Spanish and features top talent from the United States, Mexico and Latin America, is also broadcast on a number of digital multicast streams. See Liberman Broadcasting, Inc., *Estrella TV Makes Its Nationwide Debut*, Sept. 14, 2009, available at [http://www.lbimedia.com/Media/PressReleases/20090914\\_EstrellaTvLaunch.pdf](http://www.lbimedia.com/Media/PressReleases/20090914_EstrellaTvLaunch.pdf) (last visited Feb. 9, 2010). Other stations are similarly using their digital multicast streams to broadcast a diverse range of programming. See, e.g., Arirang – Korea's Global TV, <http://www.arirang.co.kr/> (last visited Feb. 8, 2010) (offering news and information programming from Korea); The Church Channel, [www.churchchannel.org](http://www.churchchannel.org) (last visited Feb. 8, 2010) (offering religious programming); FamilyNet.com, <http://www.familynet.com/about/> (last visited Feb. 8, 2010) (dedicated to providing responsible, relevant, and entertaining viewing choices for today's diverse family); Qubo Network (ION), [www.qubo.com](http://www.qubo.com) (last visited Feb. 8, 2010) (providing programming with "positive messages that promote literacy, reinforce timeless values, and convey relatable life lessons"); The Wazoo Sports Network, <http://www.wazoosports.com/programming/channelguide.html> (last visited Feb. 8, 2010) (original Kentucky sports programming, including high school, NCAA, NAIA, and youth sports); This TV, [www.thisTV.com](http://www.thisTV.com) (last visited Feb. 8, 2010) (offering movies and classic television shows).

<sup>143</sup> See BIA Report, at 21; *id.* at Appendix C.

<sup>144</sup> 47 C.F.R. § 73.6001(b)(2).

<sup>145</sup> See BIA Report, at 21; *id.* at Appendix C.

<sup>146</sup> See *id.*

<sup>147</sup> For example, Nielsen May 2009 data indicate that Class A station WJAN-CA earned a 1.7 share, and low power digital television station WFUN-LD earned a 0.2 share.

b. Multichannel Video Programming Distributors (“MVPDs”).

As of November 2009, cable penetration in the Miami-Ft. Lauderdale DMA was 66.5%, 29.9% of the households in the DMA subscribed to alternative MVPDs (including direct broadcast satellite (“DBS”)), and total MVPD penetration was approximately 94.4%.<sup>148</sup> In November 2001, by contrast, total MVPD penetration was lower at 81.1%, with cable penetration of 75.7% and alternative MVPD penetration of only 7.1%.<sup>149</sup> As of 2005, cable systems and other MVPDs throughout the nation offered an average of more than 230 channels,<sup>150</sup> a number that has increased substantially since then and to which must be added hundreds and, on some systems, thousands, more programming choices available on-demand.<sup>151</sup> In comparison, as of 2000, only a minute proportion (0.15%) of cable systems offered consumers

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<sup>148</sup> See TVB Research Central, Market Track, *Cable and ADS Penetration by DMA: Miami-Ft. Lauderdale*, [http://www.tvb.org/nav/build\\_frameset.asp?url=/rcentral/index.asp](http://www.tvb.org/nav/build_frameset.asp?url=/rcentral/index.asp) (last visited Feb. 10, 2010) (based on Nielsen Media Research, DMA Household Universe Estimates) (click on “Research Central” then “Market Track” then “Cable and ADS Penetration by DMA” and then “Miami-Ft. Lauderdale”). Total MVPD penetration values may differ from the sum of cable and alternative penetration values because Nielsen includes households subscribing to both in each category.

<sup>149</sup> See *id.*

<sup>150</sup> *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, 561-62 (¶ 44) & Table 4 (2009) (“13th Annual Video Competition Report”) (230.6 is the average of the number of cable channels offered by systems facing effective competition (234.9) and those not (226.3)). The 2005 data are the most recent that have been publicly reported by the FCC.

<sup>151</sup> See, e.g., Comcast Corporation, Digital Cable Service With On Demand from Comcast, <http://www.comcast.com/Corporate/Learn/DigitalCable/digitalcable.html> (last visited Feb. 20, 2010) (indicating that its systems offer 17,000 on demand choices); Time Warner Cable, On Demand, <http://www.twondemand.com/> (last visited Feb. 10, 2010) (providing on-demand listings for Time Warner); Cablevision, Optimum, iO TV, On Demand, [http://www.optimum.com/io/on\\_demand/index.jsp](http://www.optimum.com/io/on_demand/index.jsp) (last visited Feb. 10, 2010) (providing on-demand listings for Cablevision); Charter On Demand - Frequently Asked Questions, <http://www.charter.com/customers/support.aspx?SupportArticleID=14> (last visited Feb. 10, 2010) (stating that “Charter On Demand allows you to enjoy thousands of shows and movies whenever you want – many are FREE with hundreds available in High Definition”); Cox On Demand, <http://www.cox.com/digitalcable/ondemand/default.asp> (last visited Feb. 10, 2010) (providing on demand listings for Cox).

125 or more channels, while the majority of systems (more than 62%) offered only 30-53 channels.<sup>152</sup> Consumers also now may choose from among multiple options for MVPD service including cable systems, two DBS operators and, in many areas, a telephone company providing video service.<sup>153</sup> These competing MVPD services provide varying channel line-ups. Furthermore, in addition to the expansive line-ups of non-broadcast programming offered by these MVPDs, both DirecTV and DISH Network offer local-into-local service to their subscribers in the Miami-Ft. Lauderdale DMA.<sup>154</sup> Telephone companies' video services also offer access to local broadcast stations.<sup>155</sup>

The hundreds of channels available through MVPDs include not only local broadcast stations and cable entertainment channels, but also numerous networks focused on providing news and information. In the Miami-Ft. Lauderdale DMA, in addition to cable news networks such as CNN, MSNBC, and FOX News, multiple local cable networks offer programming of particular interest to local residents. These include the following:

- Telemiami, a local Spanish-language cable news and entertainment channel which reaches more than 1.5 million cable viewers in Dade and Broward Counties;

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<sup>152</sup> *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Seventh Annual Report, 16 FCC Rcd 6005, 6103 (Table B-3) (2001).

<sup>153</sup> See, e.g., Verizon, FiOS TV, About FiOS, <http://www22.verizon.com/Residential/FiOSTV/Details/Details.htm> (last visited Feb. 10, 2010); AT&T, U-verse, What is AT&T U-verse?, AT&T U-Verse TV, <http://www.att.com/u-verse/> (click on "Television" under "Explore" on right-hand side) (last visited Feb. 10, 2010).

<sup>154</sup> See DirecTV, The Guide, <http://www.directv.com/DTVAPP/epg/theGuide.jsp> (last visited Feb. 10, 2010) (click on "Missing Local Channels?" on top right of guide; enter local zip code to view local channels); DISH Network, Programming, <https://customersupport.dishnetwork.com/customernetqual/prepAddress.do> (last visited Feb. 10, 2010) (click on "Click here for a complete list of Available local markets" for a list of markets where local programming is available). Full listings of the channels offered by DirecTV and DISH Network in the Miami-Ft. Lauderdale area are appended hereto as Attachment 5.

<sup>155</sup> See *supra* note 153.

- Miami Latin TV, a local Spanish-language news, information, and entertainment channel;
- Miami Dade College Television and UMTV (the latter of which is owned and operated by the University of Miami's School of Communication), both of which include original student programming;
- Coral Springs City TV, which provides government information and local programming related to Coral Springs, a suburb in the Miami-Ft. Lauderdale area;
- Three additional channels – Plum TV, The Beach Channel, and Town Talk TV – which provide a variety of local information as well as local advertising;
- SunSports and Fox SportsNet Florida, which provide extensive local and regional sports coverage, including major and minor league professional sports, college sports, and coverage of all Florida state high school sports championships, with SunSports also providing local and regional public affairs programming focused on Florida government and politics.<sup>156</sup>

In addition to presenting ever-expanding programming offerings, cable channels have increasingly taken audience share from broadcasters. For example, in Miami-Ft. Lauderdale:<sup>157</sup>

- In May 2009, six cable channels (TNT, Disney Channel, Nickelodeon, ESPN, USA Network, and the Cartoon Network) ranked among the top-15 channels viewed in the market, and another three (Fox News Channel, Fox Sports Florida, and TBS) made the top-20.
- In May 2009, 10 broadcast and 22 cable channels earned a share of 1 or greater, compared to 12 broadcast and 17 cable channels that had earned a share of 1 or greater in May 2006.
- The 22 cable channels earning a 1 audience share or greater in 2009 outranked five broadcast stations in the Miami DMA.
- In addition to 22 cable channels earning a 1 share or greater, 99 other cable channels earned a share of 0.1 or greater in the Miami DMA in May 2009, including the Family Channel, HGTV, MSNBC, Bravo, the National Geographic Channel, TV1, BBC America, and Logo.

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<sup>156</sup> Additional information regarding the local cable channels available in the Miami-Ft. Lauderdale DMA is reflected in Attachment 6 hereto.

<sup>157</sup> The discussion below is based on 9 a.m. – midnight shares during the May 2009 sweeps period, as reported by Nielsen.



The diversity of viewpoint and programming options available to consumers has been increased significantly by the extensive MPVD penetration in the market and the abundant viewing options that MVPDs provide. At the same time, local audience share data demonstrate that MVPDs have significantly reduced the market shares of local broadcast voices, both individually and collectively.

c. Print Media.<sup>158</sup>

The Miami-Ft. Lauderdale newspaper market also features intense competition, including three daily newspapers and 36 weekly newspapers in the Miami-Ft. Lauderdale area and the surrounding suburbs. As is the case in many other markets and despite substantial population growth, the combined circulation of daily newspapers in Miami-Ft. Lauderdale has declined since 1975, and has fallen precipitously over the last decade. Still, both the *Sun Sentinel* and *The Miami Herald* compete for sizable readership, as shown by the following chart:

<b>Top Daily Newspapers</b>	<b>1975 Circulation</b>	<b>2001 Circulation</b>	<b>2009 Circulation</b>
<i>Sun Sentinel</i>	96,616	236,095	195,522
<i>The Miami Herald</i>	375,745	300,377	202,122
Combined Circulation	472,361	536,472	397,644

Daily circulation at the *Sun Sentinel* is down 17.4% since 2001. Combined circulation at these top two newspapers declined 25.9% since 2001. Moreover, in addition to these two dailies, *El Nuevo Herald* and *Diario Las Americas* – specialty newspapers serving the significant local

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<sup>158</sup> Circulation data included in this section were obtained from several sources. The 2009 daily circulation data for daily newspapers discussed in this section are based on information from the Audit Bureau of Circulations for the six-month period ending March 29, 2009, and are current as of October 3, 2009. The 2009 daily circulation figures for the *Sun Sentinel*, *The Miami Herald*, and *El Nuevo Herald* represent Monday – Friday (5 Day) circulation averages. The 2009 daily circulation figure for *The Key West Citizen* represents a Monday – Saturday (6 Day) circulation average. The circulation data for the weekly newspapers discussed in this section were obtained from the BIA/Kelsey Media Access Pro™ Database, Miami-Ft. Lauderdale, FL Market Newspaper Overview, and reflect BIAfn Estimated Current Circulation values for total circulation reported therein as of February 4, 2010.

Spanish-speaking population – and *The Key West Citizen* serve the Miami-Ft. Lauderdale DMA with daily circulations of 71,318, 69,132, and 9,522, respectively.

In addition, a large array of weekly newspapers contributes to the diversity and competition in the Miami-Ft. Lauderdale newspaper market.<sup>159</sup> At least 36 weekly newspapers published by 15 different owners are currently distributed in the DMA.<sup>160</sup> Many weekly newspapers in the market have substantial circulations, including, for example, the *Coral Springs Forum* (37,635), *Miami Today* (33,000), the *Deerfield Beach-Lighthouse Point Observer* (30,000), and the *Broward Informer* (22,000).

In addition to these daily and weekly newspapers, there is a wide variety of other print media that deliver local information to residents of the Miami-Ft. Lauderdale area. These include 31 specialty newspapers serving diverse interests including *El Nuevo Herald* and *Diario Las Americas* noted above; three shopper publications; three college newspapers; and 27 local magazines.<sup>161</sup>

d. AM, FM, And Satellite Radio Service.

The Miami-Ft. Lauderdale DMA includes 79 commercial and non-commercial AM and FM radio stations, owned by 41 separate entities.<sup>162</sup> Of those, 13 radio stations, operated by 10 different broadcasters, offer varied formats that focus on news, talk, sports, and information, while eight radio stations operated by eight different broadcasters offer formats that focus on

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<sup>159</sup> See BIA Report, at 22; *id.* at Appendix D. This chart notes the weekly newspapers that Tribune owns.

<sup>160</sup> See *id.*

<sup>161</sup> See *id.* Several of these publications are owned by Tribune.

<sup>162</sup> See *id.* at 21-22; *id.* at Appendix E-1. In the more limited radio geographic market as defined by the local radio ownership rule as revised in the 2003 Order, there are 58 radio stations owned by 31 different owners. See *id.* at 22.

education and religion.<sup>163</sup> Twenty-two stations, operated by 16 different broadcasters, offer Spanish-language or other ethnic formats.<sup>164</sup> In addition, 34 stations offer a variety of music formats, and one station offers a children's format.<sup>165</sup> Moreover, the market's radio broadcasters are offering programming on 11 HD multicast streams.<sup>166</sup> There are an additional three independently owned low power FM stations, each of which by definition must be locally owned by an entity that does not hold attributable interests in any other media.<sup>167</sup> Finally, in addition to terrestrial radio, XM Sirius offers satellite radio programming on a subscription basis to Miami-Ft. Lauderdale residents, with more than 200 channels, including numerous talk and information channels, multiple local traffic and weather channels, and many music channels.<sup>168</sup>

2. Residents of the Miami-Ft. Lauderdale Area Enjoy Access To A Plethora Of New Media Sources.

a. *The Internet Has Changed The Way People Access News And Information.*

In recent years, the availability of Internet access, and of high-speed Internet access in particular, have grown tremendously, allowing the Internet to overtake newspapers and achieve a position on par with television as Americans' primary source of news and information.<sup>169</sup> The

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<sup>163</sup> See *id.* at Appendix E-1.

<sup>164</sup> See *id.*

<sup>165</sup> See *id.*

<sup>166</sup> See *id.* at 22 n.30; *id.* at Appendix E-2.

<sup>167</sup> See *id.* at 22; *id.* at Appendix F; 47 C.F.R. §§ 73.853(b), 73.860.

<sup>168</sup> See XM-Sirius Channel Lineup (Attachment 7 hereto).

<sup>169</sup> Pew Research Center for the People & the Press, *Internet Overtakes Newspapers As News Outlet*, at 1 (Dec. 23, 2008) ("Internet Overtakes Newspapers"), <http://people-press.org/reports/pdf/479.pdf> (last visited Feb. 5, 2010); see also Pew Internet & American Life Project, *Understanding the Participatory News Consumer* (Mar. 1, 2010) ("Participatory News Consumer"), at 3, available at

Internet has become pervasive, with 74% of Americans having Internet access in their homes,<sup>170</sup> up from 60% in 2001.<sup>171</sup> As Internet access has become more widespread, the amount of time Americans spend using the Internet has continued to increase, rising from 14 hours per week in 2006 to more than 17 hours as of January 2009.<sup>172</sup> These increases in Internet use extend across all racial and ethnic categories, as a recent study conducted by the Joint Center for Political and Economic Studies found.<sup>173</sup>

More and more consumers now purchase *high-speed* Internet access in particular.

According to the FCC's recent OBI Working Paper No. 1, a survey conducted in October and November 2009 revealed that 67% of U.S. households have broadband connectivity and that

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[http://www.pewinternet.org/~media/Files/Reports/2010/PIP\\_Understanding\\_the\\_Participatory\\_News\\_Consumer.pdf](http://www.pewinternet.org/~media/Files/Reports/2010/PIP_Understanding_the_Participatory_News_Consumer.pdf) (last visited Mar. 3, 2010).

<sup>170</sup> John B. Horrigan, *Broadband Adoption and Use in America*, Omnibus Broadband Initiative ("OBI") Working Paper Series No. 1 (Feb. 2010), at 3 (finding that 74% of Americans have Internet access at home) ("OBI Working Paper No. 1"), *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-296442A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf) (last visited Mar. 8, 2010). The National Telecommunications and Information Administration ("NTIA") reports a slightly lower figure, finding that 68.7% of households now have access to the Internet. U.S. Department of Commerce, National Telecommunications and Information Administration, *Digital Nation: 21st Century America's Progress Toward Universal Broadband Internet Access, An NTIA Research Preview* (Feb. 2010), at 4 ("Digital Nation"), *available at* [http://www.ntia.doc.gov/reports/2010/NTIA\\_internet\\_use\\_report\\_Feb2010.pdf](http://www.ntia.doc.gov/reports/2010/NTIA_internet_use_report_Feb2010.pdf) (last visited Mar. 8, 2010).

<sup>171</sup> The Nielsen Company, *Internet Penetration Reaches 60 Percent in the U.S. According to Nielsen/NetRatings* (Feb. 28, 2001), [http://www.nielsen-online.com/pr/pr\\_010228.pdf](http://www.nielsen-online.com/pr/pr_010228.pdf) (last visited Feb. 5, 2010). More Americans have home Internet connections than subscribe to cable television. *13th Annual Video Competition Report*, 24 FCC Rcd at 627 (¶ 178) (reporting that 68.2% of Americans have cable television).

<sup>172</sup> *PEJ 2009 State of the News Media Report*, Online, Audience, at 15, [http://www.stateofthemediamedia.org/2009/printable\\_online\\_chapter.htm](http://www.stateofthemediamedia.org/2009/printable_online_chapter.htm) (last visited Feb. 5, 2010) (citing *The Digital Future Report 2009*, Center for Digital Future, University of Southern California, Annenberg School Survey).

<sup>173</sup> Joint Center for Political and Economic Studies, *National Minority Broadband Adoption: Comparative Trends in Adoption, Acceptance and Use*, at 1, 8-9 (Feb. 2010), *available at* [http://www.jointcenter.org/publications\\_recent\\_publications/media\\_and\\_technology/national\\_minority\\_broadband\\_adoption](http://www.jointcenter.org/publications_recent_publications/media_and_technology/national_minority_broadband_adoption) (last visited Mar. 5, 2010) ("Minority Broadband Adoption").

65% of adults use broadband at home.<sup>174</sup> This represents a substantial increase from prior years; the Pew Internet & American Life Project previously had found that home broadband adoption stood at only 3% of Americans in June 2000<sup>175</sup> and had risen to 55% of Americans in May 2008.<sup>176</sup> The Minority Broadband Adoption report found that racial disparities in broadband adoption continue to narrow and that minorities are among the fastest-growing groups of home broadband subscribers.<sup>177</sup>

To encourage further expansion of broadband access, Congress last year specifically directed the FCC to submit a report detailing a national broadband plan which “shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal.”<sup>178</sup> And, further expanding and improving broadband access has always been one of the Obama Administration’s, and thus the FCC’s, primary policy objectives. Indeed, Chairman Genachowski listed “[p]romoting universal broadband that’s

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<sup>174</sup> See OBI Working Paper No. 1, at 13. Another study found that home broadband adoption had increased to 60% of Americans by December 2009. Lee Rainie, *Internet, Broadband, and Cell Phone Statistics*, at 3 (Jan. 5, 2010), [http://www.pewinternet.org/~media/Files/Reports/2010/PIP\\_December09\\_update.pdf](http://www.pewinternet.org/~media/Files/Reports/2010/PIP_December09_update.pdf) (last visited Feb. 4, 2010).

<sup>175</sup> John B. Horrigan, *The Broadband Difference: How Online Americans’ Behavior Changes With High-Speed Internet Connections at Home*, at 9 (June 23, 2002) (“The Broadband Difference 2002”), [http://pewinternet.org/~media/Files/Reports/2002/PIP\\_Broadband\\_Report.pdf.pdf](http://pewinternet.org/~media/Files/Reports/2002/PIP_Broadband_Report.pdf.pdf) (last visited Feb. 5, 2010).

<sup>176</sup> John B. Horrigan, *Home Broadband Adoption 2009*, at 3, 9 (June 17, 2009) (“Home Broadband Adoption 2009”), <http://www.pewinternet.org/~media/Files/Reports/2009/Home-Broadband-Adoption-2009.pdf> (last visited Feb. 4, 2010). These growth figures are supported by those reported by NTIA, which reflect that in August 2000, 4.4% of households had broadband access; by October 2007, that number had grown to 50.8%; and that in October 2009, the household broadband adoption rate stood at 63.5%. Digital Nation, at 4.

<sup>177</sup> Minority Broadband Adoption, at 1, 14-15.

<sup>178</sup> See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115 (2009), codified at 47 U.S.C. § 1305(k).

robust, affordable and open” as *first* in a set of goals for the Commission under his leadership,<sup>179</sup> and recently explained that developing a broadband plan constitutes a task of “extraordinary importance.”<sup>180</sup> While there is still work left to be done, there is no evidence that the trend towards increasing broadband usage is slowing. “Broadband adoption appears to have been largely immune to the effects of the current economic recession,” in that “more than twice as many respondents [to a recent survey] said they had cut back or cancelled a cell phone plan or cable TV service than said the same about their Internet service.”<sup>181</sup> Indeed, both household use of the Internet and adoption of broadband increased substantially between 2007 and 2009 in each of the extensive array of demographic groups tracked by NTIA in its Digital Nation report.<sup>182</sup>

Trends in the South Florida market relating to Internet access and broadband usage mirror those in the nation as a whole. In response to a recent survey, nearly 65.5% of South Florida residents reported accessing the Internet at home, 30.1% reported doing so at work, and

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<sup>179</sup> Remarks of Chairman Julius Genachowski to the Staff of the Federal Communications Commission (June 30, 2009), *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-291834A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291834A1.pdf) (last visited Feb. 4, 2010); *see* Jim Puzzanghera, *FCC Chairman Has Broad Approach to Net Access*, L.A. TIMES, July 20, 2009, *available at* <http://www.latimes.com/business/la-fi-genachowski20-2009jul20,0,5802880.story> (last visited Feb. 4, 2010) (“**What’s your top priority for the FCC?** One is broadband. And the other is revitalizing and retooling the FCC.”) (emphasis in original); Chairman Genachowski Announces Topics to Focus Discussion at Workshops for National Broadband Plan (July 30, 2009), *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-292455A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292455A1.pdf) (last visited Feb. 4, 2010) (“Broadband is our generation’s major infrastructure challenge.”).

<sup>180</sup> Letter from Chairman Julius Genachowski, Federal Communications Commission, to the Honorable John D. Rockefeller, United States Senate; Kay Bailey Hutchison, United States Senate; Henry A. Waxman, U.S. House of Representatives; and Joe Barton, U.S. House of Representatives (Jan. 7, 2010), *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-295546A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295546A1.pdf) (last visited Feb. 4, 2010).

<sup>181</sup> Home Broadband Adoption 2009, at 4-5.

<sup>182</sup> Digital Nation, at 5-9, 11.

9.8% reported doing so in other places (*e.g.*, public libraries).<sup>183</sup> Moreover, a large percentage indicated that they have broadband connections at home, with 48.3% reporting a DSL connection and 17.7% reporting a cable modem connection.<sup>184</sup>

It is not just the Internet's accessibility but also its interactivity that has contributed to the importance of the Internet as a source of news and information. The interactive nature of the Internet distinguishes online sources from traditional media by allowing users to filter and select content specific to their interests and to contribute their own information, commentary, and opinions to the mix. In fact, the Pew Internet & American Life Project's Participatory News Consumer study released in March 2010 found that today "37% of Internet users have contributed to the creation of news, commented on it, or disseminated it via postings on social media sites like Facebook or Twitter."<sup>185</sup> As more users are consuming Internet news and participating in its creation and distribution, the medium increasingly performs the same functions as traditional news outlets, and also, in many respects, goes beyond traditional one-way news delivery. For these reasons, as early as 2003 and in the context of revising its media ownership rules, the Commission readily acknowledged the "important role [of the Internet] in the available media mix" as "a commonly-used source for news, commentary, community

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<sup>183</sup> Scarborough Research, *2009 Miami/West Palm Beach Combined Scarborough Release 1 Study*.

<sup>184</sup> *Id.*

<sup>185</sup> Participatory News Consumer, at 2; *see id.* at 40, 44 (finding that on a typical day, 51% of social networking site users get news from people they follow on sites such as Facebook or MySpace, 23% of this cohort specifically get news from news organizations or individual journalists that they follow on social networking sites, and 17% of Internet users have posted links and thoughts about news on a social networking site); *see also* OBI Working Paper No. 1, at 16 (reporting that 52% of all Internet users use the Internet to access social networking sites); The Nielsen Company, *Social Networking's New Global Footprint* (Mar. 9, 2009), <http://blog.nielsen.com/nielsenwire/global/social-networking-new-global-footprint/> (last visited Feb. 4, 2010) (documenting the increase in popularity of social networking sites in general).

affairs, and national/international information.”<sup>186</sup> And in 2008 the agency further recognized that:

The nearly instantaneous speed with which consumers can now communicate via the Internet has created a vastly improved two-way flow in the sharing of ideas between traditional news gatherers and news consumers, with a consequent power to affect the priority that the traditional media place on coverage of certain events and topics. Many previously passive consumers of news are already taking advantage of the opportunities the Internet allows to influence the newsgathering process. More than ever before, readers and audiences are themselves communicating with news gatherers to demand, directly and indirectly, coverage of specific topics.<sup>187</sup>

Although online news played a relatively small role just a few short years ago and thus was not even tracked in media consumption surveys, large percentages of Americans now obtain news online. Indeed, by early 2009 fully 70% of adult Internet users reported getting news online.<sup>188</sup> This represents a significant increase over prior years; in 2008, only 37% of Americans reported receiving news through the Internet regularly; in 2006, only 31% reported doing so; and in 2000 the percentage was only 23%.<sup>189</sup> In addition, during the short period between 2006 and 2008, the number of Americans responding that they read a newspaper online “yesterday” increased more than 50%, from 9% in 2006 to 14% in 2008,<sup>190</sup> a figure that has risen further since then. With respect to particular types of news, OBI Working Paper No. 1 found

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<sup>186</sup> 2003 Order, 18 FCC Rcd at 13,765-66 (¶ 365).

<sup>187</sup> 2008 Order, 23 FCC Rcd at 2032 (¶ 38).

<sup>188</sup> Sydney Jones and Susannah Fox, *Generations Online in 2009*, at 5 (Jan. 28, 2009) (“Generations Online in 2009”), [http://pewinternet.org/~media/Files/Reports/2009/PIP\\_Generations\\_2009.pdf](http://pewinternet.org/~media/Files/Reports/2009/PIP_Generations_2009.pdf) (last visited Feb. 4, 2010).

<sup>189</sup> Pew Research Center for People & the Press, *Pew Research Center Biennial News Consumption Survey*, at 3-4 (Aug. 17, 2008) (“Biennial News Consumption Survey 2008”), <http://people-press.org/reports/pdf/444.pdf> (last visited Feb. 4, 2010).

<sup>190</sup> *Id.* at 18.



that, by late 2009, 75% of Internet users reported getting local or community news online and 73% reported accessing international or national news on the Internet.<sup>191</sup>

Pew's Participatory News Consumer study confirms that the Internet's popularity as a source of news has continued to grow, finding that on a "typical day" 61% of Internet users access news online, while 71% do so "at least occasionally."<sup>192</sup> This same study also found that the Internet is now the third most popular news platform behind local television news and national television news, surpassing radio (54%), local newspapers (50%), and national newspapers (17%).<sup>193</sup> This study further demonstrates the central importance of the Internet as a news resource for an increasing segment of the population; Pew found that among news consumers that rely on only a single medium for news, 36% relied solely on the Internet, a higher figure than for any other medium.<sup>194</sup>

With respect to particular types of news, a recent survey asking people to identify their main source or sources for national and international news revealed that the Internet now serves

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<sup>191</sup> OBI Working Paper No. 1, at 16.

<sup>192</sup> Participatory News Consumer, at 10.

<sup>193</sup> *Id.* at 3. In fact, by 2008, the percentage of Americans who reported receiving news online regularly significantly exceeded the percentage of individuals saying that they regularly watched the network evening news (29%) or the network morning news (22%), and amounted to nearly the same percentage of respondents indicating that they regularly watch cable news (39%). Biennial News Consumption Survey 2008, at 3-4. Even as of May 2007, according to an FCC-commissioned study by Nielsen Media Research, Inc., when asked what they considered the "most important source for more in-depth information on specific news and current affairs topics," 23.5% of those surveyed cited Internet/websites, a higher percentage than those citing broadcast television stations (20.1%), local newspapers (9.8%), or national newspapers (4.7%). Nielsen Media Research, Inc., *Federal Communications Commission Telephone Study*, FCC Media Study 1, at 89 (June 2007), available at [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DA-07-3470A2.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A2.pdf) (last visited Feb. 4, 2010). Similarly, more Americans surveyed cited Internet/websites (16.8%) as the most important source of national news and current affairs than cited national newspapers (5.9%) or local newspapers (4.8%). *Id.* at 93.

<sup>194</sup> Participatory News Consumer, at 11.

as a primary source of such news for more Americans than newspapers and, indeed, all other media sources except television, which it may well overtake soon.<sup>195</sup> Among younger Americans (those under 30), the same percentage that identified television as one of their main sources for national and international news – 59% – identified the Internet as one of their main news sources.<sup>196</sup> Americans also are increasingly relying on the Internet for local news. As noted above, OBI Working Paper No. 1 found that 75% of Internet users – or 58.5% of all respondents – access local or community news online.<sup>197</sup> Further, the Internet allows Americans to connect more easily with government; OBI Working Paper No. 1 found that 58.5% of all respondents reported using the Internet to visit local, state, or federal government websites, and half of Internet users, or 39% of all respondents, used the Internet to get advice from a government agency about a health or safety issue.<sup>198</sup> These findings hold true across racial categories. More than two-thirds (67%) of Black respondents and 61% of Hispanic respondents recently reported having visited local, state, or federal government websites.<sup>199</sup> And minorities are more likely to use the Internet to obtain information about or to apply for government benefits.<sup>200</sup>

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<sup>195</sup> Internet Overtakes Newspapers, at 1.

<sup>196</sup> *Id.*

<sup>197</sup> OBI Working Paper No. 1, at 3, 16. A previous study had reached similar results. Pew Research Center for the People & the Press, *Many Would Shrug if Their Local Newspaper Closed*, at 9 (Mar. 12, 2009) (“Many Would Shrug”), <http://people-press.org/reports/pdf/497.pdf> (last visited Feb. 4, 2010) (reporting that 54% of respondents reported getting local news from the Internet either “regularly” (31%) or “sometimes” (23%)).

<sup>198</sup> OBI Working Paper No. 1, at 3, 16. This finding is also consistent with previous studies. See *Generations Online in 2009*, at 5 (reporting that 59% of respondents indicated that they had visited government websites).

<sup>199</sup> *Minority Broadband Adoption*, at 21.

<sup>200</sup> See *id.*

The Internet is also becoming a principal destination for political news and advocacy in particular. Data from the last three Presidential election cycles show steady increases in the percentage of American adults who went online for news or information about politics or an election: the percentage of adults who did so rose from 18% in 2000 to 29% in 2004, and then significantly to 44% in 2008.<sup>201</sup> Moreover, the percentage of Americans citing the Internet as one of their *major* sources for election news more than doubled over the same period from just 11% in 2000 to 26% in 2008.<sup>202</sup>

The increasing availability of broadband makes it even easier for users to control the amount and type of content they receive; the method by which they receive it (for example, PDA or mobile phone alert, podcast, or streaming video file); and the time or schedule on which they access it. Broadband has thus fueled the popularity of online news sources and will likely continue to do so. Those Internet users with home broadband connections are *twice as likely* to use the Internet as they are newspapers to get political news, and for these users the Internet is “by far the second-most important source of campaign news, behind only television and well ahead of newspapers, radio and magazines.”<sup>203</sup> Indeed, according to one study, approximately one-quarter of the growth of daily online news consumption between 2002 and 2006 was properly attributable to the rise in residential broadband adoption.<sup>204</sup>

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<sup>201</sup> Aaron Smith, *The Internet's Role in Campaign 2008*, at 48 (Apr. 15, 2009), [http://www.pewinternet.org/~media/Files/Reports/2009/The\\_Internets\\_Role\\_in\\_Campaign\\_2008.pdf](http://www.pewinternet.org/~media/Files/Reports/2009/The_Internets_Role_in_Campaign_2008.pdf) (last visited Feb. 4, 2010).

<sup>202</sup> *Id.* at 51.

<sup>203</sup> *Id.* at 7, 52.

<sup>204</sup> John B. Horrigan, *Online News*, at 4 (Mar. 22, 2006) (“Online News”), [http://www.pewinternet.org/~media/Files/Reports/2006/PIP\\_News.and.Broadband.pdf](http://www.pewinternet.org/~media/Files/Reports/2006/PIP_News.and.Broadband.pdf) (last visited Feb. 4, 2010).

One-third of Americans – half of Internet users – also already regularly watch news video online,<sup>205</sup> something which has only been made possible by broadband. In fact, “[n]ews shows are the most popular online programs – watched by about 43% of online TV viewers.”<sup>206</sup> Content providers recognize these trends, with YouTube creating a “News Near You” feature that, after recognizing a user’s location, provides a list of potentially relevant videos.<sup>207</sup> YouTube also recently invited the more than 25,000 news sources listed on Google News, which include many local news sources, to supply video for its site.<sup>208</sup> In addition to the draw of a diverse supply of news sources online, the increasing preference Americans have shown for news-on-demand – checking on the news from time to time when it is convenient for them to do so instead of getting it at regular times chosen by traditional media outlets<sup>209</sup> – is also likely to bolster reliance on online news sources.

The popularity of online video sites offering entertainment content in competition with television broadcasters has also continued to rise, increasing by 34.9% from the third quarter of

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<sup>205</sup> Biennial News Consumption Survey 2008, at 21, 25.

<sup>206</sup> Radio Business Report, Inc., *More Consumers Watch TV Online; Hulu Rising* (Sept. 8, 2009), <http://www.rbr.com/media-news/research/16890.html> (last visited Feb. 4, 2010) (citing the Consumer Internet Barometer, a quarterly report produced by The Conference Board and TNS based on surveys of 10,000 U.S. households).

<sup>207</sup> Brian Stelter, *Now on YouTube, Local News*, N.Y. TIMES, Aug. 3, 2009, *available at* <http://www.nytimes.com/2009/08/03/business/media/03youtube.html> (last visited Feb. 4, 2010).

<sup>208</sup> *Id.* YouTube now hosts individual channels for Tribune’s WGN-TV, WPIX(TV), KTLA(TV), WSFL-TV, WTTV(TV), and WTIC-TV. *See* <http://www.youtube.com/user/wgn> (last visited Feb. 18, 2010); <http://www.youtube.com/user/WPIX> (last visited Feb. 18, 2010); <http://www.youtube.com/user/ktla> (last visited Feb. 18, 2010); <http://www.youtube.com/user/WSFL> (last visited Feb. 18, 2010); <http://www.youtube.com/user/wttv> (last visited Feb. 18, 2010); <http://www.youtube.com/user/WTIC> (last visited Feb. 18, 2010).

<sup>209</sup> Biennial News Consumption Survey 2008, at 33.

2008 to the third quarter of 2009.<sup>210</sup> Online video viewing continues to soar with nearly 31 billion videos viewed in November 2009 by more than 170 million U.S. Internet users.<sup>211</sup> Indeed, one of the most popular sites – Hulu.com – is now commanding higher ad prices for some prime time shows than over-the-air TV,<sup>212</sup> and reportedly garnered more viewers in July 2009 than Time Warner Cable, one of the nation’s largest cable operators.<sup>213</sup> As a result of the dramatic growth in online viewing, Nielsen plans to incorporate online viewership into the TV ratings used for buying and selling of advertising this year.<sup>214</sup> Thus, due to unique characteristics that distinguish the Internet from traditional media, it has become a significant source for Americans of local and other news and information, as well as entertainment, and is likely to become even more of a factor as Internet usage in general and broadband adoption in particular continue to grow.<sup>215</sup>

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<sup>210</sup> The Nielsen Company, *Three Screen Report: TV Remains Strong as DVR and Online Video Show Most Growth* (Dec. 7, 2009), [http://blog.nielsen.com/nielsenwire/online\\_mobile/three-screen-report-tv-remains-strong-as-dvr-and-online-video-show-most-growth/](http://blog.nielsen.com/nielsenwire/online_mobile/three-screen-report-tv-remains-strong-as-dvr-and-online-video-show-most-growth/) (last visited Feb. 4, 2010).

<sup>211</sup> PR Newswire, *November Sees Number of U.S. Videos Viewed Online Surpass 30 Billion for First Time on Record*, Jan. 5, 2010, <http://www.prnewswire.com/news-releases/november-sees-number-of-us-videos-viewed-online-surpass-30-billion-for-first-time-on-record-80739807.html> (last visited Feb. 4, 2010).

<sup>212</sup> See Brett Pulley and Andy Fixmer, *Loyal ‘Simpsons’ Fans Fetch Higher Ad Rates on Web*, Bloomberg.com, June 25, 2009, <http://www.bloomberg.com/apps/news?pid=20601204&sid=atKGiQOMco.Y> (last visited Feb. 4, 2010).

<sup>213</sup> See *Hulu Had More Viewers in July than Time Warner Cable*, BROADCAST ENGINEERING, Sept. 3, 2009, available at <http://broadcastengineering.com/news/hulu-had-more-viewers-in-july-than-time-warner-090709/> (last visited Feb. 4, 2010).

<sup>214</sup> See Joe Mandese, *Nielsen Unveils Plan To Add Online Viewing To C3 Ratings*, MEDIA DAILY NEWS, Jan. 22, 2010, available at [http://www.mediapost.com/publications/?fa=Articles.showArticle&art\\_aid=121116](http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=121116) (last visited Feb. 4, 2010).

<sup>215</sup> There has also been a proliferation of hyperlocal news sites on the Internet. For instance, in June 2009, AOL acquired Patch and has since created AOL Patch local news web sites for small towns throughout New York, New Jersey, and Connecticut, with a goal of expanding the service

Further, the rise of Internet sites such as Craigslist, a free online classifieds site with separate sub-domains for 500 cities across 50 countries that is now one of the most popular destinations online, shows how the Internet is taking on many of the functions long-served by traditional news media.<sup>216</sup> Craigslist leverages filtering and search functionality in order to cater to an individual's particular interest, and that and other online classified advertising services have contributed to the steep decline in the traditional print classifieds business.<sup>217</sup> As Commissioner Baker recently explained, "the success of Craigslist and eBay has significantly reduced highly profitable classified ads."<sup>218</sup> Other websites that have eroded classified

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to many more locales. AOL, Press Release, *AOL Acquires Two Local Services, Patch and Going* (June 11, 2009), <http://corp.aol.com/press-releases/2009/06/aol-acquires-two-local-services-patch-and-going> (last visited Feb. 12, 2010); Patch, *About Us*, <http://www.patch.com/about> (last visited Feb. 12, 2010). Each town's site has a dedicated editor who provides a steady stream of articles, photographs, and web listings covering a myriad of topics from tax ordinances to government hearings, high school sports, and traffic frustrations. Everyblock (which was acquired by MSNBC last summer) allows users to customize its site to receive aggregated local information relevant to their towns, such as municipal data, location-tagged photographs from Flickr, and business reviews from Yelp; the user can then have that information delivered to him or her automatically via e-mail or RSS feed reader. Everyblock, *About Everyblock*, <http://www.everyblock.com/about/> (last visited Feb. 12, 2010). Yahoo! Local delivers hyperlocal content to users through an extension of its existing site infrastructure, and Yahoo! Neighbors provides residents of the same area the ability to post questions and comments to which other residents respond. Yahoo!, *Yahoo! Local*, <http://local.yahoo.com/> (last visited Feb. 12, 2010); Yahoo!, *About Neighbors | Yahoo! Neighbors*, [http://local.yahoo.com/neighbors/bi\\_about.php](http://local.yahoo.com/neighbors/bi_about.php) (last visited Feb. 12, 2010). And Outside.in and Placeblogger have launched services that make lists of local sites and aggregated content available to users. Outside.in, *About Outside.in | Hyperlocal news in 57,830 neighborhoods*, <http://outside.in/about> (last visited Feb. 12, 2010); Placeblogger, *FAQ*, <http://www.placeblogger.com/faq> (last visited Feb. 12, 2010). As hyperlocal sites increase in number and use, surveys will likely track their growing popularity.

<sup>216</sup> Sydney Jones, *Online Classifieds*, at 4, 6 (May 22, 2009) ("Online Classifieds"), <http://www.pewinternet.org/~media/Files/Reports/2009/PIP%20-%20Online%20Classifieds.pdf> (last visited Feb. 4, 2010).

<sup>217</sup> According to NAA, which tracks advertising expenditures in a number of categories and product/service types on an annual basis, total expenditures on classifieds in all categories declined by 29.7% in 2008 and another 38.1% in 2009. *See Annual Advertising Expenditures*.

<sup>218</sup> *Hands off the Journalist*, Remarks of Commissioner Meredith Attwell Baker Before The Media Institute (Jan. 21, 2010), *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-295867A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295867A1.pdf) (last visited Feb. 4, 2010).

advertising revenues for newspapers, contributing to their deteriorating financial condition, include job search sites, automobile search sites, and real estate search sites covering residential and commercial sales and rentals. OBI Working Paper No. 1 shows that by October/November 2009, 57% of adults who use the Internet reported accessing online classifieds websites.<sup>219</sup> This is a significant increase over May 2009 when 49% reported doing so and an even more substantial increase over 2005 when 22% reported doing so.<sup>220</sup> The increasing use of such websites by consumers shows that people are turning to the Internet now more than ever for information previously provided largely by print copies of newspapers.

b. *The Miami-Ft. Lauderdale Market Is Well-Served By Abundant Internet Sites That Unquestionably Contribute To Localism, Diversity, And Competition.*

Today's Internet users have a multitude of online news sources from which to receive diverse information and commentary, including not only local daily newspaper, television station, and radio news sites, but also local pages from national providers like CNN and MSNBC, portals and aggregators such as Google and Yahoo!, international news sites such as the BBC, local news blogs, alternative news sites such as Alternet or Newsmax, and news listservs.<sup>221</sup> Locally oriented sites provide a rich source of unique information about, and perspectives concerning, community-wide issues. Importantly, a growing number also cater to

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<sup>219</sup> OBI Working Paper No. 1, at 16. The Minority Broadband Adoption study showed that 78% of Black and 64% of Hispanic American respondents use the Internet to find information about employment opportunities, significantly outpacing the 48% of Whites who use the Internet for job information. Minority Broadband Adoption, at 20-23.

<sup>220</sup> Online Classifieds, at 3-4.

<sup>221</sup> Online News, at 10-12.

highly localized, or even neighborhood-oriented, issues that often are too narrow for coverage by the mainstream media.<sup>222</sup>

The Miami-Ft. Lauderdale market is served by a wide variety of local news and information sites. These include not only an exceedingly large number of text-based sites, but also sites providing video, on a broad range of topics including local news, weather, and media; business; social and community organizations; culture and the arts; recreational activities and sports; education; public safety and emergencies; government and civic services; food and culinary events; hospitals, health, and medical education; political parties and candidates; religion; style and society; tourism; transportation and infrastructure; utilities; and miscellaneous other subjects. Multiple local sites also offer user-supplied content and classified advertising for automobiles, goods and services, employment, and real estate.

Moreover, usage of *independent* local news and information sites is extensive in the Miami-Ft. Lauderdale market. For example, between January and December of 2009, [www.coconutgrovegrapevine.blogspot.com](http://www.coconutgrovegrapevine.blogspot.com), which focuses on news, art, and events in the Coconut Grove neighborhood and surrounding Miami-Ft. Lauderdale area, had 75,679 unique visitors and 263,633 total visits. Eight other independent Miami-Ft. Lauderdale-oriented sites had more than 30,000 unique visitors and 11 had between 5,000 and 29,999 unique visitors.<sup>223</sup> The widespread availability and usage of these independent local websites contribute to the diversity of local news and information available in the Miami-Ft. Lauderdale market and reflect the limitless potential of the Internet to augment the already staggering number and variety of local news and information content sources in the Miami-Ft. Lauderdale media marketplace.

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<sup>222</sup> See *supra* note 215.

<sup>223</sup> Further information regarding usage of local independent Internet news sites in the market is appended hereto as Attachment 8.



c. *Mobile Video Applications And Other New Media Provide Additional Sources Of Information For Those “On The Go.”*

The mobile video market is one of the fastest growing segments of the video marketplace,<sup>224</sup> providing yet another alternative to traditional broadcasting outlets or newspapers as a source of information and entertainment for consumers, as well as a platform for advertisers to reach those consumers with their marketing messages. Mobile video can be accessed by a variety of methods including subscription wireless services on a mobile phone, downloads to a portable device, applications customized for the iPhone, iPad or BlackBerry, and soon over-the-air mobile DTV viewable on an array of portable devices.<sup>225</sup> Wireless providers, broadcasters, and other content providers are responding to the increased consumer demand for mobile video.

A recent Nielsen survey found that the percentage of subscribers watching video on a mobile phone increased by 53% between the third quarter of 2008 and the third quarter of 2009.<sup>226</sup> This trend appears likely to continue; indeed, a recent national survey conducted by

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<sup>224</sup> See The Nielsen Company, *A2/M2 Three Screen Report: 3rd Quarter 2009*, at 2, 4 (updated Dec. 18, 2009), [http://en-us.nielsen.com/etc/medialib/nielsen\\_dotcom/en\\_us/documents/pdf/white\\_papers\\_and\\_reports.Pa.r.30466.File.dat/3ScreenQ309\\_USrpt\\_12.07final.pdf](http://en-us.nielsen.com/etc/medialib/nielsen_dotcom/en_us/documents/pdf/white_papers_and_reports.Pa.r.30466.File.dat/3ScreenQ309_USrpt_12.07final.pdf) (“Nielsen A2/M2 3rd Quarter 2009 Study”) (last visited Feb. 1, 2010).

<sup>225</sup> See Tricia Duryee, *Mobile DTV Backers Prep New Video Devices For 2010*, MocoNews.net, Jan. 4, 2009, <http://moconews.net/article/419-mobile-dtv-backers-prep-new-video-devices-for-2010/> (last visited Feb. 4, 2010) (describing new devices, including a portable Mobile DTV receiver with DVD playback, netbook computers, a mobile Wi-Fi access point, USB receivers for laptops, and the Tivit, a device that receives Mobile DTV signals and transfers them to a device with a Wi-Fi connection); see also Television Broadcast, *Mobile DTV Beta Launch Scheduled*, Jan. 8, 2010, <http://www.televisionbroadcast.com/article/92816> (last visited Feb. 4, 2010); Todd Haselton, *LG to Launch Three North American Mobile DTV Phones at CES*, Mobile Burn, Dec. 29, 2009, <http://www.mobileburn.com/news.jsp?Id=8457> (last visited Feb. 4, 2010); see also, e.g., Tong Zhang, *Tivizen Mobile DTV Receiver Brings TV Watching Over Wi-Fi to Tablet, Laptop and Phone*, MobileTech Review, Apr. 12, 2010, <http://mobiletechreview.com/ubbthreads/showflat.php?Number=36719> (last visited Apr. 17, 2010).

<sup>226</sup> See Nielsen A2/M2 3rd Quarter 2009 Study, at 2, 4.

Magid Media Labs found that nearly 9 out of 10 respondents were interested in watching live news and weather programming on mobile devices.<sup>227</sup> At present, two wireless mobile video providers – MobiTV and MediaFLO – offer video content to a growing number of subscribers. MobiTV provides live video and video on demand (“VOD”) to more than seven million subscribers<sup>228</sup> and MediaFLO’s FLO TV service is available in the top 110 U.S. markets through a number of carriers.<sup>229</sup> In addition to providing service via hand-held devices, both MobiTV and MediaFLO are aggressively targeting the nascent market for in-vehicle live TV and on-demand programming. MobiTV’s chief marketing officer has commented that “it’s a viable use case that people like to be connected with news, entertainment and information services in the car.”<sup>230</sup> For CNN, broadcasting on FLO TV, a preinstalled video device in the car, is an opportunity to “notify the driver if there’s an accident on the highway up ahead and advise an alternate route or send breaking news alerts to the dashboard.”<sup>231</sup> Consumers increasingly are turning to mobile video for live information. MediaFLO noted that its “most dramatic

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<sup>227</sup> See Open Mobile Video Coalition, *Survey Reveals Widespread Appeal of Over-The-Air Broadcast Mobile Digital Television Delivering Live, Local News & Weather*, Dec. 9, 2009, available at [http://www.omvc.org/\\_assets/docs/press-releases/2009/OMVC-Survey-December-9-News-Release-FINAL.pdf](http://www.omvc.org/_assets/docs/press-releases/2009/OMVC-Survey-December-9-News-Release-FINAL.pdf) (last visited Feb. 4, 2010).

<sup>228</sup> See Peter Cervieri, *TV Everywhere – MobiTV*, ScribeMedia.org, Nov. 27, 2009, <http://www.scribemedi.org/2009/11/27/tv-everywhere-mobitv/> (last visited Feb. 4, 2010).

<sup>229</sup> Todd Spangler, *TV Behind the Wheel, Will In-Car TV Shift Into the Fast Lane – Or Is It a Non-Starter?*, MULTICHANNEL NEWS, Jan. 23, 2010, available at [http://www.multichannel.com/article/445558-TV\\_Behind\\_the\\_Wheel.php?nid=2226&source=link&rid=5977151](http://www.multichannel.com/article/445558-TV_Behind_the_Wheel.php?nid=2226&source=link&rid=5977151) (last visited Feb. 4, 2010).

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

viewership increases in 2008 occurred during live events,” such as live coverage of Hurricane Ike (increasing viewership by 31%) and the 2008 Presidential election.<sup>232</sup>

The end of analog broadcasting and the concomitant change to mandatory digital transmissions in June 2009 has presented broadcasters with the opportunity to reach viewers with information, entertainment, and public safety information by broadcasting a mobile video programming stream.<sup>233</sup> With the adoption of a mobile standard for over-the-air television in late 2009, television broadcasters now are well-positioned to take advantage of the mobile trend.<sup>234</sup> Indeed, by the end of 2009, approximately 30 stations were broadcasting a mobile DTV signal and more than 70 television stations announced plans to begin operating a mobile DTV stream by the end of 2010.<sup>235</sup> Trials of the OMVC mobile TV standard have been run in Chicago and Washington, D.C., and other cities will soon see additional trials. Recently, 12

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<sup>232</sup> Jason Ankeny, *MediaFLO USA: Users Watching 20 Minutes Per Day*, Fierce Mobile Content, Jan. 8, 2009, <http://www.fiercemobilecontent.com/story/mediaflo-usa-users-watching-20-minutes-day/2009-01-08> (last visited Feb. 4, 2010).

<sup>233</sup> See *Broadcasters Demo “Triple Play” of New DTV Services*, Radio Business Report/Television Business Report, July 28, 2009, <http://www.rbr.com/tv-cable/16039.html> (last visited Feb. 4, 2010); see also Stewart Wolpin, *Mobile DTV Is Ready to Roll into CES*, TWICE, Jan. 8, 2009, [http://www.twice.com/article/240652-Mobile\\_DTV\\_Is\\_Ready\\_To\\_Roll\\_Into\\_CES.php](http://www.twice.com/article/240652-Mobile_DTV_Is_Ready_To_Roll_Into_CES.php) (last visited Feb. 4, 2010) (quoting LG’s John Taylor, who notes, “what’s really important, if not more important, are their ability to receive local content and, therefore, their role in public safety or in a crisis”).

<sup>234</sup> Glen Dickson, *Mobile DTV Standard Approved*, BROAD. & CABLE, Oct. 16, 2009, available at [http://www.broadcastingcable.com/article/358341-Mobile\\_DTV\\_Standard\\_Approved.php](http://www.broadcastingcable.com/article/358341-Mobile_DTV_Standard_Approved.php) (last visited Feb. 4, 2010).

<sup>235</sup> See Tricia Duryee, *Mobile DTV Backers Prep New Video Devices For 2010*, MocoNews.net, Jan. 4, 2009, <http://moconews.net/article/419-mobile-dtv-backers-prep-new-video-devices-for-2010/> (last visited Feb. 4, 2010) (noting that OMVC says “to date, 30 U.S. stations have started offering Mobile DTV”); see also *Mobile DTV Beta Launch Scheduled*, Television Broadcast, Jan. 8, 2010, <http://www.televisionbroadcast.com/article/92816> (last visited Feb. 4, 2010) (describing a beta service launch that will include 20 free local broadcast channels); Todd Haselton, *LG to Launch Three North American Mobile DTV Phones at CES*, Mobile Burn, Dec. 29, 2009, <http://www.mobileburn.com/news.jsp?Id=8457> (last visited Feb. 4, 2010) (noting that “OMVC has said that 70 other stations have announced plans to roll-out Mobile DTV broadcasts by the end of 2010”).

major television broadcast groups, including NBC Universal, Fox, and ION, announced a joint venture designed to accelerate nationwide optimization of broadcast mobile DTV; the participating companies will contribute spectrum and content for a mobile over-the-air service that is expected to reach 150 million viewers.<sup>236</sup> In the second quarter of 2010, Sprint and Samsung will partner to launch a free trial of digital mobile video in the Washington, D.C. and Baltimore markets, bringing live TV programming from local broadcast affiliates to Sprint subscribers with a Samsung mobile device.<sup>237</sup> While over-the-air mobile DTV is still in its infancy and is likely to draw on existing sources of content initially, it is reasonable to anticipate that the launch of this new mobile service will drive the creation of content directed exclusively toward mobile viewers.<sup>238</sup>

Mobile video is available in many formats, including live programming, downloads, and VOD. Indeed, many broadcast stations and newspapers target mobile consumers by allowing the download of news and information segments to mobile devices from their websites. For example, the *Sun Sentinel* and the *Hartford Courant*, which is also owned by Tribune, offer podcast downloads on their websites directed toward mobile users. Others, such as Tribune's *Chicago Tribune*, *Los Angeles Times*, and WGN(AM), as well as the *News-Times* (Danbury,

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<sup>236</sup> Brian Stelter, *Local TV Stations in Venture for Mobile Programming*, N.Y. TIMES, Apr. 13, 2010, available at <http://www.nytimes.com/2010/04/14/technology/14mobile.html?dbk> (last visited Apr. 19, 2010).

<sup>237</sup> Ray Willington, *Mobile DTV Launch Set for May 3 in Washington, D.C.*, Hot Hardware, Apr. 13, 2010, <http://hothardware.com/News/Mobile-DTV-Launch-Set-For-May-3rd-In-Washington-DC/> (last visited Apr. 17, 2010).

<sup>238</sup> See Mobile Content Writers, <http://www.mobilecontentwriters.com> (last visited Feb. 4, 2010) (a company focused on creating new mobile content); see also Jason Ankeny, *2010 Prediction No. 1: Micropayments Will Galvanize Original Mobile Content Efforts*, Fierce Mobile Content, Jan. 4, 2010, <http://www.fiercemobilecontent.com/special-reports/2010-prediction-no-1-micropayments-will-galvanize-original-mobile-content-efforts#ixzz0e3QFdh4m> (last visited Feb. 4, 2010) (noting that the micropayment method should “inspir[e] a new wave of original, made-for-mobile efforts”).

Connecticut) and *Chicago Sun-Times*, now offer customized iPhone applications to allow users to access real-time information on local news, sports, traffic, and weather from the properties' websites.<sup>239</sup> Additionally, certain new devices on the market have been specifically designed to bring over-the-air broadcasts to iPhones, Blackberries, laptops and other devices equipped with Wi-Fi, thus converting existing equipment into a mobile-DTV accessible device.<sup>240</sup>

The popularity of the iPhone has driven the creation of iPhone web applications providing consumers with another source of news and information accessible when convenient for the viewer. In fact, a recent search of the iPhone website for “news” applications (*excluding* sports and weather applications) generated a list of more than 480 applications, such as, *Nashville 24/7*, a hyperlocal news site; *The New Yorker* magazine; and *NPR Headline News*.<sup>241</sup> The introduction of the larger-screen iPad promises to provide another mobile news opportunity for consumers.<sup>242</sup> Likewise, more traditional content sources have recognized the growth opportunities in the mobile market and are reaching out to the mobile consumer. For example, CBS has created a website targeted to the mobile viewer that provides access to news feeds,

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<sup>239</sup> See Art of the iPhone, *Chicago Tribune News Reader on Your iPhone*, <http://artoftheiphone.com/2009/02/04/chicago-tribune-news-reader-and-sports-reader-free-iphone-apps/> (last visited Feb. 4, 2010); see also Mobile Marketing Association, *News Over Wireless: Local TV Stations Launch iPhone Apps*, available at <http://www.mmaglobal.com/studies/news-over-wireless-local-tv-stations-launch-iphone-apps-news-over-wireless> (last visited Feb. 4, 2010) (noting that top stories and weather content account for 50-60% of all traffic on the applications and that readers make heavy use of the application during severe weather events). *Newsday*, in which Tribune has an approximate 3% indirect equity interest, has a similar application.

<sup>240</sup> See Stephen Lawson, *Mobile DTV Goes Wi-Fi to Reach iPhones*, IDG News Service (Jan. 4, 2009), [http://www.pcworld.com/article/185853/mobile\\_dtv\\_goes\\_wifi\\_to\\_reach\\_iphones.html](http://www.pcworld.com/article/185853/mobile_dtv_goes_wifi_to_reach_iphones.html) (last visited Feb. 4, 2010).

<sup>241</sup> Apple Web, <http://www.apple.com/webapps/news/> (last visited Apr. 17, 2010).

<sup>242</sup> *iPad's Early App Economy: Games Dominant, News Makes Inroads*, paidcontent.org, Apr. 7, 2010, <http://paidcontent.org/article/419-ipad-early-app-economy-games-dominant-news-makes-in-roads/> (last visited Apr. 18, 2010).

sports, weather, and entertainment programming in a mobile-friendly format.<sup>243</sup> During significant news events, CBS has encouraged the submission of user-generated content.<sup>244</sup>

In addition to mobile video applications, there are a host of new ways for information providers to reach audiences while they are away from home or work. For example, there are now screens conveying news, information, and advertising – much of it locally-oriented – in building lobbies and elevators, taxicabs, truck stops, and other locales.<sup>245</sup> These screens, along with mobile video applications, provide additional and alternative sources of information, adding to the diversity of voices available in local markets.

3. Tribune’s Miami-Ft. Lauderdale Combination Has Had, And Will Have, No Adverse Impact On Competition.

The Commission and the courts have long recognized that the NBCO Rule itself is not necessary to protect competition. In 2003, the Commission determined that most advertisers simply “do not view newspapers, television stations, and radio stations as close substitutes,”<sup>246</sup> and that “at least for purchasers of advertising time,” newspapers, television and radio “make up

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<sup>243</sup> CBS Mobile, <http://www.cbseyemobile.com> (last visited Feb. 4, 2010).

<sup>244</sup> See Jason Ankeny, *CBS Mobile Calls For User-Generated Video Submissions*, Fierce Mobile Content, Jan. 16, 2009, [http://www.fiercemobilecontent.com/story/cbs-mobile-calls-user-generated-video-submissions/2009-01-16?utm\\_medium=rss&utm\\_source=rss&cmp-id=OTC-RSS-FMC0](http://www.fiercemobilecontent.com/story/cbs-mobile-calls-user-generated-video-submissions/2009-01-16?utm_medium=rss&utm_source=rss&cmp-id=OTC-RSS-FMC0) (last visited Feb. 4, 2010) (CBS online and mobile properties are “inviting Americans to submit their videos and photos as part of a multi-platform project exploring the challenges facing the country as President-elect Barack Obama takes office.”).

<sup>245</sup> See, e.g., Out of Home Video Advertising Bureau, [www.ovab.org](http://www.ovab.org) (last visited Feb. 4, 2010); see also Out of Home Video Advertising Bureau, *Network Planning Guide*, <http://www.ovab.org/OVAB%20Network%20Planning%20Guide%20August.xls> (last visited Feb. 4, 2010) (providing information regarding various providers of out of home video screens).

<sup>246</sup> *2003 Order*, 18 FCC Rcd at 13,749 (¶ 332); see *id.* at 13,713 (¶ 243) (addressing the radio advertising market and stating that “[w]e conclude that advertisers do not view radio stations, newspapers, and television stations as substitutes”); see *Further Notice*, 21 FCC Rcd at 8844-45 (¶ 24).

distinct product markets.”<sup>247</sup> Further, to the extent that any advertisers tend to substitute between media, the Commission found that newspaper/broadcast combinations continue to face competition from a number of separately-owned media outlets in their local markets.<sup>248</sup> Accordingly, the FCC found that elimination of the ban could not “adversely affect competition in any product market.”<sup>249</sup> No party directly challenged this aspect of the FCC’s *2003 Order*,<sup>250</sup> and the Third Circuit expressly agreed with the agency’s determination that “repealing the cross-ownership ban was necessary to promote competition.”<sup>251</sup> The Commission reaffirmed this conclusion in its *2008 Order*, stating that newspaper/broadcast combinations do not “adversely affect competition in any product market.”<sup>252</sup>

Even to the extent that competition concerns might be considered relevant to evaluating the instant transaction, an analysis of the concentration levels and revenue shares for broadcasters and newspaper publishers in the Miami-Ft. Lauderdale DMA demonstrates that common ownership of WSFL-TV and the *Sun Sentinel* has not adversely affected, and will not adversely affect, competition among media outlets in that DMA. The HHI for traditional broadcast and newspaper media in Miami-Ft. Lauderdale is 1,115, more than 240 points lower than the national average of 1,359.<sup>253</sup> (The HHI is the metric utilized by the Federal Trade

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<sup>247</sup> *2003 Order*, 18 FCC Rcd at 13,749 (¶ 332); *see also 2008 Order*, 23 FCC Rcd at 2032 (¶ 39 n.131).

<sup>248</sup> *2003 Order*, 18 FCC Rcd at 13,753 (¶ 340).

<sup>249</sup> *Id.* at 13,749 (¶ 332); *Further Notice*, 21 FCC Rcd at 8844-45 (¶ 24).

<sup>250</sup> *Prometheus*, 373 F.3d at 398 (noting objections only to “the localism and diversity components of the Commission’s rationale”).

<sup>251</sup> *Id.* at 400-01; *see Further Notice*, 21 FCC Rcd at 8846 (¶ 28).

<sup>252</sup> 23 FCC Rcd at 2032 (¶ 39 n.131).

<sup>253</sup> BIA Report, at 12.

Commission and the Department of Justice (and otherwise widely accepted) as an appropriate measure of concentration.) An HHI of 1,115 is indicative of a market that is at the low end of the “moderately concentrated” range as defined by the Department of Justice’s Merger Guidelines and much closer to the 1,000 level that represents an unconcentrated market than the 1,800 level that represents a “highly concentrated” market.<sup>254</sup> Moreover, each segment of the traditional media in the Miami-Ft. Lauderdale DMA is highlighted by robust competition. The *Sun Sentinel* competes with *The Miami Herald* and other dailies; WSFL-TV competes with 12 other commercial television stations, including four owned by the Big-four networks (NBC and CBS); and there are 64 full-power commercial radio stations competing throughout the market. Further, the Univision affiliate in the Miami-Ft. Lauderdale market is a very strong competitor and ranks fourth in revenue market share.<sup>255</sup>

A number of factors further demonstrate that Tribune’s common ownership of WSFL-TV and the *Sun Sentinel* has not resulted in increased media concentration in the Miami-Ft. Lauderdale market. First, the level of concentration in the Miami-Ft. Lauderdale market has decreased since 2000, illustrated by a decline in the HHI from 1,351 to 1,115.<sup>256</sup> Second, over this same period, Tribune’s share of advertising revenue among traditional media has decreased from 25.1% in 2000 to 21.1% in 2008, demonstrating that Tribune does not have market power.<sup>257</sup> This wide distribution of revenues indicates a strongly competitive market.

In addition, the actual concentration level in the Miami-Ft. Lauderdale media market is much lower than is reflected by this HHI calculation, because this analysis was based only on

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<sup>254</sup> See *id.* at 11.

<sup>255</sup> *Id.* at 8, 12-13.

<sup>256</sup> See *id.* at 14.

<sup>257</sup> See *id.* at 9-10.



competition among three traditional outlets – newspapers, television, and radio. It does not account for advertising revenue that flows to non-traditional media, including Yellow Pages, direct mail, out-of-home, local cable systems, online, Internet Yellow Pages, local magazines, mobile, and email marketing. Given the increasingly significant role played by non-traditional media, the Commission must take into account that the advent and ascendancy of these media have resulted in much greater competition. When this wider media marketplace is considered, the analysis demonstrates conclusively that concentration in the Miami-Ft. Lauderdale advertising market is and is likely to remain low. Findings from a recent study indicate that, as of August 2009, the use of digital media (including the Internet) by small and medium-sized businesses for advertising surpassed their use of radio, newspaper, and television for the first time.<sup>258</sup> The study shows that 77% of local businesses are using digital media for advertising, up from 73% a year ago, while the percentage using traditional media decreased from 74% last year to 69% this year.<sup>259</sup> Further illustrating the prominent role played by non-traditional media generally, another study concluded that businesses of all sizes spent \$23.4 billion on Internet advertising in 2008 in the United States, more than was spent on radio, outdoor advertising, or Yellow Pages and about the same as was spent on consumer magazines.<sup>260</sup> These trends in use away from traditional media (newspapers and radio and television stations) and toward new media are expected to continue. Indeed, estimates released earlier this year predict continued

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<sup>258</sup> *Milestone: Local Online Tops Traditional*, INSIDE RADIO, available at <http://www.insideradio.com/Article.asp?id=1465446&spid=33231> (last visited Feb. 9, 2010).

<sup>259</sup> *Id.*; see BIA/The Kelsey Group, *Penetration of Online Media Surpasses Traditional Media for First Time Among Small-Business Advertisers, According to BIA's The Kelsey Group*, available at <http://www.kelseygroup.com/press/pr090820.asp> (last visited Feb. 9, 2010).

<sup>260</sup> BIA Report, at 15 (citing Hamilton Consultants, *Economic Value of the Advertising – Supported Internet Ecosystem*, June 10, 2009, available at [http://www.iab.net/insights\\_research/530422/economicvalue](http://www.iab.net/insights_research/530422/economicvalue) (last visited Feb. 9, 2010)).

declines in spending on traditional media between 2009 and 2014 (compounded annual growth rate (“CAGR”) of -1.2%), while new spending on non-traditional media is expected to grow substantially (CAGR of 19.3%) over that same period.<sup>261</sup>

In the Miami-Ft. Lauderdale DMA, media other than the traditional media garnered a 52.9% share, or more than half, of total advertising revenues in 2008, with new media in particular (including online, Internet Yellow Pages, Mobile, and email marketing) earning a sizeable 7.1% share.<sup>262</sup> The amount earned by just these four new media was nearly as much as the 10.6% spent on radio and nearly half of the 17.9% spent on television stations.<sup>263</sup> When the wider market of traditional and new media is taken into consideration, Tribune’s share of advertising revenue in the Miami-Ft. Lauderdale DMA was just 8.1% in 2008.<sup>264</sup> Accordingly, it is clear that Tribune’s common ownership of WSFL-TV and the *Sun Sentinel* has not had, and will not have, an adverse impact on advertising competition, even if such competition were deemed legally relevant to evaluating the instant transaction.

**C. Separation Of The Commonly Owned Properties Would Have Adverse Public Interest Effects.**

As shown above, permitting Tribune’s Miami-Ft. Lauderdale combination to remain intact would serve the public interest in myriad ways without any diversity or competition-related concerns. By contrast, the forced divestiture of WSFL-TV or the *Sun Sentinel* would have the opposite effect. As demonstrated below and in the second attached report of BIA (“BIA Separation Analysis”), the assumption that an alternative purchaser would be willing and able to

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<sup>261</sup> *Id.* at 19.

<sup>262</sup> *Id.* at 19-20.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.* at 21.

acquire any of the properties subject to such a divestiture condition simply is untenable in today's highly challenging media marketplace.<sup>265</sup> Even assuming that such a purchaser could be found, there is no guarantee that such a new owner would have the resources or resolve to maintain the amount and caliber of local news, information, and other community services that are offered by each of Tribune's Miami-Ft. Lauderdale properties today.

The existence of a financially sound alternative buyer is a key premise underlying any assumption that compelled divestiture would conceivably serve the public interest. The supposition that such a buyer might exist for any media properties, including Tribune's South Florida properties, is unlikely under current marketplace realities. The meltdown of financial markets in the last two years has caused financial institutions to tighten loan qualifications substantially and dramatically decrease lending to consumers and businesses. The credit crunch has been particularly pronounced with respect to media properties, as several financial institutions recently have reduced or even eliminated their broadcast lending divisions.<sup>266</sup> Thus, financing for businesses with an interest in acquiring broadcast and newspaper properties is not readily available as a result of the global economic crisis.<sup>267</sup>

In addition, any company seeking to acquire a newspaper or broadcast property in the near term would face highly unfavorable industry conditions. As explained in greater detail in the BIA Separation Analysis, local television stations are increasingly competing with other sources of video programming, including cable systems, DBS operators, and Internet video

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<sup>265</sup> See Mark R. Fratrik, Ph.D., BIA Advisory Services, *An Analysis of the Effect on Diversity of Separation of Local Media Combinations*, at 2-3 (Feb. 22, 2010) ("BIA Separation Analysis") (Attachment 9 hereto).

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

streaming.<sup>268</sup> The resulting migration of broadcast television audiences to other media sources has led to a sharp drop in advertising sales.<sup>269</sup> This decline has been exacerbated by the downturn in the economy, with both national and local advertisers significantly curtailing advertising expenditures.<sup>270</sup> As a result, total television station revenues have been trending downward, with a staggering drop in their growth rate of 27.5% between 2007 and 2009 and a decrease in revenues of 22.4% in 2009 alone.<sup>271</sup>

The local daily newspaper industry has fared even worse in recent months. As discussed above and in the BIA Separation Analysis, daily newspapers are confronting intense and ever-increasing competition from new media sources, which has drained advertising revenues and depleted subscribership.<sup>272</sup> Total annual advertising revenues for the newspaper industry decreased by 16.6% in 2008, and projections for newspaper advertising revenues show a further decrease of 11.5% in the compounded annual growth rate over the next five years.<sup>273</sup> Indeed, in the first three quarters of 2009, these decreases accelerated. Total newspaper advertising for these three quarters fell to \$19.9 billion, a drop of 28.4% from the same period in 2008, and the print component of advertising dropped to \$17.9 billion (a 29.6% decline from the same period in 2008).<sup>274</sup>

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<sup>268</sup> *Id.* at 7-8.

<sup>269</sup> *Id.*

<sup>270</sup> *Id.* at 9.

<sup>271</sup> *Id.* at 8-9. Dr. Fratrik uses two-year revenue growth rates to even out the impact of federal political advertising in even-numbered years. *Id.* at 8.

<sup>272</sup> *See id.* at 10-12; *see also supra* Sections II.C, III.B.1.b, III.B.2.

<sup>273</sup> BIA Separation Analysis, at 12-13 (observing also that the print component of annual newspaper advertising decreased by nearly 18% in 2008).

<sup>274</sup> *Id.* at 12.

Given these market conditions, it is not surprising that the rate of sales for media properties is depressed. Media companies have been forced to file for bankruptcy or to shut down altogether as a result of severe financial hardship and the lack of interested buyers.<sup>275</sup> An examination of transaction activity for local media properties reveals a substantial decline in both the level of third-party interest in acquiring such properties and the value of properties sold.<sup>276</sup> For example, in 2009, 76 full-power television stations were sold for a total value of \$715 million, which represents a 74.1% decrease in the number of stations sold and an 84.5% decrease in the value of those sales as compared to 2007.<sup>277</sup> And, just 31 daily newspapers were sold in 2009 for a total of \$183.7 million, compared to an average of nearly 68 daily newspapers sold per year for an average of approximately \$6.977 billion per year in each of the previous five years.<sup>278</sup> The 2009 figures represent decreases of 54.4% in the number of newspaper sales and

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<sup>275</sup> See *id.* at 10-11, 13 (noting that a number of broadcast stations and newspapers recently filed for bankruptcy protection to maintain continued service, and that several newspapers have shut down their print editions after years of service to their local communities, while others have curtailed their production as part of cost saving measures); see also *supra* Section II.C.

<sup>276</sup> BIA Separation Analysis, at 4-7, 13-14.

<sup>277</sup> See *id.* at 5-6. These figures, furthermore, overstate the actual volume of transactions, because a large number of the transactions included stations owned by companies that have been forced into bankruptcy or reorganizations. See, e.g., *id.* at 5 nn.5 & 6; *PEJ 2010 State of the News Media Report*, Local TV, Summary Essay at 2, Ownership at 24-26, [http://www.stateofthemediamedia.org/2010/printable\\_local\\_tv\\_chapter.htm](http://www.stateofthemediamedia.org/2010/printable_local_tv_chapter.htm) (last visited Mar. 18, 2010) (noting that, although “[t]he market for local television stations was more active in 2009 than a year earlier[,] . . . most of this activity was due to bankruptcies and the availability of distressed properties at often below market value”).

<sup>278</sup> BIA Separation Analysis, at 13-14 (citation omitted); see also *PEJ 2010 State of the News Media Report*, Newspapers, Ownership at 34-36, [http://www.stateofthemediamedia.org/2010/printable\\_newspaper\\_chapter.htm](http://www.stateofthemediamedia.org/2010/printable_newspaper_chapter.htm) (last visited Mar. 18, 2010) (reporting that “[v]ery few papers of any size were sold in 2009, and for the few that did change hands there were typically some special circumstances,” often bankruptcy).

97.4% in the total value of transactions as compared to the averages for the previous five years.<sup>279</sup>

Even assuming the existence of an interested buyer able to procure adequate financing to purchase one of Tribune's Miami-Ft. Lauderdale properties, it is improbable that such a buyer would have the resources to provide high-quality local programming and almost certain that it would not be able to match the amount and caliber of local service currently offered by Tribune. The high-quality local news and investigative reporting that Tribune's South Florida properties currently provide is extremely costly. To make ends meet, a growing number of publishers and broadcasters have had to cut back on local news coverage.<sup>280</sup> In this environment, the synergies and cost efficiencies that can make such local service feasible are more critical than ever. As shown herein, cross-ownership of media properties produces extensive synergies.<sup>281</sup> Given the dismal outlook for the local broadcast and newspaper industries in these economic times, such synergies can make the difference between the provision of high-quality local news and information and its absence.

**D. Waiver Of The NBCO Rule Is Plainly Justified Here, And Denial Of The Requested Relief Would Be Inconsistent With The Administrative Procedure Act And Unconstitutional.**

As shown above and expanded upon below, waiver of the NBCO Rule is fully justified in this case and necessary to satisfy long-established principles of reasoned decision-making. Indeed, in these circumstances, denial of the requested relief not only would run counter to the positive presumption the agency is required to accord the Miami-Ft. Lauderdale combination, but

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<sup>279</sup> BIA Separation Analysis, at 14.

<sup>280</sup> *See supra* Section II.C.

<sup>281</sup> *See supra* Section III.A.

also would violate the Administrative Procedure Act (“APA”) as well as both the First and Fifth Amendments to the Constitution.

First, the Commission has now twice expressly rejected an absolute ban; to apply it here would be arbitrary and capricious. As discussed above, based on abundant factual evidence regarding the benefits of common ownership and the tremendous diversity and competition among newspapers and other media properties (especially in the nation’s largest markets), the Commission has found on two prior occasions that a blanket NBCO ban no longer serves the public interest.<sup>282</sup> This finding has been affirmed by the Third Circuit.<sup>283</sup> Having also twice adopted changes to the NBCO Rule that would allow continued common ownership of Tribune’s Miami-Ft. Lauderdale combination, the Commission cannot now justify a contrary decision in this proceeding.<sup>284</sup> The Supreme Court’s recent decision in *Fox Television Stations, Inc. v. FCC*<sup>285</sup> confirms this conclusion. There, the Court held that an agency that departs from prior decisions must “provide a more detailed justification . . . when . . . its new policy rests upon factual findings that contradict those which underlay its prior policy.”<sup>286</sup> The facts here are *more compelling* than those before the Commission when it made its prior changes to the NBCO Rule.

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<sup>282</sup> See *supra* Sections II.A.3-4.

<sup>283</sup> See *id.*

<sup>284</sup> See, e.g., *Radio-Television News Directors Ass’n v. FCC*, 184 F.3d 872, 887 (D.C. Cir. 1999) (“RTNDA”); see also *Nat’l Broad. Co. v. United States*, 319 U.S. 190, 225 (1943) (“If time and changing circumstances reveal that the ‘public interest’ is not served by application of [a regulation], it must be assumed that the Commission will act in accordance with its statutory obligations.”).

<sup>285</sup> 129 S. Ct. 1800 (2009).

<sup>286</sup> *Id.* at 1811; see also *Wyeth v. Levine*, 129 S. Ct. 1187, 1203-04 (2009) (concluding that an agency statement that “represent[ed] a dramatic change in position” “does not merit deference” and “is entitled to no weight”).

It also would be arbitrary and capricious to deny Reorganized Tribune a waiver to own WSFL-TV and the *Sun Sentinel* when the television station could be owned in common with other television or radio stations (or other media properties, such as cable systems) in the market without the need for any waiver at all. At the time it adopted the original NBCO Rule, the Commission relied heavily on the fact that owners of television and radio stations also could not acquire a cross-ownership interest in another medium of mass communications in the same market,<sup>287</sup> and the Supreme Court emphasized this “one-property-per-owner” regulatory regime in upholding the rule.<sup>288</sup> But the Commission has since liberalized virtually all of its other broadcast ownership rules and their corresponding waiver policies in response to the same changes in the media marketplace that the FCC found warranted revision of the NBCO Rule.<sup>289</sup> Nor can the agency rely on the Supreme Court’s decision, rendered more than thirty years ago, regarding the facial constitutionality of the NBCO Rule to justify its application here. “The mere fact that a rule is not unconstitutional does not therefore mean that its perpetuation is not arbitrary and capricious.”<sup>290</sup> Simply put, a “thirty year old conclusion that . . . [a] challenged rule[] survive[s] First Amendment scrutiny” cannot justify its application “in the face of modern challenges to the rules’ consistency with the FCC’s regulatory mandate.”<sup>291</sup>

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<sup>287</sup> *1975 Order*, 50 F.C.C.2d at 1050 (¶ 14).

<sup>288</sup> *NCCB*, 436 U.S. at 801 (noting that the NBCO Rule “treat[s] newspaper owners in essentially the same fashion as other owners of the major media of mass communications”).

<sup>289</sup> *E.g.*, *Review of the Comm’n’s Regulations Governing Television Broad.*, Report and Order, 14 FCC Rcd 12,903, 12,932 (¶ 64), 12,947 (¶¶ 100-01) (1999) (“*Television Ownership Order*”) (relaxing the television duopoly rule and the prohibition on common ownership of radio and television stations (the “one-to-a-market rule”)). *Cf. Comcast Corp. v. FCC*, 579 F.3d 1 (D.C. Cir. 2009) (vacating 30% cap on horizontal cable ownership based on the FCC’s failure adequately to consider competition to cable from DBS).

<sup>290</sup> *RTNDA*, 184 F.3d at 882.

<sup>291</sup> *Id.*



To say that there are “modern challenges to the” NBCO Rule’s contemporary validity is an understatement. The agency simply cannot, consistent with the APA, ignore the vast changes that have occurred in the media marketplace since 1975. These include not only the growth in the number of traditional media sources – newspapers and broadcast television and radio stations – but also the introduction and increase in popularity of cable and other MVPDs, mobile video, and perhaps most significantly, the Internet.<sup>292</sup> Indeed, Congress recently recognized the importance of the Internet in facilitating diversity and civic discourse by instructing the Commission to develop a National Broadband Plan that would, among other things, include “a plan for the use of broadband infrastructure and services in advancing . . . civic participation,” and the agency already has taken steps towards doing so.<sup>293</sup> On March 16, 2010, the FCC issued its report to Congress on the National Broadband Plan; several of its recommendations could significantly affect television broadcasting, including the proposed reallocation of portions of the present television broadcasting spectrum for non-broadcast mobile and wireless services, incentive spectrum auctions to encourage current spectrum holders to relinquish all or a portion of their current holdings, the imposition of user fees on spectrum holders, and rule changes to permit and encourage spectrum sharing and innovative uses of spectrum.<sup>294</sup> On April 8, 2010, the FCC released its proposed “action agenda” for implementing key recommendations of the National Broadband Plan that involve rulemakings.<sup>295</sup>

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<sup>292</sup> See *supra* Section III.B.2.

<sup>293</sup> 47 U.S.C. § 1305(k); see FCC, Public Notice, *Comment Sought on Moving Toward a Digital Democracy*, DA 09-2431 (rel. Nov. 17, 2009).

<sup>294</sup> FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2009), available at <http://www.broadband.gov/plan/> (last visited Apr. 18, 2010).

<sup>295</sup> FCC, Public Notice, *FCC Announces Broadband Action Agenda* (rel. Apr. 8, 2010).

FCC Commissioners and high-ranking staff also have acknowledged the fundamental changes that new technologies, particularly the Internet, have brought about. For instance, Commissioner Clyburn recently explained that “[t]oday, thanks to an open Internet, a small community newspaper or a budding journalist essentially has the same distribution network as the *Washington Post* or the *Memphis Commercial Appeal*.”<sup>296</sup> Commissioner Copps has similarly recognized that “[i]ncreasingly our national conversation, our source for news and information, our knowledge of one another, will depend upon the Internet.”<sup>297</sup> And Blair Levin, Executive Director of the FCC’s Omnibus Broadband Initiative, explained that “[m]uch like the printing press allowed the power of information to diffuse from the hands of the elite few to the many, the Internet has allowed for the democratization of content,” and that even if we cannot “precisely predict our digital future we know that it leads to **more** . . . opportunities to communicate, more viewpoints, [and] more ideas.”<sup>298</sup> It would be arbitrary and capricious for the Commission to ignore the dramatic impact on the manner in which people obtain news and

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<sup>296</sup> Remarks of Mignon L. Clyburn at the Workshop on Speech, Democracy and the Open Internet (Dec. 15, 2009), *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-295258A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295258A1.pdf) (last visited Jan. 28, 2010).

<sup>297</sup> Remarks of Commissioner Michael J. Copps at the Workshop on Speech, Democracy and the Open Internet (Dec. 15, 2009), *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-295241A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295241A1.pdf) (last visited Jan. 28, 2010).

<sup>298</sup> *Wired for Social Justice*, Speech by Blair Levin, Executive Director, Omnibus Broadband Initiative, at the Minority Media and Telecommunications Council’s Broadband and Social Justice Summit (Jan. 22, 2010) (emphasis in original), *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-295886A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295886A1.pdf) (last visited Jan. 28, 2010). Another high-ranking government official with responsibility for the nation’s broadband policies has echoed these sentiments. See *The Internet: Evolving Responsibility for Preserving a First Amendment Miracle*, Remarks of Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information, before The Media Institute (Feb. 24, 2010), *available at* [http://www.ntia.doc.gov/presentations/2010/MediaInstitute\\_02242010.pdf](http://www.ntia.doc.gov/presentations/2010/MediaInstitute_02242010.pdf) (last visited Mar. 4, 2010) (recognizing that “[f]rom the very first encounter between our Constitution and the Internet, courts have recognized the Internet as an unprecedented gift to the First Amendment” and stating that “[t]he Internet, and particularly broadband Internet, are the central nervous system of our information economy and society”).

information that the Internet has had in evaluating the instant request for waiver of the NBCO Rule, particularly given the agency's and Congress' recognition of the significance of the Internet in other contexts.<sup>299</sup>

Strict application of an absolute ban on cross-ownership of newspapers and broadcast stations here, especially given the changes that have occurred over the last 30 years, also would violate the Constitution. The Due Process Clause of the Fifth Amendment includes an equal protection component,<sup>300</sup> under which governmental actions that discriminate against constitutionally protected activities are subject to heightened scrutiny.<sup>301</sup> Under the applicable standard, even content-neutral regulations that single out a medium must be “narrowly tailored” and “no greater than is essential to further” a “substantial” government interest.<sup>302</sup> Application

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<sup>299</sup> At the heart of the APA's “reasoned decisionmaking” requirement is the need for an agency to “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1989); see also *HBO, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (“[A] regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.”); *Quincy Cable TV, Inc. v. FCC*, 768 F.2d 1434, 1463 (D.C. Cir. 1985) (“[T]he Commission has failed entirely to determine whether the evil the rules seek to correct is a real or merely a fanciful threat.”). Nor may the Commission take the Internet into account in its other proceedings, such as its broadband review, while ignoring it here. Cf. *Airline Pilots Ass'n v. FAA*, 3 F.3d 449, 453 (D.C. Cir. 1993) (striking down agency decision as “internally inconsistent and therefore unreasonable and impermissible under *Chevron*”); *General Chemical Corp. v. United States*, 817 F.2d 844, 855 (D.C. Cir. 1987) (finding agency decision arbitrary and capricious due to its “inconsistencies” and “failures of explanation”).

<sup>300</sup> *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

<sup>301</sup> *Community-Serv. Broad. of Mid-America v. FCC*, 593 F.2d 1102, 1122 (D.C. Cir. 1978) (*en banc*) (stating that intermediate scrutiny applies in the equal protection context whenever “noncontent-based distinctions . . . affecting First Amendment rights” are drawn); see also *Carey v. Brown*, 447 U.S. 455, 461-62 (1980) (“When government regulation discriminates among speech-related activities in a public forum, the Equal Protection Clause mandates that the legislation be finely tailored to serve substantial state interests, and the justifications offered for any distinctions it draws must be carefully scrutinized.”); *Police Dep't of City of Chicago v. Mosley*, 408 U.S. 92, 98-99 (1972) (“[J]ustifications for selective exclusions from a public forum must . . . be tailored to serve a substantial governmental interest.”).

<sup>302</sup> *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 662 (1994); see also *Minneapolis Star and Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585, 592-93 (1983) (finding such

of the NBCO Rule to prohibit continued ownership of the longstanding Tribune combination in Miami-Ft. Lauderdale could not survive such heightened scrutiny because the Commission already has found that the NBCO Rule does *not* further the government’s interests in localism or diversity, and, in any case, an absolute ban clearly restricts more speech than is essential.

In addition, a refusal to waive the NBCO Rule to permit continued common ownership of the properties involved here would contravene the First Amendment. In light of current marketplace realities, the “scarcity rationale” which the Commission and the courts have used to justify applying a lesser degree of First Amendment scrutiny to broadcast speech regulations is extremely questionable at best.<sup>303</sup> But even assuming that a minimal standard of constitutional scrutiny were appropriate, rigid application of the NBCO Rule to Tribune’s South Florida combination would not be “reasonable.”<sup>304</sup> The FCC already has found, on the basis of an extensive record, that the NBCO Rule in its current form is no longer necessary and that it actually results in *less* news and public affairs programming, determinations that the Third Circuit upheld. In the face of these conclusions, a contrary decision now would impermissibly interfere with Tribune’s First Amendment rights.

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differential regulation “presumptively unconstitutional” and “plac[ing] a heavy burden on the [government] to justify its action”).

<sup>303</sup> See, e.g., *Tribune*, 133 F.3d at 68 (noting the presence – more than a decade ago – of “persuasive evidence that the scarcity rationale is no longer tenable”); *Comm’n Proceeding Regarding The Personal Attack and Political Editorial Rules*, Public Notice, Joint Statement of Commissioners Powell and Furchtgott-Roth, 13 FCC Rcd 21,901, 21,940 (1998) (noting that “the Commission has unequivocally repudiated spectrum scarcity as a factual matter”); *Syracuse Peace Council*, Memorandum Opinion and Order, 2 FCC Rcd 5043, 5053 (¶ 65) (1987) (concluding – more than two decades ago – that “the scarcity rationale . . . no longer justifies a different standard of First Amendment review for the electronic press”); see also John W. Berresford, *The Scarcity Rationale for Regulating Traditional Broadcasting: An Idea Whose Time Has Passed* (Mar. 2005) (FCC Media Bureau Staff Research Paper), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-257534A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-257534A1.pdf) (last visited Feb. 22, 2010).

<sup>304</sup> *NCCB*, 436 U.S. at 796-97.

A refusal to grant the requested waiver of the NBCO Rule would violate Tribune’s First Amendment rights for three additional reasons as well. First, the NBCO Rule singles out particular speakers – newspaper publishers – restricting their speech alone, but such “differential treatment cannot be squared with the First Amendment.”<sup>305</sup> Second, any decision to apply the NBCO Rule based on the idea that newspapers and/or broadcast stations remain particularly “important” sources of news and information would rely on a constitutionally impermissible evaluation of the particular speaker’s identity.<sup>306</sup> Third, application of the NBCO Rule would run afoul of Supreme Court precedent establishing that “the concept that the government may restrict the speech of some elements in our society in order to enhance the relative voice of others is wholly foreign to the First Amendment . . . .”<sup>307</sup>

**E. Prompt Approval Of The Transaction, Including The Waiver Necessary To Permit Tribune’s Miami-Ft. Lauderdale Combination To Remain Intact, Would Be Consistent With The FCC’s Policy Of Affording Comity To The Bankruptcy Process.**

**1. The Commission Is Required To Reconcile Its Policies With Those Underlying The Bankruptcy Laws.**

“[A]gencies should constantly be alert to determine whether their policies might conflict with other federal policies and whether such conflict can be minimized.”<sup>308</sup> In keeping with this directive, the Commission has recognized that it “is obliged to reconcile its policies under the

<sup>305</sup> *Citizens United v. Federal Election Comm’n*, 130 S. Ct. 876, 884 (2010); *see id.* at 898 (“Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. . . . Speech restrictions based on the identity of the speaker are all too often simply a means to control content.”).

<sup>306</sup> *See id.* at 905 (rejecting proposition that speech could be “limited based on a speaker’s wealth” as a “necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker’s identity); *see also id.* at 883 (“[T]he Government may commit a constitutional wrong when it identifies certain preferred speakers.”).

<sup>307</sup> *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976) (citations omitted).

<sup>308</sup> *LaRose v. FCC*, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974) (“*LaRose*”).

Communications Act with the policies of other federal laws and statutes, including the bankruptcy laws in particular.”<sup>309</sup>

The Commission has acknowledged this obligation in a variety of contexts. It has traditionally deferred to bankruptcy courts concerning a debtor’s financial status.<sup>310</sup> Moreover, on numerous occasions, the agency has made exceptions to its usual policies in the interest of comity with the bankruptcy process. For example, although the FCC normally prohibits the sale of a station when there are outstanding “character issues” concerning the seller, an exception has long been made in bankruptcy cases in the interest of accommodating innocent creditors.<sup>311</sup>

2. The Commission Has Previously Taken Comity Into Account In Granting Ownership Waivers, And Should Do So Here.

The FCC also has recognized that comity with the bankruptcy process is an important element in its consideration of requests for waivers of its ownership rules, and that it “maintains the flexibility to respond to situations in which application of the . . . rules would be contrary to other public interest concerns.”<sup>312</sup> Ownership waivers “provide[] the requisite ‘safety valve’ under these ‘special circumstances’ of a Debtor emerging from Chapter 11.”<sup>313</sup>

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<sup>309</sup> *Dale J. Parsons, Jr.*, Memorandum Opinion and Order, 10 FCC Rcd 2718, 2720 (¶ 11) (1995).

<sup>310</sup> *E.g., Sam Jones, Jr.*, Memorandum Opinion and Order, 10 FCC Rcd 5330, 5341-42 (¶ 22) (1995).

<sup>311</sup> *E.g., Second Thursday Corp.*, Memorandum Opinion and Order, 22 F.C.C.2d 515, 515 (¶ 1) (1970).

<sup>312</sup> *Sam Jones, Jr.*, 10 FCC Rcd at 5341 (¶ 19).

<sup>313</sup> *Telemundo Group, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 1104, 1106 (¶ 12) (1994) (citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969)).

The Commission has taken comity into account in granting permanent waivers of its television duopoly and one-to-a-market rules and applying in its television satellite policies.<sup>314</sup> For example, in *Fox Television Stations Inc.* (“*Fox/WNYW*”), the agency granted a request for a declaratory ruling that a permanent waiver of the NBCO rule was warranted.<sup>315</sup> This holding was based in significant part on comity considerations. In its ruling, the FCC recited the objectives of the bankruptcy law – “equality of distribution among creditors, a fresh start for debtors, and the efficient and economical administration of cases”<sup>316</sup> – as well as the FCC’s obligation to “minimize, to the extent possible, any conflict between Commission policy and that of federal bankruptcy law.”<sup>317</sup> Thus, the Commission concluded:

[A] permanent waiver is an appropriate accommodation between communications-related policies and bankruptcy-related policies. In this regard, our decision will facilitate the task of the debtor, the creditors and the bankruptcy court by removing any uncertainties arising from the existence of our cross-ownership rule.<sup>318</sup>

Grant of a waiver in this case will serve the same bankruptcy law objectives the FCC identified in *Fox*. The bankruptcy process will provide for equitable distribution among Tribune’s creditors; the company is obviously in need of a “fresh start,” and grant of a waiver will, by

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<sup>314</sup> *E.g., Telemundo, Inc. v. FCC*, 802 F.2d 513, 518 (D.C. Cir. 1986) (satellite); *HBK NV LLC*, Memorandum Opinion and Order, DA 10-416, 2010 FCC LEXIS 1581, at \*9 n.11 (rel. Mar. 12, 2010) (satellite); *San Diego Television, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 14,689, 14,692 (¶ 11) (1996) (duopoly); *Dorothy J. Owens*, Memorandum Opinion and Order, 5 FCC Rcd 6615, 6615 (¶ 2) (1990) (one-to-a-market); *Channel 33, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 7674, 7679-80 (¶ 13) (1988) (duopoly).

<sup>315</sup> 8 FCC Rcd 5341 (granting a permanent waiver of the NBCO Rule to Fox to permit it to continue to hold the license for television station WNYW(TV) following the re-acquisition of the *New York Post* out of bankruptcy), *recon. den.*, 8 FCC Rcd 8744 (1993), *aff’d sub nom. Metro. Council of NAACP Branches v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995).

<sup>316</sup> *Fox/WNYW*, 8 FCC Rcd at 5344 (¶ 15).

<sup>317</sup> *Id.* at 5349 (¶ 41) (citing *LaRose*).

<sup>318</sup> *Id.* (¶ 42).

avoiding the complications and delays inherent in any separation of commonly owned and operated properties, facilitate “the efficient and economical administration” of the bankruptcy case. Accordingly, application of the Commission’s policy of comity warrants grant of the requested waiver.

3. A Waiver Would Merely Maintain The *Status Quo*, And There Is Even Greater Need Now – Given The Bankruptcy – To Preserve The Company’s Assets Intact.

The instant application does not propose creation of any new media combination, but rather requests only continuation of a combination that already exists. Given the current state of the television and newspaper industries, and the recent history of the Tribune combination at issue here, the company clearly needs the “fresh start” that the Commission has acknowledged is a bankruptcy law objective that the FCC should take into account.<sup>319</sup> Grant of the requested waiver will help ensure that as Tribune emerges from bankruptcy, it will be positioned to maximize its prospects for success in an extremely difficult economic environment. Given the state of the media industry, any other outcome would be unlikely to result in anywhere near the same level of public service as Tribune’s South Florida properties currently provide.

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

The continued common ownership of WSFL-TV and the *Sun Sentinel* is entitled to a presumption that it serves the public interest under the *2008 Order*. The Miami-Ft. Lauderdale DMA falls well within the top-20 DMAs, the cross-ownership here involves a single newspaper and a single television station not ranked among the top four stations in the DMA, and at least

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<sup>319</sup> *Id.* at 5353 (¶ 52).



eight independent “major media voices” would remain in the DMA.<sup>320</sup> Thus, because it squarely meets each of the criteria for a positive presumption, Tribune’s Miami-Ft. Lauderdale combination should be granted a permanent waiver. As discussed below, the waiver also should permit a subsequent sale of WSFL-TV and the *Sun Sentinel* in tandem. This relief is plainly justified in this case given Tribune’s bankruptcy status and the need to ensure comity with the bankruptcy process.<sup>321</sup>

In addition, continued ownership of WSFL-TV and the *Sun Sentinel* would independently be presumed in the public interest under the *2008 Order* based on application of the “failed” property test.<sup>322</sup> Under the relevant FCC standard, a property is “failed” if the licensee or newspaper owner is a debtor in an involuntary bankruptcy or insolvency proceeding at the time of the application, no out-of-market entity is reasonably available to operate the property, and a sale to another buyer would result in an artificially depressed price.<sup>323</sup> When the FCC enacted this standard, it required the bankruptcy to be involuntary only because the agency was concerned that licensees might file for bankruptcy for the sole reason of qualifying for a waiver.<sup>324</sup> Here, there is no plausible argument that Tribune and most of its subsidiaries initiated

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<sup>320</sup> *2008 Order*, 23 FCC Rcd at 2040 (¶ 53). There are 12 independent owners of full-power commercial and non-commercial television stations and three independent owners of daily newspapers, for a total of 15 independent “major media voices” in the Miami-Ft. Lauderdale market. *See supra* Sections III.B.1.a, III.B.1.c; BIA Report, at 21-22; *id.* at Appendices B-1, D.

<sup>321</sup> Although Reorganized Tribune is entitled to a presumption in favor of common ownership in the Miami-Ft. Lauderdale DMA, the facts herein demonstrate conclusively that grant of a permanent waiver also is fully consistent with the policy objectives reflected in the four factors enumerated in the *2008 Order*. *See supra* Section II.A.4; *2008 Order*, 23 FCC Rcd at 2049 (¶ 68).

<sup>322</sup> *2008 Order*, 23 FCC Rcd at 2047-48 (¶ 65).

<sup>323</sup> *See* 47 C.F.R. § 73.3555, Note 7.

<sup>324</sup> *See Review of the Comm’n’s Regulations Governing Television Broad.*, 14 FCC Rcd 12,903, 12,937-938 (¶ 76) (1999).

bankruptcy proceedings as an end run around the FCC’s ownership restrictions. Instead, the instant bankruptcy is a *bona fide* effort by a major media company in significant financial distress to restructure and thereby put itself in a position to emerge from bankruptcy as a viable entity, able to continue serving the public interest. Indeed, as a result of declining revenues and the resultant inability to service outstanding debt obligations, Tribune and all of its broadcasting and newspaper subsidiaries – including Channel 39-DIP and the publisher of the *Sun Sentinel* – filed for bankruptcy in December 2008. Tribune’s subsidiaries, including Channel 39-DIP, are jointly and severally liable for approximately \$10.2 billion of Tribune’s indebtedness as guarantors under various credit agreements. That liability, if presently allocated among the guarantors, would consume all of the value of the subsidiaries. In these circumstances, strict application of the FCC requirement that a bankruptcy be involuntary in order to justify a “failed” property waiver is not reasonable or justified. Accordingly, the FCC should find that Tribune’s South Florida properties substantially comply with the bankruptcy-related portion of the “failed” property standard. As set forth above, due largely to the economic conditions of the newspaper and broadcast industries, it is also unreasonable to assume that Tribune could locate a buyer for any of the properties involved at other than an artificially depressed price.<sup>325</sup>

Furthermore, even if the Commission were to determine, based on developments in the Third Circuit proceedings, a subsequent decision by the agency, or for any other reason, that the standards adopted by the Commission in 2008 are not applicable here, WSFL-TV and the *Sun Sentinel* would be entitled to permanent relief under prior waiver standards. The waiver test articulated when the Commission adopted the NBCO Rule in 1975 provides that a permanent waiver is appropriate when “*for whatever reason*, the purposes of the rule would be disserved by

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<sup>325</sup> See *supra* Sections II.C, III.C.

divestiture,” and those purposes “would be better served by continuation of the current ownership pattern.”<sup>326</sup> Given today’s highly diverse and competitive marketplace and the extensive contributions that Tribune’s South Florida properties have continued to make, reasoned decision-making requires grant of a permanent waiver of the NBCO Rule that would permit continued common ownership of WSFL-TV and the *Sun Sentinel*.

The case for a permanent waiver of the NBCO Rule here is at least as compelling as the other situations in which the agency has granted such relief. Most recently, in conjunction with the *2008 Order*, the Commission issued permanent waivers to Gannett Co. Inc.’s combination of KPNX-TV and *The Arizona Republic* in Phoenix (the 12th-ranked DMA) and Media General’s TV/newspaper combinations in four markets, each of which is much smaller than Miami-Ft. Lauderdale: (1) the Tri-Cities, Tennessee/Virginia DMA (the 91st-ranked DMA at the time); (2) Myrtle Beach-Florence, South Carolina (the 103rd-ranked DMA at the time); (3) Columbus, Georgia (the 128th-ranked DMA); and (4) Panama City, Florida (the 154th-ranked DMA at the time).<sup>327</sup> The agency found that a permanent waiver in each of these situations was justified

in light of the synergies that have already been achieved from the newspaper/broadcast station combination, the new services provided to local communities by the combination, the harms . . . associated with required divestitures, the prolonged period of uncertainty surrounding the status of the newspaper/broadcast cross-ownership ban, and the length of time that the waiver request has been pending.<sup>328</sup>

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<sup>326</sup> *1975 Order*, 50 F.C.C.2d at 1085 (¶ 119) (emphasis added); see *supra* note 11; *Fox/WNYW*, 8 FCC Rcd at 5348 (¶ 39) (describing the fourth “public interest” waiver criterion articulated in 1975 as “a catch-all provision” and as a “waiver category [that] countenances a myriad of arguments pertinent to the exigencies of a particular situation....”).

<sup>327</sup> *2008 Order*, 23 FCC Rcd at 2055-56 nn. 252-56 (¶ 77).

<sup>328</sup> *Id.* at 2055 (¶ 77) (internal citation omitted).

As demonstrated in detail above, these factors are just as relevant and pressing with respect to Tribune's Miami-Ft. Lauderdale combination and the public interest benefits the Tribune properties provide generally serve a much larger population. It has been shown at length herein that these properties already have achieved, through cross-ownership, important synergies that have produced high quality local news and community services that otherwise would not have been feasible. Moreover, given that the South Florida combination has been commonly owned for more than a decade, it goes without saying that forced divestiture would cause significant disruption to the properties involved as well as their respective audiences. And, of course, the uncertainty surrounding the NBCO Rule has become even more "prolonged" since the agency issued its *2008 Order*.

In addition, the Commission concluded in November 2007 that Tribune's Chicago properties were entitled to a permanent waiver under the 1975 waiver standard.<sup>329</sup> In so doing, the agency appropriately recognized, among other things, the integrated nature of the combination, the incredibly diverse and competitive makeup of the Chicago media market, and the extensive public interest benefits that had resulted from cross-ownership.<sup>330</sup> Both the factual underpinnings and the reasoning that formed the basis for the FCC's prior decision to grant a permanent waiver to the Chicago combination are equally, if not more, valid today when applied to Tribune's Miami-Ft. Lauderdale cross-owned interests. Since the agency's November 2007 decision, the Miami-Ft. Lauderdale media marketplace has remained abundantly diverse and competitive.<sup>331</sup> Similarly, it is no less true in Miami-Ft. Lauderdale than it was in 2007 in

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<sup>329</sup> See *Shareholders of Tribune Co.*, 22 FCC Rcd at 21,277-78 (¶ 34).

<sup>330</sup> *Id.*

<sup>331</sup> See *supra* Section III.B.

Chicago that combined ownership of WSFL-TV and the *Sun Sentinel* has fostered the delivery of high-caliber in-depth local news, public affairs, and community service to the South Florida market.<sup>332</sup> Indeed, in this case cross-ownership has made possible the introduction of a new local newscast on a UHF station which previously had none of its own and, before it came under common ownership with the *Sun Sentinel*, made minimal contributions to localism or diversity due to its status as a marginal independent station.

Notably, what *has* changed since the FCC's 2007 decision is the state of the U.S. economy in general, and the increasingly poor financial condition of the newspaper and broadcast industries in particular, which have deteriorated significantly over the last few years, especially in 2009. The declines in both the newspaper and broadcast industries have been exacerbated by the greater usage of alternatives to traditional media and the resulting increase in competition for audiences and advertising revenues. As explained above, both the newspaper and broadcast industries experienced severe downturns in 2008, circumstances which ultimately led Tribune to declare bankruptcy in December 2008; in 2009, Tribune's revenues from publishing, broadcasting, and entertainment were down substantially as compared to the company's 2008 performance.<sup>333</sup> Because these developments unequivocally strengthen the case for avoiding any unnecessary disruption to these properties and therefore for permitting the Miami-Ft. Lauderdale combination to remain in place, reasoned decision-making must lead the Commission to conclude that a permanent waiver is appropriate.

A permanent waiver in Miami-Ft. Lauderdale also would be consistent with the Commission's earlier decisions to afford permanent relief from the NBCO Rule. For example,

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<sup>332</sup> See *supra* Section III.A.

<sup>333</sup> Despite these economic conditions, Tribune has continued to invest in local news and, indeed, initiated a wholly new local newscast on WSFL-TV in 2009. See *id.*

as noted above, in *Fox/WNYW*, the agency granted a permanent waiver to Fox in 1993 to allow the joint ownership of the *New York Post* and WNYW(TV) based on the struggling financial condition of the *Post* and “the wide array of voices in New York City.”<sup>334</sup> Like Tribune today, the *Post* was in Chapter 11 bankruptcy at the time, and the paper’s insolvent status was a key consideration in the agency’s decision.<sup>335</sup> Indeed, the Commission highlighted in its decision the federal courts’ recognition that “[f]rom the outset of the cross-ownership rules,” the FCC “has made clear that, where [its] rules operated as an impediment to the survival of newspapers, that factor was an appropriate circumstance for waiver.”<sup>336</sup> Similarly, in *Field Communications Corporation*, the agency in 1977 granted a permanent waiver to permit the cross-ownership of distressed Chicago television station WFLD-TV with two Chicago daily newspapers.<sup>337</sup> Today, the Miami-Ft. Lauderdale market enjoys levels of overall media diversity and competition that are at least comparable to those of Chicago more than three decades ago when the Commission reached these conclusions. For that matter, the media-richness and diversity of today’s Miami-

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<sup>334</sup> 8 FCC Rcd at 5349-51 (¶¶ 41-48).

<sup>335</sup> *Id.* at 5349-50 (¶¶ 42-43).

<sup>336</sup> *Id.* at 5350 (¶ 44) (citing *Health & Med. Policy Research Group v. FCC*, 807 F.2d 1038, 1045 (D.C. Cir. 1987)).

<sup>337</sup> *Field Commc’ns Corp.*, 65 F.C.C.2d 959 (1977). In two other cases, *Kortes Communications Inc.*, 15 FCC Rcd 11,846 (2000), and *Columbia Montour Broadcasting Co., Inc.*, 13 FCC Rcd 13,007 (1998), the FCC granted permanent newspaper/radio waivers. In both cases, the FCC noted the financial difficulties facing at least one of the properties involved. In *Kortes Communications*, the FCC emphasized the licensee’s “dire financial situation” and found that a permanent waiver would allow the buyer to be able to “infuse needed resources” into station operations. 15 FCC Rcd at 11,853-56 (¶¶ 20, 26). In *Columbia Montour*, the Commission considered the declining revenues, increasing operating losses, and “financially troubled” nature of the subject radio station. 13 FCC Rcd at 13,013-14 (¶¶ 20, 22). Moreover, both of these cases involved DMAs that were considerably smaller than Miami-Ft. Lauderdale. The properties involved in *Kortes Communications* were located in Greenville, Michigan, which is part of the Grand Rapids-Kalamazoo-Battle Creek, MI DMA, which is ranked 41st. In *Columbia Montour*, the newspaper and radio station were located in Bloomsburg, Pennsylvania, which is part of the 54th-ranked Wilkes Barre-Scranton, PA DMA.

Ft. Lauderdale market is at least comparable to that of the New York DMA in 1993, when the Commission first granted the *Fox/WNYW* permanent waiver.

Moreover, Reorganized Channel 39's request for a permanent waiver must be viewed in conjunction with the current posture of the NBCO Rule. As noted above, the agency twice has ruled in the past seven years that a flat prohibition on newspaper/broadcast cross-ownership no longer serves – and in fact is inimical to – the public interest, a determination that has been affirmed by the Third Circuit.<sup>338</sup> The consistent rejections of the flat ban by both the Commission and the courts plainly necessitate a more open and flexible approach to permanent waivers. This must be the case particularly in the nation's largest and most diverse media markets, such as Miami-Ft. Lauderdale. In this market, there are thousands of media options available to local consumers, the marketplace has grown exponentially since the cross-ownership ban initially was put in place, and any conceivable threat to diversity and competition from cross-ownership is *de minimis* at best. As the agency repeatedly has acknowledged, it is self-evident that newspaper/broadcast cross-ownership raises few, if any, public interest concerns in such markets.<sup>339</sup>

Furthermore, with both newspaper publishers and broadcasters facing extraordinary competitive and financial challenges and with many properties struggling – and in many cases even failing – to survive, it is critically important for the agency to take a reasonable approach to

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<sup>338</sup> See *supra* Sections II.A.3-4.

<sup>339</sup> See *2008 Order*, 23 FCC Rcd at 2021-22 (¶¶ 16-19), 2039 (¶ 49) (noting the *Prometheus* Court's acknowledgment that a complete ban was unnecessary to preserve diversity, and finding "that the largest markets contain a robust number of diverse media sources and that the diversity of viewpoints would not be jeopardized by certain newspaper/broadcast combinations" in such markets); *2003 Order*, 18 FCC Rcd at 13,804-06 (¶¶ 473, 480) (defining "at-risk" markets as those where diversity concerns from cross-ownership are the highest, and distinguishing "larger markets" where there are "robust media cultures" and no diversity concerns from cross-media ownership).

permanent waiver requests. In a March 2009 letter to Attorney General Eric Holder, U.S. House of Representatives Speaker Nancy Pelosi urged that the traditional regulatory approach to newspaper publishers must be adjusted in light of the troubling condition of the industry. In order to “ensure that our policies enable our news organizations to survive and to engage in the news gathering and analysis that the American people expect,” Speaker Pelosi advised that the Department of Justice, in assessing the competition newspapers face, must begin to take into appropriate account “not only the number of daily and weekly newspapers . . . , but also the other sources of news and advertising outlets available in the electronic and digital age, so that the conclusions reached reflect current market realities.”<sup>340</sup> As Commissioner Copps recently reminded, “[e]ven with all the promise of new media, we need to remember that without content, there is nothing to aggregate. . . .”<sup>341</sup>

A similar reassessment and more flexible approach is called for with respect to the FCC’s application of the NBCO Rule. The agency must recognize that these challenges have forced many newspaper publishers and broadcasters, including Tribune, into bankruptcy, and should apply the NBCO Rule in a manner that ensures comity with the bankruptcy process. In addition to considering the current state of the media marketplace, the Commission must weigh the fact that the cross-ownership ban now has been in limbo for more than a decade and acknowledge the acute need for the regulatory certainty necessary for newspaper and broadcast companies to move forward with long-term business plans.<sup>342</sup> In this unique situation, denial of a waiver

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<sup>340</sup> See *supra* note 95.

<sup>341</sup> FCC, News Release, *Commissioner Michael J. Copps on the FCC Launch of Initiative to Examine the Future of Media and Information Needs of Communities in a Digital Age* (rel. Jan. 21, 2010).

<sup>342</sup> Under long-established principles of administrative law, the Commission must give all waiver requests a “hard look” and thereby ensure the “existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.” *WAIT Radio v.*



would be pointless and punitive. Further, the permanent waiver Reorganized Tribune seeks would permit a subsequent sale of those properties in tandem following the company's emergence from bankruptcy. With the financial challenges confronting newspaper companies and broadcasters, such a sale would serve the public interest in a number of ways. A Reorganized Tribune, struggling to emerge successfully from bankruptcy, may be faced with the need to sell assets in one of its cross-owned markets, in circumstances in which it is only possible to sell properties in tandem. A combination sale would preserve and maximize asset value in such a situation. Such relief is fully justified in this case given the Commission's prior findings, the exigencies of Tribune's bankruptcy status, and the need for the FCC to ensure comity with the bankruptcy process.

V. **AT A MINIMUM, REORGANIZED TRIBUNE SHOULD RECEIVE A TEMPORARY WAIVER OF THE NBCO RULE PENDING THE OUTCOME OF PROCEEDINGS TO REVISE THE RULE.**

In the event that the Commission finds, despite Tribune's entitlement to a presumption in favor of cross-ownership and the overwhelming evidence provided above, that a permanent waiver is not warranted here, it should grant – at a minimum – a temporary waiver of the NBCO Rule until 18 months after the pending proceedings to revise the NBCO Rule become final. The *2008 Order* regarding the NBCO rule remains under review in the United States Court of Appeals for the Third Circuit, and the FCC has stated its intention to reevaluate the rule as part of the 2010 Quadrennial Review, which it has already commenced.<sup>343</sup> Each of these proceedings is a continuation of the “protracted proceedings” that began with the Commission's promise to

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*FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). An approach that will permit waivers only in very limited circumstances and fails to closely examine the diversity, competition, and localism considerations specific to each waiver request does not fulfill this requirement.

<sup>343</sup> FCC, Response to the Court's Order of November 4, 2009, *Prometheus Radio Project v. FCC*, *supra* note 58; *see also* 2010 Quadrennial Review Public Notice, *supra* note 60.

reexamine the rule over 14 years ago. Waiver is appropriate for a period of 18 months following completion of these proceedings. Such limited relief is more than justified here, in view of the difficult economic conditions facing the newspaper and broadcast industries in general and Tribune in particular, and the need to ensure comity with the bankruptcy process.

More than eleven years ago, the Commission in its first biennial review – while calling for initiation of a proceeding to re-examine the rule – recognized that it retained “both the right and obligation” to review any request for conditional waiver of the NBCO Rule pending a rulemaking “based on the specific facts in a particular case.”<sup>344</sup> At that time, the Commission stated emphatically that “[w]hat is important is whether the public interest would be served by [the] grant of a waiver.”<sup>345</sup> The agency recognized that it had granted temporary waivers pending proceedings examining some of the ownership rules at issue, including the television duopoly restriction.<sup>346</sup> As the agency envisioned, waiver is 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.”<sup>347</sup> The FCC indicated that its precedent supported granting such temporary waivers when the “Commission concludes that the application before it falls within the scope of the proposals in the proceeding, and a grant of an

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<sup>344</sup> *1998 Biennial Regulatory Review*, Notice of Inquiry, 13 FCC Rcd 11,276, 11,294 (¶ 57) (1998) (“*1998 Biennial Review NOI*”); see *WAIT Radio*, 418 F.2d at 1157 (requiring the Commission to give waiver requests a “hard look”).

<sup>345</sup> *1998 Biennial Review NOI*, 13 FCC Rcd at 11,294-95 (¶ 57).

<sup>346</sup> *Id.* at 11,294 & n.87 (¶ 56) (citing *Review of the Comm’n’s Regulations Governing Television Broad.*, Second Further Notice of Proposed Rulemaking, 21,655, 21,681 (¶¶ 56-58) (1996) (Commission states that granting waivers satisfying the proposed standard would not adversely affect its competition and diversity goals in the interim)).

<sup>347</sup> *Id.* at 11,294 (¶ 56).

interim waiver would be consistent with the goals of competition and diversity.”<sup>348</sup> This is just such a case.

As explained below, the instant application proposes in the alternative a temporary waiver that is grounded on the precise bases anticipated by the Commission at the end of the last century. Indeed, we are now in the second decade of “protracted . . . proceedings” in which there is a “substantial record . . . on which to base a preliminary inclination to relax or eliminate” the NBCO Rule. Moreover, in this case, the Commission *already has concluded* that the blanket ban on cross-ownership cannot stand because newspaper/broadcast combinations (1) do not adversely affect competition in the market, (2) promote the public interest by delivering more and better local coverage of news and public affairs, and (3) do not pose a widespread threat to diversity of viewpoint or programming.<sup>349</sup> Those findings have been affirmed by the Third Circuit, and the agency has confirmed them yet again on remand.<sup>350</sup>

Continued common ownership of the Miami-Ft. Lauderdale combination falls within the scope of the proposals at issue in the pending proceedings reviewing and reevaluating the NBCO Rule, as well as the cross-media limits adopted in 2003. Moreover, in light of the competitiveness of the Miami-Ft. Lauderdale market and the abundant public interest benefits that the combination has delivered to South Florida residents in the approximately 13 years it has been in existence, a temporary waiver would be fully consistent with the Commission’s diversity, localism, and competition goals. Finally, a temporary waiver pending the outcome of proceedings to revise the NBCO Rule is independently appropriate under the standard adopted

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<sup>348</sup> *Id.*

<sup>349</sup> *See supra* Section II.A.3.

<sup>350</sup> *See supra* Section II.A.4.

with the NBCO Rule in 1975. Here, the “purposes of the rule would be disserved by divestiture” and in fact “would be better served by continuation of the current ownership pattern,”<sup>351</sup> for the temporary period requested herein, if not permanently.<sup>352</sup>

**A. A Substantial Record Exists In Protracted Proceedings.**

The “protracted” nature of proceedings regarding the NBCO Rule is incontrovertible, as is the fact that those proceedings have given rise to “a substantial record . . . on which to base a preliminary inclination to relax or eliminate” it. The FCC committed to revise the NBCO Rule over 14 years ago and has initiated numerous proceedings in which a voluminous record – consisting of an unprecedented amount of public comment and data – has been amassed. Indeed, almost seven years ago, the Commission in its *2003 Order* adopted findings that resulted in its elimination of the NBCO Rule. Those findings were based on two years of proceedings that included at least four rounds of comments and multiple studies and hearings, and were upheld by the Third Circuit.<sup>353</sup> In the *2008 Order*, the agency found no reason to depart from its prior conclusions, noting specifically that the Third Circuit had upheld them<sup>354</sup> and again finding that a blanket ban on newspaper/broadcast cross-ownership is not necessary to protect competition, localism or diversity and, to the contrary, affirmatively disserves the public interest.<sup>355</sup>

Thus, *on two separate occasions*, on the basis of exhaustive inquiry, review of hundreds of thousands of public comments, multiple public hearings, and numerous empirical studies, the FCC has found that the significant competitive and technological changes in the media

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<sup>351</sup> *1975 Order*, 50 F.C.C.2d at 1085 (¶ 119).

<sup>352</sup> *See supra* Section IV.

<sup>353</sup> *See supra* Section II.A.3.

<sup>354</sup> *E.g.*, *2008 Order*, 23 FCC Rcd at 2020-21 (¶ 16), 2021 (¶ 18), 2038 (¶ 47).

<sup>355</sup> *See supra* Section II.A.4.

marketplace warrant elimination of the absolute ban on cross-ownership. It would be arbitrary and capricious for the Commission, in the context of the instant waiver request, to contradict the conclusions it reached in these rulemaking proceedings, especially those factual findings that were upheld by the Third Circuit.<sup>356</sup> The Third Circuit's review of the Commission's *2008 Order* – itself the result of remand of the *2003 Order* – remains pending, and the 2010 Quadrennial Review is the latest in this tortured string of proceedings considering relaxation or elimination of the rule.

The extensive nature of the proceedings involving the NBCO Rule, in which Tribune has sought and the Commission has promised appropriate relief for more than a decade, is obvious:

- Almost a decade and a half ago, in several adjudications, the FCC committed to commence a rulemaking regarding the NBCO Rule, with all Commissioners recognizing the public interest in relaxation of the rule.
- Over 13 years ago, the Commission initiated a proceeding seeking comment on modifications to its newspaper/radio cross-ownership policy.
- More than nine years ago, the agency committed in its *1998 Biennial Regulatory Review* to initiate a proceeding to revise the NBCO Rule in its entirety.
- In releasing its *2000 Biennial Regulatory Review*, the Commission confirmed this conclusion and, in 2001, issued a Notice of Proposed Rulemaking to achieve this result.
- In 2003, the Commission, after extended proceedings, including multiple rounds of comments, studies and hearings, made detailed findings that supported its conclusion that the NBCO Rule was no longer justifiable, and repealed the rule, replacing it with specific cross-media limits that would permit continued common ownership of WSFL-TV and the *Sun Sentinel*.
- In 2004, the Third Circuit affirmed the portion of the FCC's *2003 Order* finding that the blanket ban should be repealed but remanded the proposed new rules for further support or amendment.
- In 2008, the Commission reaffirmed the conclusions reached in the *2003 Order*, again finding that the NBCO Rule in its current form does not serve the public

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<sup>356</sup> See *supra* Section III.D.

interest, and adopted liberalized waiver standards that presumptively allow certain cross-ownerships in the nation's largest markets, permit others under particular circumstances, and entitle all other proposed combinations to evaluation under a four-part test.<sup>357</sup>

- The Commission has now begun holding workshops in connection with the 2010 Quadrennial Review, and has indicated that it intends to address the pending petition for reconsideration of the *2008 Order* in the context of this upcoming proceeding.<sup>358</sup>

The present case therefore is the quintessential example of the “protracted rulemaking proceeding” that the agency envisioned as warranting temporary waiver relief for applicants.<sup>359</sup>

**B. The Request For Waiver Is Within The Scope Of The Proposals In The Proceedings.**

The instant request for waiver also falls squarely within the scope of the rules that have been proposed and, indeed, adopted in these protracted proceedings and that remain under judicial review and agency review and reevaluation. As demonstrated above, the Miami-Ft. Lauderdale combination is presumptively permissible under the standards set forth in the *2008 Order*.<sup>360</sup> In addition, the combination would have been legally permissible under the cross-media limits that were adopted in 2003. In the *2003 Order*, the FCC eliminated any newspaper/broadcast cross-ownership restrictions in large markets with at least nine broadcast television stations, concluding that a single entity should be able to own any combination of properties in these markets so long as the combinations comply with the local TV ownership rule

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<sup>357</sup> See *supra* Section II.A.4.

<sup>358</sup> See *supra* Section II.A.5.

<sup>359</sup> *1998 Biennial Review NOI*, 13 FCC Rcd at 11,294 (¶ 56). By contrast, the situation presented here is nothing like the situation in which the Commission wished to avoid such interim relief based solely on the pendency (or impending commencement) of a quadrennial review.

<sup>360</sup> See *supra* Section IV.

and local radio ownership rule.<sup>361</sup> The Miami-Ft. Lauderdale DMA, with 15 full power television stations,<sup>362</sup> fits within this category, and common ownership of WSFL-TV and the *Sun Sentinel* would thus have been permitted under the *2003 Order*.

Because the continued common ownership of Tribune's Miami-Ft. Lauderdale combination is permissible under both the *2008 Order* and the *2003 Order*, the instant request for waiver unquestionably falls within the scope of the proposals in the pending proceedings – both judicial and administrative – to revise the NBCO Rule. Particularly, in view of the ongoing protracted proceedings, it would be arbitrary and capricious, inequitable, inconsistent with the FCC's recognition that it must afford comity to the bankruptcy process, and counterproductive to the public interest to disrupt the continued common ownership of WSFL-TV and the *Sun Sentinel*.

**C. Grant Of An Interim Waiver Would Be Consistent With The Commission's Goals Of Diversity, Localism, And Competition.**

As demonstrated above and in the appendices to this waiver request, Miami-Ft. Lauderdale residents benefit from abundant media diversity, and Tribune's cross-ownership of WSFL-TV and the *Sun Sentinel* has fostered the addition of a significant amount of wholly new local news.<sup>363</sup> In addition, although the Commission has determined that the NBCO Rule cannot be justified based on competition concerns, it is clear that continued common ownership of WSFL-TV and the *Sun Sentinel* will not have any adverse effect on competition in the market.<sup>364</sup> Further, because this transaction involves the transfer of an *existing* combination, allowing

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<sup>361</sup> *2003 Order*, 18 FCC Rcd at 13,802 (¶¶ 463-64), 13,804-06 (¶¶ 472-80).

<sup>362</sup> *See supra* Section III.B.1.a.

<sup>363</sup> *See supra* Sections III.A-B.

<sup>364</sup> *See supra* Section III.B.3.

continued cross-ownership will not have any impact on outlet diversity or concentration levels in the market. Indeed, the Commission has allowed the intact transfer of numerous existing media combinations in recognition of this fact<sup>365</sup>

At an absolute minimum, a waiver pending the outcome of the pending proceedings to revise the NBCO Rule is appropriate here because continued common ownership falls within the scope of the standards that have been proposed and adopted by the Commission and are subject to further review and reevaluation; localism would continue to be enhanced; and no diminution in diversity or harm to competition is likely to occur.<sup>366</sup> This is true whether the request is judged under the standard for an interim waiver pending a rulemaking, the waiver standards adopted in the *2008 Order*, or the fourth “public interest” criterion for a waiver of the NBCO Rule under the 1975 standard – where, “*for whatever reason*, the purposes of the rule would be disserved.”<sup>367</sup> Indeed, as discussed above the Commission granted *permanent* waivers of the NBCO Rule under the 1975 standard for common ownership of a newspaper and one or more

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<sup>365</sup> See, e.g., *AMFM, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 16,062, 16,069 (¶ 15) (2000) (transfer of an existing combination “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 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); *Jacor Commc’ns, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 6867, 6905-06 (¶ 62) (1999); *Am. Radio Sys. Corp.*, Memorandum Opinion and Order, 13 FCC Rcd 12,430, 12,437-48 (¶ 11), 12,442-43 (¶¶ 25-26) (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) (same). *Accord United States Department of Justice and Federal Trade Commission Horizontal Merger Guidelines*, 57 Fed. Reg. 41,552 (1992), revised, 4 Trade Reg. Rep. (CCH) ¶ 13104 (Apr. 8, 1997) (stating that transfers that do not increase ownership concentration are “unlikely to have adverse competitive consequences and ordinarily require no further analysis”).

<sup>366</sup> See *supra* Sections III.A, III.B, V.B.

<sup>367</sup> *Newspaper/Broadcast NPRM*, 16 FCC Rcd at 17,285 (¶ 3) (emphasis added).



broadcast stations in markets that were marked, at the time, by a level of media diversity comparable to that present in the Miami-Ft. Lauderdale market today.<sup>368</sup> Grant of no less than a *temporary* waiver pending the conclusion of proceedings to revise the NBCO Rule is unquestionably fully justified here and would allow Reorganized Tribune to emerge from bankruptcy intact in an orderly fashion.

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In sum, the NBCO Rule survives as a relic from the days when local media consisted only of television, radio, and daily newspapers, and the Commission's local ownership rules restricted owners to a single radio or television property in any one market. Today, the rule is a regulatory anomaly; the FCC has twice decided that its original cross-ownership prohibition is no longer justified by current media conditions and that the rule should be modified in a manner that would permit the combination at issue here, and the Third Circuit has affirmed the elimination of a total ban on cross-ownership. In such a procedural posture, the Commission traditionally has granted temporary waivers pending the completion of rulemaking proceedings, and if for any reason it determines that a permanent waiver is not warranted, the agency promptly should issue a temporary waiver in this case.<sup>369</sup> Any other result, after the adoption of

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<sup>368</sup> *Fox/WNYW*, 8 FCC Rcd 5341; *Field*, 65 F.C.C.2d 959.

<sup>369</sup> *1998 Biennial Review NOI*, 13 FCC Rcd at 11,294 & n.87 (¶ 56). Such waivers have often been granted in the context of the newspaper/broadcast cross-ownership rule itself, *see, e.g., Letter from Roy J. Stewart, Chief, Mass Media Bureau to James Bayes, Wiley, Rein & Fielding*, Ref. 1800B-IB (Aug. 11, 1997); *Cross-Ownership of Broad. Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, Order and Notice of Proposed Rulemaking, 16 FCC Rcd 17,283, 17,286 n.16 (¶ 5 n.16) (2001); *NewCity Commc'ns, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 3929, 3952-53 (¶¶ 56-57) (1997); *Capital Cities Letter Decision*, as well as the radio/television cross-ownership (or "one-to-a-market") rule, *see, e.g., Max Media Properties LLC*, Memorandum Opinion and Order, 13 FCC Rcd 12,489, 12,497-12,500 (¶¶ 25-32) (1998); *NewCity Commc'ns, Inc.*, 12 FCC Rcd at 3945, 3951 (¶¶ 35, 52); the local television ownership rule, *see, e.g., Woods Television Co. LLC*, Memorandum Opinion and Order, 14 FCC Rcd 8283, 8284-85 (¶¶ 3-8) (1999); *Broad. Licenses, LP*, Memorandum Opinion and Order, 13 FCC Rcd 16,303, 16,304-05 (¶¶ 7-12) (1998); *US Broad. Group Licensee LPI*, Memorandum Opinion and Order, 13 FCC Rcd 13,963, 13,970-71 (¶¶ 16-19) (1998); and the

the purportedly “liberalized” waiver standards in the *2008 Order*, would be at odds with the FCC’s deregulatory intent in that decision as well as its previous grant of relief to permit retention of the same Miami combination.

## **VI. CONCLUSION**

For these reasons, the FCC should grant Reorganized Tribune a permanent waiver of the NBCO Rule permitting the continued common ownership of WSFL-TV and the *Sun Sentinel* 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.

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national television ownership cap, *see, e.g., UTV of San Francisco, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 14,975, 14,980-82 (¶¶ 20-25) (2001). The Commission has granted similar waivers in other circumstances as well. *See, e.g., Nat’l Exchange Carrier Ass’n Petition To Amend Section 69.104*, Order Granting Petition for Rulemaking, Notice of Proposed Rulemaking, and Order Granting Interim Partial Waiver, 19 FCC Rcd 13,591, 13,606 n.116 (¶ 45 n.116) (2004) (“Grant of a waiver pending the result of a rulemaking proceeding is consistent with Commission precedent.”); *Administration of the N. Am. Numbering Plan*, Order, 20 FCC Rcd 2957 (2005) (granting a waiver of a rule to permit numbering resources to be obtained directly from NANPA after considering hardship and equities to SBC); *2000 Biennial Regulatory Review of Part 68*, Notice of Proposed Rulemaking, 15 FCC Rcd 10,525 (¶ 9) (2000) (recognizing public interest in grant of interim waivers in anticipation of completing rulemakings that will effectuate a change in the rules to accommodate innovations on a permanent basis).

**REQUEST FOR CROSS-OWNERSHIP WAIVER**  
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**Hours and Audience Shares of Local News – Miami-Ft. Lauderdale DMA**  
**(Total hours of news and shares for early evening news (4:00 pm – 7:00 pm))**

Station	Affiliation	Hours/Wk 2001	Hours/Wk 2006	Hours/ Wk July 2009	Hours/ Wk Nov. 2009	1975 Sh	2001 Sh	2006 Sh	May 2009 Sh	July 2009 Sh	Nov. 2009 Sh
WLTU, Channel 23	Univision	12	12	17	19.5	NA	5.9	6.3	10	10	8.7
WPLG, Channel 10	ABC	24	28	29	28.5	11	6.3	5.7	8	6	10.0
WSCV, Channel 51	Telemundo	14.5	14.5	20.5	17	NA	4.8	5.5	4	5	9.1
WSVN, Channel 7	FOX	42	53.5	55	57.5	16	6	5.4	6	6	7.4
WPXM, Channel 35	ION	2.5	0	0	0	NA	0.5	NA	NA	NA	NA
WFOR, Channel 4	CBS	24.5	26.5	27	24	11	7.1	4.8	6	7	7.1
WTVJ, Channel 6	NBC	30	30	28.5	27	3	7.3	4.2	4	4	5.9
WJAN,* Channel 41	Indep.	0	7.5	7.5	7.5	NA	NA	3.1	3	4	4.5
WBFS, Channel 33	MyNetTV	3.5	4.0	2.5	2.5	NA	2.9	2.0	NA	NA	NA
WSFL, Channel 39	CW	3.5	3.5	20	20	NA	2.2	1.7	NA	NA	NA
WAMI, Channel 69	Telefutura	0	1	5	5	NA	NA	NA	NA	NA	NA
WPBT, Channel 2	PBS	0	0		0	NA	NA	NA	NA	NA	NA
WGEN, Channel 8	Indep.	0	0		0	NA	NA	NA	NA	NA	NA
WLRN, Channel 17	PBS	0	0		0	NA	NA	NA	NA	NA	NA
WSBS, Channel 22	Indep.	0	0		0	NA	NA	NA	NA	NA	NA
WHFT, Channel 45	Trinity	0	0		0	NA	NA	NA	NA	NA	NA
Total Hours		156.5	180.5	212	208.5	NA	NA	NA	NA	NA	NA

“NA” means “Not Applicable” because the station aired no local news during the relevant time period.

\* WJAN is authorized by the FCC as a Class A station.

## **Journalism Awards Received by the *Sun Sentinel* (2007 - 2009)**

### **2009 Journalism Awards**

#### **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





**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

600 SE THIRD AVENUE • FORT LAUDERDALE, FLORIDA 33301-3125

**JAMES F. NOTTER**  
*Superintendent of Schools*

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August 3, 2009

**JAMES F. NOTTER**  
*Superintendent of Schools*

Howard Greenberg  
CEO and Publisher  
South Florida Sun-Sentinel  
200 East Las Olas Boulevard  
Fort Lauderdale, FL 33301

Dear Mr. Greenberg:

Since January 2001, the Broward County School District has been proud to be the official partner with the Sun Sentinel for the "Sun Sentinel Kids of Character" Character Education Program, providing recognition for students demonstrating outstanding character. The District's Character Education Program is imbedded into all subject areas. It is based on the premise that good character is developed through a sustained process of teaching, modeling, learning and practice. The Sun Sentinel Company and WSFL have been instrumental in the growth of this program not only in our schools, but in the community.

Through this unique partnership with the Sun Sentinel Company family of products, we are able to share our message with the community. When students, staff and community members model these traits, it is easier to provide quality education in a safe and secure learning environment. In order for the District to be successful in its efforts, we need the help and cooperation from the entire community and partners like you.

In August 2006, Broward School's Character Education Department was one of only 36 projects nationwide to receive a four year, \$1,408,635 research grant entitled "Character Across the Curriculum and Beyond." The purpose of the program is to design and implement an enhanced character education curriculum at the middle school level. The District's partnership with the Sun Sentinel was a key component of securing this grant.

As always, we look forward to another successful year for the Kids of Character program. We are excited about the opportunities the new SouthFlorida.com/LIVE morning show will bring to the Kids of Character program.

Sincerely,

A handwritten signature of James F. Notter in dark ink, written over a horizontal line. The signature is stylized and cursive.

James F. Notter

JFN/MMK:jp

March of Dimes Foundation

Broward Division  
1001 West Cypress Creek Road  
Suite 111  
Fort Lauderdale, FL 33309  
Telephone (954) 772-2290  
Fax (954) 772-8849

[marchofdimes.com/florida](http://marchofdimes.com/florida)

Howard Greenberg  
CEO & Publisher  
Sun Sentinel  
200 East Las Olas Blvd.  
Fort Lauderdale, FL

Dear Mr. Greenberg:


The March of Dimes Broward Division has enjoyed a long-standing partnership with the Sun Sentinel and WSFL. Through their combined efforts, the newspaper and television station have expanded our reach in the community and have provided a cohesive media platform for our organization and events. Having been partners with both the Sun Sentinel and WSFL as separate entities, we have been pleased with the integration of your print and television properties and feel that this collaborative multimedia effort has benefited the March of Dimes Broward Division.

This partnership has been especially valuable for our organization this year. During one of the most difficult times in fundraising history, the March of Dimes, Sun Sentinel and WSFL have worked closely to develop innovative cause-marketing campaigns that have not only helped raise funds for our organization, but have also increased awareness of our brand in the community.

With budget cuts being the norm this year, it has been difficult to secure the necessary resources to promote the events that are so crucial to our fundraising. By creating "Life's Littlest Champions," a multimedia cause-marketing campaign highlighting inspirational stories of families who have survived premature births, we were not only able to promote our March for Babies event in creative and new way, but were also able to share our mission with the community in a way that we have never done before. We look forward to continuing our relationship with the Sun Sentinel and WSFL team and are excited about the new opportunities this partnership will produce. WSFL's SouthFlorida.com/LIVE "Spirit Stop" was voted the #1 fan favorite at the recent March for Babies. With this excitement and support behind us, we're bound to do great things.

Thank you for helping to support the mission of the March of Dimes to improve the health of babies by preventing birth defects, premature birth and infant mortality.

Sincerely,

  
Jacqueline Nicholson  
Executive Director  
Broward Division

Cc: Mary Helen Olejnik  
Rochelle Darman



**Miami DMA TV Stations and Audience Shares (ranked by February 2010 Share)\***

Station	Owner	Affiliation	Share 1975	Rating/ Share May 2001		Rating/ Share May 2006		Rating/ Share May 2009		Rating/ Share July 2009		Rating/ Share Nov. 2009		Rating/ Share Feb. 2010	
WTVJ, Channel 6	NBC Universal	NBC	9	4.2	9.1	2.6	5.2	1.7	3.9	1.8	3.9	2.0	4.4	3.6	8.0
WLTU, Channel 23	Univision	Univision	2	5.2	11.3	4.4	8.8	3.8	8.7	3.5	7.8	3.2	7.0	3.5	7.8
WFOR, Channel 4	CBS	CBS	35	4.5	9.7	3.7	7.4	2.3	5.3	2.2	4.9	3.8	8.3	2.9	6.5
WPLG, Channel 10	Post-Newsweek	ABC	21	4.5	9.8	3.6	7.2	3.2	7.4	2.1	4.7	3.4	7.5	2.8	6.3
WSVN, Channel 7	Sunbeam Television Corp.	FOX	31	3.7	8.0	3.6	7.3	2.3	5.2	2.1	4.7	3.3	7.3	2.8	6.3
WSCV, Channel 51	NBC Universal	Telemundo	<1	3.4	7.4	3.5	7.0	2.4	5.5	2.2	4.8	2.3	5.1	2.1	4.6
WAMI, Channel 69	Univision	Telefutura	NA	0.8	1.7	1.3	2.6	1.1	2.5	1.4	3.0	1.4	3.0	1.6	3.7
WSFL, Channel 39	Tribune	CW	NA	2.5	5.4	1.8	3.6	1.3	3.0	1.1	2.4	1.3	2.9	1.1	2.5
WJAN,** Channel 41	Sherjan Broadcasting	Independent	NA	0.2	0.5	0.9	1.7	0.7	1.7	0.8	1.9	0.8	1.9	1.0	2.3
WSBS, Channel 22	Spanish Broadcasting System, Inc.	Independent	NA	NA	NA	0.3	0.7	0.8	1.7	0.7	1.5	0.7	1.4	0.6	1.3
WBFS, Channel 33	CBS	MyNetworkTV	NA	2.7	5.8	1.6	3.3	0.7	1.6	0.7	1.5	0.6	1.4	0.6	1.3
WPBT, Channel 2	Community TV Foundation	PBS	2	1.1	2.4	0.6	1.2	0.4	0.9	0.4	0.9	0.4	0.9	0.4	0.8
WLRN, Channel 17	Dade County Public Schools	PBS	<1	0.6	1.2	0.7	1.3	0.3	0.7	0.3	0.6	0.3	0.7	0.3	0.6
WPXM, Channel 35	Ion	ION	NA	0.5	1.1	0.1	0.2	0.1	0.2	0.2	0.4	0.3	0.6	0.2	0.6
WGEN, Channel 8	Mapale, LLC	Independent	NA	NA	NA	0.1	0.3	0.2	0.4	0.2	0.5	0.2	0.5	0.2	0.5
WHFT, Channel 45	Trinity Broadcasting	TBN	<1	0.3	0.7	0.4	0.8	0.1	0.3	0.1	0.3	0.2	0.4	0.2	0.4

\* Shares are based on 9 am – midnight time period.

\*\* WJAN is authorized by the FCC as a Class A station.

“NA” means “Not Applicable” because the station was not on the air.

**Report on the Miami-Ft. Lauderdale, FL**  
**Media Market**  
**Media Diversity, Revenue Share, and Concentration Analysis**  
**In Support of the Request for Cross-Ownership Waiver**  
**for Television Station WSFL-TV**

**Mark R. Fratrik, Ph. D.**

**Vice President**

**BIA Advisory Services**

**February 26, 2010**



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## Introduction

On behalf of television station WSFL-TV, Miami-Ft. Lauderdale, we are providing an analysis of the traditional media (local newspapers, radio and television stations) in the Miami-Ft. Lauderdale Designated Market Area (“DMA”) with respect to diversity, advertising revenue shares, and the level of concentration in the Miami-Ft. Lauderdale media marketplace.<sup>1</sup>

Specifically, we have examined the combination of WSFL-TV and the (Ft. Lauderdale-based) *Sun Sentinel*, a daily newspaper (“the *Sun Sentinel*” and together with WSFL-TV, the “Tribune Properties”). In this study, we also assess the present level of concentration in the Miami-Ft. Lauderdale DMA, and compare that level of concentration to the average of the DMAs ranked 11-25,<sup>2</sup> and the average concentration of all traditional media markets in the nation based on estimates made by BIA. With respect to each of these analyses, we look at the past nine-year history in the Miami-Ft. Lauderdale DMA to assess the impact of concentration trends due to the combination of WSFL-TV and the *Sun Sentinel*. Finally, we have worked with Tribune and its counsel to confirm the “voice” counts of various media outlets in the Miami-Ft. Lauderdale DMA.

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<sup>1</sup> See “Report on Miami-Ft. Lauderdale, FL Media Advertising Markets,” Mark R. Fratrik, May 1, 2007, attachment to FCC File No. BTCCT-20070501AGB for a previous examination of the Miami-Ft. Lauderdale, FL traditional media market. This report, like the earlier report, is submitted by Mark R. Fratrik, Ph. D., Vice President, BIA Advisory Service, LLC. BIA Advisory Service, LLC (BIA) is a financial and strategic consulting firm specializing in the media and communications industries. A copy of Dr. Fratrik’s vitae is attached at the end of this report, establishing his qualifications to collect and evaluate media advertising data, as well as the presence of media outlets in the Miami-Ft. Lauderdale DMA.

<sup>2</sup> The Miami-Ft. Lauderdale, FL market is currently ranked 17<sup>th</sup>, and was ranked 16<sup>th</sup> for the 2008-2009 television season. The television markets for 2008-2009 that are in the range 11 through 25 are: Detroit, MI; Phoenix, AZ; Tampa-St. Petersburg-Sarasota, FL; Seattle-Tacoma, WA; Minneapolis-St. Paul, MN; Miami-Ft. Lauderdale, FL; Cleveland-Akron, OH; Denver, CO; Orlando-Daytona Beach-Melbourne, FL; Sacramento-Stockton-Modesto, CA; St. Louis, MO; Portland, OR; Pittsburgh, PA; Charlotte, NC; and Indianapolis, IN.

Analyzing competition among traditional media just in the Miami-Ft. Lauderdale DMA actually understates the level of competition due to the proximity of other traditional media in adjacent, abutting areas. Specifically, the Miami-Ft. Lauderdale DMA is immediately south of the West Palm Beach, FL DMA with many people commuting between the two areas and with the traditional media of both markets available in many places in each adjoining market.<sup>3</sup> Consequently, there are many more competitors vying for readers, listeners, and viewers, as well as for local advertisers, than just the properties in the Miami-Ft. Lauderdale, FL DMA.

In addition to the update of the traditional media, we have also expanded the advertising marketplace analysis to account for the wider choices now available. Since the last time we analyzed these media markets, other advertising options have become more significant. Indeed, in addition to the traditional media of local newspapers and radio and television stations, the advertising options now available to local advertisers include Yellow Pages, direct mail, out-of-home, local cable systems, online, Internet Yellow Pages, local magazines, mobile, and email marketing. Incorporating local estimates for these other media provides a more comprehensive picture of local advertising competition and diversity. Even after taking into account the impact of these new advertising-supported media, the analysis necessarily understates the true level of diversity because there are even more sources of diverse and local information and entertainment made available through non-advertising supported media such as subscription-based media and non-commercial broadcast outlets.

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<sup>3</sup> The possibility of a larger geographic market was noted more than ten years ago in a study by Dr. Roger D. Blair, "An Economic Analysis of the Cross-Ownership of WFLA-TV and the Sun Sentinel," August 1, 1996 originally submitted by Tribune in its application to acquire WFLA-TV from Renaissance Communications Corporation, and included as Appendix A-1 to this report. That study provides both technical and market based information on a wider geographic market that should include Palm Beach County (which is part of the West Palm Beach, FL DMA) in which to evaluate the competitive impacts of the combination of the Tribune Properties. (See pp. 19-21 of the Blair study).

As part of these analyses, we have also included in the appendices a listing of traditional media outlets in the Miami-Ft. Lauderdale media market. These lists include all of the full and low power television and radio stations, the daily and weekly newspapers, and the various print media serving this area.

The first revenue analysis, which does not take into account the presence of additional competitors for audience and advertising revenue beyond the traditional media, tends to overstate the revenue shares and level of concentration among the three traditional media. Even after excluding the other alternative advertising options now available, we demonstrated previously and will show again here that competition between and among traditional media outlets remains fierce in this market. Our second revenue analysis, which reviews the broader competitive landscape, including not only the three traditional media but also the additional competing media identified above, demonstrates an even more competitive and diverse media marketplace.

Moreover, after examining the Tribune Properties' share of revenues, one can only conclude that there is strong and vigorous competition in the Miami-Ft. Lauderdale market. The Tribune Properties' revenue share in this market, even when considered in comparison to just the traditional media, has been decreasing in recent years. In 2008, the combined revenue share was 21.1% as compared to 25.1% in 2000. This decrease in share indicates that Tribune does not have market power. Likewise, the overall level of concentration in this market has also decreased over the past nine years, with other traditional media competing effectively against the Tribune Properties. Once available advertising options beyond the traditional media are included, the resulting share held by the Tribune Properties is even less significant. In fact, in the wider advertising market, the Tribune Properties' share in 2008 was only 8.1%. Further, the vast number of different media outlets serving this area as listed in the appendices provides an



incredible and growing amount of diversity of information and entertainment. Competition and the provision of diverse programming can only be expected to increase in this market over time, without material impact from the combined ownership of the Tribune Properties.

## **Analysis of Traditional Media Shares**

We first examined the revenue shares of the three traditional media outlets (newspaper and commercial broadcast television and radio) in all local advertising markets, and then calculated the revenue shares by owners in the relevant local markets. We also calculated averages of the three traditional media for markets 11-25, and for the nation as a whole, using figures for each of the nation's 210 DMAs. We thus can compare the Miami-Ft. Lauderdale market to markets of similar size (*i.e.*, ranked between 11-25) and national averages to determine if shares are out of the ordinary, or in some other way reflect increased or decreased competition in the market. Finally, we can analyze Tribune's share of the traditional media market in Miami-Ft. Lauderdale since 2000 to determine whether there have been any noticeable changes that reflect the presence of market power or enhanced control over advertising dollars.

## **Methodology**

In this analysis we have used local television markets (*i.e.*, Nielsen DMAs) as the relevant geographic markets to analyze the entire United States. Virtually all counties in the contiguous 48 states are included in one and only one television market.<sup>4</sup> The same is true of Hawaii and the more populous counties in Alaska. In contrast, some Arbitron-defined radio metro areas cut across more than one television market; radio stations in those markets were assigned to the television market in which their city of license is located. Daily and weekly

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<sup>4</sup> The six exceptions are Riverside, Kern, Solano, and El Dorado Counties, all in California; Lea County in New Mexico; and Oneida County in New York.

newspapers were assigned to the television DMA in which they are located. For revenue estimates we rely on the estimates included in the BIA Advisory Service (BIA) Media Access Pro™ software product. BIA estimates revenues for all commercial television stations, daily and weekly newspapers located in local television markets, and all commercial radio stations located in Arbitron markets.<sup>5</sup> Those estimates are derived from survey responses from those media outlets as well as modeling for non-responding outlets. Using our estimates for revenue at radio and television stations and newspapers, we can sum the total advertising revenue by media for markets 11-25 and for all 210 DMAs, and compare the Miami-Ft. Lauderdale market to these averages.

The use of the DMA as the relevant geographic market for these analyses is appropriate for several reasons. First, many advertising agencies base their spending plans on the local media within the entire DMA, choosing among the various media within those DMAs. Second, many FCC regulations utilize the DMA as the area in which to measure compliance. For example, the local television ownership rule is applied on a DMA basis, and the FCC utilized DMAs as the relevant geographic market in its earlier efforts to modify the newspaper/broadcast cross-ownership rule. In addition, must carry regulations apply to the entire DMA.

### **Relative Market Shares for Traditional Media**

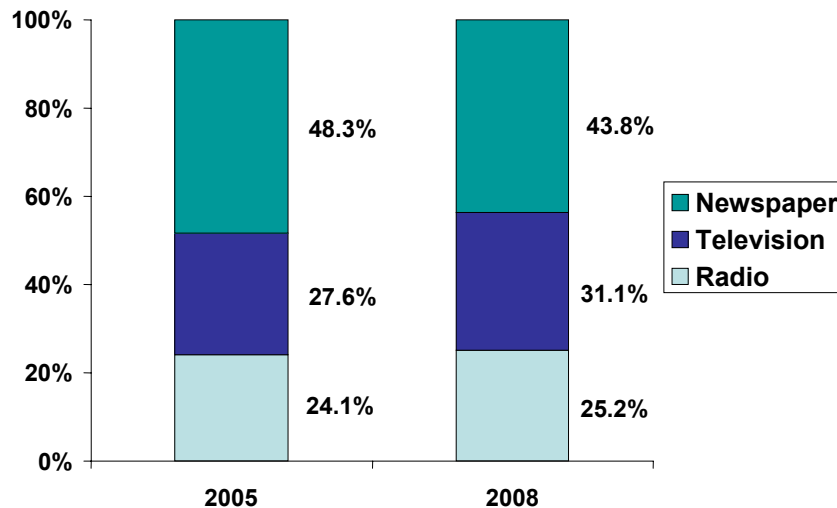
With these totals, we first evaluate the various market shares of the three traditional media, both at the national level and within television DMAs ranked between 11 and 25. Figure

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<sup>5</sup> The revenue estimates used here are also included in the various annual BIA publications: *Investing in Television*, *Investing in Radio*, and *Investing in Newspapers*. The database that includes these revenue estimates is constantly updated from a variety of sources of information. The revenue share and HHI analyses contained herein extend only through December 31, 2008, because 2008 is the most recent year for which comprehensive revenue data were available as of the date of this report. Additional information regarding the methodology employed is included in Appendix A-2 hereto.

1 shows the estimated average revenue shares across all 210 markets for both 2005 (data for which were used in our previous analysis) and 2008:

**Figure 1 – Estimated Revenue Shares of Traditional Media – National Average**



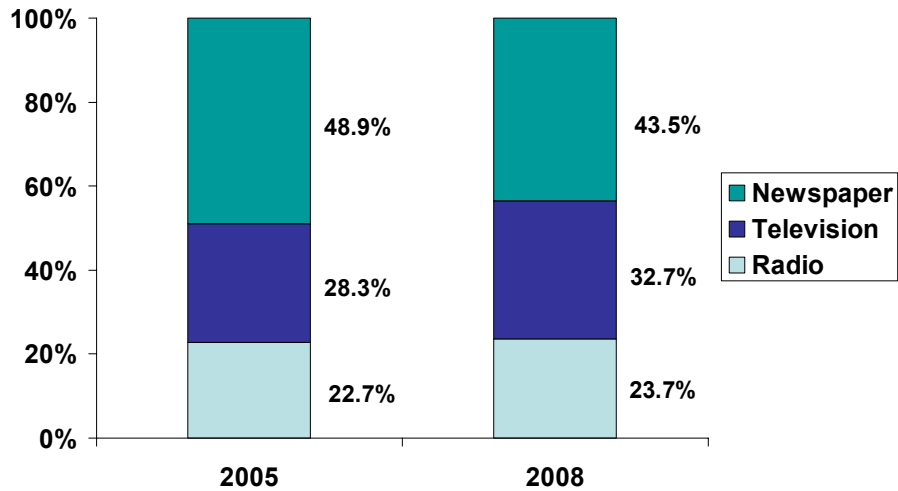
It is interesting to note that the relative shares have changed noticeably since 2005.<sup>6</sup> At that time, local newspapers garnered nearly half of the total revenues with 48.3%, followed by local television stations with 27.6%, and local radio stations with 24.1%. By 2008, however, newspapers' share had declined 4.5% to 43.8%, while television and radio shares showed increases. This shift in share is a clear indication of more vibrant competition within the narrow category of traditional media, as newspapers have experienced greater declines in revenue than have the television and radio sectors.

Figure 2 shows the estimated average revenue shares across the markets ranked between 11 and 25 for both 2005 and 2008:

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<sup>6</sup> Data for 2005 in this section of the report were drawn from the report cited in footnote 1.

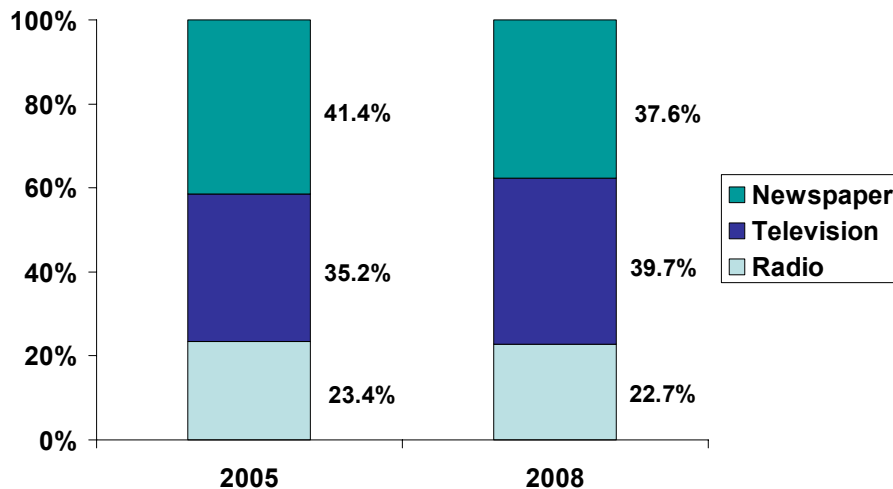
**Figure 2 – Estimated Average Traditional Media Revenue Shares for Markets Ranked 11-25**



Much like the national averages of these traditional media, the averages for markets ranked between 11 and 25 have also shifted in just the past few years. The newspapers' share has decreased, while the television and radio stations' shares have increased, indicating increased competition in these markets. In the Miami-Ft. Lauderdale media marketplace, by comparison, the newspaper share in 2008 is 37.6%, noticeably lower than the national average and the average for markets ranked 11-25. Television stations claimed 39.7%, and radio stations claimed 22.7% of advertising dollars.

Figure 3 shows the distribution of estimated traditional media revenue for the Miami-Ft. Lauderdale DMA for both 2005 and 2008:

**Figure 3 –Estimated Traditional Media Revenue Shares  
for the Miami-Ft. Lauderdale, FL Market**



It is interesting to note the changes in these shares over time. Local newspapers' share in Miami-Ft. Lauderdale decreased from 41.4% in 2005 to 37.6% in 2008, while the share of local television stations increased from 35.2% to 39.7% over that same time period. This movement in shares can be explained in part by the declining fortunes in local newspapers in this market, relative to the recent performances of local television and radio stations.

In the Miami-Ft. Lauderdale, FL market there are 13 full service commercial television stations with 10 separate and distinct owners. Included in that count of stations are several Spanish-language network affiliates that garner noticeable shares of revenues, such as WLTV, the Univision affiliate that is ranked fourth in revenue share in the Miami-Ft. Lauderdale market.<sup>7</sup> There are also 64 full power commercial radio stations in the Miami-Ft. Lauderdale DMA with 29 separate and distinct owners. In the smaller Miami-Ft. Lauderdale Arbitron Metro

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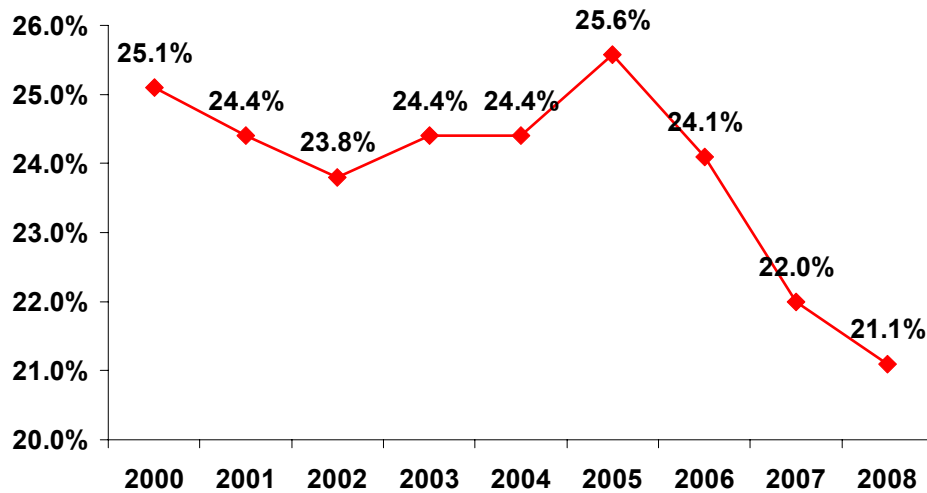
<sup>7</sup> Revenue share data based on BIA/Kelsey Estimated Revenue Shares for 2008.

market as utilized in the FCC's geographic market rules adopted in 2003, there are 47 full power commercial radio stations with 21 separate and distinct owners.

### **Recent History of Tribune-Owned Properties in Miami-Ft. Lauderdale**

As we saw above, the distribution of revenues across the traditional media in the Miami-Ft. Lauderdale DMA shows a competitive market. Within that traditional media market, Tribune's share of revenue does not indicate dominance or market power, even given the existing WSFL-TV-*Sun Sentinel* combination. The conclusion that the combination does not materially affect competition in the market is confirmed by the fact that the combined Tribune share has been generally decreasing over the past several years. During the past nine years, the Miami-Ft. Lauderdale media marketplace has become more competitive as a result of the competition among increasingly diverse traditional media, the continuing growth of non-broadcast program outlets (such as multi-channel video and audio program distributors), and the introduction of new media sources such as the Internet. Faced with this increased competition, Tribune has seen a decline in its market share since 2000. Figure 4 shows the estimated local market share of the Tribune properties for the last nine years. Whereas once they garnered over one quarter (25.1%) of all of the revenues generated by the traditional media, these properties have lost 4 percentage points from that share to 21.1% as a result of competition:

**Figure 4 – Estimated Historical Share of Revenue  
for Tribune Properties in Miami-Ft. Lauderdale**



The decline in the Tribune Properties' market share has occurred because the Miami-Ft. Lauderdale advertising market reflects, on average, extremely competitive results due to the presence of a large number of traditional media as well as numerous new media outlets that are becoming more competitive and gaining advertising revenue share. As the market concentration analysis below indicates, other traditional media have competed effectively against these properties, and that competition can only be expected to increase, both as a result of the number of strong and well-funded traditional media sources and competition from cable and broadband video systems, direct broadcast satellite systems, the Internet, and new media.<sup>8</sup>

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<sup>8</sup> In the present marketplace, owners of media properties spend a considerable amount of time comparing their properties with properties in the same media and other media in different services. As discussed below, these inter-media comparisons are not only made among traditional media, but also between traditional media and the new media opportunities that are constantly being developed as a result of the Internet and in other venues. Therefore, any analysis of traditional media market shares alone overstates the importance of those media's positions in today's marketplace, as will be shown later in this analysis.

## Concentration Analysis Based On Advertising Markets

With the above estimates for television and radio stations as well as for daily and weekly newspapers, we examine next whether the traditional media markets are concentrated using the commonly used Herfindahl-Hirschman Index (“HHI”) that is employed by the Department of Justice and the Federal Trade Commission in their analyses of proposed transactions.<sup>9</sup> The HHI is used by these antitrust agencies, as well as many economists analyzing the competitiveness of different markets, because it accurately reflects the distribution of the revenue shares and the present level of competition. For example, if a particular market had ten firms each having 10% of the total revenues, the resulting HHI calculation would be only 1,000 (the DOJ and FTC level of an unconcentrated market), reflecting the presence of ten equal competitive firms. On the other hand, if a particular market had only two firms, each with 50% of the total revenues, the resulting HHI calculation would be 5,000 (significantly over the DOJ and FTC level of 1,800 for a highly concentrated market). The range between 1,000 and 1,800 is defined by these agencies as “moderately concentrated.” Even in the moderately and highly concentrated areas, these antitrust agencies permit further consolidation, weighing the potential benefits of each merger against any possible anticompetitive impacts.

The HHI calculation we have made here overstates the concentration of these local advertising markets because it only includes the revenues generated by the traditional media. Clearly, other media -- whether they are local cable systems, local Internet websites, magazines and other print media, outdoor advertising, or other media -- compete with the traditional media

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<sup>9</sup> The HHI is the total sum of the squared market revenue shares expressed as whole numbers for all market participants. In this case, that includes the revenue shares for all of the television and radio stations and newspapers in each of the 210 geographic markets. Larger numbers indicate greater concentration, and lower numbers tend to show less concentration and more competition in a market.



for advertising revenues. And even if those media could be taken into account in a concentration analysis, that would still understate the level of diversity in the marketplace because many non-advertiser-supported media (such as subscription-based media and non-commercial broadcast outlets) offer alternative sources of information.

We begin by examining the HHIs for the average national market, and values across the markets ranked 11-25, to compare to the Miami-Ft. Lauderdale market. We will also analyze the HHI for the Miami-Ft. Lauderdale market over the past nine years.

### **Calculation of HHIs**

Using the radio and television station and newspaper revenue estimates, we have summed the total advertising revenue by media for each of the 210 geographic markets. With those totals, we calculated the market shares of all owners of the three media in each market. We then calculated the HHI for each market. For 2008, the average HHI across all 210 traditional media markets is 1,359, and the median is 1,232 -- both of which are classified as moderately concentrated.

There is a noticeable difference in average HHIs across different size markets. As one moves from larger to smaller markets with fewer media outlets, the HHIs generally increase. There are fewer traditional media outlets competing for advertising sales, and therefore, the media outlets in those markets tend to realize larger revenue shares resulting in higher HHIs. For the markets ranked between 11 and 25, the average HHI is 1,115, over 240 points below the national average.

The HHI for Miami-Ft. Lauderdale is also 1,115, again over 240 points lower than the national average of 1,359. Clearly, many different media owners with significant shares exist in this market providing substantial competitive influence. For example, two of the big-four major

broadcast television networks own their local affiliates in this market (CBS and NBC), and the Univision affiliate in this market is a very strong competitor ranked fourth in terms of revenue market share.<sup>10</sup> Second, a number of major radio groups have multiple outlets in this market. The market therefore is characterized by the presence of a large number of strong competitors. Most importantly, because this waiver involves an existing combination as opposed to the creation of a new one, the transaction itself will have no direct impact on concentration levels. Moreover, the historical downward trend in revenues indicates that continued common ownership of WSFL-TV and the *Sun Sentinel* would leave the HHI in Miami-Ft. Lauderdale well in the low range of a moderately concentrated market.

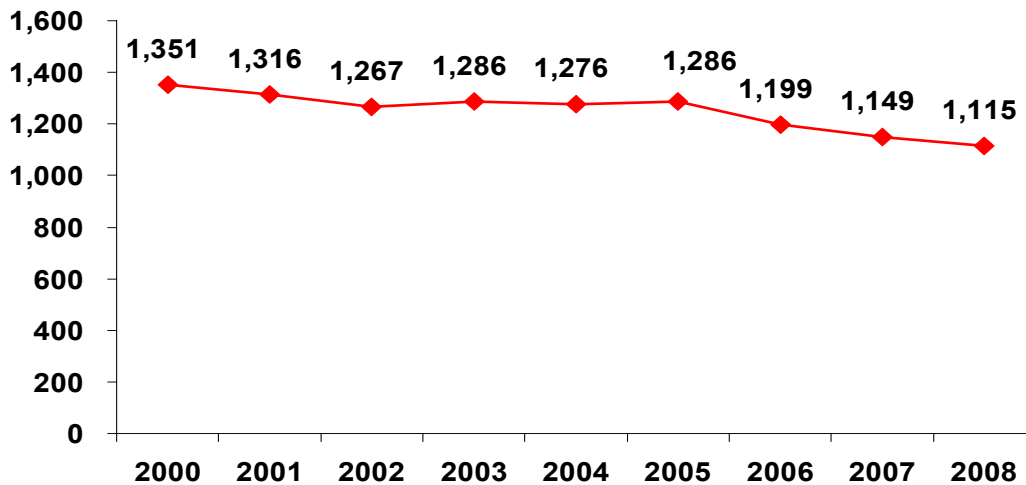
### **Recent History of Concentration**

Concentration of traditional media revenues has been decreasing for several years in the Miami-Ft. Lauderdale media marketplace, as measured by the HHI. The significant number of outlets owned by many different media groups in the Miami-Ft. Lauderdale market clearly indicates that there is a strong level of competition in attracting viewers, listeners, and readers. This competition is evidenced by the decrease in the level of concentration in Miami-Ft. Lauderdale over the past nine years. Figure 5 shows the HHI for the Miami-Ft. Lauderdale DMA market over the last nine years based on revenue estimates:

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<sup>10</sup> Media Access Pro™, BIA.

**Figure 5 - Historical HHI of Traditional Media for Miami-Ft. Lauderdale Market**



During this time, the level of concentration in the Miami-Ft. Lauderdale market, as measured by the HHI, has declined by over 230 points. The concentration measure is now further in the low end of the moderately concentrated range.

To summarize, the Miami-Ft. Lauderdale market is comparatively less concentrated than the national average and has become less concentrated over time. Currently in Miami-Ft. Lauderdale, the calculation of the HHI as it relates to only the traditional media of newspapers, radio, and television indicates a market that falls easily into the low end of the category of “moderately concentrated.” Moreover, trends clearly indicate that Miami-Ft. Lauderdale will become even less concentrated. And as discussed below, adding alternative and new media to the analysis further dilutes this level of concentration.

## The Wider Media Marketplace

Over the last decade, the media industry has undergone significant changes in advertising choices, content dissemination, and audience usage. Advertisers today have many options beyond the traditional media when choosing how to get their messages to local audiences. In addition, content originators (including many traditional media) now provide their information and entertainment through multiple means of access (*e.g.*, Internet sites, mobile applications). Finally, consumers obtain information and entertainment using many different devices.

Americans go online for a variety of reasons, including to be informed or entertained.<sup>11</sup> Much of the content on the Internet is ad-supported and free to the user. The “advertising supported Internet” has become such a pervasive part of the advertising ecosystem that the Interactive Advertising Bureau commissioned a study to understand its size, scope and benefits.<sup>12</sup> Among other findings, the study concludes that with \$23.4 billion spent on Internet advertising in 2008, that medium is already bigger than radio, outdoor advertising, or Yellow Pages and about the same as consumer magazines. ComScore, a leading provider of Internet usage data, has shown that, in the U.S. (including home, work, and university locations) in June 2009 alone, 193 million individuals visited an Internet site at least once.<sup>13</sup> This included not only search sites (*e.g.*, Google and Yahoo) but also media sites (*e.g.*, Fox, Viacom, Turner, CBS, New York Times, Disney, NBC, ESPN, Gannett and Time Warner).

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<sup>11</sup> [http://www.emarketer.com/Article.aspx?Ne=1050&N=1064&No=2&R=1007184&xsrc=article\\_head\\_sitesearchx](http://www.emarketer.com/Article.aspx?Ne=1050&N=1064&No=2&R=1007184&xsrc=article_head_sitesearchx).

<sup>12</sup> Hamilton Consultants, “Economic Value of the Advertising-Supported Internet Ecosystem,” published by the Interactive Advertising Bureau, New York, NY, June 10, 2009. For a copy of the study, see [http://www.iab.net/insights\\_research/530422/economicvalue](http://www.iab.net/insights_research/530422/economicvalue).

<sup>13</sup> [http://www.comscore.com/Press\\_Events/Press\\_Releases/2009/7/comScore\\_Media\\_Metrix\\_Ranks\\_Top\\_50\\_U.S.\\_Web\\_Properties\\_for\\_June\\_2009](http://www.comscore.com/Press_Events/Press_Releases/2009/7/comScore_Media_Metrix_Ranks_Top_50_U.S._Web_Properties_for_June_2009).

In addition to the wired Internet, there are the wireless Internet and other mobile media. New research from the Pew Internet & American Life Project shows that over half (56%) of Americans access the wireless Internet using a variety of devices including laptops, cell phones, MP3 players and game consoles.<sup>14</sup> African Americans are the most active users of the mobile Internet, according to Pew, making this medium particularly important to this demographic group. In fact, Pew concludes that any “digital divide between African Americans and white Americans diminishes when mobile use is taken into account.”<sup>15</sup>

Mobile media choices are becoming richer and more prevalent. For example, the Open Mobile Video Coalition and others currently are demonstrating the benefits of the new digital broadcast mobile service in Washington, DC and other markets.<sup>16</sup> Since the cutover to all digital television, spectrum was freed up allowing MediaFLO USA to expedite roll-out of its mobile video service, FLO TV, which is now available in more than 110 major markets (including Miami)<sup>17</sup> and reaches a population of over 200 million consumers.<sup>18</sup> There are other mobile media choices such as those offered by News Over Wireless, Inergize, Verve and other mobile media companies offering local news, sports, information and entertainment. Mobile media themselves are becoming a fast growing category for ad spending, which allows free content to be provided to users.

The trend in consumer technologies typically has been that consumers adopt new technologies first, then media companies start to follow them into these new media, followed in

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<sup>14</sup> Horrigan, John, “Wireless Internet Use,” Pew Internet, July 2009. See <http://pewinternet.org/Reports/2009/12-Wireless-Internet-Use.aspx>.

<sup>15</sup> Horrigan, p. 4.

<sup>16</sup> [www.omvc.org](http://www.omvc.org).

<sup>17</sup> See Todd Spangler, “TV Behind the Wheel, Will In-Car TV Shift Into the Fast Lane – Or Is It a Non-Starter?,” Multichannel News, Jan. 23, 2010, available at [http://www.multichannel.com/article/445558-TV\\_Behind\\_the\\_Wheel.php?nid=2226&source=link&rid=5977151](http://www.multichannel.com/article/445558-TV_Behind_the_Wheel.php?nid=2226&source=link&rid=5977151) (last visited Feb. 4, 2010); FLOTV, “Coverage Map,” <http://www.flotv.com/whats-on-flo-tv/map> (last visited Feb. 4, 2010) (type “Miami, FL” into “Address” box and hit “SEARCH” button).

turn by advertisers. Increasingly, advertisers see the benefits of “integrated marketing mixes” in which media campaigns are conducted across traditional and new media platforms. Research from the Direct Marketing Association showed that 82% of companies surveyed coordinated use of multiple media in campaigns (*i.e.*, “integrated marketing”) including particularly email (75.8%), online video (61.1%) and search engines (62.9%).<sup>19</sup>

Recognizing these changes in the marketplace and utilizing the expertise of its subsidiary The Kelsey Group,<sup>20</sup> BIA unveiled in February 2009 its first comprehensive local media forecast.<sup>21</sup> The BIA/Kelsey forecast defines local advertising as spending by small and medium-sized businesses, national advertisers and regional advertisers making local buys. That forecast draws from proprietary data; company, industry and county information in the public domain; and informational interviews with firms in these media about the competitive position and strength of these media, as well as where these media may be heading as they develop.<sup>22</sup> Building off the national forecast research, BIA/Kelsey also offers “Media Ad Views,” market-specific custom reports that provide a comprehensive picture of the state of local media advertising for the different advertising options that are now available. In this section, we will compare the national distribution of advertising revenue to the situation in the Miami-Ft. Lauderdale, FL media marketplace, and evaluate the Tribune Properties’ share in this wider media marketplace.

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<sup>18</sup> [http://www.flotv.com/sm/assets/pdfs/FLO\\_TV\\_Fact\\_Sheet.pdf](http://www.flotv.com/sm/assets/pdfs/FLO_TV_Fact_Sheet.pdf).

<sup>19</sup> Direct Marketing Association, “Integrated Marketing Media Mix: More Digital with Mainstay Traditional,” see <http://www.marketingcharts.com/television/integrated-marketing-media-mix-study-more-digital-with-mainstay-traditional-5287/>.

<sup>20</sup> The Kelsey Group is a research firm that has over twenty years of experience in the Yellow Pages area, and over ten years of experience in the Internet and online search areas.

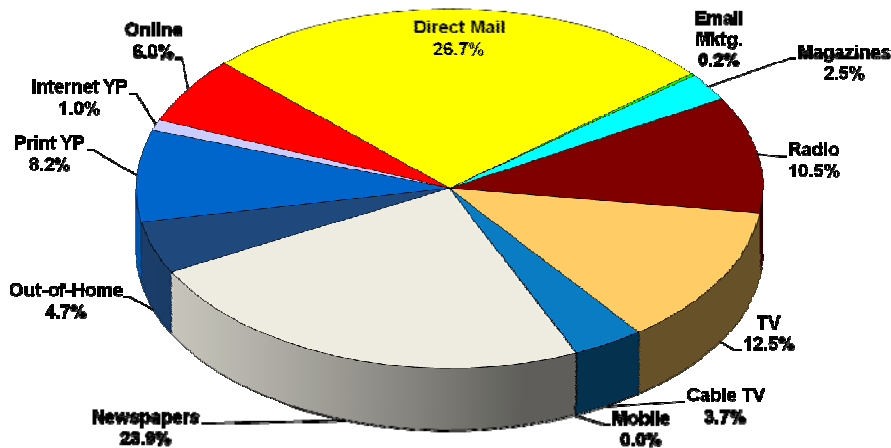
<sup>21</sup> <http://www.bia.com/pr090226-forecast.asp>.

<sup>22</sup> Additional information regarding the methodology employed is included in Appendix A-2 hereto.

## The National View

Across the entire nation, there is a wide variety of local choices available to advertisers to get their messages out to consumers. Figure 6 shows the distribution of estimated local advertising revenues for the nation as a whole for 2008.

**Figure 6 – Distribution of Estimated Local Advertising Spending by Media Nationally - 2008**



As an advertising vehicle, Direct Mail garnered the largest share, with local newspapers second. In our 2009 projections for these local media, BIA/Kelsey Group anticipated that the shares going to traditional media (including Direct Mail and newspapers) would decrease significantly over the next few years.<sup>23</sup> In contrast, many of the interactive/digital media – mobile, online, Internet Yellow Pages, and email marketing – were expected to see substantial growth in the next few years. In fact, revenues from this interactive/digital advertising segment

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<sup>23</sup> “[T]he traditional segment (encompassing newspapers, direct mail, television, radio, print Yellow Pages, out of home (non-digital), cable television and magazines) will decrease from \$141.3 billion in 2008 to \$112.4 billion in 2013 (CAGR of -4.5%).” <http://www.bia.com/pr090226-forecast.asp>.

were projected to grow at an 18% compounded annual growth rate (“CAGR”) between 2008 and 2013.<sup>24</sup>

BIA/Kelsey’s recently released data for 2009 confirm that the trend away from traditional media advertising has continued and is not likely to abate in the future.<sup>25</sup> While the overall U.S. local advertising market is projected to grow at a modest CAGR of only 2.2% from 2009 to 2014, spending on traditional media advertising is projected to decline from \$115 billion in 2009 to \$108.2 billion in 2014 (CAGR of -1.2%).<sup>26</sup> That continued decline contrasts strongly with the projected growth in spending on media in the interactive/digital segment (CAGR of 19.3%) in the same period and shows that traditional media are expected to continue to lose ground to new competitors over the long-term.<sup>27</sup>

### **The Miami-Ft. Lauderdale, FL View**

As shown earlier, the relative strength and number of local radio and television stations and newspapers in the Miami-Ft. Lauderdale, FL media market have led to a high level of competition among traditional media. Given that strength of competition and, in particular, the number of strong local television stations, it is not surprising to see the traditional media garnering a minimally larger percentage of total local media advertising than at the national level. Figure 7 below shows the distribution of estimated local advertising spending within the Miami-Ft. Lauderdale, FL media marketplace.

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<sup>24</sup>

*Id.*

<sup>25</sup>

<http://www.bia.com/pr220210.asp>.

<sup>26</sup>

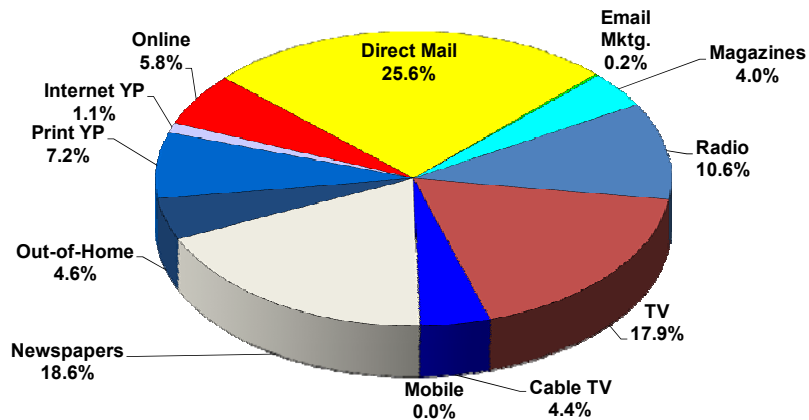
*Id.*

<sup>27</sup>

*See id.*



**Figure 7 – Distribution of Estimated Local Advertising Spending by Media in Miami-Ft. Lauderdale, FL - 2008**



On average, newspapers nationally garnered nearly a quarter (23.9%) of all local media advertising revenues. In the Miami-Ft. Lauderdale market, newspapers only accounted for 18.6% of those revenues. As for radio, nationally it realized 10.5% of all local media advertising revenues and 10.6% in the Miami-Ft. Lauderdale market. Only television stations, in contrast, have a significantly higher share of those revenues than nationally (17.9% in Miami-Ft. Lauderdale versus 12.5% nationally), and that share is distributed among the substantial number of television outlets in the marketplace.

#### **Tribune Properties' Share of the Miami-Ft. Lauderdale, FL Media Marketplace**

As shown earlier, the revenue share garnered by the Tribune Properties has been declining in recent years, falling to 21.1% of traditional media revenues. When the larger advertising market is examined, including all of the various media that actually compete with

these Tribune Properties, that share is even less. For 2008, the Tribune Properties' share of expanded media advertising market revenues in the Miami-Ft. Lauderdale DMA is 8.1%. Many different companies are included among the other media competing with these Tribune Properties, further supporting the conclusion that Tribune does not have any market power.<sup>28</sup>

## **Today's Media Marketplace**

The statistical analysis of traditional media discussed above demonstrates the existence of a very competitive situation in Miami-Ft. Lauderdale. The media marketplace there reflects the vibrant competition and diversity that have come from the introduction over time of more television stations and more radio stations, the advent of cable television, and other innumerable technological developments. We have assisted Tribune and its legal staff in compiling the various media tables and "voice" counts contained in its waiver request, and believe that these counts accurately reflect the very diverse and competitive market among traditional media outlets as further illustrated by the Tribune revenue share and market concentration analysis discussed above. These listings of media voices are included in appendices to this report.

To summarize those listings, there are 15 full power television stations (13 commercial and 2 non-commercial) owned by 12 companies (10 commercial and 2 non-commercial) in the Miami-Ft. Lauderdale DMA.<sup>29</sup> There are 35 low power and Class A television stations owned by 21 companies. In the DMA, there are 79 full power radio stations (64 commercial and 15

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<sup>28</sup> It is not possible to calculate an HHI index for this wider advertising market, as we do not know the owners of all the various media outside of the traditional media that were analyzed earlier. Given that the traditional media examination of the HHI showed it in the low end of the moderately concentrated range and that the presence of these additional media outlets would decrease concentration levels, the wider market value would likely indicate an unconcentrated market, with correspondingly lower HHI values than the traditional media advertising market.

<sup>29</sup> There are 14 multicast programming streams in addition to the primary programming being provided by these local television stations.

non-commercial) owned by 41 companies (29 commercial and 12 non-commercial).<sup>30</sup> There are three low power radio stations owned by three different entities. In the smaller Miami-Ft. Lauderdale, FL Arbitron Metro market as utilized in the FCC's geographic market rules adopted in June 2003, there are 58 full power radio stations (47 commercial and 11 non-commercial) owned by 31 companies (21 commercial and 10 non-commercial). With respect to newspapers, there are 3 daily newspapers owned by 3 companies along with 23 weekly newspapers owned by 15 companies. At least 31 specialty and 3 collegiate publications, as well as 27 local magazines also provide additional diversity of information and entertainment to people living in the Miami-Ft. Lauderdale market. Finally, there are a host of other outlets, including the new media analyzed above, that are available in the Miami-Ft. Lauderdale, FL DMA.

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<sup>30</sup> There are also 11 multicast HD radio signals being provided by the market's radio stations.

In addition to the competition from the radio and television stations available in the Miami-Ft. Lauderdale, FL DMA analyzed above, there are many traditional media outlets located in the adjacent West Palm Beach-Ft. Pierce, FL DMA that attract listeners and viewers from the Miami-Ft. Lauderdale, FL market.

## **Conclusion**

This update and expansion upon the 2007 study of traditional media revenues clearly show that competition continues to increase in the Miami-Ft. Lauderdale market. In fact, the measure of concentration falls within the lower range of the moderately concentrated category using the revenues of the three traditional media outlets alone. Moreover, when the numerous other local outlets providing information and entertainment are considered, the number of competing outlets is overwhelming.

When the advertising revenue analysis is expanded to include more of the new media outlets now actually available to advertisers, the level of concentration is clearly even lower. Many of these new media are now providing opportunities for local and national advertisers, increasing the competitive pressure on the traditional media outlets, both nationally and in the Miami-Ft. Lauderdale, FL market. Many of these new outlets are also expanding the choices of information and entertainment available to consumers in this market.

The Tribune Properties' share of advertising revenues continues to decrease in the Miami-Ft. Lauderdale market. For just the traditional media marketplace, that share has decreased by four percentage points over the last nine years. In the wider advertising marketplace, the Tribune Properties' share is only 8.1%.

After examining the statistical and outlet information for the Miami-Ft. Lauderdale, FL media market, one can only conclude that it is a vibrant, actively competitive, and expanding

advertising market offering many sources of diverse content to the area's residents. Advertisers and consumers are being provided more choices every day. The relative position of the combined Tribune Properties should not be of any regulatory concern in this expanding market.

**Appendix A-1: Reprint of *An Economic Study of the Cross-Ownership of WDZL and the Sun Sentinel*, by Roger D. Blair**

**An Economic Analysis of the  
Cross-Ownership of WDZL and  
the Sun-Sentinel**

**Roger D. Blair  
Department of Economics  
University of Florida**

**August 1, 1996**

**AN ECONOMIC ANALYSIS OF THE CROSS-OWNERSHIP  
OF STATION WDZL(TV) AND THE SUN-SENTINEL**

**I. INTRODUCTION.**

The Tribune Company proposes to acquire control of Station WDZL, a Miami, Florida television station (WDZL) currently owned indirectly by Renaissance Communications Corporation. The Tribune Company currently indirectly owns the Sun-Sentinel, a daily newspaper published in Fort Lauderdale, Florida. I have been retained on behalf of the Tribune Company to perform an economic analysis of various issues raised by the proposed common ownership of WDZL and the Sun-Sentinel with respect to certain concerns of the Federal Communications Commission (FCC) regarding diversity and economic competition.

I currently am the Huber Hurst Professor of Business and Legal Studies in the Department of Economics at the University of Florida in Gainesville, Florida. I formerly served as Chairman of the Department of Economics and as Associate Director of the Public Policy Research Center. My major fields of academic concentration are antitrust economics, industrial organization, and applied microeconomics. I received my Ph.D. in economics from Michigan State University in 1968. I have taught economics at the University of Florida since 1970, with the exception of time that I have taken for visiting professorships or leaves. During that time, I have served as a consultant on antitrust matters for the Federal Trade Commission, the Antitrust Division of the United States Department of Justice, and the



Attorneys General of Arizona, California, Connecticut, Florida, Missouri, Oregon, and Washington.<sup>1</sup>

## **II. THE GENERAL METHODOLOGY FOR THE COMPETITIVE ANALYSIS OF THE PROPOSED CROSS-OWNERSHIP OF WDZL AND THE SUN-SENTINEL.**

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In evaluating the competitive significance of the cross-ownership of WDZL and the Sun-Sentinel, I have relied upon customary and standard antitrust methodology. To start, the relevant market for the analysis must be defined; the relevant market has both a product dimension and a geographic dimension. Once the relevant product and geographic markets have been defined, standard and customary antitrust methodology can be applied to determine whether market power is present and whether a market is concentrated or competitive.

### **A. Standard Methodology: The Product Market.**

The essence of the product market definition inquiry is to identify those goods and services that are reasonably good substitutes for one another in consumption. In defining the relevant product market, one ignores geographic or locational considerations and centers on reasonable substitutability on the demand side. The idea is to capture all of the goods and services that have a high cross-elasticity of demand. The cross-elasticity of demand

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<sup>1</sup> My academic and professional qualifications to provide expert economic analysis of the issues regarding competition and diversity posed by the proposed cross-ownership of WDZL and the Sun-Sentinel are set forth in Exhibit A to this Report.

measures the relative responsiveness of the quantity demanded of product A to changes in the price of product B. If the cross-elasticity of demand is positive -- consumers buy more of product A when the price of product B rises -- then product A and product B are substitutes.<sup>2</sup>

B. Standard Methodology: The Geographic Market.

As a general proposition, the relevant geographic market identifies the area within which sellers can turn for consumers of their goods or services and buyers can turn for suppliers of those goods or services. Again, the idea is one of reasonable substitutability, but in the geographic context the inquiry is over the sources of supply. In other words, are the product sold by Business A and the product sold by Business B substitutable in the sense that the locations of Business A and Business B are sufficiently close together that buyers can reasonably turn to Business B if they are unhappy with the price or quality of service offered by Business A? If the answer is "yes," then A and B are in the same geographic market.<sup>3</sup>

C. Standard Methodology: Market Power.

A seller is said to have market power if it can profitably raise price above the competitive level. A firm's ability to do this will be influenced by alternatives that are

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<sup>2</sup> See, e.g., Roger D. Blair and David L. Kaserman, Antitrust Economics (1985) at 108; Herbert Hovenkamp, Federal Antitrust Policy (1994), at 98.

<sup>3</sup> Blair and Kaserman, Antitrust Economics, at 107; Hovenkamp, Federal Antitrust Policy, at 108.

available to the buyers, the ability of the firm's rivals to expand their output in response to a price increase, and the size of the firm in question. As Landes and Posner have shown, one may write an index of market power as

$$L = \frac{S}{\eta + \epsilon(1-S)}$$

where  $S$  represents the share of the firm in question,  $(1 - S)$  represents everyone else's share,  $\eta$  is the elasticity of demand, and  $\epsilon$  is the elasticity of supply.<sup>4</sup>

Intuitively, these relationships make sense. As its market share rises, a firm's ability to deviate from competitive price levels increases. This is consistent with the usual inference regarding the importance of market share as an indicator of market power. To the extent that market share of sales provides an indication of the firm's share of capacity, it will provide an indication of the firm's ability to control output in the market. This, in turn, provides a means of influencing price. Thus, all else being equal, market share is indisputably important in assessing market power. In cases where a firm's market share is less than 30 percent, it is extremely unlikely that the firm will have any meaningful market power. For example, the Supreme Court has held that a market share of 30 percent was insufficient as a matter of law to confer market power on a firm.<sup>5</sup>

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<sup>4</sup> William M. Landes and Richard A. Posner, Market Power in Antitrust Cases, 94 Harvard Law Review 939 (1981).

<sup>5</sup> Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2 (1984); see Antitrust Law Developments, ABA Antitrust Section (3d Ed. 1992), at 213-14 ("a market share of less than about 40% virtually precludes a finding of monopoly power").

Market share alone also is not dispositive; the elasticity of demand is also important. The more elastic the demand, the less able a firm is to deviate from competitive pricing. This rings true because the elasticity of demand measures the relative responsiveness of the quantity demanded to changes in price. When demand is relatively elastic, buyers will substantially decrease the quantity purchased when price increases. In effect, buyers will substitute other products, limiting the firm's ability to increase price.

The elasticity of rivals' supply is also important because it measures the ability of the firm's rivals to expand output in response to a price increase. The more elastic the rivals' supply, the less able the firm will be to raise price because any price increase will elicit a substantial increase in output. This increase in output will defeat to some extent the firm's efforts to increase price by restricting its own output.

In summary, in order to assess the power of WDZL and the Sun-Sentinel, once under common ownership, to raise the price of their product in the relevant geographic market, one must have data on (1) their combined market share, (2) the elasticity of demand for advertising, and (3) the elasticity of supply of rivals in the advertising market.<sup>6</sup> In instances where a firm's market share is insubstantial, it can have no market power. As discussed above, in Hyde, the Supreme Court found that a market share of 30 percent was

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<sup>6</sup> In Federal Antitrust Policy, at page 82, Hovenkamp points out that "in order to estimate a firm's market power we must gather some information not only about a firm's market share, but also about the demand and supply elasticities."

insufficient to confer market power.<sup>7</sup> Similarly, in instances where the firm's rivals can readily expand their outputs, the subject firm's efforts to restrict output will be frustrated.

D. Standard Methodology: Market Concentration.

Due to its prominence in the Department of Justice (DOJ) and Federal Trade Commission (FTC) Merger Guidelines, the Herfindahl-Hirschman Index (HHI) has become a statistic of choice for summarizing concentration in a market.<sup>8</sup> The HHI is calculated as the sum of the squared market shares of the participants times 10,000:

$$HHI = \left( \sum_{i=1}^N s_i^2 \right) (10,000)$$

where  $s_i$  is the share of firm  $i$ ,  $N$  is the number of firms, and  $\Sigma$  is the summation operator.

In an effort to reduce uncertainty regarding the enforcement policy of the DOJ and FTC these agencies published a set of horizontal merger guidelines utilizing an HHI

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<sup>7</sup> Hyde, supra, 466 U.S. 2 (1984).

<sup>8</sup> It should be remembered that the HHI is just a summary statistic. While it is useful in conveying some information about concentration, it does not correlate perfectly with economic performance. In some markets, concentration will be high, but intense economic rivalry will produce prices and outputs that approximate competitive levels. In other concentrated markets, there may be an absence of intense rivalry with prices and outputs that are near the monopoly level. In other words, in a highly concentrated market, one may observe noncollusive outcomes that span the spectrum from competition to monopoly.

analysis.<sup>9</sup> The general enforcement standards are couched in terms of HHI statistics based on a belief that highly concentrated markets may perform poorly in an economic sense. The Guidelines for horizontal merger enforcement are set forth in Section 1.51:

- a) Post-Merger HHI Below 1000. The Guidelines regard markets in this region to be unconcentrated. Mergers resulting in unconcentrated markets are unlikely to have adverse competitive effects and ordinarily require no further analysis of the proposed combination.
- b) Post-Merger HHI Between 1000 and 1800. The Guidelines regard markets in this region to be moderately concentrated. Mergers producing an increase in the HHI of less than 100 points in moderately concentrated post-merger markets are unlikely to have adverse competitive consequences and ordinarily require no further analysis of the proposed combination. Mergers producing an increase in the HHI of more than 100 points in moderately concentrated post-merger markets may raise significant competitive concerns, depending on an analysis of the factors set forth in Sections 2-5 of the Guidelines.
- c) Post-Merger HHI Above 1800. The Guidelines regard markets in this region to be highly concentrated. Mergers producing an increase in the HHI of less than 50 points even in highly concentrated post-merger markets are unlikely to have adverse competitive consequences and ordinarily require no further analysis of the proposed combination. Mergers producing an increase in the HHI of more than 100 points in highly concentrated post-merger markets potentially raise significant competitive concerns, depending on an analysis of the factors set forth in Sections 2-5 of the Guidelines. Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise. The presumption may be overcome by a showing that the factors set forth in Sections 2-5 of the Guidelines make it unlikely that the merger will create or enhance market power or facilitate its exercise in light of market concentration and market share.

It thus is only in cases where the post-merger market structure is highly concentrated and the change in concentration is fairly substantial that the DOJ or the FTC presumes an

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<sup>9</sup> Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, April 2, 1992.

anticompetitive effect of the merger. Even in that circumstance, the presumption may be overcome by other economic evidence.

After determining the HHI and the change in the HHI due to the proposed common ownership, the antitrust enforcement agencies consider a host of other factors before reaching a conclusion on the competitive significance of a merger that raises any questions under the structural tests. For example, under Section 1.521, the DOJ and the FTC will examine changing market conditions and substitutes that have been omitted from the product or geographic market definition to see whether the HHIs overstate the competitive significance of a proposed merger.

In Section 2, the Guidelines call for an examination of a variety of factors that may inhibit or facilitate coordinated or unilateral noncompetitive behavior. With respect to coordinated behavior, the Guidelines point out that successful coordination requires (1) agreeing on the terms of coordination that are profitable to the firms involved, (2) policing the agreement so that cheating can be detected, and (3) a mechanism for punishing the cheaters. The Guidelines recognize that product heterogeneity and firm heterogeneity make agreement on terms very difficult, and that with respect to detection and punishment, speed is of the essence. If either detecting cheating or punishing it is slow, there will be greater incentives to cheat and the possibility of coordinated behavior will be greater.

In Section 3, the Guidelines call for an examination of the ease of entry into the relevant market. The easier it is to enter the market, the less likely that a proposed

combination will lead to noncompetitive pricing. This, of course, follows because supra-competitive pricing will attract entry.

In Section 4, the Guidelines explicitly recognize that common ownership may enhance efficiency.<sup>10</sup> In this case, the benefits that flow from improved efficiency may offset any increase in market power that result from the common ownership.<sup>11</sup>

### **III. THE COMPETITIVE ANALYSIS OF THE PROPOSED CROSS-OWNERSHIP OF STATION WDZL AND THE SUN-SENTINEL.**

#### **A. The Product Market: Advertising.**

The product that WDZL and the Sun-Sentinel both sell is advertising. WDZL, a broadcast station, sells advertising time while the Sun-Sentinel, a newspaper, sells advertising space. There are other methods of advertising available, however, and there is ample evidence that these other various advertising media are reasonably good substitutes for one another. As a result, for the proper competitive analysis of the proposed cross-ownership of WDZL and the Sun-Sentinel, the relevant product market includes advertising sold by newspapers, television stations, radio stations, cable television systems, publishers of yellow pages, direct mailers, magazines, shoppers, and outdoor facilities. These advertising

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<sup>10</sup> See Oliver E. Williamson, Economics As An Antitrust Defense: The Welfare Tradeoffs, 58 American Economic Review 18 (1968).

<sup>11</sup> Finally, Section 5 deals with failing firms. If one of the parties to a merger likely would fail if the merger were not permitted, the merger may be procompetitive.



media all compete for the same advertising dollar in a significant way. In fact, one expert, Jules S. Tewlow, has characterized the competition between these different methods of advertising as "fearsome."<sup>12</sup>

Unfortunately, there are no studies that detail the extent to which one advertising medium substitutes for another. In part, this is due to the unavailability of sufficient data. Transaction prices paid for advertising space or time generally are not published or made publicly available. Without precise price data, one cannot accurately measure the cross-elasticity of demand. There is much evidence, however, of a more qualitative nature that suggests that all of the various media -- including broadcast stations, newspapers, cable systems, yellow pages, direct mail, magazines, shoppers and billboards, -- compete with one another.

In another study, the FCC staff implicitly recognized that television shares total advertising revenue with these alternative media.<sup>13</sup> In particular, the staff compared broadcast television advertising revenues to the advertising revenues of radio stations, cable television systems, newspapers, magazines, farm publications, direct mail, business publications, outdoor, yellow pages, and miscellaneous.<sup>14</sup> The staff's discussion of

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<sup>12</sup> Jules S. Tewlow, Are Newspapers in Trouble? Observations on Some Trends and Development in the Newspaper Business, Harvard University Center for Information Policy Research, Aug. 1991.

<sup>13</sup> "Overview of the Television Industry," Policy and Rules Division, Mass Media Bureau, Federal Communications Commission, March 1992, at pp. 5, 12.

<sup>14</sup> Id. at p. 12.

broadcast television's share and trends in shares of the various media would have been pointless if these media were not substitutes for broadcast television.

Academic Study. Second, numerous academic studies also support the broad definition of the advertising market. For example, Owen and Wildman have examined competition among the advertising media for advertising dollars.<sup>15</sup> Owen and Wildman conclude that most advertisers can substitute one medium for another in response to changes in prices of advertising time or space.<sup>16</sup> With respect to network advertising, they find that there are a number of good substitutes: spot television, basic cable networks and superstations, national magazines, direct mail, billboards as well as newspapers.<sup>17</sup> Owen and Wildman even cite an FCC study for the proposition that "spot television, radio, magazine, newspaper, and outdoor advertising constrain the prices of network advertising and that the prices networks charge for viewer exposures reflect competitive forces."<sup>18</sup>

In another study, Seldon and Jung examined four general types of media advertising: (1) radio and television broadcasting, (2) print (newspapers and magazines), (3)

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<sup>15</sup> Bruce Owen and Steven Wildman, Video Economics (1992).

<sup>16</sup> Id. at 12.

<sup>17</sup> Id. at 154.

<sup>18</sup> Id. at 157 citing Entry, Jurisdiction, Ownership, and Regulation, FCC Network Inquiry Special Staff Report (1980).

direct mail, and (4) outdoor (billboards and posters). Their empirical analysis found that these various advertising media are fairly good substitutes for one another.<sup>19</sup>

Furthermore, Lilien and Kotler identify the media planning problem as selecting among the various advertising media to find the most cost-effective combination of reach, frequency, and impact.<sup>20</sup> Lilien and Kotler explain that "[i]n choosing a combination of media types, the media planner considers . . . the relative cost. On the basis of media impacts and costs, the media planner chooses specific media within each media type . . . that delivers the desired response in the most cost effective way."<sup>21</sup> This can be seen as a constrained optimization problem in which the decision maker maximizes the advertising impact subject to an advertising budget constraint. Importantly, Lilien and Kotler identified the major media types to include newspapers, television, direct mail, radio, magazines, and outdoor.<sup>22</sup>

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<sup>19</sup> Barry Seldon and Chulho Jung, "Derived Demand for Advertising Messages and Substitutability Among the Media," 33 *Quarterly Review of Economics and Finance* 71 (1993).

<sup>20</sup> Gary Lilien and Phillip Kotler, Marketing Decision Making (1983). It is standard in marketing textbooks to teach business students how to optimize the selection of advertising from amongst all media.

<sup>21</sup> Id. at 513.

<sup>22</sup> Id.

Using data from 1977, when cable was far less prominent than it is today, Fournier and Martin also examined the market for television advertising.<sup>23</sup> The central concern of their study was whether the FCC restriction on entry had insulated the incumbent television broadcasters from competition. Using various measures of concentration, Fournier and Martin could find no evidence that concentration influenced prices. An obvious implication of the evidence and conclusions supplied by Fournier and Martin is that television stations compete in a broader advertising market and that alternative media are constraining the prices of television advertising.

In another study, Economists Incorporated, a consulting firm in Washington, D.C., conducted interviews with seven advertising agency executives and one media consultant.<sup>24</sup> These executives allocated advertising budgets across media on the basis of cost-effectiveness. Important factors in decision making were effectiveness, cost per thousand, and coverage. Importantly, in response to a hypothetical increase in television prices, one or more of these executives stated that they would reallocate advertising dollars to cable, radio, newspapers, outdoor, and direct mail.

The Office of Plans and Policies of the FCC also has recognized that an array of substitutes to video advertising are available, including radio, newspapers, magazines,

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<sup>23</sup> Gary M. Fournier and Donald L. Martin, "Does Government-Restricted Entry Produce Market Power? New Evidence from the Market for Television Advertising", 14 *Bell Journal of Economics* 44 (1983).

<sup>24</sup> Economists Incorporated, *An Economic Analysis of the Broadcast Television National Ownership, Local Ownership and Radio Cross-Ownership Rules*, May 17, 1995.

direct mail, yellow pages, and outdoor advertising.<sup>25</sup> In this same study, the FCC staff also recognized that there are alternatives to advertising that include various promotions such as coupons, conventions and trade shows, and point-of-purchase displays.<sup>26</sup>

A review of the advertising trade literature confirms that media planning involves all of the various media, including broadcast, print, yellow pages, direct mail and outdoor. For example, Douglas Johnson reports that cost-per-thousand (CPM) is compared across various media by advertisers.<sup>27</sup> On this basis, many advertisers find billboards economically attractive. Rosemary Reitelberg reports that one advertising agency uses outdoor effectively rather than newspapers for promoting the products of the agency's clients.<sup>28</sup> Keith J. Kelly and Joe Mandese have reported that high prices and tight availability of television time was apt to cause a reallocation of advertising budgets to other media including outdoor.<sup>29</sup>

A number of other articles support the view that all advertising, including broadcast, print, direct mail and outdoor, is substitutable. These articles, for example,

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<sup>25</sup> Florence Setzer and Jonathan Levy, "Broadcast Television In A Multichannel Marketplace," Office of Plans and Policy, Federal Communications Commission, June 27, 1991, 8 FCC Rcd. 3996, 4083.

<sup>26</sup> Id. The staff's discussion of audience trends and the resultant impact on the decision of advertisers as to where to spend their advertising dollars is consistent with the constrained optimization approach examined below.

<sup>27</sup> "The Last Unavoidable Medium: Billboards," 38 Indiana Business Magazine (1994).

<sup>28</sup> Women's Wear Daily (June 16, 1995).

<sup>29</sup> Advertising Age (June 12, 1995).

compare CPMs across various media,<sup>30</sup> and examine the increased use of outdoor in non-standard ways: for discount stores,<sup>31</sup> for promoting retail products,<sup>32</sup> for grocery stores,<sup>33</sup> for automobiles,<sup>34</sup> for dairy foods,<sup>35</sup> and for insurance.<sup>36</sup> These examples all point to specific cases where advertising dollars are being shifted from one medium to another in the broad product market.<sup>37</sup>

Empirical Anecdotes. Third, there is no doubt whatsoever that the sellers of advertising time and space recognize that they compete with one another. For example, Knight-Ridder has reported that "[a]ll of the company newspapers compete for advertising . . . with broadcast and cable television, radio, magazines, non-daily suburban newspapers, free shoppers, billboards and direct mail."<sup>38</sup> Additionally, Outdoor Systems, a major national

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<sup>30</sup> Richard R. Szathmary, "The Great and Not So Great Outdoors," 144 Sales & Marketing Management 75 (1992).

<sup>31</sup> Teresa Andreoli, "From Retailers To Consumers: Billboards Drive Message Home," 33 Discount Stores News 14 (1994).

<sup>32</sup> Ann Marie Kerwin, "Retail Wears Outdoor Crown," Inside Media 6 (February 2, 1994).

<sup>33</sup> Terry Hennessey, "Larger Than Life," 73 Progressive Grocer 55 (1994).

<sup>34</sup> Riccardo A. Davis, "Chrysler, VW Year For Outdoors," Advertising Age (Special Report) S-4 (1993).

<sup>35</sup> Jeff Reiter, "The Great Outdoors," 91 Dairy Foods Magazine 37 (1990).

<sup>36</sup> Lisa Marie Petersen, "Outside Chance," 2 MEDIAWEEK 20 (1992).

<sup>37</sup> Echoing the academic literature, Jody Token, Do-It-Yourself Retailing (June 1993), points out that the "problem retailers face is how to allocate precious advertising funds." The author advises that "the right media mix is the one that brings you the biggest return for your money."

<sup>38</sup> Knight-Ridder, 1993 SEC Form 10-K, at p. 7.

billboard company, "competes in each of its markets with other outdoor advertisers as well as other media, including broadcast and cable television, radio, newspapers and direct mail marketers."<sup>39</sup>

It also is instructive to observe that all of these media develop promotional materials to compete with one another. For example, I am aware that the Yellow Pages Publishers Association develops competitive information on television, newspapers, radio, magazines, outdoor, and direct mail for its members. I am also aware that POA Acquisition Corporation, a large outdoor advertising firm in the Orlando area routinely arms its sales personnel with standardized sales tools that compare the cost effectiveness of billboard advertising to other media. These efforts are clearly aimed at moving advertising dollars from other media to outdoor.

Although a large-scale, systematic survey of all major advertisers is beyond the scope of this analysis, it also is instructive to examine the behavior of several important advertisers in the Miami-Fort Lauderdale-West Palm Beach area. For example, I am aware that Office Depot allocates its advertising budget to at least five media: 58 percent to network cable, 25 percent to other media such as in-stadium displays, seven percent to network television, five percent to radio, and five percent to newspaper. Sunglass Hut, on the other hand, primarily uses outdoor advertising (85 percent), but also uses radio (10 percent) and magazines (5 percent).

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<sup>39</sup> Outdoor Systems, 1993 SEC Form 10-K at p. 6.

It is also instructive that both the Sun-Sentinel and WDZL act in a manner that reflects competition against all forms of advertising, including the Yellow Pages, direct mail, and outdoor advertising. Attached to this Report as Exhibits B and C are statements from management personnel at WDZL and the Sun-Sentinel that reflect their competitive approach to sales of advertising. In both cases, WDZL and the Sun-Sentinel solicit advertising competitively against not only other broadcast stations, cable television systems, and newspapers, as has been presumed, but also against producers of Yellow Pages, direct mail and outdoor media.

The Sun-Sentinel has created promotional materials specifically directed to cross-sell against other advertising media, including but not limited to outdoor, Yellow Pages, direct mail, weekly newspapers, radio and television. A close review of two samples of this material illustrates the intense nature of competition in the advertising product market. The Sun-Sentinel has created a presentation entitled "Weaknesses Inherent in Outdoor Advertising" that highlights the advantages that advertising in the newspaper has over outdoor advertising. The presentation is clearly directed at either reducing outdoor advertising's share of a given promotional budget (by noting that outdoor advertising "is not effective when relied upon as the sole source of advertising") or eliminating it entirely (by noting "What billboards can deliver -- image and color impact -- can be obtained through various newspaper products that are specifically designed for image advertising and color reproduction. So newspapers can offer the advantages of outdoor display without any of the disadvantages.")



The second presentation, entitled "Put Your Listing in the Yellow Pages, And Your Advertising in the Sun-Sentinel," is directed at reducing or replacing entirely the advertising dollars spent in the Yellow Pages. The presentation highlights intense price competition between media by highlighting that the cost of a quarter page advertisement in the Yellow Pages is the equivalent of 11 quarter page advertisements in the Sun-Sentinel. The presentation also challenges some of the presumed benefits of advertising in the Yellow Pages by highlighting that the Sun-Sentinel, rather than the Yellow Pages, is the primary source of advertising referred to most frequently by 10 times the number of people that use the Yellow Pages. Finally, the presentation highlights the Sun-Sentinel's strengths by highlighting the ability to change copy and target to an audience as compared to a single advertising purchase in the Yellow Pages.

This promotional material demonstrates the intense competition between media. The material supports the conclusions of academic literature and the Office of Plans and Policy study cited above concluding that the advertising product market is a broad one.

Finally, the fact that each medium is not, at any given moment, a perfect substitute for every advertising message or objective is economically irrelevant. The crucial fact from an economic perspective is that rival advertising media continually monitor and cross-sell against each other. In a market with such intense rivalry, there is little chance that any competitor could successfully implement a non-transitory non-trivial price increase above the competitive price. As noted in the Smith Declaration, "cost efficiency is a key consideration for most advertisers and they frequently move business from one medium to

another." Given this highly elastic demand, and the highly elastic supply market illustrated above, the economically relevant advertising product market includes television, radio, cable television, newspapers, Yellow Pages, direct mail, magazines, outdoor and interactive.<sup>40</sup>

B. The Geographic Market: Dade, Broward and Palm Beach Counties.

For advertising, the relevant geographic market is quite broad.<sup>41</sup> As an initial matter, the facts demonstrate that WDZL and the Sun-Sentinel both serve Dade, Broward and Palm Beach Counties. The map at Exhibit D shows that the Grade A contour of WDZL covers the entire Miami area and extends south to Homestead. Going north, the Grade A contour covers all of Broward County and extends well into Palm Beach County. For its part, the Sun-Sentinel and its various associated daily, Sunday, weekly and monthly publications have a circulation area that includes Dade, Broward, and Palm Beach Counties.

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<sup>40</sup> While at a theoretical level this product market is more expansive, I will focus on this product market for the purposes of this report.

<sup>41</sup> In fact, the relevant market may well be national in scope. Demands for advertising time and space by national, regional, and local advertisers all press on the limited time and space that suppliers have available. As a result, these forces of demand and supply cause the various geographic areas to be interrelated. For example, a local advertiser may increase its expenditures on local newspaper advertising. This has ramifications for other newspaper advertisers. If rates rise as a result, this will cause budget reallocations to the rival media. As some money shifts to outdoor, this will influence both local and national outdoor supply. Similarly, as some advertisers turn to television and radio, this will influence both national and local suppliers of television and radio time. The logic of the interrelationships does not mean that someone who wants to sell a used car through a classified ad in the Miami Herald is apt to shift to a radio spot in St. Louis or a national spot on CBS. What it does mean, however, is that the various segments of the market are linked together and that the forces of supply and demand have wide ranging impact.

The statements provided by WDZL and the Sun-Sentinel, Exhibits B and C, also support the conclusion that the geographic market includes Dade County, Broward County, and Palm Beach County. WDZL clearly solicits advertising purchases from businesses in all three of these counties. Similarly, the Sun-Sentinel solicits advertising from businesses in all three of these counties. Moreover, the Sun-Sentinel also assigns specific personnel to cover the news and issues that are local and particular to Dade County, Broward County, and Palm Beach County. See Exhibit C. Logic, in addition to my economic analysis, compels the conclusion that the geographic market can be no smaller than the combined areas of Dade, Broward, and Palm Beach Counties.

There are several other pieces of evidence that illustrate that the geographic market is at least as large as Dade, Broward and Palm Beach counties. First, the Grade A contours of WDZL (Dade) and WFLX (Palm Beach) overlap quite substantially. These television stations are carrying advertising messages into all three counties. An advertiser can use either television station to get substantial coverage of all three counties. Within this area, there are numerous television stations, cable systems, radio stations, newspapers, weeklies, shoppers, billboards, Yellow Pages, and the like that are competing for the advertising dollar. When the Sun-Sentinel, for example, competes for advertising business with the Yellow Pages, this influences prices and quantities in the Sun-Sentinel generally. This, in turn, has an impact on prices and quantities for television, radio, and cable time. The Miami Herald has a substantial presence in Broward county, which puts it in head-to-head competition with the Sun-Sentinel, which is in head-to-head competition with the Palm

Beach Post. As a result, price and quantity decisions in Dade county have a direct impact on price and quantity decisions in Palm Beach county.

The promotional materials developed by the Sun-Sentinel clearly show that it competes in Miami (Dade) and West Palm Beach (Palm Beach). The Sun-Sentinel's spanish language publication, Exito, aggressively markets itself in Dade County. Exito's main offices, including its sales staff, are located in Dade County. The Sun-Sentinel has produced a marketing presentation that compares Exito's reach to that of the Hispanic radio stations in Miami. Exito's performance is also compared to that of the Hispanic television stations in South Florida. These presentations vividly illustrate that the Sun-Sentinel is an active, aggressive competitor in all of South Florida. Thus, the Sun-Sentinel's presence links these three counties.

Scarborough data also show that these three counties are in the same market. Most of the major sports teams and major entertainment events advertise to and regularly draw from Dade, Broward and Palm Beach. For example, substantial numbers of fans from all three counties attend Dolphins football games, Miami Heat basketball games, and Florida Marlins baseball games.

In addition, major advertisers seek business from the entire Dade-Broward-Palm Beach area. Car dealers such as Mullinax Ford (in north Broward) and Kendall Toyota (in south Dade) draw customers from and advertise in all three counties. Tourist attractions such as Grand Prix Race-A-Rama (Dade) and Rapids Water Park (West Palm Beach) also

advertise in all three counties. These firms are competing in the three counties and buying advertising time and/or space in all three.

Thus, these three counties -- Dade, Broward, and Palm Beach -- are inextricably linked together in a market. It would make no sense to sub-divide this area. To do so would be inconsistent with economic reality.

C. The Analysis Of The Market.

The various sources and amounts of advertising for Dade, Broward and Palm Beach counties, along with the percentage share held by WDZL and the Sun-Sentinel publications, are displayed in Exhibits E and F. Exhibit F has been provided only as an accommodation to the FCC's decision in the Disney/CapCities case which inexplicably focused on an advertising product market that only included television, radio, cable and newspapers. In my opinion, there is no valid economic basis to support this product market definition. The information reflected in these exhibits was compiled from an array of sources under my supervision and at my request. In addition, specific competitors were identified and estimates of their market shares were made. These efforts resulted in data that I used to evaluate the competitive significance of the proposed cross-ownership of WDZL and the Sun-Sentinel.

I received reliable estimates of the market shares of competing television stations, radio stations, daily newspapers, cable systems, and yellow pages. I treated all

radio stations with common ownership as a single entity. Cable television systems were treated similarly. The estimate of total advertising revenue of the non-daily newspapers was allocated on the basis of each newspaper's circulation. The direct mail suppliers are highly diffused, but I had specific estimates for Advo and Harte Hanks. In order to be conservative, I assumed that the remaining firms were just a bit smaller than Harte Hanks. I had no firm-specific data on outdoor advertising, so I treated outdoor as a single entity. Similar treatment was accorded to the interactive revenue. Thus, in every instance, I made assumptions that biased the HHI upward.

Nonetheless, concentration in the South Florida market is still low; market shares are not very large and there are a substantial number of competitors in the market. I have calculated HHIs for four different possible definitions of the relevant market. First, defining the product market as television, radio, cable television, newspapers, yellow pages, direct mail, magazines, outdoor, and interactive advertising and the geographic market as Dade, Broward, and Palm Beach Counties, the HHI is 841. According to the Merger Guidelines, the antitrust enforcement agencies consider such markets to be unconcentrated and ordinarily do no further analysis. Cross-ownership of WDZL and the Sun-Sentinel will increase the HHI by 40 to 881, which is still in the unconcentrated range. Thus, for the agencies charged with protecting competition, cross-ownership would not trigger any concern. Moreover, the combined market share of WDZL and the Sun-Sentinel is less than 14 percent.

Second, using the same product market, but eliminating Palm Beach County from the geographic market, the HHI is 994, which is still unconcentrated. The combined market share of WDZL and the Sun-Sentinel would be 14.7 percent, which is too small to confer any market power. Cross-ownership of WDZL and the Sun-Sentinel will increase the HHI by 54 to 1048. Technically, this puts the market into the moderately concentrated range, but as the Merger Guidelines explain, the enforcement agencies recognize that threshold is not as precise as it appears. As a result, "[o]ther things being equal, cases falling just above and just below a threshold present comparable competitive issues." Moreover, as the Merger Guidelines indicate, the enforcement agencies ordinarily will be unconcerned with an HHI of 1048 and a change of only 54. The market is still largely unconcentrated and the change is so small that no market power could result from the proposed combination.

Third, based on a product market consisting of radio, television, cable and newspaper advertising, I examined the HHI for Dade, Broward, and Palm Beach Counties. In this case, the HHI is 832. Cross-ownership of WDZL and the Sun-Sentinel will increase the HHI by 80 to 912. The combined market share of WDZL and the Sun-Sentinel is 18.9 percent, which is too small to confer any market power. Thus, the market remains unconcentrated and of no competitive concern to the agencies charged with antitrust enforcement.

Finally, I used the more limited product market and reduced the geographic market to include only Dade and Broward Counties, even though this market does not in

either respect reflect the proper market for analysis. For this market, the HHI still is only 1098, which is just barely in the moderately concentrated range. Cross-ownership of WDZL and the Sun-Sentinel will increase the HHI in this most narrowly defined market by 106 to 1205. In this case, the combined market share of WDZL and the Sun-Sentinel is still only 19.8 percent, which is not sufficiently large in this market to confer market power.

Even in this case, competitive concerns should not be triggered under the Merger Guidelines. Section 2.0 of the Guidelines explicitly recognizes that "market share concentration data provide only the starting point for analyzing the competitive impact of a merger." For a number of reasons, the factors set forth in Sections 2 through 5 of the Guidelines reveals that there is, in fact, no competitive concern in the present case.

First, Section 2.0 points out that the smaller the percentage of total supply that a firm controls, the more severely it must restrict its own output in order to produce a given price increase, and the less likely it is that an output restriction will be profitable. In this instance, the combined market share of WDZL and the Sun-Sentinel is only 19.8 percent which is well below 30 percent that the Supreme Court found insufficient to confer market power in Hyde. This share is far too small to pose an anticompetitive threat. If WDZL and the Sun-Sentinel restricted output and no one else did anything, it would lose the profit on the sales not made while the benefit of the resulting price increase would be diffused throughout the market. Thus, WDZL and the Sun-Sentinel would bear all of the costs of restricting output but receive only a portion (about 19.8 percent) of the benefits. Moreover, it is unlikely that rivals would do nothing. Advertisers could turn to other television stations



(many with higher ratings), cable, radio, and other newspapers (the Miami Herald, for example, has a more substantial presence) in the market. These rivals would benefit by soliciting the former customers of WDZL and the Sun-Sentinel.

Second, Section 2.1 points out that when the DOJ and the FTC examine the potential for coordinated behavior, they "examine the extent to which post-merger market conditions are conducive to reaching terms of coordination, detecting deviations from those terms, and punishing such deviations." One should not underestimate the complexity of reaching any agreement among the market participants. There are still seven other English language television stations, more than 18 radio groups, 20 cable systems groups, and three other daily newspapers serving Dade and Broward counties. In addition, these firms do not supply a homogeneous product. Differences across products make agreement on terms complicated because prices have to change by varying amounts. Product heterogeneity is specifically recognized in the Guidelines (Section 2.11) as a factor that impedes successful coordination.

Third, the ability of other firms to adjust capacity in the event of an output restriction by the merged firm is also recognized as a limiting characteristic (Section 2.22). Rival newspapers can adjust the space available for advertising almost instantly through decision on the number of pages to print and how much news to include.

Fourth, one must also remember that there are a variety of substitutes that have been omitted from the product market definition: yellow pages, outdoor, direct mail,

and magazines. In many cases, a ready substitute for an advertising insert in the newspaper is direct mail. Outdoor and magazines provide a substitute for television advertising of branded products such as automobiles. By eliminating some of these substitute media from the product market, we have increased the demand elasticity for the media that were included. The result is a reduction in the ability to behave noncompetitively.

Fifth, the Guidelines specifically recognize that mergers may result in efficiencies that are procompetitive (Section 4). The cross-ownership of WDZL and the Sun-Sentinel will create efficiencies that permit expanded local news programming on WDZL.

For all these reasons, cross-ownership of WDZL and the Sun Sentinel would not appear to pose any competitive risks.

#### IV. DIVERSITY IN VIDEO PROGRAMMING.

The FCC has long justified its regulation of broadcast and broadcast station ownership on the theory that there is scarcity in the number of available stations on the airwaves and that as a result of this scarcity, market forces will not ensure that programming is diverse. Precisely what is meant by diversity is somewhat elusive. Reed Hundt, FCC Chairman, has identified four different concepts of diversity: outlet diversity, source diversity, voice diversity, and program diversity.<sup>42</sup> Since the FCC's articulated concern

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<sup>42</sup> Speech by Reed Hundt to the American Bar Association, Washington, D.C., March 28, 1996.

with diversity is focused on the interests of the viewership, the most important diversity concepts in this context appear to be voice and program diversity. Voice diversity refers to editorial perspective and is clearly important for presenting more than one side of various social and political issues. Program diversity refers to the availability of different types of programming in a particular area.

A. A Competitive Market Will Result In A Diversity Of Programming And Viewpoint.

A competitive market for video programming will result in diversity of both programming and viewpoint without the need for governmental intervention. Under basic principles of economics, a competitive market will result in product differentiation. Where there are numerous entrants into a given market, the entrants will act rationally to maximize their profits by differentiating themselves from the incumbents. As applied to a market for shares of the viewing public, the rational supplier of video programming will "differentiate" his product, i.e., vary his programming or viewpoint, so as to capture the largest possible share of the audience. This strategy makes economic sense because larger audience shares mean larger advertising revenues.

The primary economic prerequisite for full product differentiation is having enough rival suppliers so that it is profitable to pursue each market segment. In other words, once the number of suppliers reaches a critical mass, it will be economically rational for some of them to serve niche or small market segments, resulting in a mature market with all profitable market segments served.

Just as competition in a mature market will generally result in product differentiation, a mature market for video programming will result in both viewpoint and programming diversity. A simple hypothetical will demonstrate this point. Suppose that at four o'clock in the afternoon, 90 percent of television viewers prefer to watch soap operas, and 10 percent prefer to watch other types of programming. Acting rationally, the first nine entrants into the market will compete for the 90 percent soap opera market, leaving 10 percent of the viewers unserved. As there are new entrants into the market, however, programming will be aimed at the smaller, remaining market shares until it is no longer profitable to do so. In this sense, technological developments in the market for video programming can make (and, as shown below, have made) the video programming market sufficiently competitive to result in diversity of programming and viewpoint. Sufficient growth in the avenues for supply of video programming will eliminate any functional scarcity in that market and competitive forces will necessarily result in the diversity sought by the FCC.<sup>43</sup>

The FCC and the Department of Justice obviously agree with this view of competition in the video programming market because they use the HHI in deciding whether markets (including the video programming market) should be regulated. As discussed above, the HHI is simply a measure of the concentration in a market. And where the market is

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<sup>43</sup> The use of the term "scarcity" is somewhat misleading in this context. As a technical economic matter, scarcity exists in any market where there is not an infinite supply. For example, there is scarcity in the salt market. Clearly, therefore, the technical definition of scarcity is not a meaningful one for purposes of justifying FCC regulations, since it could be applied to an infinite number of markets that are regulated much less intrusively, most notably the cable industry.

unconcentrated as measured by the HHI, the FCC and the Department of Justice assume that competitive forces will ensure that all segments of the market are served, i.e., that program and viewpoint diversity will be achieved.

B. Any Relevant Market For Purposes Of This Transaction Is Competitive And Diverse. "Critical Mass" In The Video Programming Market Has Been Reached.

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1. National Market

Since 1969, broadcast television has expanded significantly and has become less scarce than at any time in the past. The national market for video programming is competitive and diverse. Given the number of broadcast opportunities available nationwide (i.e., UHF and VHF stations), there is no functional scarcity in that market and diversity is preserved.

Furthermore, for purposes of evaluating whether there is "scarcity" in the broadcast market, one must consider not only the availability of broadcast, but also the availability of competing technologies such as cable, MDS, SMATV, VCR, low power television, HSD and DBS. For purposes of determining the level of competition in a particular market, a market is defined as the particular product (broadcast television) and all reasonable substitutes for it. When all of these technologies are taken into account, it is clear that there is no scarcity of opportunity to present video programming. Indeed, according to the FCC's Policy and Rules Division's Overview of the Television Industry, in

1990, the HHI for the television industry was 187, making it an extremely unconcentrated market. With such a low HHI, one can confidently state as an economic matter that programmers are competing for virtually every available market segment.

A simple review of the myriad offerings on television, cable and related services demonstrates this point. It is hard to imagine a program format that anyone will watch that is not available. In Miami, for example, there is a large Hispanic population and we find Spanish language programming. In Honolulu, there is Japanese language programming. As tastes and interest vary from one locale to another, the programming responds. This is not to say that there is "enough" of certain types of programs that some deem more worthy than others of being aired. But the current array of programs is what the market dictates should be provided.

## 2. South Florida Market

The South Florida market is also extremely competitive and provides viewers with a wide array of programming. One study indicates that the all daypart HHI for Miami is in the unconcentrated range. In re Review of the Prime Time Access Rule, 11 FCC Rcd 546 (1995) Table D-1. For purposes of illustrating the range of viewing options available in this market, in Exhibit G, I have attached an annotated program grid for Miami for Tuesday, July 23, 1996, at 6:00 p.m. The grid reveals an impressive array of programming available. During this time slot, there were the following numbers of program types:

<u>Program</u>	<u>Number</u>
News - English	8
News - Spanish	1
Religious	1
Movies	6
Sports	4
Children's	2
Sitcom	4
Computer	1
Teen	1
Action/Crime Drama	6
Business News	1
Music	3
Comedy	2
Game	1

In just this one time slot, there were 14 different types of programs and 43 different programs. Again, as this example illustrates, if the demand exists, the program will be provided.

C. This Transaction And The Resulting Cross-Ownership Will Not Have Any Negative Impact On Diversity.

The belief that diversification of ownership will increase content diversity rests on the assumption that the owner of multiple outlets will cause each of those outlets to present information, viewpoints and entertainment that reflects the owner's own political and artistic philosophy. This assumption is unjustified. Video programmers (and other information service providers) are in the business of supplying material that meets the public's demand for information and entertainment. Economic self-interest compels a group owner (like any owner) to target its programming at the audience shares present in its market. Any other approach would require the group owner to subsidize its programming or fail commercially.

As an economic matter, therefore, there is no reason to suppose that cross-ownership of WDZL and the Sun-Sentinel will reduce diversity. The Sun-Sentinel may decide to change WDZL's programming if it can improve profits by doing so. If WDZL was behaving in an optimal fashion, the acquisition would not lead to wholesale changes because this would reduce profits. There are indications, however, that the Sun-Sentinel will make some programming changes that will result in a net increase in news and public service programming.

In addition, there are efficiencies associated with the cross-ownership of media outlets. It allows advertisers to choose between a number of commonly held media outlets, and permits the cross-owner to cut its news-gathering costs. This may allow the cross-owner to produce more news and public interest programming since those programs can be more efficiently produced by the cross-owner. In fact, the FCC staff found "that on average, co-located, newspaper-owned TV stations programmed 6% more local news, 9% more local non-entertainment, and 12% more total local including entertainment than do other TV stations."<sup>44</sup>

I am informed that Tribune is presently considering the implementation of a number of strategies that would allow the Sun-Sentinel and WDZL share certain expenses and operations and increase WDZL's news and public service programming. For example, there are economies of scale associated with sharing of office space, security, capital equipment and computer systems. In addition, news beat reporting, assignment desk

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<sup>44</sup> See Second Report and Order, 50 F.C.C.2d 1046, 1094, Appendix C (1975).



functions and news management can be performed jointly. Finally, human resources costs can be reduced. Obviously, these synergies are only possible where a newspaper has an incentive to share its information and resources with another entity, an incentive that can be created by cross-ownership.

There are a number of decisions of the FCC which have recognized that the substantial cost savings enable the common owner to provide more local programming and other public interest benefits that are less profitable than network/syndicated programming. For example, in US Radio Stations, L.P., 11 FCC Rcd. 5772 (1996), the FCC noted that common ownership of a television station and two radio stations in the Little Rock, Arkansas DMA would result in savings in excess of \$850,000 the first year and over \$250,000 in succeeding years, allowing the television station to initiate local news programming during a time slot in which no other station provided news and to increase radio station news programming by drawing on public affairs resources at the television station. There are many similar examples. See, e.g., New Maintain Broadcasting II Corp., 11 FCC Rcd. 2344 (1996) (\$3 million in cost savings from co-ownership of a television station and two radio stations allowing increased news, weather and live local coverage throughout the state). These examples suggest that the co-owner will in many circumstances add to the diversity of programming available rather than diminish it.

**Appendix A-2: Methodology Statement for the BIA/Kelsey Group National and Local  
Media Marketplace Estimates**



## **Methodology Statement for the BIA/Kelsey National and Local Media Marketplace Estimates**

**February 26, 2010**

BIA/Kelsey estimated total advertising revenues across twelve media that compete in local advertising markets. Local advertising is defined as spending by local businesses of all sizes as well as by national and regional advertisers making local advertising purchases on a variety of local media. The twelve media included in the BIA/Kelsey estimates are: daily and weekly newspapers, local commercial radio stations, local commercial television stations, Yellow Pages, direct mail, out-of-home, local cable systems, online, Internet Yellow Pages, local magazines, mobile, and email marketing. These estimates of spending by local and non-local sources are generated through various methods, briefly described below for each of the twelve media.

### **1. Newspapers**

- A comprehensive annual survey instrument was sent in the first quarter of 2009 to all daily and weekly newspapers asking for their historical revenues for both traditional and online advertising and their circulation revenues.
- Revenues for non-responding newspapers were estimated through a proprietary model utilizing circulation and other relevant data, such as retail sales and population growth, to determine the revenue changes from previous years.
- Estimates were checked for accuracy with publicly available sources, such as annual reports and other security filings for public companies.

### **2. Local Commercial Radio Stations**

- A comprehensive annual survey instrument was sent in the first quarter of 2009 to all commercial radio stations, as well as to the groups owning these stations asking for their historical revenues for both over-the-air and online advertising revenues.
- Revenues for non-responding stations were estimated by BIA/Kelsey through proprietary models utilizing audience estimates and other relevant data, such as population and retail sales growth, to determine each station's share of the local market.
- Estimates were checked for accuracy with other publicly available sources, such as annual reports and other security filings for public companies, as well as aggregate information from industry sources.

### 3. Local Commercial Television Stations

- A comprehensive annual survey instrument was sent in the first quarter of 2009 to all commercial television stations, as well as to the groups owning these stations, asking for historical revenues for both over-the-air and online advertising revenues.
- Revenues for non-responding television stations were estimated by BIA/Kelsey through proprietary models utilizing historical revenue and other relevant data, such as population and retail sales growth.
- Estimates were checked for accuracy with publicly available sources, such as annual reports and other security filings for public companies, as well as aggregate information from industry sources.

### 4. Yellow Pages

- Revenues for individual directories in major markets and for the U.S. overall were obtained from key industry data vendors and sources, such as Localeze and the Yellow Pages Association (YPA). Data on total national revenues were provided by YPA. Data on individual directories provided include number of paid items, number of advertisers, rate card, and total directory revenues.
- Revenues for smaller markets were modeled, using a proprietary BIA/Kelsey model, that incorporates population, population growth, various demographic variables (*e.g.* age, household income) and various economic activity variables (such as new business formation).

### 5. Direct Mail

- Revenues for the Direct Mail sector in the U.S. overall were estimated based on the results of a BIA/Kelsey survey, Local Commerce Monitor (“LCM”). The LCM is an annual survey of small businesses seeking information about their use of the media for advertising, historical spending on media, spending intentions, use of various online advertising formats, use of various channels for purchasing advertising media, satisfaction with media, channel performance, and other relevant factors. Twelve annual surveys were completed as of 2008, and the thirteenth will be completed by September 2009. Also used was published data on total Direct Mail spending from various sources, such as leading sources that make media forecasts, including Universal McCann Worldwide, Zenith Optimedia, Omnicom International, WPP Group, Advertising Age magazine, and two leading investment banks, Bank of Montreal and Merrill Lynch.
- Revenues for individual markets were determined on the basis of key variables correlated to direct mail activity such as the number of businesses, number of employees, rate of new business formation, and number of businesses in selected business categories (generally Standard Industry Classifications as defined by the U.S. Census Bureau) related to direct mail activities, as well as further BIA/Kelsey analyses. The BIA/Kelsey analyses are informed adjustments based

on our extensive work in media over the years, accumulated knowledge about the individual characteristics, and idiosyncrasies of many individual markets.

## 6. Out-Of-Home

- Information on the history of traditional billboards including their recent revenues was obtained from industry trade associations and other publicly available media forecasts, such as Universal McCann Worldwide, Zenith Optimedia, Omnicom International, WPP Group, Advertising Age magazine, and two leading investment banks, Bank of Montreal and Merrill Lynch. Based on this information and information on national economic trends, a proprietary model was used to project the total revenues generated by this subsection of this media category.
- For the digital sector of this media, which includes digital billboards and taxicab and elevator screens, a proprietary model was used incorporating information regarding the growth of the number of such screens, screen traffic, sell-out rates, and cost per thousands to calculate the revenues generated obtained from key industry players that are representative of the industry.
- Similarly, for the digital cinema sector of this category (i.e., commercial airing prior to movies), a proprietary model employing growth rates of the number of screens, sell-out rates, and cost per thousands, obtained from industry sources that are representative of the industry was used to calculate the revenues generated.

## 7. Local Cable Systems

- Using historical information on the growth of local cable advertising from industry trade association (National Cable and Telecommunications Association) and other national estimates (Universal McCann), as well as the BIA estimates of the recent history of over-the-air television advertising, the relationship between national cable and over-the-air advertising revenues was modeled. From that proprietary model, present and future national cable advertising estimates were generated.
- Local cable advertising estimates were derived using a series of factors including local cable penetration data and the strength of the local over-the-air television market using BIA individual television market revenue estimates.

## 8. Online/Interactive

- Revenues for the U.S. overall were derived from proprietary models of revenues for several types of online advertising, including search ads, display ads, rich media ads, classifieds, and other online advertising types. As noted above, the surveys for certain traditional media asked for their online advertising revenues. For 2008, those revenues for newspapers, local commercial radio, and local commercial television stations were included in the online/interactive sector. For 2009, those revenues for newspapers, local commercial radio and television stations were included in the revenues for each of the traditional media.

- The detailed BIA/Kelsey proprietary models used to generate estimates for each type of online ad involve a complex calculation based on numerous variables. These variables include the “ad coverage” (the percentage of search results that have ads associated with them), the number of searches, the percentage of searches and search results that are local in nature, clickthrough rates (number of ads that are clicked on by the user), and other relevant factors. These estimated values were benchmarked against actual, proprietary data provided to us by key industry players, who are representative of the industry.
- Revenues for individual markets were determined on the basis of key variables correlated to online consumer and commercial activity, such as population and retail sales growth, as well as further BIA/Kelsey analyses. The BIA/Kelsey analyses are informed adjustments based on our extensive work in media over the years, accumulated knowledge about the individual characteristics, and idiosyncrasies of many individual markets.

#### 9. Internet Yellow Pages

- Revenues for the U.S. overall were estimated based on the LCM (see the discussion of LCM in the Direct Mail section), published data on media spending from various sources, such as the Interactive Advertising Bureau, and proprietary performance data from the leading Internet Yellow Pages companies that are representative of the industry.
- Revenues for individual markets were determined on the basis of key variables correlated to Yellow Pages revenues, estimated print-online cross-sales levels, and other key variables correlated to online activity, as well as further BIA/Kelsey analyses. The BIA/Kelsey analyses are informed adjustments based on our extensive work in media over the years, accumulated knowledge about the individual characteristics, and idiosyncrasies of many individual markets.

#### 10. Local Magazines

- Revenues for the U.S. overall were estimated based on the LCM (see the discussion of LCM in the Direct Mail section), published data on media spending from trade associations and other sources such as estimates from Universal McCann Worldwide, Zenith Optimedia, Omnicom International, WPP Group, Advertising Age Magazine, and several leading investment banks, including Bank of Montreal and Merrill Lynch.
- Revenues for individual markets were estimated based on performance data on the leading city magazine publishers obtained from BIA/Kelsey’s original web-based research on local magazines in the top markets.

#### 11. Mobile

- Revenues for the U.S. overall were derived from proprietary models of revenues for several types of mobile advertising, including search ads, display ads, directory-related ads, and other mobile advertising types.

- The detailed proprietary models used to estimate the revenue generated by each type of mobile ad involve a calculation based on numerous variables. These variables include the number of mobile searches, the “ad coverage” (the percentage of search results that have ads associated with them), the percentage of searches and search results that are local in nature, clickthrough rates (number of ads that are clicked on by the user), and other relevant factors. These estimates were benchmarked against actual, proprietary data provided to us by key industry players that are representative of the industry. We also benchmarked these estimates against mobile advertising performance in other countries that have a more developed mobile advertising market.
- Revenues for individual markets were determined on the basis of key variables correlated to mobile usage and commercial activity, such as population and retail sales growth, as well as further BIA/Kelsey analyses. The BIA/Kelsey analyses are informed adjustments based on our extensive work in media over the years, accumulated knowledge about the individual characteristics, and idiosyncrasies of many individual markets.

## 12. Email Marketing (ERPM)

- Revenues for the U.S. overall were derived from the LCM (see the discussion of LCM in the Direct Mail section), published data on leading email marketing providers, including financial reports by public companies (such as Constant Contact, and Alliance Data Systems, parent company of Epsilon); reports from several leading investment banks (such as Oppenheimer, Thomas Weisel Partners, and Think Equity); and promotional materials published by service providers themselves (such as Lyris, Emma, and Vertical Response).
- Revenues for individual markets were determined on the basis of key variables correlated to email activity, such as relative population and population growth, as well as further BIA/Kelsey analyses. The BIA/Kelsey analyses are informed adjustments based on our extensive work in media over the years, accumulated knowledge about the individual characteristics, and idiosyncrasies of many individual markets

# Curriculum Vitae

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### Education

Ph.D., 1981, Economics, Texas A&M University, College Station, TX  
M.S., 1978, Economics, Texas A&M University, College Station, TX  
B.A., 1976, Mathematics and Economics (honors), State University of New York at Binghamton

### Professional experience

2001 – Present

BIA Financial Network

Vice President

- Consulting in litigation and tax-related cases
- Developing of new broadcasting and related industry research offerings
- Speaking at industry forums

Fall 2002 – Present

The Johns Hopkins University

Adjunct Professor, *The Political Economy of Mass Communications*

1985 – 2000

National Association of Broadcasters

Vice President/Economist      1991 – 2000

- Supervised the Research and Planning Department.
- Conducted primary research about the broadcasting and related industries, used for testimony before the Congress and in filings at the FCC and other governmental agencies.
- Conducted research and studies included in publications and reports distributed by NAB.
- Presented results of primary research and other analyses at industry forums.

Director of Financial and Economic Research      1985 -- 1991

- Supervised the collection and dissemination of the annual industries financial reports



1980 – 1985

Federal Trade Commission  
Bureau of Economics  
Staff Economist

- Conducted analysis of proposed mergers and other arrangements.
- Conducted analyses of industry practices to evaluate economic impact.
- Participated in litigation support in several antitrust cases.

#### Professional activities

Broadcast & Cable Financial Management Association – Board Member 2001-2004

American Economic Association – member

Southern Economic Association – member

*Journal of Media Economics* – reviewer

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“Media Outlets by Market – Update,” “A Financial Analysis of the UHF Handicap,” Appendices A and C, respectively, NAB Comments in re FCC 1998 Biennial Review of Commission Ownership Rules, July 1998.

“The Television Industry’s Provision of Closed Captioning Services in 1996,” Attachment 1 NAB Comments in re FCC examination of Closed Captioning and Video Description of Video Programming, March 1996.

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“The 1990 Children’s Television Act: A Second Look at Its Impact” (with Richard V. Ducey), Attachment 1, NAB Reply Comments in re FCC examination of Children’s Television Programming Rules, October 1995.

## **Curriculum Vitae - Mark R. Fratrik**

“The 1990 Children’s Television Act: Its Impact on the Amount of Educational and Informational Programming,” Attachment 1, NAB Comments in re FCC examination of Children’s Television Programming Rules, June 1994.

“Minimum Number of Owners under NAB Proposed Ownership Rules,” Appendix D, NAB Comments in re FCC examination of Revision of Radio Rules and Policies, May 1992.

“National Ownership Concentration of Television Stations,” Appendix A, NAB Comments in re FCC Review of the Policy Implications of the Changing Video Marketplace, November 21, 1991.

“AB Switch Availability and Use,” Attachment 1, NAB Comments in re FCC Examination of Carriage of Television Broadcast Signals by Cable Television Systems, September 23, 1991.

“FM Station Financial Picture,” Appendix B, NAB Request for Temporary Suspension of New Commercial FM Stations Allotment and Application Processing, February 10, 1991.

“Financial Analysis of Program Duplication for Radio Stations,” Appendix E, NAB Comments in re FCC Review of the Technical Assignment Criteria for the AM Broadcast Service, November 1990.

“Programming Aspects of the Territorial Exclusivity Rule,” “Financial Condition of Small Market Network Affiliated Television Stations,” Appendices A and E, respectively, NAB Comments in re FCC examination of Program Exclusivity Rules, January 1989.

“License Renewal/Transfer Study,” (with Michael Fitzmaurice), Appendix A in re FCC examination of Formulation of Policies & Rules Relating to Broadcast Renewal Applications, October 14, 1988.

“An Updated Examination of Market Concentration in Radio Markets,” Appendix E, NAB Comments in re FCC examination of Broadcast Multiple Ownership Rules, June 1987.

Testimony at the Environmental Protection Agency: In the Matter of Public Hearing on Federal Radiation on Protection Guidance: Proposed Alternatives for Controlling Public Exposure to Radio Frequency Protection, September 22, 1986.

“FM Facilities Reclassification Survey: Class B and Class C FM Stations,” (with Rick Ducey) Appendix A, NAB Comments in re FCC examination of FM Station Reclassification, August 1986.

“Financial Information on Commercial Radio Stations for AM Band Expansion Report,” Report V, submission of the Subgroup of Radio Spectrum Allocations on the Advisory Committee on Radio Broadcasting, May 1985.

### Testimony

Satellite Broadcasting & Communications Association of America, et al vs. Federal Communications Commission, et al, U.S. District Court, Eastern District of Virginia, deposed on May 10, 2001.

Costa De Oro Television, Inc. vs. Charter Communications, LLC, Superior Court of California, Los Angeles County, Central District, deposed on December 17, 2001.

Infinity Radio, Inc. vs. Elena Whitby, et. al., Fifteenth Judicial Circuit, Florida, testified on April 4 and 6, 2005.

## **Curriculum Vitae - Mark R. Fratrik**

CBS Broadcasting, Inc., et. al. vs. Echostar Communications Corporation, et. al., U.S. District court for the Southern District of Florida, deposed on April 1, 2003

Copyright Arbitration Royalty Panel, witness for National Association of Broadcasters, testified on May 7 –8, 2003.

Braunstein vs. KICU, et. al., Superior Court of the State of California, County of Santa Clara, deposed on February 17, 2004.

Infinity Radio, Inc. vs. Elena Whitby, et. al., Fifteenth Judicial Circuit, Florida, testified on April 4 and 6, 2005.

Qantum Communications Corporation v. Tiger Communications, Alabama, deposed on February 3, 2006.

Michael H. Vechery v. Bonneville International Corporation, et. al., (settled).

Salem Media of Virginia, Inc. v. WAVA Limited Partnerships et. al., (settled).

### Miami DMA Full Power Television Stations

<b>CALLS</b>	<b>Affiliation</b>	<b>City/St. of License</b>	<b>Owner</b>	<b>C/NCE</b>
WAMI-DT	TLF	Hollywood, FL	Broadcasting Media Partners Inc	C
WBFS-TV	My	Miami, FL	CBS Corporation	C
WFOR-TV	CBS	Miami, FL	CBS Corporation	C
WGEN-TV	INS	Key West, FL	Cumbia Entertainment LLC	C
WHFT-TV	TBN	Miami, FL	Trinity Broadcasting Network Inc	C
WLRN-TV	PBS	Miami, FL	School Board of Miami-Dade County FL	NCE
WLTW-DT	UNI	Miami, FL	Broadcasting Media Partners Inc	C
WPBT	PBS	Miami, FL	Community TV Foundation of South Florida Inc	NCE
WPLG	ABC	Miami, FL	Washington Post Company	C
WPXM-TV	i	Miami, FL	ION Media Networks, Inc.	C
WSBS-TV	INS	Key West, FL	Spanish Broadcasting System	C
WSCV	TEL	Fort Lauderdale, FL	NBC/GE	C
WSFL-TV	CW	Miami, FL	Tribune Company	C
WSVN	FOX	Miami, FL	Sunbeam Television Corp	C
WTVJ	NBC	Miami, FL	NBC/GE	C

### Miami DMA Multicast Television Streams

<b>CALLS</b>	<b>Affiliation</b>	<b>City/St. of License</b>	<b>Owner</b>	<b>C/NCE</b>
WHFT-D2	CHC	Miami, FL	Trinity Broadcasting Network Inc	C
WHFT-D3	JCT	Miami, FL	Trinity Broadcasting Network Inc	C
WHFT-D4	ENL	Miami, FL	Trinity Broadcasting Network Inc	C
WHFT-D5	SML	Miami, FL	Trinity Broadcasting Network Inc	C
WPBT-D2	CRT	Miami, FL	Community TV Foundation of South Florida Inc	NCE
WPBT-D3	VME	Miami, FL	Community TV Foundation of South Florida Inc	NCE
WPLG-D2	LAT	Miami, FL	Washington Post Company	C
WPXM-D2	qbo	Miami, FL	ION Media Networks, Inc.	C
WPXM-D3	ILF	Miami, FL	ION Media Networks, Inc.	C
WPXM-D4	WSP	Miami, FL	ION Media Networks, Inc.	C
WSFL-D2	AZT	Miami, FL	Tribune Company	C
WSVN-D2	EST	Miami, FL	Sunbeam Television Corp	C
WTVJ-D2	Wx	Miami, FL	NBC/GE	C
WTVJ-D3	SPT	Miami, FL	NBC/GE	C

### Miami DMA Class A and LPTV Stations

<b>CALLS</b>	<b>Affiliation</b>	<b>City/St. of License</b>	<b>Owner</b>	<b>Type</b>
W05CJ		Key West, FL	Chladek, James	LPTV
W10CQ		Key West, FL	Chladek, James	LPTV
W15CM	FOX	Orient City, FL	Mako Communications LLC	LPTV
W16CA		Big Pine, FL	WEYS Television Corp	LPTV
W16CL		Key West, FL	Prism Broadcasting Network Inc	LPTV
W25DQ		Key West, FL	Prism Broadcasting Network Inc	LPTV
W29CW		Duck Key, FL	Prism Broadcasting Network Inc	LPTV
W39AC	INS	Key West, FL	Cumbia Entertainment LLC	LPTV
W40AA	INS	Rock Harbor, FL	Luna Digital Television LLC	LPTV
W43AD	FOX	Matecumbe, FL	WEYS Television Corp	LPTV
W43CB-D	PBS	Matecumbe, FL	Ministerio Oscar Aguero Inc	LPTV
W44AC	NBC	Key West, FL	Miranda Bcstg Co of Key West LLC	LPTV
W47AC	NBC	Big Pine Key, FL	WEYS Television Corp	LPTV
W57AM		Big Pine Key, FL	WEYS Television Corp	LPTV
W57DU-D		Brownsville, FL	Luna Digital Television LLC	LPTV
WBPB-LD		Miami, FL	Budd Broadcasting Company Inc	LPTV
WCAY-CA	IND	Key West, FL	Beach TV Properties	CL-A
WDES-CA	IND	Miramar, FL	Beach TV Properties	CL-A
WDFL		Marathon, FL	Paramount Broadcasting Communications LLC	LPTV
WDLP-CA	INS	Pompano Beach, FL	Cumbia Entertainment LLC	CL-A
WEYS-LP		Miami, FL	AlmaVision Hispanic Network	LPTV
WEYW-LP	RTV	Key West, FL	New Colonial Broadcasting	LPTV
WFUN-LD	tr3	Miami, FL	America-CV Station Group Inc	LPTV
WGAY-LP	DRK	Key West, FL	Three Grand TV LLC	LPTV



<b>CALLS</b>	<b>Affiliation</b>	<b>City/St. of License</b>	<b>Owner</b>	<b>Type</b>
WGEN	INS	Miami, FL	Cumbia Entertainment LLC	LPTV
WGZT-LD		Key West, FL	Towne-Nolte, Jeanette M	LPTV
WIMP-CD	IND	Miami, FL	D.T.V. LLC	CL-A
WJAN-CA	INS	Miami, FL	America-CV Station Group Inc	CL-A
WKIZ-LP	INS	Key West, FL	WEYS Television Corp	LPTV
WLMF-LP	IND	Miami, FL	Paging Associates Inc	LPTV
WPMF-LP	AZT	Miami, FL	Chladek, James	CL-A
WSBS-CA	INS	Miami, FL	Spanish Broadcasting System	CL-A
WSBS-CD	INS	Miami, FL	Spanish Broadcasting System	LPTV
WTVK-LP	PBS	Key West, FL	Sparacio, Mary	LPTV
WVFW-LP	PBS	Miami, FL	Benavides, Gerald G.	LPTV

**Daily Newspapers Published in or Circulated in the  
Miami-Ft. Lauderdale, FL DMA (2009)<sup>1</sup>**

	<b>Title</b>	<b>Published</b>	<b>Owner</b>
1.	* <i>Sun Sentinel</i>	Fort Lauderdale, FL	Tribune Company
2.	* <i>The Key West Citizen</i>	Key West, FL	Cooke Communications, L.L.C.
3.	* <i>The Miami Herald</i>	Miami, FL	The McClatchy Company

\* *Newspapers published within the DMA.*

*Sources: SRDS Circulation 2009; Editor & Publisher International Yearbook (2008);  
BIA Investing in Newspapers, Miami-Ft. Lauderdale, FL Market Newspaper Overview  
(2009).*

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<sup>1</sup> Counties (All FL): Broward, Miami-Dade, and Monroe. “Circulated in” indicates circulation of five percent or greater within the DMA.

**General Interest Newspapers of Varying Frequency Published in the  
Miami-Ft. Lauderdale, FL DMA<sup>1</sup> (2009)**

	<b>Title</b>	<b>Published</b>	<b>Owner</b>
1.	<i>The Sentry</i>	Pompano Beach, FL	Amendment One News, Inc., <sup>2</sup>
2.	<i>Clarke Times-Courier</i>	Sunrise, FL	ARCOM, Inc.
3.	<i>^South Dade News Leader</i>	Homestead/South Dade, FL	Calkins Media
4.	<i>Hialeah News</i>	Hialeah, FL	Community Newspapers
5.	<i>Pinecrest Tribune</i>	Miami, FL	Community Newspapers
6.	<i>Solares Hill</i>	Key West, FL	Cooke Communications
7.	<i>Marathon/Big Pine Free Press</i>	Marathon, FL	Cooke Communications
8.	<i>Islamorada Free Press</i>	Islamorada, FL	Cooke Communications†
9.	<i>Deerfield Beach-Lighthouse Point Observer</i>	Deerfield Beach/Lighthouse, FL	Deerfield Publishing, Inc.
10.	<i>Key West – The Newspaper</i>	Key West, FL	Dennis Reeves Cooper <sup>3</sup>
11.	<i>Coral Gables Gazette</i>	Coral Gables, FL	Limestone Communications, Inc.

<sup>1</sup> Counties (All FL): Broward, Miami-Dade, and Monroe.

“Varying frequency” means weekly unless otherwise specified.

Papers marked with the symbol “^” are published twice weekly.

Papers marked with the symbol “#” are published thrice weekly.

*Sources: Gale Directory of Publications and Broadcast Media 2009; Editor & Publisher International Yearbook (2008); BIA/Kelsey Media Access Pro™ Database, Miami-Ft. Lauderdale, FL Market Newspaper Overview (as of July 23, 2009).*

Information for papers marked with the symbol “†” was verified by BIA Advisory Services, LLC as of August 17, 2009 through telephone research.

<sup>2</sup> Owner identified through newspaper’s website. See The Sentry, <http://www.fl Sentry.com/> (last visited June 30, 2009).

<sup>3</sup> Owner identified through newspaper’s website. See Key West The Newspaper, [www.kwtn.com](http://www.kwtn.com) (last visited June 30, 2009).

	<b>Title</b>	<b>Published</b>	<b>Owner</b>
12.	<i>#Coral Gables News</i>	Coral Gables, FL	Miller Publishing (Miami's Community Newspapers)
13.	<i>Kendall Gazette</i>	Miami, FL	Miller Publishing (Miami's Community Newspapers)
14.	<i>Aventura News</i>	South Miami, FL	Miller Publishing (Miami's Community Newspapers)
15.	<i>Palmetto Bay News</i>	South Miami, FL	Miller Publishing (Miami's Community Newspapers)
16.	<i>South Miami News</i>	South Miami, FL	Miller Publishing (Miami's Community Newspapers)
17.	<i>Islander News</i>	Key Biscayne, FL	Samar Publishing
18.	<i>Broward Informer</i>	Broward Co., FL	Sunrise News and Shopper Inc.†
19.	<i>Plantation Forum</i>	Davie, FL	Sun-Sentinel Co. (Forum Publishing Group) <sup>4</sup>
20.	<i>Coral Springs Forum</i>	Coral Springs, FL	Sun-Sentinel Co. (Forum Publishing Group)
21.	<i>Deerfield Beach Forum</i>	Deerfield Beach, FL	Sun-Sentinel Co. (Forum Publishing Group)
22.	<i>Lake Worth Forum</i>	Deerfield Beach/Lighthouse, FL	Sun-Sentinel Co. (Forum Publishing Group)
23.	<i>Pompano Beach Forum</i>	Deerfield Beach/Lighthouse, FL	Sun-Sentinel Co. (Forum Publishing Group)
24.	<i>Hi-Riser-Broward</i>	Fort Lauderdale, FL	Sun-Sentinel Co. (Forum Publishing Group)
25.	<i>Hi-Riser South</i>	Hollywood/Hallandale/Aventura/North Miami/ Sunny Isles, FL	Sun-Sentinel Co. (Forum Publishing Group)
26.	<i>City Link</i>	Ft. Lauderdale, FL	Sun-Sentinel Co.
27.	<i>Margate/Coconut Creek Forum</i>	Margate/Coconut Creek, FL	Sun-Sentinel Co. (Forum Publishing Group)

<sup>4</sup> Sun-Sentinel Co. and Forum Publishing Group are owned by Tribune Company.

	<b>Title</b>	<b>Published</b>	<b>Owner</b>
28.	<i>Sunrise Forum</i>	Sunrise, FL	Sun-Sentinel Co. (Forum Publishing Group)
29.	<i>Tamarac Forum</i>	Tamarac/North Lauderdale, FL	Sun-Sentinel Co. (Forum Publishing Group)
30.	<i>The Delray Forum</i>	Delray Beach, FL	Sun-Sentinel Co.†
31.	<i>Teenlink</i> <sup>5</sup>	Broward County, FL	Sun-Sentinel Co.
32.	<i>^Florida Keys Keynoter</i>	Marathon, FL	The McClatchy Company
33.	<i>The Keynoter</i>	Upper Florida Keys, FL	The McClatchy Company†
34.	<i>Miami Today</i>	Miami, FL	Today Enterprises, Inc.
35.	<i>Miami New Times</i>	Miami, FL	Village Voice Media
36.	<i>New Times Broward-Palm Beach</i>	Fort Lauderdale, FL	Village Voice Media <sup>6</sup>

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<sup>5</sup> *Teenlink* is published weekly during the academic year and distributed free to Broward County high school students.

<sup>6</sup> Owner identified through newspaper's website. See New Times Broward, <http://www.browardpalmbeach.com/> (last visited June 30, 2009).

**Miami-Ft. Lauderdale, FL DMA<sup>1</sup> (2009)**

**Specialty Newspapers <sup>^</sup>**

1. **Name:** El Nuevo Herald +  
**Frequency:** Daily  
**Published:** Miami, FL  
**Circulation:** 85,676 (Monday-Saturday); 88,151 (Sunday)  
**Subscription Rate:** \$183.59 per annum  
**Advertising:** Accepted  
**Description:** Spanish language newspaper
2. **Name:** Diario Las Americas +  
**Frequency:** Daily  
**Published:** Miami, FL  
**Circulation:** 69,132  
**Subscription Rate:** \$73.83 per annum  
**Advertising:** Accepted  
**Description:** Spanish language newspaper
3. **Name:** The Broward Times +  
**Frequency:** Weekly  
**Published:** Ft. Lauderdale, FL  
**Circulation:** Paid 22,000  
**Subscription Rate:** \$19.95 per annum<sup>2</sup>  
**Advertising:** Accepted  
**Description:** Black community newspaper
4. **Name:** Westside Gazette \*  
**Frequency:** Semiweekly  
**Published:** Ft. Lauderdale, FL  
**Circulation:** Paid 7,000; Free 14,500

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<sup>1</sup> Counties (All FL): Broward, Miami-Dade, and Monroe. <sup>^</sup> Targeted to special ethnic, religious, demographic, or other groups.

<sup>2</sup> Subscription rate identified through newspaper's website. *See* Broward Times, <http://www.browardtimes.com> (last visited July 1, 2009)

\* *Gale Directory of Publications and Broadcast Media 2009*.  
+ *Editor & Publisher International Yearbook (2008)*.

**Advertising:** Accepted  
**Description:** Black community newspaper

5. **Name:** Miami Times +

**Frequency:** Weekly  
**Published:** Miami, FL  
**Circulation:** Paid 22,557; Free 113  
**Advertising:** Accepted  
**Description:** Black community newspaper

6. **Name:** Florida Review +

**Frequency:** Monthly  
**Published:** Miami, FL  
**Circulation:** 32,000  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Portuguese language newspaper

7. **Name:** Seminole Tribune \*

**Frequency:** Biweekly  
**Published:** Hollywood, FL  
**Subscription Rate:** \$35 per annum  
**Description:** Seminole community newspaper

8. **Name:** El Noticiero +

**Frequency:** Every other week  
**Published:** Fort Lauderdale, FL  
**Circulation:** 15,000  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Spanish language newspaper

9. **Name:** El Heraldo de Broward +

**Frequency:** Weekly  
**Published:** Fort Lauderdale, FL  
**Circulation:** 12,000

\* *Gale Directory of Publications and Broadcast Media 2009.*  
+ *Editor & Publisher International Yearbook (2008).*

- Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Hispanic community newspaper (English language)
10. **Name:** La Voz de la Calle +  
  
**Frequency:** Weekly  
**Published:** Hialeah, FL  
**Circulation:** 30,000  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Spanish language newspaper
11. **Name:** El Especial +  
  
**Frequency:** Weekly  
**Published:** Miami, FL  
**Circulation:** 25,000  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Spanish language newspaper
12. **Name:** Libre +  
  
**Frequency:** Weekly  
**Published:** Miami, FL  
**Circulation:** Paid 1,100; Free 3,850  
**Subscription Rate:** \$19.99<sup>3</sup> per annum  
**Advertising:** Accepted  
**Description:** Spanish language newspaper
13. **Name:** El Nuevo Patria +\*  
  
**Frequency:** Weekly  
**Published:** Miami, FL  
**Circulation:** Paid 13,400; Free 30,000  
**Advertising:** Accepted  
**Description:** Spanish language newspaper

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<sup>3</sup> Subscription rate identified through newspaper's website. *See* Libre, <http://www.libreonline.com> (last visited July 1, 2009)

\* *Gale Directory of Publications and Broadcast Media 2009.*

+ *Editor & Publisher International Yearbook (2008).*



14. Name: El Sentinel (owned by Tribune Company)<sup>4</sup>  
Frequency: Weekly  
Published: Fort Lauderdale  
Description: Spanish language newspaper
15. **Name:** El Popular +  
**Frequency:** Weekly  
**Published:** Miami, FL  
**Circulation:** 60,000  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Spanish language newspaper
16. **Name:** El Argentino Newspaper +  
**Frequency:** Monthly  
**Published:** Miami, FL  
**Circulation:** 35,000  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Hispanic newspaper (English and Spanish language)
17. **Name:** La Voz Catolica +  
**Frequency:** Monthly  
**Published:** Miami, FL  
**Circulation:** 160,000  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Spanish language Catholic newspaper
18. **Name:** Jewish Journal Broward (Central-JB) (owned by Tribune Company)+  
**Frequency:** Weekly  
**Published:** Fort Lauderdale, FL

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<sup>4</sup> See <http://southflorida.elsentinel.com/>.

\* *Gale Directory of Publications and Broadcast Media 2009.*  
+ *Editor & Publisher International Yearbook (2008).*

**Circulation:** 27,720  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Jewish community newspaper

19. **Name:** Jewish Journal Broward (North-JA) (owned by Tribune Company)+

**Frequency:** Weekly  
**Published:** Fort Lauderdale, FL  
**Circulation:** 20,392  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Jewish community newspaper

20. **Name:** Jewish Journal Broward (South-JC) (owned by Tribune Company)+

**Frequency:** Twice Weekly  
**Published:** Hollywood, FL  
**Circulation:** 119,009  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Jewish community newspaper

21. **Name:** Jewish Journal Miami-Dade (owned by Tribune Company)+\*

**Frequency:** Weekly  
**Published:** Deerfield Beach/Miami, FL  
**Circulation:** 21,387  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Jewish community newspaper

22. **Name:** Senior News +

**Frequency:** Monthly  
**Published:** Coral Springs, FL  
**Circulation:** 30,000  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Senior newspaper

\* *Gale Directory of Publications and Broadcast Media 2009.*  
+ *Editor & Publisher International Yearbook (2008).*

23. **Name:** El Heraldo South \*

**Frequency:** Weekly

**Published:** Ft. Lauderdale, FL

**Circulation:** Not reported

**Advertising:** Accepted

**Description:** Hispanic newspaper (English and Spanish language)

24. **Name:** Boomer Times and Senior Life +

**Frequency:** Monthly

**Published:** Boca Raton, FL

**Circulation:** Paid 100; Free 51,500

**Subscription Rate:** \$30 per annum<sup>5</sup>

**Advertising:** Accepted

**Description:** Senior newspaper

25. **Name:** The Voice Newspaper \*

**Frequency:** Monthly

**Published:** Ft. Lauderdale, FL

**Circulation:** Not reported

**Subscription Rate:** \$25 per annum

**Advertising:** Accepted

**Description:** Newspaper for persons with disabilities

26. **Name:** Le Soleil de la Floride \*

**Frequency:** 35 per year

**Published:** Hollywood, FL

**Circulation:** Free 350,000; Controlled 150,000

**Subscription Rate:** Free

**Advertising:** Accepted

**Description:** French Canadian community newspaper

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<sup>5</sup> Subscription rate identified through newspaper's website. *See* Boomer Times and Senior Life, <http://www.babyboomers-seniors.com> (last visited July 1, 2009)

\* *Gale Directory of Publications and Broadcast Media 2009.*

+*Editor & Publisher International Yearbook (2008).*

27. **Name:** La Nacion \*
- Frequency:** Weekly  
**Published:** Miami, FL  
**Circulation:** 10,000 per annum  
**Advertising:** Accepted  
**Description:** Hispanic newspaper
28. **Name:** The Weekly News \*
- Frequency:** Weekly  
**Published:** Miami, FL  
**Circulation:** 32,000  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Gay community newspaper
29. **Name:** Broward Daily Business Review \*
- Frequency:** Daily (except court holidays)  
**Published:** Fort Lauderdale, FL  
**Circulation:** Not Reported  
**Subscription Rates:** \$348 per annum  
**Advertising:** Accepted  
**Description:** Business newspaper
30. **Name:** Daily Business Review \*
- Frequency:** Daily  
**Published:** Miami, FL  
**Circulation:** Paid 10,184; Controlled 286  
**Advertising:** Accepted  
**Description:** Trade newspaper
31. **Name:** Celebrate! Key West<sup>6</sup>
- Frequency:** Weekly  
**Published:** Key West, FL  
**Description:** Gay community newspaper

\* *Gale Directory of Publications and Broadcast Media 2009.*  
+ *Editor & Publisher International Yearbook (2008).*

**Miami-Fort Lauderdale, FL DMA<sup>7</sup> (2009)**

**Shopper Publications**

1.     **Name:** Sun Post Newspaper +  
  
          **Frequency:** Weekly  
          **Published:** Miami Beach, FL  
          **Circulation:** 55,000  
          **Subscription Rate:** Free  
          **Advertising:** Accepted  
          **Description:** Shopper
  
2.     **Name:** TheFlyer.com +  
  
          **Frequency:** Weekly  
          **Published:** Miami, FL  
          **Circulated:** 87 Florida locations in Miami/Ft. Lauderdale area  
          **Circulation:** 1,422,594  
          **Subscription Rate:** Free  
          **Advertising:** Accepted  
          **Description:** Shopper
  
3.     **Name:** Herald Values \*  
  
          **Frequency:** Weekly  
          **Published:** Miami, FL  
          **Circulation:** Not reported  
          **Description:** Shopper

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<sup>6</sup> Information verified by BIA Advisory Services, LLC as of August 17, 2009 through telephone research.

<sup>7</sup> Counties (All FL): Broward, Miami-Dade, and Monroe.

\* *Gale Directory of Publications and Broadcast Media 2009.*

+*Editor & Publisher International Yearbook (2008).*

**Miami-Fort Lauderdale, FL DMA<sup>1</sup> (2009)**

**College and University Newspapers**

1. **Name:** The Miami Hurricane \*  
  
**Frequency:** Semiweekly (during academic year)  
**Published:** Coral Gables, FL  
**College:** University of Miami  
**Circulation:** 10,000  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** College newspaper
  
2. **Name:** Res Ipsa Loquitur \*  
  
**Frequency:** Biweekly  
**Published:** Coral Gables, FL  
**College:** University of Miami School of Law  
**Circulation:** 1,500  
**Subscription Rates:** Free  
**Advertising:** Accepted  
**Description:** College newspaper
  
3. **Name:** The Observer \*  
  
**Frequency:** Biweekly  
**Published:** Davie, FL  
**College:** Broward Community College  
**Circulation:** 10,000  
**Subscription Rates:** Free  
**Advertising:** Accepted  
**Description:** College newspaper

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<sup>1</sup> Counties (All FL): Broward, Miami-Dade, and Monroe.

\* *Gale Directory of Publications and Broadcast Media 2009.*  
+ *Editor & Publisher International Yearbook (2008).*

**Miami-Fort Lauderdale, FL DMA<sup>1</sup> (2009)**

**Local Magazines**

1. **Name:** Aventura Magazine \*  
  
**Frequency:** Bimonthly  
**Published:** Aventura, FL  
**Circulation:** 30,000  
**Subscription Rates:** \$43.47 per annum  
**Advertising:** Accepted  
**Description:** Lifestyle magazine
2. **Name:** South Florida Parenting Magazine (owned by Tribune Company)+  
  
**Frequency:** Monthly  
**Published:** Tamarac, FL  
**Circulation:** 110,000  
**Subscription Rates:** Free  
**Advertising:** Accepted  
**Description:** Parenting magazine
3. **Name:** Business in Broward \*  
  
**Frequency:** 6 per year  
**Published:** Fort Lauderdale, FL  
**Circulation:** Paid 14,200; Controlled 5,800  
**Subscription Rates:** \$19.95 per annum  
**Advertising:** Accepted  
**Description:** Trade magazine
4. **Name:** Home Fort Lauderdale \*  
  
**Frequency:** 11 per year  
**Published:** Fort Lauderdale, FL  
**Circulation:** 21,000  
**Subscription Rates:** \$48 per annum  
**Advertising:** Accepted  
**Description:** Trade Magazine

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<sup>1</sup> Counties (All FL): Broward, Miami-Dade, and Monroe.

\* *Gale Directory of Publications and Broadcast Media 2009.*  
+ *Editor & Publisher International Yearbook (2008).*

5. **Name:** Nursing Spectrum-Florida Edition \*

**Frequency:** Biweekly  
**Published:** Ft. Lauderdale, FL  
**Circulation:** 57,000  
**Advertising:** Accepted  
**Description:** Trade magazine

6. **Name:** South Florida Adventures \*

**Frequency:** Monthly  
**Published:** Ft. Lauderdale, FL  
**Circulation:** 25,000  
**Advertising:** Accepted  
**Description:** Hobby magazine

7. **Name:** Waterfront News \*

**Frequency:** Monthly  
**Published:** Ft. Lauderdale, FL  
**Circulation:** 42,000  
**Subscription Rate:** \$15 per annum  
**Advertising:** Accepted  
**Description:** Nautical newsmagazine

8. **Name:** Dolphin Digest \*

**Frequency:** Weekly  
**Published:** Miami, FL  
**Circulation:** Paid 30,000; Non-paid 500  
**Subscription Rate:** \$29.95 per annum  
**Advertising:** Accepted  
**Description:** Sports magazine

9. **Name:** Home Miami \*

**Frequency:** 11 per year  
**Published:** Miami, FL  
**Circulation:** 21,000  
**Subscription Rate:** \$48 per annum  
**Advertising:** Accepted  
**Description:** Home magazine

\* *Gale Directory of Publications and Broadcast Media 2009.*  
+ *Editor & Publisher International Yearbook (2008).*



10. **Name:** Key Biscayne Magazine \*  
  
**Frequency:** Monthly  
**Published:** Miami, FL  
**Circulation:** 15,000  
**Advertising:** Accepted  
**Description:** Entertainment magazine
11. **Name:** Social \*  
  
**Frequency:** Bimonthly  
**Published:** Miami, FL  
**Circulation:** Not reported  
**Subscription Rate:** \$24 per annum  
**Advertising:** Accepted  
**Description:** Local lifestyle magazine
12. **Name:** Tequesta \*  
  
**Frequency:** Annual  
**Published:** Miami, FL  
**Circulation:** Paid 3,600  
**Subscription Rate:** Free (Member)  
**Advertising:** Not accepted  
**Description:** Scholarly journal
13. **Name:** Florida InsideOut \*  
  
**Frequency:** Bimonthly  
**Published:** Miami Beach, FL  
**Circulation:** 45,000  
**Advertising:** Accepted  
**Description:** Trade magazine
14. **Name:** Lincoln Road Magazine \*  
  
**Frequency:** 10 per year  
**Published:** Miami Beach, FL  
**Circulation:** Not reported  
**Subscription Rate:** \$19.95 per annum  
**Advertising:** Accepted  
**Description:** Entertainment magazine

\* *Gale Directory of Publications and Broadcast Media 2009.*  
+ *Editor & Publisher International Yearbook (2008).*

15. **Name:** Ocean Drive \*
- Frequency:** Monthly  
**Published:** Miami Beach, FL  
**Circulation:** Not reported  
**Subscription Rate:** \$49.95 per annum  
**Advertising:** Accepted  
**Description:** Entertainment magazine
16. **Name:** Venetian Style \*
- Frequency:** Semiannual  
**Published:** Miami Beach, FL  
**Circulation:** Not reported  
**Subscription Rate:** \$10.95 per annum  
**Advertising:** Accepted  
**Description:** Travel magazine
17. **Name:** Entertainment News & Views \*
- Frequency:** Weekly  
**Published:** North Miami Beach, FL  
**Circulation:** 125,000  
**Subscription Rate:** Free  
**Advertising:** Accepted  
**Description:** Entertainment magazine
18. **Name:** Welcome to Miami and the Beaches \*
- Frequency:** Weekly  
**Published:** North Miami Beach, FL  
**Circulation:** Non-Paid 16,000  
**Subscription Rate:** \$35 per annum; Free  
**Advertising:** Accepted  
**Description:** Travel magazine
19. **Name:** The Broward Informer \*
- Frequency:** Biweekly  
**Published:** Sunrise, FL  
**Circulation:** Paid 2,000; Free 80,000  
**Advertising:** Accepted  
**Description:** Travel magazine

\* *Gale Directory of Publications and Broadcast Media 2009.*  
+ *Editor & Publisher International Yearbook (2008).*

20. **Name:** Southern Boating \*
- Frequency:** Monthly  
**Published:** Ft. Lauderdale, FL  
**Circulation:** Paid 19,804; Non-paid 9,567  
**Subscription Rate:** \$22.95 per annum  
**Advertising:** Accepted  
**Description:** Hobby magazine
21. **Name:** Automundo Magazine \*
- Frequency:** Monthly  
**Published:** Miami, FL  
**Circulation:** Paid 25,000; Non-paid 25,000  
**Subscription Rate:** \$32.45 per annum  
**Description:** Spanish language automotive magazine
22. **Name:** Buenhogar \*
- Frequency:** Monthly  
**Published:** Miami, FL  
**Circulation:** 18,449  
**Subscription Rate:** \$24.95 per annum  
**Description:** Spanish language home magazine
23. **Name:** Hispanic Enterprise \*
- Frequency:** Monthly  
**Published:** Miami, FL  
**Circulated:** Internationally  
**Circulation:** 125,000  
**Subscription Rate:** \$15.80 per annum  
**Advertising:** Accepted  
**Description:** Hispanic magazine
24. **Name:** Southeast Travel Professional \*
- Frequency:** Monthly  
**Published:** Miami, FL  
**Circulation:** Paid 450; Controlled 11,000  
**Advertising:** Accepted  
**Description:** Trade magazine

\* *Gale Directory of Publications and Broadcast Media 2009.*  
+ *Editor & Publisher International Yearbook (2008).*

25. **Name:** City & Shore (owned by Tribune Company)<sup>2</sup>

**Frequency:** 6 Times per year  
**Published:** Fort Lauderdale, FL  
**Circulation:** 46,000  
**Advertising:** Accepted  
**Description:** Lifestyle magazine

26. **Name:** Home Source (owned by Tribune Company)

**Frequency:** Monthly  
**Published:** Broward and Palm Beach Counties  
**Circulation:** 33,000  
**Advertising:** Accepted  
**Description:** Home and design magazine

27. **Name:** Southern Beverage Journal \*

**Frequency:** Monthly  
**Published:** Miami, FL  
**Circulation:** 23,000  
**Subscription Rate:** \$30 per annum  
**Advertising:** Accepted  
**Description:** Trade magazine

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<sup>2</sup> See <http://www.cityandshore.com/aboutus.html>;  
[http://trb365.com/adspecs/City\\_Shore\\_Magazine/City\\_&\\_Shore\\_Rates\\_Specs.pdf](http://trb365.com/adspecs/City_Shore_Magazine/City_&_Shore_Rates_Specs.pdf) (last visited February 11, 2010).

\* *Gale Directory of Publications and Broadcast Media 2009*.  
+ *Editor & Publisher International Yearbook (2008)*.

### Miami DMA Full Power Radio Stations

<b>CALLS</b>	<b>AM/FM</b>	<b>Format</b>	<b>City/St. License</b>	<b>Owner</b>	<b>C/NCE</b>
WACC	AM	Span/Chrst	Hialeah, FL	Pax Catholic Communications Inc	C
WAFG	FM	Christian	Fort Lauderdale, FL	Westminster Academy	NCE
WAIL	FM	Clsc Rock	Key West, FL	CC Media Holdings Inc	C
WAMR	FM	Span/AdCHR	Miami, FL	Broadcasting Media Partners Inc	C
WAQI	AM	Spn/Nws/Tlk	Miami, FL	Broadcasting Media Partners Inc	C
WAVK	FM	DARK	Marathon, FL	Vox Media Corporation	C
WAVS	AM	Tropical	Davie, FL	Alliance Broadcasting Network Inc	C
WAXY	AM	Sports	South Miami, FL	Lincoln Financial Group	C
WBGG	FM	Clsc Rock	Fort Lauderdale, FL	CC Media Holdings Inc	C
WCMQ	FM	Span/Oldes	Hialeah, FL	Spanish Broadcasting System	C
WCNK	FM	Country	Key West, FL	Vox Media Corporation	C
WCTH	FM	Country	Plantation Key, FL	CC Media Holdings Inc	C
WDNA	FM	Jazz	Miami, FL	Bascomb Memorial Broadcasting Foundation	NCE
WEDR	FM	Hip Hop	Miami, FL	Cox Media Group	C
WEOW	FM	Top 40	Key West, FL	CC Media Holdings Inc	C
WEXY	AM	Religion	Wilton Manors, FL	MultiCultural Broadcasting	C
WFFG	AM	Talk	Marathon, FL	Great Marathon Radio	C
WFKZ	FM	Clsc Rock	Plantation Key, FL	CC Media Holdings Inc	C
WFLC	FM	AC	Miami, FL	Cox Media Group	C
WFLI	AM	Sports	Fort Lauderdale, FL	James Crystal Licenses LLC	C
WGES	FM	Span/CCtmp	Cutler Bay, FL	Genesis Group LLC	NCE
WGMX	FM	AC	Marathon, FL	Great Marathon Radio	C
WGNK	FM	Span/CCtmp	Pennsuco, FL	Genesis Group LLC	NCE
WHDR	FM	Rock	Miami, FL	Cox Media Group	C

<b>CALLS</b>	<b>AM/FM</b>	<b>Format</b>	<b>City/St. License</b>	<b>Owner</b>	<b>C/NCE</b>
WHQT	FM	Urban AC	Coral Gables, FL	Cox Media Group	C
WHSR	AM	Internat'l	Pompano Beach, FL	Beasley Broadcast Group	C
WHYI	FM	CHR	Fort Lauderdale, FL	CC Media Holdings Inc	C
WIIS	FM	Alternative	Key West, FL	Keyed Up Communications Company	C
WINZ	AM	Sports	Miami, FL	CC Media Holdings Inc	C
WIOD	AM	News/Talk	Miami, FL	CC Media Holdings Inc	C
WJCC	AM	Ethnic	Miami Springs, FL	MultiCultural Broadcasting	C
WJIR	FM	ChrsContemp	Key West, FL	Key West Educational Broadcasting Foundation	NCE
WKAT	AM	Spn/Cst/Tlk	North Miami, FL	Salem Communications Corporation	C
WKCP	FM	Classical	Miami, FL	American Public Media Group	NCE
WKEY	FM	AC	Key West, FL	Aloha Station Trust LLC	C
WKEZ	FM	AAA	Tavernier, FL	Aloha Station Trust LLC	C
WKIZ	AM	Talk	Key West, FL	Seattle Streaming Radio LLC	C
WKLG	FM	AC	Rock Harbor, FL	WKLG Inc	C
WKPX	FM	Alternative	Sunrise, FL	Broward County School Board	NCE
WKWF	AM	Sports	Key West, FL	Aloha Station Trust LLC	C
WKWM	FM	Nws/Tlk/Inf	Marathon, FL	School Board of Miami-Dade County FL	NCE
WKWR	FM	ChrsContemp	Key West, FL	Broadcasting For The Challenged Inc	NCE
WKYZ	FM	Clsc Rock	Key Colony Beach, FL	Glades Media Company	C
WKZG	FM	AC	Key West, FL	Westminster Academy	NCE
WLQY	AM	Ethnic	Hollywood, FL	Entravision Communications Corp	C
WLRN	FM	Nws/Tlk/Inf	Miami, FL	School Board of Miami-Dade County FL	NCE
WLYF	FM	AC	Miami, FL	Lincoln Financial Group	C
WMBM	AM	Gospel	Miami Beach, FL	New Birth Broadcasting Corp	C
WMCU	AM	Chrst/Talk	Coral Gables, FL	Salem Communications Corporation	C
WMFL	FM	Religion	Florida City, FL	Family Stations Inc	NCE

<b>CALLS</b>	<b>AM/FM</b>	<b>Format</b>	<b>City/St. License</b>	<b>Owner</b>	<b>C/NCE</b>
WMFM	FM	Tropical	Key West, FL	South Broadcasting System	C
WMGE	FM	Spanish AC	Miami Beach, FL	CC Media Holdings Inc	C
WMIA	FM	Rhymc/AC	Miami Beach, FL	CC Media Holdings Inc	C
WMIB	FM	Urban/HotAC	Fort Lauderdale, FL	CC Media Holdings Inc	C
WMKL	FM	Christian	Key Largo, FL	Call Communications Group Inc	NCE
WMXJ	FM	Oldies	Pompano Beach, FL	Lincoln Financial Group	C
WMYM	AM	Family Hits	Miami, FL	ABC/Disney	C
WNMA	AM	Span/Varty	Miami Springs, FL	MultiCultural Broadcasting	C
WOCN	AM	Spt/Spn/Tlk	Miami, FL	Independence Media Holdings LLC	C
WOIR	AM	Span/Relgn	Homestead, FL	Amanecer Investment Company LLC	C
WPIK	FM	Span/Easy	Summerland Key, FL	Summerland Media LLC	C
WPOW	FM	Rhymc/CHR	Miami, FL	Beasley Broadcast Group	C
WQAM	AM	Sprts/Talk	Miami, FL	Beasley Broadcast Group	C
WQBA	AM	Spn/Nws/Tlk	Miami, FL	Broadcasting Media Partners Inc	C
WRAZ	FM	Mexican	Key Largo, FL	South Broadcasting System	C
WRGP	FM	Variety	Homestead, FL	Florida International University	NCE
WRHC	AM	Spn/Nws/Tlk	Coral Gables, FL	Rodriguez, Jorge & Ana Vidal	C
WRMA	FM	Romantic	Fort Lauderdale, FL	Spanish Broadcasting System	C
WRTD	FM	SpnAC/Trpcl	Goulds, FL	Broadcasting Media Partners Inc	C
WSRF	AM	Ethnic	Fort Lauderdale, FL	Alliance Broadcasting Network Inc	C
WSUA	AM	Spn/Nws/Var	Miami, FL	Grupo PRISA	C
WURN	AM	Spn/Tlk/Nws	Kendall, FL	New World Broadcasting Inc	C
WVUM	FM	Alternative	Coral Gables, FL	WVUM Inc	NCE
WWFE	AM	Spn/Nws/Spt	Miami, FL	Rodriguez, Jorge & Ana Vidal	C
WWNN	AM	Motivationl	Pompano Beach, FL	Beasley Broadcast Group	C
WWUS	FM	ClHts/70&80	Big Pine Key, FL	Vox Media Corporation	C

<b>CALLS</b>	<b>AM/FM</b>	<b>Format</b>	<b>City/St. License</b>	<b>Owner</b>	<b>C/NCE</b>
WWWK	FM	Span/Dance	Islamorada, FL	Caribbean Bcstg Systems Inc	C
WXDJ	FM	Tropical	North Miami Beach, FL	Spanish Broadcasting System	C
WZAB	AM	BusNw/Talk	Sweetwater, FL	Salem Communications Corporation	C



### Miami DMA Multicast Radio Streams

<b>CALLS</b>	<b>AM/FM</b>	<b>Format</b>	<b>City/St. of License</b>	<b>Owner</b>	<b>C/NCE</b>
WBGG-HD2	F2	Alternative	Fort Lauderdale, FL	CC Media Holdings Inc	C
WEDR-HD2	F2	Hip Hop	Miami, FL	Cox Media Group	C
WFLC-HD2	F2	80s Hits	Miami, FL	Cox Media Group	C
WHDR-HD2	F2	Rock	Miami, FL	Cox Media Group	C
WHQT-HD2	F2	Urban AC	Coral Gables, FL	Cox Media Group	C
WHYI-HD2	F2	Top 40	Fort Lauderdale, FL	CC Media Holdings Inc	C
WMGE-HD2	F2	Urban	Miami Beach, FL	CC Media Holdings Inc	C
WMIA-HD2	F2	Smooth Jazz	Miami Beach, FL	CC Media Holdings Inc	C
WMIB-HD2	F2	Variety	Fort Lauderdale, FL	CC Media Holdings Inc	C
WPOW-HD2	F2	Reggaeton	Miami, FL	Beasley Broadcast Group	C
WPOW-HD3	F2	Sprts/Talk	Miami, FL	Beasley Broadcast Group	C

### Miami FCC Geographic Market Radio Stations

<b>CALLS</b>	<b>AM/FM</b>	<b>Format</b>	<b>City/St. of License</b>	<b>Owner</b>	<b>C/NCE</b>
WACC	AM	Span/Chrst	Hialeah, FL	Pax Catholic Communications Inc	C
WAFG	FM	Christian	Fort Lauderdale, FL	Westminster Academy	NCE
WAMR	FM	Span/AdCHR	Miami, FL	Broadcasting Media Partners Inc	C
WAQI	AM	Spn/Nws/Tlk	Miami, FL	Broadcasting Media Partners Inc	C
WAVS	AM	Tropical	Davie, FL	Alliance Broadcasting Network Inc	C
WAXY	AM	Sports	South Miami, FL	Lincoln Financial Group	C
WBGG	FM	Clsc Rock	Fort Lauderdale, FL	CC Media Holdings Inc	C
WCMQ	FM	Span/Oldes	Hialeah, FL	Spanish Broadcasting System	C
WDNA	FM	Jazz	Miami, FL	Bascomb Memorial Broadcasting Foundation	NCE
WEDR	FM	Hip Hop	Miami, FL	Cox Media Group	C
WEXY	AM	Religion	Wilton Manors, FL	MultiCultural Broadcasting	C
WFLC	FM	AC	Miami, FL	Cox Media Group	C
WFLI	AM	Sports	Fort Lauderdale, FL	James Crystal Licenses LLC	C
WGES	FM	Span/CCtmp	Cutler Bay, FL	Genesis Group LLC	NCE
WGNK	FM	Span/CCtmp	Pennsuko, FL	Genesis Group LLC	NCE
WHDR	FM	Rock	Miami, FL	Cox Media Group	C
WHQT	FM	Urban AC	Coral Gables, FL	Cox Media Group	C
WHSR	AM	Internat'l	Pompano Beach, FL	Beasley Broadcast Group	C
WHYI	FM	CHR	Fort Lauderdale, FL	CC Media Holdings Inc	C
WINZ	AM	Sports	Miami, FL	CC Media Holdings Inc	C
WIOD	AM	News/Talk	Miami, FL	CC Media Holdings Inc	C
WJCC	AM	Ethnic	Miami Springs, FL	MultiCultural Broadcasting	C
WKAT	AM	Spn/Cst/Tlk	North Miami, FL	Salem Communications Corporation	C
WKCP	FM	Classical	Miami, FL	American Public Media Group	NCE

<b>CALLS</b>	<b>AM/FM</b>	<b>Format</b>	<b>City/St. of License</b>	<b>Owner</b>	<b>C/NCE</b>
WKIS	FM	Country	Boca Raton, FL	Beasley Broadcast Group	C
WKLK	FM	AC	Rock Harbor, FL	WKLK Inc	C
WKPX	FM	Alternative	Sunrise, FL	Broward County School Board	NCE
WLQY	AM	Ethnic	Hollywood, FL	Entravision Communications Corp	C
WLRN	FM	Nws/Tlk/Inf	Miami, FL	School Board of Miami-Dade County FL	NCE
WLYF	FM	AC	Miami, FL	Lincoln Financial Group	C
WMBM	AM	Gospel	Miami Beach, FL	New Birth Broadcasting Corp	C
WMCU	AM	Chrst/Talk	Coral Gables, FL	Salem Communications Corporation	C
WMFL	FM	Religion	Florida City, FL	Family Stations Inc	NCE
WMGE	FM	Spanish AC	Miami Beach, FL	CC Media Holdings Inc	C
WMIA	FM	Rhymc/AC	Miami Beach, FL	CC Media Holdings Inc	C
WMIB	FM	Urban/HotAC	Fort Lauderdale, FL	CC Media Holdings Inc	C
WMKL	FM	Christian	Hammocks, FL	Call Communications Group Inc	NCE
WMXJ	FM	Oldies	Pompano Beach, FL	Lincoln Financial Group	C
WMYM	AM	Family Hits	Miami, FL	ABC/Disney	C
WNMA	AM	Span/Varty	Miami Springs, FL	MultiCultural Broadcasting	C
WOCN	AM	Spt/Spn/Tlk	Miami, FL	Independence Media Holdings LLC	C
WOIR	AM	Span/Relgn	Homestead, FL	Amanecer Investment Company LLC	C
WPOW	FM	Rhymc/CHR	Miami, FL	Beasley Broadcast Group	C
WQAM	AM	Sprts/Talk	Miami, FL	Beasley Broadcast Group	C
WQBA	AM	Spn/Nws/Tlk	Miami, FL	Broadcasting Media Partners Inc	C
WRAZ	FM	Mexican	Leisure City, FL	South Broadcasting System	C
WRGP	FM	Variety	Homestead, FL	Florida International University	NCE
WRHC	AM	Spn/Nws/Tlk	Coral Gables, FL	Rodriguez, Jorge & Ana Vidal	C
WRMA	FM	Romantic	Fort Lauderdale, FL	Spanish Broadcasting System	C
WRTD	FM	SpnAC/Trpcl	Goulds, FL	Broadcasting Media Partners Inc	C

<b>CALLS</b>	<b>AM/FM</b>	<b>Format</b>	<b>City/St. of License</b>	<b>Owner</b>	<b>C/NCE</b>
WSRF	AM	Ethnic	Fort Lauderdale, FL	Alliance Broadcasting Network Inc	C
WSUA	AM	Spn/Nws/Var	Miami, FL	Grupo PRISA	C
WURN	AM	Spn/Tlk/Nws	Kendall, FL	New World Broadcasting Inc	C
WVUM	FM	Alternative	Coral Gables, FL	WVUM Inc	NCE
WWFE	AM	Spn/Nws/Spt	Miami, FL	Rodriguez, Jorge & Ana Vidal	C
WWNN	AM	Motivationl	Pompano Beach, FL	Beasley Broadcast Group	C
WXDJ	FM	Tropical	North Miami Beach, FL	Spanish Broadcasting System	C
WZAB	AM	BusNw/Talk	Sweetwater, FL	Salem Communications Corporation	C

### Miami DMA LPFM Stations

<b>CALLS</b>	<b>Format</b>	<b>City/St. of License</b>	<b>Owner</b>
WORZ-LP	Variety	Key Largo, FL	Ocean Reef Public Radio Inc
WGGP-LP	Religion	Big Pine Key, FL	First Baptist Church Big Pine Key
WTHA-LP	Variety	Seaside, FL	Seaside School, Inc.



# **PREMIER™ package** **285+ digital channels**

Print channels for ZIP Code 33186



## **NATIONALS**

A&E	265	ESPN	206	ION Television	305	Science Channel	284
ABC Family	311	ESPN U	614	ION Television West	347	ShopNBC	316
American Movie Classics (AMC)	254	ESPN2	209	Independent Film Channel (IFC)	550	Sleuth	308
Animal Planet	282	ESPNEWS	207	Investigation Discovery (ID)	285	Speed Channel	607
BBC America	264	EWTN	370	Jewelry Television	313	Spike	241
BYU TV	374	Enlace Christian Television	448	Jewish Life Television	366	Style	235
Big Ten Network	610	FX	248	Lifetime	252	Syfy Channel	244
Biography Channel	266	Fine Living	232	Lifetime Movie Network	253	TBS	247
Black Entertainment Television (BET)	329	Fit TV	261	LinkTV	375	TCT Network	377
Bloomberg Television	353	Food Network	231	Logo	272	TNT	245
Boomerang	298	Fox Business Network	359	MHz WORLDVIEW	2183	TV Guide Network	237
Bravo	273	Fox Movie Channel	258	MLB Network	213	TV Land	304
CMT	327	Fox News Channel	360	MSNBC	356	TV One	328
CNBC	355	Fox Reality	250	MTV	331	TeenNick	303
CNBC World	357	Fuel	618	MTV2	333	Tennis Channel	217
CNN	202	Fuse	339	Military Channel	287	The 101 Network HD	101
CSPAN 1	350	G4	310	NASA TV	283	The Learning Channel	280
CSPAN 2	351	GEM NET (Global Expansion Media Network)	2068	NBA TV	216	The Sportsman Channel	605
Cartoon Network (East)	296	GOD TV	365	NFL Network	212	The Word Network	373
Cartoon Network (West)	297	GSN, the network for games	309	NHL Network	215	Travel Channel	277
Centric	330	Galavision	404	NRB	378	Trinity Broadcasting Network (TBN)	372
Chiller	257	GemsTV	233	National Geographic Channel	276	TruTV	246
Christian Television Network (CTN)	376	Golf Channel	218	Nick Jr.	301	Turner Classic Movies (TCM)	256
Church Channel	371	Gospel Music Channel	338	Nickelodeon (East)	299	USA Network	242
Comedy Central	249	Great American Country	326	Nickelodeon (West)	300	Univision	402
Current TV	358	HD Theater	281	Nicktoons Network	302	V-me	440
DIY Network	230	HDNet	306	ONCE México	447	VH1	335
Daystar	369	HITN	438	Ovation TV	274	VH1 Classic	337
Discovery Channel	278	Hallmark Channel	312	Oxygen	251	Versus	603
Discovery Health	279	Headline News	204	PBS	0	WE: Women's Entertainment	260
Discovery Kids	294	History Channel	269	PBS Kids Sprout	295	WGN America	307
Disney Channel (East)	290	History International	271	Planet Green	286	Weather Channel	362
Disney Channel (West)	291	Home & Garden Television (HGTV)	229	QVC	275	World Harvest Television	367
Disney XD	292	Home Shopping Network	240	RFD TV	345		
Documentary Channel	263	Hope	368	ReelzChannel	238		
E! Entertainment	236	INSP	364	SOAPnet	262		

## **PREMIUMS**

CBS College Sports	613	Encore Westerns	538	HBO Latino	511	Starz Comedy HD	526
Cinemax East	512	Flix	557	HBO Signature	503	Starz Edge	529
Cinemax West	514	Fox Soccer Channel	619	MoreMAX	513	Starz InBlack	530
ESPN Classic Sports	208	Fox Sports en Espanol	624	Outdoor Channel	606	Starz Kids & Family HD	525
Encore (East)	535	Go!TV	620	SHOWTIME	545	Sundance Channel	558
Encore (West)	536	HBO (East)	501	SHOWTIME (West)	546	TVG - The Interactive Horseracing Network	602
Encore Action	541	HBO (West)	504	SHOWTIME 2	547	The Movie Channel (West)	555
Encore Drama	540	HBO 2 (East)	502	SHOWTIME Extreme	549	The Movies Channel	554
Encore Love	537	HBO 2 (West)	505	SHOWTIME Showcase	548	(East)	
Encore Mystery	539	HBO Family (East)	507	Starz (East)	527		
Encore Wam	542	HBO Family (West)	508	Starz (West)	528		

## **REGIONAL SPORT NETWORKS**

FSN Florida 654	654	Sun Sports Network 653	653
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SATELLITE RADIO							
SONICTAP: 60's Revolution	803	SONICTAP: College Rock	831	SONICTAP: Italian Bistro Blend	881	SONICTAP: Regional Mexican	873
SONICTAP: 70's Hits	804	SONICTAP: Dance	859	SONICTAP: Italian Contemporary	882	SONICTAP: Retro Disco	845
SONICTAP: 8-Tracks	840	SONICTAP: Familiar Favorites	880	SONICTAP: Jazz	852	SONICTAP: Rock en Espanol	878
SONICTAP: 80's Hits	805	SONICTAP: Fiesta Tropical	870	SONICTAP: Latin Hits	871	SONICTAP: Salsa	874
SONICTAP: 90's Hits	806	SONICTAP: Flashback/New Wave	839	SONICTAP: Latin Jazz	879	SONICTAP: Showtunes	823
SONICTAP: Adult Alternative	832	SONICTAP: Folk Rock	813	SONICTAP: Light Classical	866	SONICTAP: Silky Soul	843
SONICTAP: Adult Contemporary	821	SONICTAP: Full Metal Jacket	830	SONICTAP: Love Songs	819	SONICTAP: Silver Screen	822
SONICTAP: Alternative	834	SONICTAP: Gospel Glory	827	SONICTAP: Malt Shop Oldies	802	SONICTAP: Singer-Songwriters	836
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If you do not see HD local channels currently available in your area, you may still be able to receive them via a high definition off-air antenna.

**Local channels currently available in this package:****Locals Package – \$5.99 per month\***

Station	Local Channel Number	Dish Channel Number
MIAMI CW-WSFL	39	8834
 MIAMI ABC-WPLG	10	8830
 MIAMI CBS-WFOR	4	8831
MIAMI UNVSN-WLTV	23	8838
MIAMI NBC-WTVJ IN HD	6	6403
 MIAMI NBC-WTVJ	6	8832
 MIAMI FOX-WSVN	7	8833
MIAMI ABC-WPLG IN HD	10	6401

 <b>PBS</b>	MIAMI PBS-WPBT	2	8836
	MIAMI MNT-WBFS	33	8835
	MIAMI TMNDO-WSCV	51	8839
 <b>PBS</b>	MIAMI PBS-WLRN	17	8841
	MIAMI ION - WPXM	35	8843
	MIAMI CBS-WFOR IN HD	4	6402
	MIAMI CW-WSFL HD	39	6405
	MIAMI AZTECA-WSFLD	19	8837
	MIAMI IND-WGEN	8	8845
	MIAMI TELEF-WAMI	69	8840
	MIAMI IND - WBEC	63	8846
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	MIAMI IND-WJAN	41	8844

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**Superstations – \$5.99 per month\*\***

Station	Affiliate	Dish Channel Number
NEW YORK UPN-WWOR	UPN	238

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NEW YORK WB-WPIX	WB	234
DENVER WB-KWGN	WB	235
BOSTON UPN-WSBK	UPN	236

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Station
Sunshine_CO
Fox Sports Florida

\*Locals for non-qualifying packages are \$5.99 per month. Call 1-888-884-2741 for additional details.

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**Local Cable Programming in Miami Market<sup>1</sup>**

- Telemiami – local Spanish-language cable news and entertainment channel<sup>2</sup>
  - “Entre Amigos” (“Among Friends”) – features local journalist discussing topics of community interest with guests and viewers, who are invited to call in<sup>3</sup>
  - “El Informative con Tomas Regalado” (“News of the Day with Miami Commissioner Tomas Regalado”) – local and national and international news and commentary hosted by Miami City Commissioner
  - “Actualidad Semanal” (“Weekly Happenings”) – debate program on significant current events
  - Other local and international news, public affairs, and entertainment programming
  - Reaches more than 1.5 million cable viewers in Dade and Broward counties<sup>4</sup>
- Miami Latin TV – local Spanish-language news, information, and entertainment channel offered on Comcast cable systems<sup>5</sup>
- Miami Dade College Television – original programming produced by Miami Dade College<sup>6</sup>
  - Broadcasts 7 days per week from 8:00am to 10:00pm.
  - Available on Atlantic Broadband and Comcast systems
  - Includes programs such as “Being Fit for Life,” “Let’s Talk Business,” “Safety First,” and “In Focus.”<sup>7</sup>
- UMTV – University of Miami Cable Television Channel<sup>8</sup>
  - Owned and operated by the University of Miami’s School of Communication
  - Programming includes “NewsVision,” an award winning half-hour newscast covering local, state, national, and international news; “UniMiami,” a Spanish-language news program covering campus, local, and national news; “We the Students,” an online,

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<sup>1</sup> This listing of local cable programming is not comprehensive, and additional programming may be available in each market. All websites listed were visited in January 2010.

<sup>2</sup> <http://www.telemiami.info>.

<sup>3</sup> [http://www.telemiami.info/eng/program\\_local\\_eng.html](http://www.telemiami.info/eng/program_local_eng.html).

<sup>4</sup> [http://www.telemiami.info/eng/cobertura\\_eng.html](http://www.telemiami.info/eng/cobertura_eng.html).

<sup>5</sup> <http://www.miamilatin.tv>.

<sup>6</sup> [http://www.mdc.edu/mdctv/what\\_is.html](http://www.mdc.edu/mdctv/what_is.html).

<sup>7</sup> [http://www.mdc.edu/mdctv/schedule\\_tue.asp](http://www.mdc.edu/mdctv/schedule_tue.asp).

<sup>8</sup> <http://www.umtv.miami.edu>.

interactive debate show; “Sportsdesk,” and other information and entertainment programming

- Available on Comcast cable in the Coral Gables area
- Coral Springs City TV – government information and local programming available on Advanced Cable Communications in Coral Springs<sup>9</sup>
  - City Commission Meetings (live and rebroadcast)
  - Community Bulletin Board
  - Local Special Events programming
  - Programming produced by local high schools
  - Other programming produced locally by City staff
  - Cultural arts programming
- Atlantic Broadband in Miami Beach carries Plum TV’s local Miami Beach channel. Plum TV is a network of 8 local basic cable channels in resort communities the programming of which includes “dedicated local programming” including live local weather and local information.<sup>10</sup>
- Atlantic Broadband in Miami Beach carries The Beach Channel, a locally-produced cable channel featuring local advertising and programs on local restaurants, bars, spas, real estate, and entertainment.<sup>11</sup>
- Town Talk TV – local advertising channel offered to Advanced Cable Communication customers in Coral Springs and Weston<sup>12</sup>
  - Also includes community event and public service announcements and a “Real Estate Showcase.”
- SunSports and Fox SportsNet Florida<sup>13</sup>
  - Provide extensive local and regional sports coverage, including major and minor league professional sports, college sports, and coverage of all Florida state high school sports championships

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<sup>9</sup> <http://www.coralsprings.org/MediaCenter/aboutTV.cfm>.

<sup>10</sup> <http://www.plumtv.com/channels.html>.

<sup>11</sup> <http://www.thebeachchannel.tv/>.

<sup>12</sup> <http://www.towntalktv.com/aboutus.html>.

<sup>13</sup> <http://www.foxsportsflorida.com/pages/main>.

- SunSports, which is also owned by Fox, also provides local and regional public affairs programming, including “Capital Dateline,” focused on Florida government and politics.<sup>14</sup>

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<sup>14</sup> [http://www.foxsportsflorida.com/pages/tvlisting\\_sun?showdate=1264654800](http://www.foxsportsflorida.com/pages/tvlisting_sun?showdate=1264654800).

### **XM-Sirius Channel Lineup**

<b>Programming</b>	<b>Genre</b>	<b>Sirius/XM/Both</b>
<b>MUSIC</b>		
Top 40 Hits	Pop	Sirius ( <i>available on XM Internet Radio</i> )
Lite Pop Hits	Pop	Both
Love Songs	Pop	Both
'40s Pop Hits/Big Band	Pop	Both
'50s Pop Hits	Pop	Both
'60s Pop Hits with Cousin Brucie	Pop	Both
'70s Pop Hits	Pop	Both
'80s Pop Hits	Pop	Both
'90s Pop Hits	Pop	Both
UK Pop Hits	Pop	Both
2000s Pop Hits	Pop	XM ( <i>available on Sirius Internet Radio</i> )
Elvis Presley 24/7	Pop	Both
Beautiful Music	Pop	Both
Top 20 Hits	Pop	XM ( <i>available on Sirius Internet Radio</i> )
Mellow Rock	Pop/Rock	Both
2000s Pop Hits	Pop	XM ( <i>available on Sirius Internet Radio</i> )
Variety/Adults Hits	Pop w/ Commercials	XM
All Hit Music	Pop w/ Commercials	XM
Bruce Springsteen 24/7	Rock	Both
'60s & '70s Classic Rock	Rock	Both
'70s & '80s Classic Rock	Rock	Both
Deep Classic Rock	Rock	Both
Jam Bands	Rock	Both
Adult Album Rock	Rock	Both
Classic Hard Rock	Rock	Both
New Hard Rock	Rock	Both
New Alternative	Rock	Both
Classic Alternative	Rock	Both
'80s Hair Bands	Rock	Both
'90s Alternative/Grunge	Rock	Both
Little Steven's Garage Rock	Rock	Both
Indie/College/Unsigned Rock	Rock	Both
Heavy Metal	Rock	Both
Action Sports/Punk/Ska	Rock	Both
Comfortably Electric	Rock	Both

<b>Programming</b>	<b>Genre</b>	<b>Sirius/XM/Both</b>
Acoustic Singer-Songwriters	Rock	Both
Escape to Margaritaville	Rock	Both
Grateful Dead 24/7	Rock	Both
Canadian Adult Alternative Music	Rock	Sirius
Canadian Indie	Rock	Sirius
Pure Classic Rock Variety	Rock w/Commercials	XM
Smooth Electronic	Dance & Electronic	Both
Dance Hits	Dance & Electronic	Both
Trance/Progressive	Dance & Electronic	Both
Disco/Classic Dance	Dance & Electronic	Both
Old Skool Rap	Hip-Hop/R&B	Both
Old Skool R&B	Hip-Hop/R&B	XM ( <i>available on Sirius Internet Radio</i> )
Hip-Hop Hits	Hip-Hop/R&B	Both
Eminem's Uncut Hip-Hop Channel	Hip-Hop/R&B	Both
R&B Hits	Hip-Hop/R&B	Both
Adult R&B Hits	Hip-Hop/R&B	Both
Classic Soul/Motown	Hip-Hop/R&B	Both
Hot Hits & Jamz	Hip-Hop/R&B w/Commercials	XM
New Country	Country	Both
'80s & '90s Country	Country	Both
'60s and '70s Country/The Grand Ole Opry	Country	Both
Rockin' Country/Americana	Country	Both
Willie Nelson's Traditional Country	Country	Both
Bluegrass	Country	Both
Folk	Country	XM ( <i>available on Sirius Internet Radio</i> )
Great Country Variety	Country w/Commercials	XM
Christian Pop & Rock	Christian	Both
Southern Gospel	Christian	Both
Gospel	Christian	Both
Smooth/Contemporary Jazz	Jazz, Blues & Standards	Both
Traditional Jazz	Jazz, Blues & Standards	Both
New Age	Jazz, Blues & Standards	Both
B.B. King's Blues	Jazz, Blues & Standards	Both
Sinatra/American Standards	Jazz, Blues & Standards	Both

Programming	Genre	Sirius/XM/Both
Show Tunes	Jazz, Blues & Standards	Both
Movie Soundtracks	Jazz, Blues & Standards	XM ( <i>available on Sirius Internet Radio</i> )
Opera/Classical Vocals	Classical	Both
Classical Pops	Classical	Both
Traditional Classical	Classical	Both
Tropical Latin Music	Latin & World	Both
Reggae	Latin & World	Both
Canadian Pop Hits ( <i>Energie 2</i> )	Latin & World	Sirius
Canadian Soft Rock ( <i>French</i> )	Latin & World	Sirius
Canadian Pop & Rock ( <i>Bande a Part</i> )	Latin & World	Sirius
Emerging Artists	Latin & World	XM
Canadian Pop Hits ( <i>Air Musique</i> )	Latin & World	XM
New & Emerging Artists ( <i>French</i> )	Latin & World	XM
India's Hottest Hit Mix	Latin & World w/Commercials	XM
<b>SPORTS</b>		
ESPN's Sports Talk Channel		Both
SportsCenter, College Gameday & More ( <i>ESPN All Access</i> )		Sirius
College Sports Talk/Dan Patrick		Both
Mad Dog Radio with Chris Russo		Both
24/7 NFL Talk		Sirius ( <i>available on XM with "Best of Sirius"</i> )
European Soccer & More Including Formula 1 ( <i>Play-by-Play 1</i> )*		Sirius ( <i>Play by Play programming available on XM with "Best of Sirius" – 15 channels</i> )
European Soccer, Formula 1 & More ( <i>Play-by-Play 2</i> )*		Sirius ( <i>Play by Play programming available on XM with "Best of Sirius" – 15 channels</i> )
Sporting News Radio		Sirius
24/7 NASCAR Talk		Sirius ( <i>available on XM with "Best of Sirius"</i> )
Spanish Sports Talk & Play-by-Play ( <i>ESPN Deportes</i> )		Sirius ( <i>available on XM Internet Radio</i> )

\* Possible occasional programming overlap between "Play-by-Play 1" and "Play-by-Play 2" on Sirius and "Sports Play-by-Play" channels on XM

<b>Programming</b>	<b>Genre</b>	<b>Sirius/XM/Both</b>
Sports Radio French Language		Sirius
Sports Express from Canada		Sirius
Sports Talk with a Canadian Edge		Sirius
ESPN Xtra		XM
24 Hour Live Sports Talk ( <i>Fox</i> )		XM
IndyCar Series Racing		XM ( <i>available on Sirius with "Best of XM"</i> )
The PGA TOUR Network/Live Coverage & Golf Talk		XM ( <i>available on Sirius with "Best of XM"</i> )
Sports en Espanol/Mexican League Soccer		XM
Play-by-Play en Espanol ( <i>MLB</i> )		XM
MLB Home Plate 24/7 MLB News & Talk		XM ( <i>available on Sirius with "Best of XM"</i> )
14 Major League Baseball Play-by-Play Channels ( <i>14 channels</i> )		XM
ACC Football/Basketball ( <i>3 channels</i> )		XM
Pac-10 Football/Basketball ( <i>3 Channels</i> )		XM
Big Ten Football/Basketball ( <i>3 Channels</i> )		XM
SEC Football/Basketball ( <i>3 Channels</i> )		XM
Big East Football/Basketball		XM
Big 12 Football/Basketball		XM
Sports Play-by-Play* ( <i>7 Channels</i> )		XM ( <i>Play by Play programming available on Sirius with "Best of XM" – 10 channels</i> )
24/7 Hockey Talk & Play-by-Play		XM ( <i>available on Sirius with "Best of XM"</i> )
NHL Hockey Play-by-Play ( <i>5 Channels</i> )		XM
NBA Play-by-Play ( <i>5 Channels</i> )		XM
Sports, Schedules, Scores & Updates		XM
Sports Schedules ( <i>French</i> )		XM
<b>Talk, News &amp; NPR</b>		
Fair and Balanced News ( <i>Fox News</i> )		Both
Politics of the United States		Both
First in Business Worldwide ( <i>CNBC</i> )		Both
The World Leader in Business News ( <i>Bloomberg News</i> )		Both
The Worldwide Leader in News ( <i>CNN</i> )		Both
News & Views ( <i>CNN HLN</i> )		Both
NPR News & Conversation ( <i>NPR Now</i> )		Both
NPR News & Talk ( <i>NPR Talk</i> )		Sirius

<b>Programming</b>	<b>Genre</b>	<b>Sirius/XM/Both</b>
National/International News		Sirius
News from Around the World		Both
BBC World Service News		Both
Talk Radio from FOX News		Both
Liberal Talk <sup>†</sup>		Sirius ( <i>available on XM Internet Radio</i> )
Conservative Talk <sup>*</sup>		Sirius ( <i>available on XM Internet Radio</i> )
All-News Spanish Language ( <i>CNN</i> )		Both
Current Affairs French Language		Sirius
International Talk French Language		Sirius
C-SPAN Radio		XM ( <i>available on Sirius Internet Radio</i> )
The Bob Edwards Show, A Prairie Home Companion		XM ( <i>available on Sirius with "Best of XM"</i> )
Public Radio Exchange		XM ( <i>available on Sirius Internet Radio</i> )
Extreme Talk		XM
Live Talk Programming		XM
America's Talk		XM
Asian Radio		XM
XM Public Radio		XM
24/7 News & Talk for Physicians		XM
The Place for Politics ( <i>MSNBC</i> )		XM ( <i>available on Sirius Internet Radio</i> )
Progressive Talk <sup>†</sup>		XM ( <i>available on Sirius Internet Radio</i> )
Conservative Talk <sup>*</sup>		XM ( <i>available on Sirius Internet Radio</i> )
African-American Talk		XM ( <i>available on Sirius Internet Radio</i> )
Talk Radio for Men ( <i>French</i> )		XM
News & Information ( <i>English</i> )		XM
News & Information ( <i>French</i> )		XM
<b>Entertainment</b>		
Howard 100 ( <i>Howard Stern</i> )		Sirius ( <i>available on XM with "Best of Sirius"</i> )

<sup>†</sup> Substantial programming overlap between "Liberal Talk" on Sirius and "Progressive Talk" on XM

<sup>\*</sup> Substantial programming overlap between "Conservative Talk" on Sirius and "Conservative Talk" on XM



<b>Programming</b>	<b>Genre</b>	<b>Sirius/XM/Both</b>
Howard 101 ( <i>Howard Stern</i> )		Sirius ( <i>available on XM with "Best of Sirius"</i> )
Barbara Walters, Deepak Chopra and More		Both
Jay Thomas and More		Both
Gay & Lesbian Radio		Both
Funs, Fearless, Female ( <i>Cosmo</i> )		Both
How-To For Living ( <i>Martha Stewart</i> )		Sirius ( <i>available on XM with "Best of Sirius"</i> )
Listen to Books		Both
Old-Time Radio		Both
Just for Truckers		Both
Smart & Sexy Adult Radio ( <i>Playboy</i> )		Sirius ( <i>available on XM with "Best of Sirius"</i> )
Live Your Best Life ( <i>Oprah</i> )		XM ( <i>available on Sirius with "Best of XM"</i> )
<b>Family &amp; Health</b>		
Powered by NYU Langone Medical Center		Both
The Music Destination for Kids & Families ( <i>Disney</i> )		Both
Songs & Fun for Younger Kids		Both
<b>Comedy</b>		
Blue Collar Comedy		Both
Comedy Uncensored		Both
Comedy From Canada		XM
Family Comedy		Both
Presented by Jamie Foxx		Both
The Opie & Anthony Show/The Ron & Fez Show		XM ( <i>available on Sirius with "Best of XM"</i> )
<b>Religion</b>		
Now What You'd Expect		Both
EWTN Global Catholic Radio Network		Sirius ( <i>available on XM Internet Radio</i> )
FamilyNet Christian Talk		Sirius ( <i>available on XM Internet Radio</i> )
Christian Talk		XM ( <i>available on Sirius Internet Radio</i> )
<b>Traffic &amp; Weather</b>		
Canada Weather		Sirius

<b>Programming</b>	<b>Genre</b>	<b>Sirius/XM/Both</b>
Weather Emergency ( <i>Weather Channel Radio Network</i> )		Both
<b>Local</b>		
Boston & Philadelphia		Both
New York		Both
Atlanta & Miami		Both
Dallas & Houston		Both
Washington DC & Baltimore		Both
Pittsburgh & Minneapolis		XM
Detroit & Las Vegas		Both
Chicago & St. Louis		Both
Tampa & Orlando		Both
Phoenix & San Diego		Both
San Francisco & Seattle		Both
Los Angeles		Both
<b>Internet Radio</b>		
NPR	Talk/News/NPR	Both Internet Radio
F1, Notre Dame PXP, Sports Talk	Sports	Both Internet Radio
Breuer, Jamie Foxx & More	Comedy	Both Internet Radio
Exclusives from Dylan, Petty & More	Music	Both Internet Radio
Latin Pop Hits	Music	Both Internet Radio
Live Music from the Sirius XM Studios	Music	Both Internet Radio
Artist Only/Seasonal Programming	Music	Both Internet Radio
Rosie Radio 24/7	Talk/News/NPR	Both Internet Radio

## Usage of Local Independent Internet News Sites – Miami

<i>Website</i>	<i>Unique Visitors</i> <i>(January 2009-December 2009)</i>	<i>Total Visits</i> <i>(January 2009-December 2009)</i>
<a href="http://www.coconutgrovegrapevine.blogspot.com">www.coconutgrovegrapevine.blogspot.com</a>	75,679	263,633
<a href="http://www.sfltimes.com">www.sfltimes.com</a>	84,821	97,144
<a href="http://www.floridaswapshop.com">www.floridaswapshop.com</a>	70,925	76,246
<a href="http://eyeonmiami.blogspot.com">eyeonmiami.blogspot.com</a>	55,694	75,938
<a href="http://www.ftlchamber.com">www.ftlchamber.com</a>	33,734	47,574
<a href="http://www.browardbeat.com">www.browardbeat.com</a>	19,881	47,526
<a href="http://www.hallandalebeach.org">www.hallandalebeach.org</a>	36,117	46,074
<a href="http://www.sflcn.com">www.sflcn.com</a>	42,975	45,654
<a href="http://www.villageofmerrickpark.com">www.villageofmerrickpark.com</a>	41,989	45,374
<a href="http://www.lbts.com">www.lbts.com</a>	36,649	40,641
<a href="http://www.hollywoodgazette.com">www.hollywoodgazette.com</a>	11,327	23,832
<a href="http://www.thecrier.com">www.thecrier.com</a>	19,570	23,332
<a href="http://www.browardbiz.com">www.browardbiz.com</a>	18,910	20,238
<a href="http://www.miamisprings.com">www.miamisprings.com</a>	17,497	20,196
<a href="http://www.cocowalk.net">www.cocowalk.net</a>	15,297	16,348
<a href="http://www.waterfront-news.com">www.waterfront-news.com</a>	12,322	13,649
<a href="http://www.browardalliance.org">www.browardalliance.org</a>	11,937	13,142
<a href="http://www.fortlauderdalebites.com">www.fortlauderdalebites.com</a>	11,311	11,311
<a href="http://www.hellocoralsprings.com">www.hellocoralsprings.com</a>	9,202	9,462
<a href="http://www.transitmiami.com">www.transitmiami.com</a>	5,586	6,040

Source: Usage estimates based on free site profiles from Compete.com (available at <http://siteanalytics.compete.com>.)

Note: “Unique Visitors” reported above represents the sum of the number of unique visitors each month over a year-long period. Within each month, Compete.com’s count of “unique visitors” includes a person only one time regardless of how many times he or she visits a site in that month. “Total Visits” represents the total number of visits to a site. A “visit” is initiated when a user first enters a site during an internet session and is considered “live” until that user’s interaction with the entire internet session has ceased for 30 minutes. See Compete.com Metric Descriptions at <http://www.compete.com/help/s2>.

**AN ANALYSIS OF THE EFFECT ON DIVERSITY  
OF  
SEPARATION OF  
LOCAL MEDIA COMBINATIONS**

**Mark R. Fratrik, Ph. D.**

**Vice President**

**February 22, 2010**



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# **AN ANALYSIS OF THE EFFECT ON DIVERSITY OF SEPARATION OF LOCAL MEDIA COMBINATIONS**

## **Executive Summary**

A transaction requiring or causing the separation of any of the currently existing local media combinations owned by Tribune Company would not serve, and in fact would be directly adverse to, the public interest objectives of the Federal Communications Commission. Some opponents may argue that the level of diverse and local programming and information would be increased if some or all of these commonly-owned local television and newspaper properties were separated. One key assumption underlying this line of argument is that a viable purchaser would be willing and able to purchase any such property. In light of the unprecedented challenges that both the television and the newspaper industry currently are facing and will continue to face in the near future, however, this assumption is not valid. In fact, given the extensive revenue losses that both the broadcasting and the newspaper industries have experienced and the limited availability of acquisition financing, there are few, if any, prospective buyers of these properties. As shown herein, the present anemic levels of transactions involving local television stations and daily newspapers are astounding given the levels seen in past years.

Furthermore, the synergies inherent in the cross-ownership of Tribune's properties have enabled these combinations to maintain an especially high level of local programming and other local services, even while many other stations and newspapers are cutting back on such offerings. Recent studies have shown, in particular, that the amount of news programming is greater on local television stations that are cross-owned with a local newspaper. Thus, even assuming that a viable purchaser could be found for any particular property, it is unlikely that any such new owner would have the resources to maintain the current level of local and diverse programming and information offered by these outlets. Therefore, it seems clear that the level and quality of local and diverse programming and information is maximized by maintaining the common ownership of these properties.

## **AN ANALYSIS OF THE EFFECT ON DIVERSITY OF SEPARATION OF LOCAL MEDIA COMBINATIONS**

### **Introduction**

This paper considers the question of whether the separation of any of Tribune's existing newspaper/broadcast combinations likely would lead to greater levels of diverse local programming. First, I will provide an analysis of the present state of the local television and newspaper industries and the level of transaction activity in these industries to evaluate the level of interest in acquiring these types of properties in the current marketplace. Reasons for the current and future lack of interest on the part of buyers and investors are then discussed. Next, this paper discusses the significant synergies and cost savings that allow these cross-owned properties to continue to provide local and diverse programming in the face of incredibly challenging economic and industry conditions.

An argument often made by opponents of local newspaper/broadcast cross-ownership is that the quality and diversity of local programming and information offered by such properties would be improved by separate ownership. By having separate owners of these local media properties, it is argued, local communities would benefit as there would be more companies providing more varied programming and information.

Particularly in light of the present and near-future economic and industry conditions facing the broadcast and newspaper sectors, the argument for requiring separate ownership does not hold water. There are very few serious buyers of either local television stations and/or daily newspapers in today's marketplace, and even fewer who could maintain the present levels of diverse local programming and information made possible by the current cross-ownership. Moreover, continued

common ownership of these local media properties will help maintain the synergies and cost benefits that sustain the financial viability of these operations, which in turn, will lead to even higher quality local programming and information over time.

## **Financial Market Breakdown and Its Impact**

Occurring at the same time as the severe drop off in revenue growth for both broadcasters and newspapers has been the complete “drying up” of available financing for companies thinking about acquiring these “traditional” media properties. The marketplace took a significant hit during the third quarter of 2008 with the bankruptcies of some major financial institutions, and the acquisition and resulting financial aid by the federal government of others. These financial institutions, criticized for their speculative loan activity, reacted strongly by reducing the number of loans they issued and tightening loan qualifications for borrowers.

These financial institutions remain very hesitant to loosen their credit qualifications and make loans to businesses. An analysis by the *Wall St. Journal* showed that the total amount of loans by the fifteen largest banks in the U.S. decreased by 2.8% in the second quarter of 2009 alone.<sup>1</sup> These authors concluded that “financial institutions are clamping down on lending to conserve capital as a cushion against mounting loan losses.”<sup>2</sup>

The lack of available financing is particularly pronounced for broadcast and other media properties. Several financial institutions that have been prominent lenders to acquirers of these types of properties have either cut back or completely left the business of providing new loans to parties

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<sup>1</sup> David Enrich and Dan Fitzpatrick, “Loans Shrink as Fear Lingers”, *Wall St. Journal*, July 27, 2009. <http://online.wsj.com/article/SB124865259057482435.html>.

<sup>2</sup> Id.



interested in purchasing broadcast stations. For example, CIT and Wells Fargo, both historically strong financial supporters of companies acquiring stations, eliminated their entire broadcast lending divisions in 2009.

The lack of adequate financing for acquisitions would make it impossible for most prospective purchasers to acquire television or newspaper properties that might become available for sale because of regulatory fiat. Even if they could secure the necessary financing to make the initial purchase, moreover, most companies would be so financially strapped as a result of the current credit crunch that they almost certainly would find it difficult to maintain the station's or newspaper's current high level of diverse local service.

### **The Local Television Station Industry**

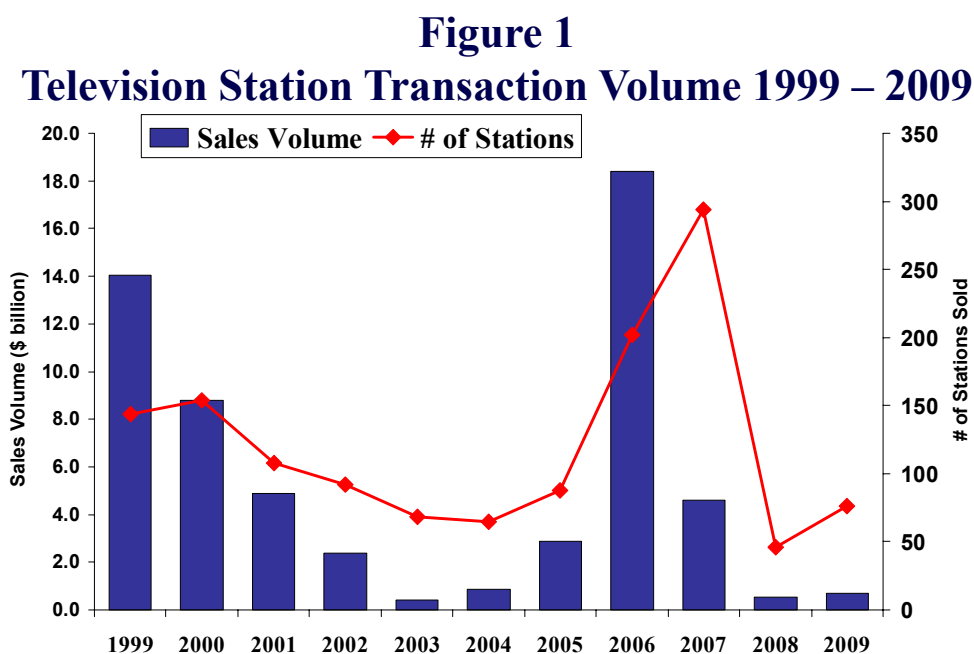
The reasoning behind the argument that diversity will increase as a result of separation of commonly owned local media properties requires, first, that there would be "sufficiently financed buyers" of such properties.<sup>3</sup> The recent history of local television station transactions strongly suggests that the existence of such buyers is unlikely, as the television station sales marketplace is completely moribund. This lack of station transaction activity is not surprising given the unfavorable economic and industry conditions facing companies that might otherwise be interested in acquiring these types of properties.

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<sup>3</sup> What we mean by "sufficiently financed buyers" is buyers that have both enough equity and debt financing to acquire stations. With banks apprehensive about loaning large amounts of money, equity investors need to invest more funds, something they, too, are apprehensive to do.

### Total Number of Television Station Transactions

The lack of any significant television station transactions is clearly seen in the recent history of the annual number and total value of television stations sold. Figure 1 shows the number of local television stations sold in the ten most recent calendar years and the total value of those sales. This information is from BIA's Media Access Pro™ database, which tracks all transactions of commercial and non-commercial radio and television stations.



The number of television stations sold in the past few years has been remarkably low.<sup>4</sup> Except for the big spike in the volume of sales proceeds in 2006 occasioned almost entirely by the Univision network and television stations sale, the total number and total value of television stations sold have been at very low levels.<sup>5</sup> Even with the preceding low levels, the drop-off in activity in 2008 was dramatic. That year, only 46 local television stations were sold for a total value of around \$531 million, as opposed to 294 stations sold for a total value of \$4.6 billion in 2007, representing an 88.5% decrease in the value of stations sales from the previous year. Notably, even the depressed level of station transactions reported in 2008 is somewhat overstated because the level of activity is driven not by a normal buyer-seller market, but to a large extent, by several large groups that have been forced into bankruptcy proceedings or reorganizations.<sup>6</sup> In 2009 there were 76 full-power

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<sup>4</sup> Note that in 2003 and 2004 the number of television station transactions were also low. At around that time, the FCC was considering revising all of the local television station ownership regulations. As a result, many potential buyers were “waiting on the sidelines” to see what final rules would emerge and whether they would pass judicial review.

<sup>5</sup> Figure 1 shows what appears to be a large number of station “sales” in 2007; however, this total includes a substantial number of television stations that were part of restructuring deals that technically were counted as “sales”. These restructuring transactions included Granite Broadcasting, ION Media Networks, and Communications Corporation of America. In total, these three restructuring deals accounted for 91 of the total 294 stations that were “sold” in 2007, according to data compiled in the BIA/Kelsey Group Media Access Pro™ database.

<sup>6</sup> Included in that total are the four Ohio stations of Public Media Corporation that were being transferred as a part of its reorganization and the nine stations that New World Group, a subsidiary of Pappas Television, is acquiring but temporarily assigning to TTBG LLC per a bankruptcy court-ordered sale. The experience of another company that has recently gone through bankruptcy, Equity Media Holdings, is further evidence of the lack of activity in television station transactions. As part of that bankruptcy proceeding, all of the television stations owned by that company were put up for auction, and while a few of these stations were sold, many more of these Equity Media stations went unsold.

television stations sold for a total value of \$715 million.<sup>7</sup> Compared to 2007, that is a decrease of 74.1% in the number of stations and 84.5% in the value of those sales. As discussed herein, potential buyers of these properties (whether existing broadcasters or new entrants) generally have been dissuaded from buying by industry conditions and the absence of available financing necessary to acquire stations.

### **Television Station Transactions By Market Size**

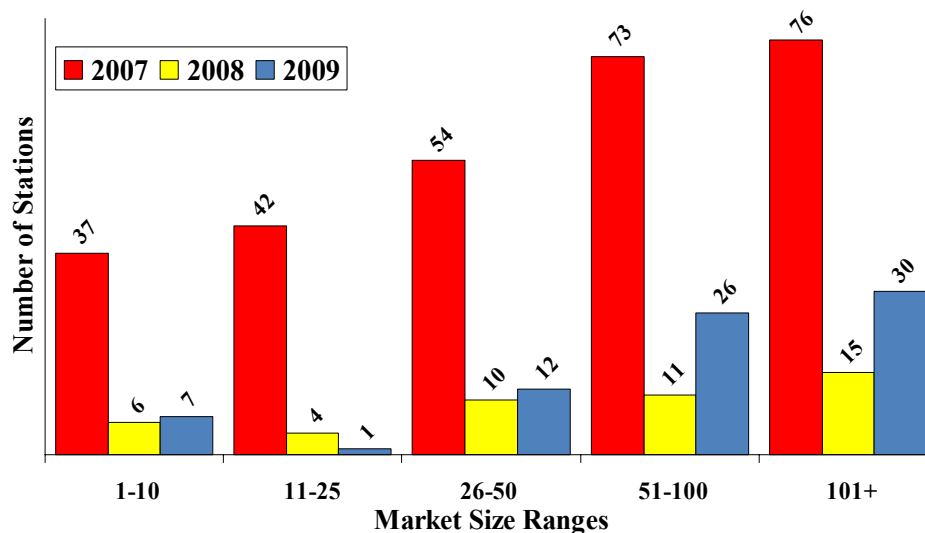
The decrease in transaction activity has been even more dramatic when the market sizes of the stations that have been sold are examined. Figure 2 shows the number of full-power television stations that have been sold in the past three years across various market size ranges, also based on data available through Media Access Pro<sup>TM</sup>.<sup>8</sup>

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<sup>7</sup> [http://www.bia.com/resources\\_trends\\_sold.asp](http://www.bia.com/resources_trends_sold.asp) (last visited Feb. 2, 2010) (on file with author); [http://www.bia.com/resources\\_trends\\_trans.asp](http://www.bia.com/resources_trends_trans.asp) (last visited Feb. 2, 2010) (on file with author).

<sup>8</sup> Figure 2 does not include sales of full-power television stations located outside of areas designated by Nielsen Media Research as television markets, such as Puerto Rico. These station sales are, however, included in the textual discussion above.

**Figure 2**  
**Television Station Deals by Rated Market Sizes: 2007 - 2009**



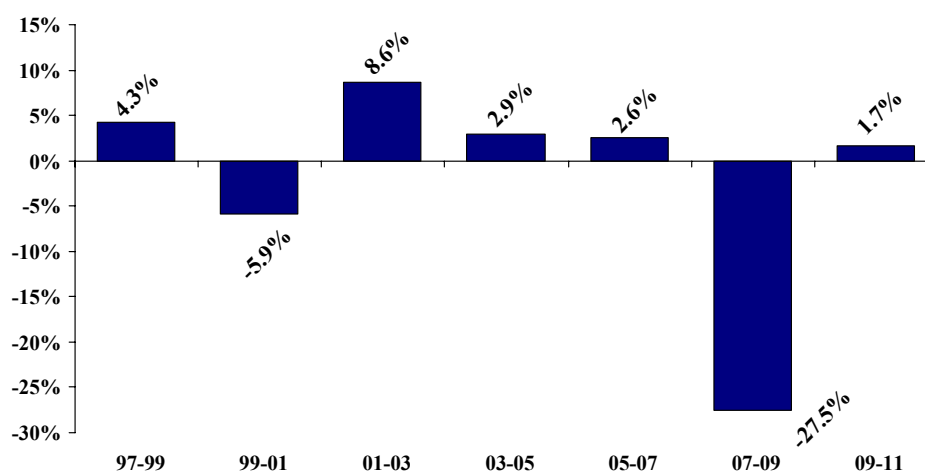
While the drop off in television station activity is widespread, the percentage decreases are most pronounced in the largest two market ranges, markets 1-10 and 11-25. In these ranges, there is an incredible amount of competition both from within the local television market as well as from other media, which makes profitability difficult to achieve, especially in today's very challenging advertising marketplace. Added to that is the difficulty in securing the necessary financing to acquire a station in these market ranges, where stations typically are far more expensive, as will be discussed below.

### **Outlook for Local Television Station Industry**

One significant reason for the lack of television station trading activity is the challenging competitive position in which many local television stations find themselves. Increasing competition from other video sources of programming for audiences (*e.g.*, local cable systems, Internet streaming) coupled with the increasing competition from other local media outlets for

advertising sales has severely crippled the revenues of local television stations. Moreover, the revenue outlook for local television stations is significantly lower than in previous years. To demonstrate this point, Figure 3 shows the two-year growth rates for local television station revenues for the past ten years and the outlook for the next several years. These historical and projected television industry revenues are from BIA's Media Access Pro™ database. Using the two-year revenue growth rates evens out the impact of political advertising in every even-numbered year and the subsequent lack of that source of revenue in the following odd-numbered year.

**Figure 3**  
**Television Station Revenue Two Year**  
**Growth Rates 1997 – 2011**



Even before the recent economic downturn, the increases in total television station revenues had been trending downward. The increases from the even-numbered years were less pronounced and the decreases in the odd-numbered years were more significant. Indeed, BIA/Kelsey estimates

that television station revenues were down 22.4% in 2009.<sup>9</sup> This is largely because, even under favorable economic conditions, local television stations are competing with more and stronger alternative sources of advertising.

That competition was particularly fierce in the most recent years, as the long term movement of advertisers to other media was exacerbated by the impact of lower expenditures by advertisers. National and local advertisers react and react quickly to any potential downturn in the economy. When advertisers project that customers will not be spending at previous levels, due to unemployment increases or an overall decrease in consumer confidence, they pull back their spending significantly. According to the Television Bureau of Advertising, automotive manufacturer spending at local television stations decreased nearly 50% in the third quarter of 2009 from the previous year's level, and car and truck dealers' advertising expenditures decreased 33%.<sup>10</sup> The decrease in these major advertiser categories, in addition to the declines in many other categories of advertising, was so substantial that it far exceeded the significant increase in political advertising in 2008, resulting in a net decline.<sup>11</sup> Furthermore, advertising levels, especially in the automotive sector, most likely will not return to previous levels, even when the overall economy recovers, because there are fewer brands of cars being sold and fewer car dealerships in the U.S. than there were in the past.

Potential purchasers of local television stations recognize these industry changes and are very hesitant to invest in station acquisitions. Any local media properties subject to government-dictated

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<sup>9</sup> <http://www.bia.com/pr091222-IITV4.asp>.

<sup>10</sup> [http://www.tvb.org/nav/build\\_frameset.aspx](http://www.tvb.org/nav/build_frameset.aspx). These categories of advertisers have historically been the largest for local television stations.

<sup>11</sup> The campaigns of political candidates spent over \$700 million in 2008. Id.

sales would, therefore, find little if any interest, especially by well funded and experienced operators.

### **Bankruptcies in the Television Station Industry**

Due to the poor industry conditions facing local television stations and the lack of available financing for potential acquirers, several prominent broadcast companies have had to resort to bankruptcy protection to maintain their operations.<sup>12</sup> Prior to the last several years, very few broadcast companies ever had to resort to that option. Historically, under-performing stations were sold to new owners who had new business plans, and sufficient debt and equity funding, to turn those stations around. In today's marketplace, however, many stations are not being sold in time for their owners (sellers) to meet restrictive debt covenants, and owners therefore have sought protection under the bankruptcy laws.

### **The Local Daily Newspaper Industry**

Regulatory action requiring the sale of a commonly owned local daily newspaper would also be counterproductive given the present and near term conditions facing the newspaper industry. Even more than the local television industry, local daily newspapers have been dramatically affected by the onslaught of new media competition. Furthermore, the current conditions and marketplace evidence strongly suggest that these trends will continue into the foreseeable future. As a result of the challenges facing newspapers and the lack of available financing, sales of newspaper operations have slowed down considerably, if not halted completely. In fact, recently several prominent daily

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<sup>12</sup> These companies include Young Broadcasting, Pappas Telecasting, Communications Corporation of America, and ION Media Networks, as well as Tribune Company.

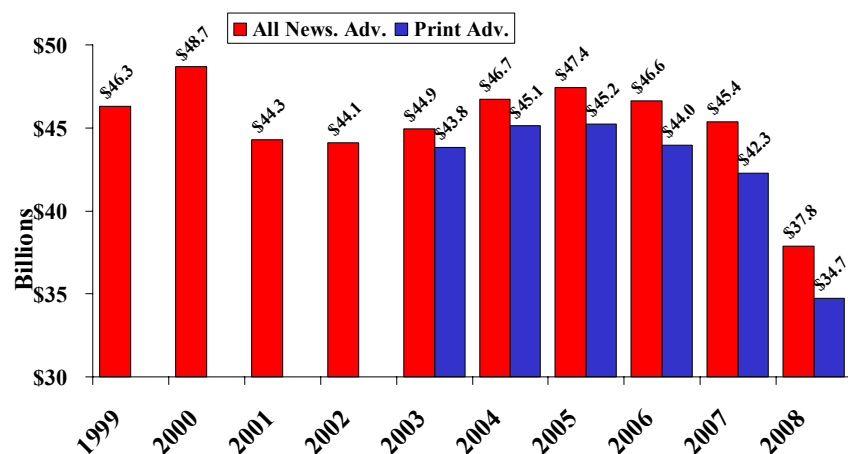


newspapers have actually ceased operating due to the lack of any interest from potential buyers, and at least five large newspaper companies, in addition to Tribune, have sought bankruptcy protection.

### Newspaper Industry Overview

To get a sense of the dramatic impact new media have had on the local newspaper industry and why there is little or no interest in acquiring newspaper properties, one only has to look at the recent history of daily newspaper advertising revenues. Figure 4 shows the annual advertising revenues for the newspaper industry as reported by the Newspaper Association of America. For the past ten years, both the total amount of advertising expenditures and print only<sup>13</sup> advertising expenditures are shown.

**Figure 4**  
**Annual Newspaper Advertising Expenditures: 1999-2008**



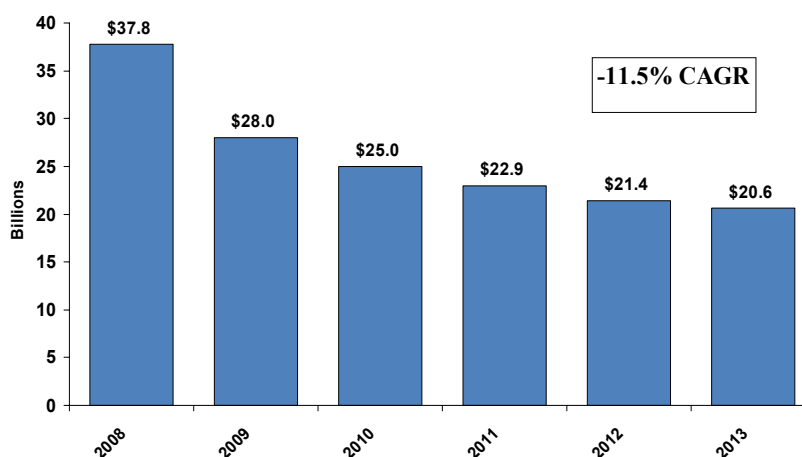
Source: Newspaper Association of America, 2009

<sup>13</sup> The online advertising expenditures were subtracted from the total amount to arrive at the print only figures. The online expenditures estimates were separately reported starting in 2003.

Before the economic downturn in 2008, the newspaper industry already was experiencing decreases in total revenues, even after taking into account the positive impact of online operations. That decrease was even more severe in 2008, with total newspaper advertising decreasing by 16.6% and the print component of advertising decreasing by 17.8%. In the first three quarters of 2009, these decreases accelerated. Total newspaper advertising for these three quarters fell to \$19.9 billion, a drop of 28.4% from the same period in 2008. The print component of advertising dropped to \$17.9 billion, a decline of 29.6% compared to the first two quarters of 2008.

With the competitive forces facing newspapers, the negative trend in total advertising revenues almost certainly will continue. As part of its first comprehensive local media advertising revenues forecast, BIA/Kelsey projected the near term outlook for twelve local media, including the newspaper industry. As shown by Figure 5 below, the projection for newspaper advertising revenues shows a negative 11.5% compounded annual growth rate over the next five years. One reason for this significant and continued negative outlook is that some of the most important categories of newspaper advertising – real estate, automotive, retail and help-wanted – continue to lag, with advertisers in several of these categories moving to new media options. Competition from local Internet sites, out-of-home advertising opportunities, as well as several other new media will continue to cut into the competitive position of local newspapers, leading to a substantial decrease in revenues. Potential acquirers recognize the dismal outlook for newspapers and are dissuaded from seriously considering acquisitions.

**Figure 5**  
**2008-2013 Newspaper Advertising Revenues**



Source: BIA/Kelsey Media Ad View projections, 2009.

### Newspapers Closing Down or Cutting Back

In light of this recent history and the prospects of continued negative revenue growth, several newspapers, most noticeably the *Seattle Post-Intelligencer*, have shut down their print editions after long histories of serving their communities, and *The Rocky Mountain News* went out of business entirely. Although both papers were available for purchase, no viable prospective buyer viewed the acquisition of these newspapers as a worthwhile investment. Other newspapers, such as the *Detroit Free Press*, have curtailed their production to fewer days per week as a cost saving measure.

### Level of Newspaper Transactions

The lack of viable newspaper buyers is further evidenced by the small number of papers that have been sold recently. According to Dirks, Van Essen & Murray, a leading broker of newspapers,

just 31 daily newspapers were sold in 2009 for only \$183.7 million.<sup>14</sup> This compares to an average of nearly 68 daily newspapers sold per year for a total of \$6.977 billion over the previous five years.<sup>15</sup> The 2009 figures represent decreases of 54.4% in the number of newspaper sales and 97.4% in the total value of transactions as compared to the averages for the previous five years. As shown by this data, prospective buyers are not optimistic about the future of local newspapers, nor are they able to secure the necessary financing to acquire these properties.

### **Benefits of Continued Joint Operations**

While the outlook is dismal for a well-funded company acquiring either a local television station or local daily newspaper, there are clear benefits in allowing such properties to remain commonly owned at the local level. The poor financial outlook for the newspaper and local television industries requires that these properties maximize synergies and cost efficiencies in order to remain competitive and provide diverse local programming and information. These opportunities for synergies and cost efficiencies are pronounced in cross-owned local television station and daily newspaper operations. Administrative offices can be combined, cross promotion of the different properties can be effectively managed, and news staffs can collaborate to ensure that all of the market's news is covered.

Recent studies sponsored by the Federal Communications Commission provide strong support for the view that more and better news will be provided by local television stations that also own a local daily newspaper in the same market. One such study measured the amount of news

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<sup>14</sup> See Declaration of Phillip W. Murray (Appendix A hereto).

<sup>15</sup> See *id.*

provided by all full power television stations in the years 2002-2005.<sup>16</sup> After controlling for many station and market specific factors, the study concluded that, “TV-newspaper cross-ownership is associated with a large increase in the production of news of 18 minutes per day (11% increase), which was statistically significant.”<sup>17</sup>

Another study examining the effects of cross-ownership on the political slant of television news also found that cross-owned television stations provide quantitatively more news coverage.<sup>18</sup> This study analyzed the time devoted to news in general, local news, and state and local political news. The author concludes,

The within-market comparison reveals that cross-owned newspaper/television combinations devote more time to news, as well as several categories of local news. In particular, cross-owned stations contain on average 1-2 minutes more news coverage overall, or 4%-8% more than the average for non-cross-owned stations (regardless of whether sports and weather segments are included in this comparison). Further, on average, cross-owned stations also broadcast 24%-27% more coverage of state and local politics and provide about 25% more candidate coverage, candidate speaking time and poll coverage (although the latter effects are not precisely estimated).<sup>19</sup>

## Conclusion

Increased diverse local news and informational programming is a goal long sought by the Federal Communications Commission. The argument that having more owners of local media

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<sup>16</sup> Daniel Shiman, “The Impact of Ownership Structure on Television Stations’ News and Public Affairs Programming,” July 24, 2007, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-07-3470A5.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A5.pdf).

<sup>17</sup> Id., p. I-22.

<sup>18</sup> Jeffrey Milyo, “The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News,” September 2007, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-07-3470A7.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A7.pdf).

<sup>19</sup> Id., p. 29.

properties would lead to such an increase has often been advanced, with some contending that dismantling existing cross-ownerships would also lead to this result. Whatever merit such conclusions might have had in “boom” times for traditional media, the present state of the local newspaper and television industries is so grim that there are few, if any, prospective buyers for these properties. An added challenge to prospective buyers is the very limited financing available for acquisitions, especially for acquisitions in the media industries. Recent auctions of television stations that were unsuccessful in soliciting buyers provide further evidence of the lack of buyers.

In contrast to the negative prospects even for strong companies purchasing these properties is the simple fact that commonly owned media outlets benefit from a number of synergies and cost savings, leading to more diverse local programming and information. Recent studies have clearly shown that these commonly owned television stations provide more local news than similarly situated non-cross-owned stations. Therefore, the level and quality of diverse local programming and information is maximized not by regulatory intervention to separate outlets, but by allowing continued common ownership of local broadcast and newspaper properties.

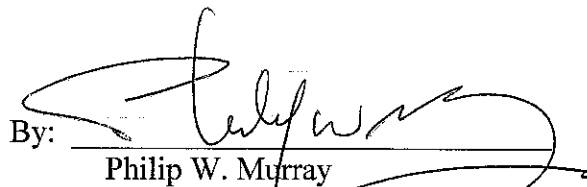
## DECLARATION OF PHILIP W. MURRAY

I, Philip W. Murray, do hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. I am Executive Vice President of Dirks, Van Essen & Murray, the leading brokerage firm in the U.S. newspaper industry, which specializes in assisting companies in the sale and acquisition of daily newspapers and has established itself as the newspaper industry's top authority on transactions and valuations. I have been with Dirks, Van Essen & Murray since 1996. Prior to that, I had eleven years of experience as a reporter and editor for daily newspapers in Virginia and Pennsylvania. I earned a master's degree in business administration from the University of Virginia's Darden School and a B.A. in journalism from Washington and Lee University.

2. According to our newspaper market data, there were 31 daily newspaper acquisitions in 2009. The 31 dailies acquired in 2009 were part of 16 transactions totaling \$183.7 million. By comparison, there was an average of nearly 68 daily newspapers sold per year for a total of \$6.977 billion in each of the previous five years, as calculated from the following data:

2008: 16 dailies totaling \$ 0.883 billion;  
2007: 91 dailies totaling \$ 20.042 billion;  
2006: 76 dailies totaling \$ 9.9606 billion;  
2005: 111 dailies totaling \$ 3.091 billion;  
2004: 44 dailies totaling \$ 0.9081 billion.

By:   
Philip W. Murray  
Executive Vice President  
Dirks, Van Essen & Murray

Executed on this 18th day of February, 2010 at Santa Fe, New Mexico