

WNAB(TV), Nashville, TN
FCC Form 314
July 2005

ASSIGNEE EXHIBIT 15

REQUEST FOR WAIVER OF SECTION 73.3555(b)

TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | INTRODUCTION | 2 |
| II. | SINCLAIR’S PROPOSED ACQUISITION OF WNAB MEETS EACH OF THE COMMISSION’S CRITERIA FOR GRANT OF A FAILING STATION WAIVER..... | 6 |
| A. | WNAB’s All-Day Audience Share Has Been Far Lower Than 4%. | 6 |
| B. | WNAB’s Financial Condition Has Been Poor..... | 7 |
| C. | Consolidated Operations of the Stations Will Result in Tangible and Verifiable Public Interest Benefits That Outweigh Any Potential Harm to Competition and Diversity..... | 9 |
| 1. | Cost Savings from Consolidated In-Market Operations Would Contribute to the Station’s Financial Success, Improving Its Ability to Serve the Public..... | 9 |
| 2. | Sinclair Pledges to Provide Additional Public Interest Benefits to the Community..... | 11 |
| 3. | The Proposed Combination Would Not Result in Any Harm to Competition or Diversity in the Nashville Market. | 13 |
| D. | Sinclair Is the Only Reasonably Available Purchaser Willing and Able to Acquire and Operate WNAB..... | 15 |
| III. | IN THE ALTERNATIVE, SHOULD THE COMMISSION DENY THE FAILING STATION WAIVER REQUEST, IT SHOULD ASSESS THE PROPOSED COMBINATION UNDER A GENERAL PUBLIC INTEREST ANALYSIS AND UNDER THAT STANDARD GRANT THE APPLICATION. | 16 |
| IV. | CONCLUSION..... | 19 |

ATTACHMENTS

- A.....Nielsen Ratings Data
- B.....WNAB Financials
- C.....Declaration of J.P. Hannan
- D.....Market Media Data

REQUEST FOR WAIVER OF SECTION 73.3555(b)

I. INTRODUCTION

By this application, Nashville Broadcasting Limited Partnership and Nashville License Holdings, LLC (collectively “Nashville”) and Sinclair Broadcast Group, Inc. (“Sinclair”) seek the Commission’s grant of a “failing station waiver”¹ of the 1999 local television ownership rule² to permit the assignment of the license of television station WNAB(TV), Channel 58, Nashville, Tennessee (“WNAB” or the “Station”), and the associated digital license for WNAB-DT operating on Channel 23, from Nashville to WNAB Licensee, LLC, an indirect subsidiary of Sinclair. This assignment requires a waiver because Sinclair, through its subsidiaries, is the FCC licensee of television station WZTV(TV), Channel 17, Nashville, Tennessee (“WZTV”) and WUXP(TV), Channel 30, Nashville, Tennessee (“WUXP”). WNAB, WZTV, and WUXP (collectively, the “Stations”) are located in the Nashville Nielsen Designated Market Area (the “DMA” or “Nashville DMA”), the 30th-ranked DMA, and their predicted Grade B contours overlap. As permitted under the Commission’s rules, Sinclair has provided operational services to WNAB since May 2002, pursuant to a Servicing Agreement.³

¹ See *Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules, Report and Order*, 14 FCC Rcd 12903, at ¶¶ 42-91 (1999) (“*TV Local Ownership Order*”); see also *Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules, Memorandum Opinion and Second Order on Reconsideration*, 16 FCC Rcd 1067, at ¶ 25-33 (2001) (“*Second Order on Reconsideration*”).

² See 47 C.F.R. § 73.3555(b) (2002) (the “1999 local television ownership rule”).

³ At that time, Sinclair and Nashville also executed both an Option Agreement and a Put Agreement. Sinclair recently executed the Option Agreement to purchase the station, resulting in the instant application. That agreement is provided in Exhibit 4 to this application.

Under the 1999 local television ownership rule, which the FCC is presently enforcing,⁴ the same entity may own or control in the same market two commercial television stations with overlapping Grade B contours so long as: (i) at the time the application is filed at most one of the stations is ranked among the top four stations in the DMA in terms of all-day audience share; and (ii) at least eight independently owned and operated full-power commercial and non-commercial educational television stations would remain in the market after the proposed acquisition.⁵ WNAB is a WB affiliate and is not one of the top four-ranked stations in the DMA. *See Attachment A.* WUXP is a UPN affiliate and is also not a top four-ranked station. WZTV is a Fox affiliate and is the fourth-ranked station in the market. Accordingly, the proposed combination would not violate the top-four restriction of the 1999 local television ownership rule. At present, the Nashville DMA has twelve full-power television stations, which are owned and operated by eleven independent entities.⁶ After the proposed combination there will be ten remaining independent television “voices” in the Nashville DMA. Thus, except for Sinclair’s acquisition of a third station in the market, the proposed combination otherwise meets the Commission’s 1999 local television ownership rule.

A failing station waiver of the 1999 local television ownership rule is warranted in this case. The underlying premise of the Commission’s waiver provisions is to permit mergers that are “consistent with [the FCC’s] competition and diversity goals, provide relief in a more tailored

⁴ See *infra* Part III (discussing the unenforceability of the 1999 local television ownership rule).

⁵ See *TV Local Ownership Order*, at ¶¶ 42-91; *Second Order on Reconsideration*, at ¶¶ 25-33.

⁶ See *Attachment D*. The parties to this application are not aware that any other party has filed an application with the Commission to acquire a station in the DMA which might result in a further reduction of the number of independent entities.

fashion for stations . . . that are unable to compete effectively.” *See TV Local Ownership Order*, at ¶ 70. The Commission has acknowledged that “[a]llowing a ‘failing’ station to join with a stronger station in the market can greatly improve its ability to improve its facilities and programming options, thus benefiting the public interest.” *Id.* at ¶ 80. This merger is just such a situation.

First, WNAB’s all-day audience share has remained substantially below the four-percent benchmark for the preceding six years. Second, WNAB’s financial condition is poor. For the three years prior to the execution of the Servicing Agreement, which is the relevant period for the assessment of this waiver request, the Station had annual operating losses in the millions of dollars and had an average annual negative cash flow in the hundreds of thousands of dollars. Even considering the most recent years in which the Station has been operating pursuant to the Servicing Agreement, WNAB has been unable to overcome the vigorous competition in the Nashville market and has sustained average yearly losses in the hundreds of thousands of dollars during this period. Third, the proposed acquisition would create cost savings from economies of scale that, in turn, would lead to more local programming and coverage of community events, and would facilitate the transition to DTV. Additionally, because of Sinclair’s familiarity with the Nashville market, it is uniquely positioned to implement these public interest commitments sooner, rather than later, and quickly turn the failing station into an effective and viable local outlet. Sinclair would also maintain separate WB, Fox, and UPN network affiliations for the Stations, preserving the program diversity in the market. Fourth, in Nashville’s four-year search for a buyer for WNAB, Sinclair proved to be the only reasonably available candidate willing and able to acquire and operate the Station. Accordingly, the Commission should grant this failing station waiver request.

Under analogous circumstances, the FCC has granted waivers of its 1999 ownership rules to permit ownership of media interests otherwise inconsistent with its rules. For example, in *Telemundo Communications Group*, the Commission granted a waiver of the 1999 local ownership rule permitting ownership of three television stations in Los Angeles in light of the demonstrated lack of harm to diversity and competition.⁷ While the FCC stated in its grant that the licensee would be required to divest its interest in the third station within two years, the FCC has never subsequently required any divestiture, and that combination exists to this day.⁸ Similarly, in *Counterpoint Communications, Inc.*, the Commission granted a waiver request of the 1999 newspaper-broadcast cross-ownership rule permitting a licensee to own a daily newspaper and two television stations in light of the number of media “voices” in the Hartford-New Haven, Connecticut market (the 27th-ranked DMA), the demonstrated lack of market power, and the public interest benefits from the combination.⁹ Although the FCC purportedly conditioned the ownership on the licensee’s continued efforts to divest one of the stations, the FCC is not obligated to take any further action until 2007, at which time the FCC is likely to have eliminated the newspaper-broadcast cross-ownership restriction.¹⁰

⁷ See *Telemundo Communications Group, Inc.*, 17 FCC Rcd 6958, at ¶ 46 (2002).

⁸ See Letter to Marlene H. Dortch from F. William LeBeau, FCC File No. BTCT-20011101ABK *et seq.* (July 7, 2003).

⁹ The licensee had previously acquired the television stations pursuant to a failing station waiver request of the FCC’s 1999 local television ownership rule. See *Counterpoint Communications, Inc.*, FCC 05-83 (April 13, 2005). A similar situation exists in the New York market, where a licensee presently owns a daily newspaper and two television stations, pursuant to an effectively permanent waiver of the 1999 ownership rules. See *Petition for Modification of Permanent Waiver* (September 22, 2004); see also *UTV of San Francisco, Inc., et al.*, 16 FCC Rcd 14975 (2001).

¹⁰ As part of its 2002 biennial review, the Commission repealed its blanket ban on newspaper-broadcast cross-ownership. See *In the Matter of 2002 Biennial Regulatory Review*, 18 FCC Rcd 13620, at ¶ 330 (2003) (“2002 Biennial Review”), *remanded sub nom. Prometheus*

Should the Commission deny the waiver request, the parties submit that the Commission cannot continue to enforce the 1999 local television ownership rule in light of the mandate of the U.S. Court of Appeals for the D.C. Circuit in *Sinclair v. FCC* to justify the rule as necessary in the public interest or repeal or modify it¹¹ and the Commission's own subsequent determination that the 1999 rule is unjustifiable.¹² Instead, the Commission must evaluate each transfer or assignment application to determine whether the public interest would be served, and under such a test, the Commission should grant this application.

II. SINCLAIR'S PROPOSED ACQUISITION OF WNAB MEETS EACH OF THE COMMISSION'S CRITERIA FOR GRANT OF A FAILING STATION WAIVER.

Under the "failing station waiver" test, an applicant seeking a waiver of the FCC's 1999 local television ownership rule must demonstrate that:

- (1) The failing station has an all-day audience share of 4% or lower.
- (2) The financial condition of the failing station is poor.
- (3) The merger will produce public interest benefits.
- (4) The in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station, and selling the station to an out-of-market buyer would result in an artificially depressed price.

See TV Local Ownership Order, at ¶ 81; *see also Second Order on Reconsideration*, at ¶ 25.

A. WNAB's All-Day Audience Share Has Been Far Lower Than 4%.

To meet the first prong of the failing station waiver test, the failing station must have an

Radio Project v. FCC, 373 F.3d 372 (3d Cir. 2004) ("*Prometheus*"), *cert. denied*, 2005 U.S. LEXIS 4807-12 (U.S. June 13, 2005). The U.S. Court of Appeals for the Third Circuit upheld the Commission's repeal of that restriction but left in place the stay of all the new ownership rules pending remand. *Prometheus*, 373 F.3d at 398.

¹¹ *See Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148, 159, 162-65 (D.C. Cir. 2002).

¹² *See 2002 Biennial Review*, at ¶ 133 (2003).

audience share at or below 4%.¹³ WNAB readily satisfies this criterion. As demonstrated in Attachment A, the Nielsen-reported all-day (9 a.m. to midnight) audience share for WNAB has been half that level (2%) for more than four years, and in the two years prior to that, the Station also remained below a 4% audience share.

B. WNAB's Financial Condition Has Been Poor.

The second prong of the failing station waiver standard requires a showing that the failing station is in poor financial condition.¹⁴ The record of WNAB's financial performance shows that the Station has been "struggling for an extended period of time in terms of its . . . financial performance," and its financial situation more than "hampers [its] ability to be a viable 'voice' in the market."¹⁵

The critical period for consideration is the three years prior to WNAB's execution of the Servicing Agreement. As the Commission has recognized with respect to LMAs, a failing station waiver request for a station operating pursuant to a cost-saving agreement with the prospective purchaser should be evaluated using information from the three-year period preceding the execution of the agreement in order to account for any positive financial impact resulting from efficiencies associated with the agreement.¹⁶

¹³ See *TV Local Ownership Order*, at ¶ 81; *Second Order on Reconsideration*, at ¶ 27; see also *Hispanic Keys Broadcasting, Inc. and Sonia Broadcasting Company, LLC, Memorandum Opinion and Order*, 19 FCC Rcd 4603, at ¶ 5 (2004).

¹⁴ See *TV Local Ownership Order*, at ¶ 81.

¹⁵ *Id.* at ¶ 79.

¹⁶ *Id.* at ¶ 147; see also *Second Order on Reconsideration*, at ¶ 28.

As demonstrated in Attachment B,¹⁷ for the years 1999 to 2001, before WNAB entered into the Servicing Agreement, the Station was struggling financially with annual losses averaging in the millions of dollars¹⁸ and an average annual negative cash flow in the hundreds of thousands of dollars.¹⁹ This data readily demonstrates that WNAB cannot operate on a stand-alone basis and be profitable. In fact, the independent auditor concluded in 2001 that the Station's "recurring losses from operations . . . raise[d] substantial doubt about its ability to continue as a going concern." *See* Report of Independent Public Accountants, Consolidated Financial Statements as of December 31, 2001 and 2000 Together with Auditors' Report, at p. 2.

Even with some cost efficiencies associated with the Servicing Agreement entered into in May 2002, WNAB has been unable to overcome the vigorous competition in the Nashville market. While the Station's financial condition has improved over the most recent three years as a result of the benefits derived from the Servicing Agreement, WNAB has nonetheless sustained an average loss in the hundreds of thousands of dollars. Thus, WNAB's poor financial condition satisfies the second prong of the failing station waiver test.

¹⁷ The materials in Attachment B are confidential and are being provided under separate cover, along with a request for confidential treatment.

¹⁸ *See TV Local Ownership Order*, at ¶ 79 (The inclusion of data "such as detailed income statements and balance sheets" can support the waiver showing under this criterion.); at ¶ 81 (A waiver is "more likely to be granted where one or both of the stations has had a negative cash flow for the previous three years.").

¹⁹ Under a free cash flow measure, which is used by Sinclair and other broadcast companies and analysts in the industry, the Station had substantially greater annual negative cash flow for each of those three years.

C. Consolidated Operations of the Stations Will Result in Tangible and Verifiable Public Interest Benefits That Outweigh Any Potential Harm to Competition and Diversity.

To satisfy the third prong of the Commission's failing station waiver standard, the applicant must demonstrate that the "tangible and verifiable public interest benefits of the merger outweigh any harm to competition and diversity."²⁰ As demonstrated below, the consolidated operations of the Stations would result in substantial cost savings from economies of scale that would, in turn, lead to substantial public interest benefits. The efficiencies and cost savings would permit Sinclair to provide more local programming and greater coverage of community events on WNAB and the Sinclair Stations. For example, Sinclair would be able to provide a new half-hour weekly public affairs program on WNAB. The combination would also facilitate WNAB's transition to DTV. Importantly, given the robust level of media competition in the Nashville market and Sinclair's commitment to continue to operate WNAB as a WB network affiliate, the proposed combination would not result in any harm to competition or diversity.

1. Cost Savings from Consolidated In-Market Operations Would Contribute to the Station's Financial Success, Improving Its Ability to Serve the Public.

As the Commission has acknowledged, the common ownership of television stations in the same market generates substantial efficiencies and public interest benefits. For instance, "[j]oint operations can eliminate redundant studio and office space, equipment, and personnel, and increase opportunities for cross-promotion and counter-programming."²¹ With respect to the transition to DTV, the Commission has recognized common ownership would "facilitate cost savings by [allowing the Stations to] shar[e] DTV equipment (e.g., towers, production

²⁰ *Id.* at ¶ 81.

²¹ *2002 Biennial Review*, at ¶ 147.

equipment) and engineering personnel [and] would also allow the expertise gained in transitioning one station to DTV to be transferred to other commonly owned stations.”²²

As discussed above, WNAB was suffering substantial financial difficulties prior to the execution of the Servicing Agreement, and its auditors had serious doubts about its ability to continue as a going concern. The Servicing Agreement rescued the Station. The present operation of WNAB under the Servicing Agreement illustrates some of the benefits from combined operations. Sinclair has assisted WNAB in moving the station’s analog transmission facilities to a tower on which Sinclair’s stations are located, resulting in 164,203 more people receiving WNAB’s analog signal. Sinclair has also provided financial and engineering assistance to WNAB for the construction of the transmission facilities of its digital station on that same tower, and the digital facility is now licensed. Given WNAB’s struggling financial situation prior to the execution of the Servicing Agreement, it is doubtful that the Station would have been able to implement digital broadcasts without Sinclair’s assistance.

At Nashville’s request, Sinclair has made available its weekly public service program “Comments with Dr. James Haney” for broadcast on WNAB. Additionally, the promotional and advertising services provided by Sinclair under the Servicing Agreement generated greater revenues for the Station, which enabled WNAB to obtain more popular syndicated programs such as “King of Queens,” “That ‘70’s Show,” “Malcolm in the Middle,” and “Frasier.”

Under common ownership, there would be even greater benefits. For example, Sinclair would commit to producing a half-hour weekly public affairs program addressing significant community issues identified by Sinclair’s ascertainment process. The cost for the new program could not be justified without the efficiencies associated with combined operation of the

²² *Id.* at ¶¶ 149-50.

Stations.²³ Sinclair would be able to coordinate programming purchases for the Stations, leading to better programming for WNAB at a lower cost. Sinclair would also be able to co-locate facilities and create operational savings of approximately \$162,000 per year. Through such additional benefits, Sinclair would be able to transform WNAB from a station that is financially struggling into an economically viable station.

2. Sinclair Pledges to Provide Additional Public Interest Benefits to the Community.

The cost savings from the joint operation of the Stations would result directly in a number of broadcast and non-broadcast public interest benefits. As the owner of WNAB, Sinclair would ensure that the Station serves the public interest through responsive public service programming and activities. Sinclair is dedicated not only to continuing, but also to enhancing, WNAB's commitment to public service.

Sinclair's current broadcast operations in Nashville exemplify its strong commitment to local programming and community involvement. For instance, WZTV and WUXP regularly air "Comments with Dr. James Haney," a locally produced public affairs program. The Sinclair Stations also participate and/or provide coverage of over fifteen community events a year between the two stations, including the MDA Labor Day Telethon, Kidz Fair, MS Walk, Coats Against the Cold, Red Cross Blood Drives, Main Street Festival (Heritage Foundation), Swine Ball (American Cancer Society), Memory Walk for Alzheimer's, Team in Training (Leukemia Society), Bark in the Park (Wilson County Humane Association), and Christmas for Kids. WUXP also provides regular coverage of TSSAA high school football and regional SEC football

²³ See *In Re Application of Counterpoint Communications, Inc. and Tribune Television Company*, 16 FCC Rcd 15044, at ¶ 6 (2001) (concluding additional public affairs programming made possible by efficiencies associated with economies of scale served the public interest and supported grant of a waiver of the 1999 local television ownership rule).

and basketball games. The stations also have implemented an internship program which has enabled six students from local colleges and technical schools each year to acquire first-hand experience in the operation of television broadcast stations.

Sinclair pledges to implement similar initiatives for WNAB following its acquisition of the station. For example, Sinclair would produce a half-hour weekly public affairs program addressing significant community issues identified by Sinclair's ascertainment process. Sinclair would seek to repurpose appropriate local programming and programming content for broadcast on WNAB and also make available to WNAB local programming and program content that Sinclair cannot include in its existing line-up for its other stations. Sinclair would work with the owners of certain high quality programming currently airing on its other stations and either obtain the right to air a second run on WNAB or move the primary run of the program to WNAB. Sinclair would use WNAB to provide coverage of community events, particularly when its other stations otherwise would be constrained by existing network and programming commitments. Under Sinclair's ownership, WNAB would serve the community through additional activities such as blood drives, food drives, contributions to local school fundraisers, and volunteering and youth mentoring efforts. The Stations together can provide fuller coverage of community events than they could acting independently. Also, Sinclair would incorporate WNAB into its internship program creating additional opportunities for candidates from colleges and technical schools to learn about the broadcast industry.

3. The Proposed Combination Would Not Result in Any Harm to Competition or Diversity in the Nashville Market.

As the Commission has repeatedly recognized, “a failed, failing, or unbuilt station clearly cannot contribute to localism, competition or diversity in local markets.”²⁴ In fact, as demonstrated above, permitting a failing station to merge “can greatly improve its ability to improve its facilities and programming operations, thus benefiting the public interest.”²⁵

Here, there is no possibility that Sinclair’s operation of the Stations would harm competition or programming or ownership diversity. The data in Attachment D demonstrates the robust media competition with which Sinclair must contend. There are currently twelve full-power broadcast television stations in the DMA representing eleven (ten post-acquisition) independent “voices.” Based on 2004 BIA data, the audience share for the number one-ranked station WTVF(TV), a CBS affiliate, is 15 and that of the number two-ranked station WSMV-TV, an NBC affiliate, is 13.5, as compared with 2 for WNAB, 4.75 for WZTV, and 4.25 for WUXP. *See Attachment A*. Thus even combined, the Stations’ audience share is less than that of each of the top two-ranked stations. Indeed, the fact that the combined audience share of stations seeking a waiver is less than that of each of the top two-ranked stations in the relevant market is a relevant factor in assessing a media ownership waiver request and supports grant of the waiver. *See Counterpoint*, at ¶ 7. The results are essentially the same using 2004 advertising revenue share. WTVF has 30% of the market, and WSMV has 26%, as compared with 5% for WNAB,

²⁴ 2002 Biennial Review, at ¶ 226; *see also TV Ownership*, at ¶ 79 (“Permitting [failing] stations to merge should pose minimal harm to our diversity and competition goals, since [the stations’] financial situation typically hampers their ability to be a viable “voice” in the market.”).

²⁵ *TV Local Ownership Order*, at ¶ 79.

13.4% for WZTV, and 6.4% for WUXP. Again, even combined, the Stations' advertising revenue share is less than that of each of the top two-ranked stations.

Additionally, the Stations face intense competition from cable television both for viewers and advertising dollars.²⁶ In the Nashville DMA, cable systems serve an estimated 492,662 subscribers, 54.5% of the TV households. *See Attachment D*. In fact, there are a plethora of other media voices in the market, which the FCC must consider.²⁷ There are 17 low-power television stations, representing an additional 14 television owners. The market has 45 radio stations representing 31 separate radio owners. In addition, 16 daily newspapers and 62 other periodic newspapers serve the DMA, representing 51 different newspaper owners. The presence of all of these media "voices" demonstrates the highly competitive environment in the Nashville market and the fact that the proposed combination would not harm competition.

The proposed acquisition would also not harm ownership or programming diversity in the Nashville market. As demonstrated above, the Station is not financially viable as a stand-alone operation.²⁸ Indeed, in Nashville's four-year search, no out-of-market buyer came forward with a viable offer to purchase the Station. Significantly, a failure of WNAB would deprive Nashville of its only WB affiliate.²⁹ Sinclair would maintain separate WB, Fox, and UPN network

²⁶ *See Counterpoint*, at ¶ 8 (recognizing in the context of a waiver request the competitive impact cable television has on broadcast television stations).

²⁷ The D.C. Circuit in *Sinclair* made clear in remanding the Commission's 1999 local television ownership rule that it was unreasonable to count only television stations as voices. *Sinclair*, 284 F.3d at 162 ("[T]he Commission has not provided any justification for counting fewer types of 'voices' in the local ownership rules than it counted in its rule on cross-ownership of radio and television stations.").

²⁸ *See supra* Part II.B.

²⁹ *See In Re Application of Counterpoint Communications, Inc. and Tribune Television Company*, 16 FCC Rcd 15044 (2001) (concurring statement of Commissioner Copps)

affiliations for the Stations, thereby preserving the program diversity in the market. Moreover, the three stations are all UHF stations and the Commission has recognized that the reduced audience reach of UHF station diminishes any negative impact on diversity and competition in local markets. *See 2002 Biennial Review*, at ¶ 230. For these reasons, there can be no legitimate concern that the proposed acquisition will impede the Commission's goal of promoting ownership or programming diversity. Accordingly, the public interest benefits of the proposed merger outweigh any potential harm to competition and diversity, and the third prong of the failing station waiver test is satisfied.

D. Sinclair Is the Only Reasonably Available Purchaser Willing and Able to Acquire and Operate WNAB.

As explained in the attached Declaration of J.P. Hannan, from 1999 until May 2002, when Sinclair and Nashville executed an Option Agreement and Put Agreement for the purchase and sale of the Station, Nashville actively sought to sell WNAB, and approximately eleven different entities expressed interest in the Station. However, none of these discussions resulted in a reasonable offer to purchase WNAB. *See Attachment C.*

Around 1999, a major broadcaster took an interest in purchasing WNAB and its commonly-owned station, but the discussions did not materialize into an agreement. Subsequently, Nashville hired Bear Stearns to market WNAB and other broadcast interests in other markets. In late 1999, Bear Stearns organized and conducted an auction. Bear Stearns sent sales information to almost all of the broadcasters who had a WB or UPN affiliated station – the most likely potential buyers, and the broadcasters were provided with a period of time to conduct due diligence and submit bids. No bids offering to purchase the stations were submitted. After

(supporting Commission decision granting waiver of the 1999 local television ownership rule because it would permit the only UPN station to continue to serve the Hartford market).

the auction, another broadcaster that had previously contacted Nashville re-expressed its interest in WNAB. The parties entered into negotiations, which led to the parties preparing a purchase agreement. Because of a decline in the prospective purchaser's stock price, however, the deal ultimately fell through.

Thereafter, between 1999 and 2002, approximately nine additional potential purchasers contacted Nashville or were contacted by Nashville and expressed an interest in WNAB. None of these talks materialized into an agreement for purchase of the Station. These potential purchasers either determined that they were no longer interested in buying the station, were unable to secure financing, or proposed a price for the station that Nashville believed was inadequate. Finally, in May 2002, Sinclair and Nashville executed an Option Agreement and Put Agreement for the purchase and sale of the Station and also entered into a Servicing Agreement.³⁰ The history of Nashville's unsuccessful efforts to sell the Station demonstrates that this waiver request meets the fourth criterion of the failing station waiver test.

III. IN THE ALTERNATIVE, SHOULD THE COMMISSION DENY THE FAILING STATION WAIVER REQUEST, IT SHOULD ASSESS THE PROPOSED COMBINATION UNDER A GENERAL PUBLIC INTEREST ANALYSIS AND UNDER THAT STANDARD GRANT THE APPLICATION.

If, notwithstanding the overwhelming evidence presented in the foregoing sections, the Commission does not grant the failing station waiver request, then it should nevertheless permit the proposed ownership combination under a general public interest analysis. The Commission may not simply continue to apply the 1999 local television ownership rule in light of the

³⁰ After May 2002, Nashville could not consistent with its contractual obligations seek additional offers for WNAB. Moreover, as the Commission recognized in the context of LMAs, where the purchaser has an existing contractual relationship with the seller, there is no need "to prove that the proposed buyer was the only buyer willing and able to operate the station [at the time of the sale]." *Second Order on Reconsideration*, at ¶ 28; *see also supra* Part II.B (discussing the proper period for assessment of a failing station waiver request).

deregulatory mandate of the D.C. Circuit in *Sinclair*³¹ and the FCC's subsequent determination in the *2002 Biennial Review* that the ownership rule is not in the public interest and may, in fact, hinder program diversity and localism.³² Instead, the Commission must evaluate the merits of each potential merger situation to determine whether the public interest would be served.³³ In light of the abundant number of media "voices" in the Nashville DMA, the clear lack of anticompetitive consequence, and the overwhelming public interest benefits that would result from the proposed acquisition, the Commission should grant the application.³⁴

In April 2002, the D.C. Circuit ruled in *Sinclair* that the Commission's decision to exclude non-broadcast media as independent voices in its 1999 local television ownership rule was arbitrary and capricious and remanded the rule to the Commission. *Sinclair*, 284 F.2d at 159, 162-65. In June 2003, the Commission adopted new media multiple ownership rules. In rejecting the 1999 local television ownership rule, the Commission found that, "in light of the myriad sources of competition to local television broadcast stations . . . our current rule is not necessary in the public interest to promote competition . . . [and] does not promote, and may even hinder, program diversity and localism." *2002 Biennial Review*, at ¶ 133.

Under the 2003 local television ownership rule, a single entity can own up to two or three stations in a market, depending on the total number of stations in that market. *Id.* at ¶ 134.

Sinclair would be able to own WNAB under the grant of a failing station waiver of the 2003

³¹ 283 F.2d at 159, 162-65.

³² *See 2002 Biennial Review*, at ¶ 133.

³³ To the extent the Commission believes that compliance with the 1999 local television ownership rule is necessary for grant of this application, *Sinclair* requests waiver of 47 C.F.R. § 73.3555(b). *See WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *see also* 47 C.F.R. § 1.3.

³⁴ *See supra* Part II.C.

local television ownership rule. *Id.* at ¶ 225. The Court of Appeals for the Third Circuit, however, stayed the effective date of the rule and remanded to the FCC to justify its new numerical limits. *See Prometheus*, 373 F.3d at 420, *cert. denied*, 2005 U.S. LEXIS 4807-12 (U.S. June 13, 2005).

Nonetheless, the Third Circuit’s decision to stay and remand the 2003 local television ownership rule does not require dismissal or deferral of this application and waiver request. As discussed earlier, the Commission has recognized that it has authority to waive its 1999 media ownership rules where warranted, despite the Third Circuit’s stay.³⁵ In any event, the Third Circuit overstepped its authority in ordering the Commission to continue to enforce the arbitrary and capricious 1999 rule and disregarded well-established principles of law-of-the-case doctrine, in effect impermissibly overruling the D.C. Circuit’s decision in *Sinclair*.³⁶ Under the deregulatory mandate of *Sinclair* and Section 202(h) of the 1996 Act, the Commission cannot perpetuate the insufficiently deregulatory and arbitrary and capricious 1999 local television ownership rule as the *de facto* permanent rule while it struggles, possibly for years,³⁷ to

³⁵ *See supra* Part I (discussing *Counterpoint Communications, Inc.*).

³⁶ *See Arizona v. California*, 460 U.S. 605, 618 (1983) (Under the law-of-the-case doctrine “when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.”); *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988) (“[A]s a rule, courts should be loathe to [revisit prior decisions of a coordinate court] in the absence of extraordinary circumstances such as where the initial decision was ‘clearly erroneous and would work a manifest injustice.’”) (citation omitted); *see also Phillips Petroleum Co. v. F.E.R.C.*, 902 F.2d 795, 799 (10th Cir. 1990) (“To the extent that issues have been decided by [a coordinate court of appeals before remand], review of those issues would be contrary to law of the case.”).

³⁷ The Commission’s most recent attempt to establish a local television ownership rule took approximately two years (*Prometheus*, 373 F.3d at 386), and the prior attempt required eight years. *See Review of the Commission’s Regulations Governing Television Broadcasting*, 14 FCC Red. 12,903 (¶ 1) (1999). Publicly available information indicates that the Commission has been unable to commence a proceeding to revise its media ownership rules since the Third Circuit issued its decision in July 2003. *See, e.g., FCC Postpones New Rulemaking On Contentious*

formulate a replacement rule.³⁸ Accordingly, the Commission should consider the proposed combination under a general public interest analysis and under that standard grant the application.

IV. CONCLUSION

As all the evidence set forth above demonstrates, WNAB squarely meets the failing station waiver standard. Accordingly, approval of this application to permit the proposed combined operation of the Stations would serve the public interest. Should the Commission deny the failing station waiver, the parties submit that the Commission cannot continue to enforce the 1999 local television ownership rule. Instead, the Commission must evaluate each transfer or assignment application to determine whether the public interest would be served, and under such a test, the Commission should grant this application.

Media Ownership Rules, Communications Daily (July 15, 2005) (reporting that no date has been set to consider the new ownership rulemaking).

³⁸ See *American Broad. Co., Inc. v. FCC*, 191 F.2d 492, 500-01 (D.C. Cir. 1951) (granting mandamus for FCC delay because “[t]here comes a point when what has been designed a ‘temporary measure’ lasts for so long, and shows so little sign of being terminated in the foreseeable future, that to continue to categorize it as ‘temporary’ is to ignore the realities of the situation.”); see also *MCI Telecomm. Corp. v. FCC*, 627 F.2d 322, 325 (D.C. Cir. 1980).

ATTACHMENT A

2004 Audience Share in the Nashville, TN DMA¹

| Rank (by audience share) | Call Sign | Audience Share ² | Market Revenue Share ³ |
|--------------------------|-----------|-----------------------------|-----------------------------------|
| 1 | WTVF(TV) | 15 | 30.0 |
| 2 | WSMV-TV | 13.5 | 26.0 |
| 3 | WKRN-TV | 8.75 | 18.5 |
| 4 | WZTV(TV) | 4.75 | 13.1 |
| | WUXP(TV) | 4.25 = 11 | 6.4 = 24.5 |
| | WNAB(TV) | 2 | 5.0 |

¹ Source: BIA's Investing in Television 2005, 1st Edition.

² Average of four quarters (9AM – midnight).

³ Numbers are expressed as percentages of the total market revenue share.

WNAB(TV) AUDIENCE SHARE IN NASHVILLE, TN DMA¹

| Year | Audience Share ² |
|--------------------------|-----------------------------|
| 1999 | 3 |
| 2000 | 2.5 |
| 2001 | 2 |
| 2002 | 2 |
| 2003 | 2 |
| 2004 | 2 |
| 2005 (1 st Q) | 2 |

¹ Sources: BIA's Investing in Television 2000 - 2004.

² Average of four quarters (9AM-midnight).

Nashville, TN Market Overview

DMA Rank: 30
BIA Revenue Rank: 38

Demographic and Economic Overview

(000s, except Retail Sales and EBI in \$000,000s)

| (000's, unless otherwise specified) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|----------------|---------------|---------------|--------|-----------------|-----------|--------------------------------|-------------|-----------|-------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------------|--|------|--|------|--|------|--|-------------|--|-------------|--|--|--|---|-------|---|-------|---|-------|---|-------|---|-------|----------------------|----------------|------|------|------|------|------|------|------|------|------|------|-------|---------|---------------|---------------|-------|---------|---------|---------|-------|---------|---------|---------|
| | Growth | | | Growth | | | ESTIMATED GROSS REVENUES | 1999-2009 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | 1999 | 2004 | Rate | 2004 | 2009 | Rate | | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | Δ '99 - '09 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| DMA Population | 2,158 | 2,350 | 1.7% | 2,350 | 2,472 | 1.0% | \$143,600 | \$146,800 | \$129,500 | \$136,900 | \$140,000 | \$150,500 | \$154,000 | \$161,000 | \$168,000 | \$175,000 | \$180,700 | Δ 04 - 09 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Households | 827 | 914 | 2.0% | 914 | 966 | 1.1% | Δ 03 - 04 | 7.5% | \$152,000 | \$164,200 | \$164,200 | \$178,900 | \$180,700 | \$187,000 | \$193,000 | \$199,000 | \$205,000 | Δ 04 - 09 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Retail Sales | NA 1/ | 32,872 | NA 1/ | 39,616 | 3,861 | 9.7% | *** | *** | *** | *** | *** | *** | *** | *** | *** | *** | *** | 3.7% | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| EBI2/ | 36,790 | 43,179 | 3.3% | 43,179 | 51,182 | 3.5% | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Pop Rank # 31 | TV Households | 916 | White | 82.5% | Avg Household | \$ 47,254 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| HH Rank # 30 | DMA Cable | 60% | Black | 12.4% | Per Capita | \$18,374 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| RS Rank # 30 | DMA ADS | 26% | Asian | 1.5% | Hispanic Origin | 3.63% | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| EBI Rank # 32 | DMA VCR | 90% | | | DMA Counties | 49 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table><tr><th colspan="2"></th><th colspan="2">1999</th><th colspan="2">2004</th><th colspan="2">2009</th><th colspan="2">Δ '99 - '04</th><th colspan="2">Δ '04 - '09</th></tr><tr><th></th><th></th><th>%</th><th>Count</th><th>%</th><th>Count</th><th>%</th><th>Count</th><th>%</th><th>Count</th><th>%</th><th>Count</th></tr><tr><td>Revenue/Retail Sales</td><td>Revenue/Capita</td><td>1999</td><td>2004</td><td>1999</td><td>2004</td><td>1999</td><td>2004</td><td>1999</td><td>2004</td><td>1999</td><td>2004</td></tr><tr><td>NA 1/</td><td>\$66.54</td><td>\$4,558/1,000</td><td>\$4,558/1,000</td><td>NA 1/</td><td>\$64.04</td><td>\$73.10</td><td>\$73.10</td><td>NA 1/</td><td>\$66.54</td><td>\$73.10</td><td>\$73.10</td></tr></table> | | | | | | | | | | | | | | | | | | | | | 1999 | | 2004 | | 2009 | | Δ '99 - '04 | | Δ '04 - '09 | | | | % | Count | % | Count | % | Count | % | Count | % | Count | Revenue/Retail Sales | Revenue/Capita | 1999 | 2004 | 1999 | 2004 | 1999 | 2004 | 1999 | 2004 | 1999 | 2004 | NA 1/ | \$66.54 | \$4,558/1,000 | \$4,558/1,000 | NA 1/ | \$64.04 | \$73.10 | \$73.10 | NA 1/ | \$66.54 | \$73.10 | \$73.10 |
| | | 1999 | | 2004 | | 2009 | | Δ '99 - '04 | | Δ '04 - '09 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | % | Count | % | Count | % | Count | % | Count | % | Count | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Revenue/Retail Sales | Revenue/Capita | 1999 | 2004 | 1999 | 2004 | 1999 | 2004 | 1999 | 2004 | 1999 | 2004 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| NA 1/ | \$66.54 | \$4,558/1,000 | \$4,558/1,000 | NA 1/ | \$64.04 | \$73.10 | \$73.10 | NA 1/ | \$66.54 | \$73.10 | \$73.10 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table><tr><th colspan="2"></th><th colspan="2">1999</th><th colspan="2">2004</th><th colspan="2">2009</th><th colspan="2">Δ '99 - '04</th><th colspan="2">Δ '04 - '09</th></tr><tr><th></th><th></th><th>%</th><th>Count</th><th>%</th><th>Count</th><th>%</th><th>Count</th><th>%</th><th>Count</th><th>%</th><th>Count</th></tr><tr><td>Revenue/Retail Sales</td><td>Revenue/Capita</td><td>1999</td><td>2004</td><td>1999</td><td>2004</td><td>1999</td><td>2004</td><td>1999</td><td>2004</td><td>1999</td><td>2004</td></tr><tr><td>NA 1/</td><td>\$66.54</td><td>\$4,558/1,000</td><td>\$4,558/1,000</td><td>NA 1/</td><td>\$64.04</td><td>\$73.10</td><td>\$73.10</td><td>NA 1/</td><td>\$66.54</td><td>\$73.10</td><td>\$73.10</td></tr></table> | | | | | | | | | | | | | | | | | | | | | 1999 | | 2004 | | 2009 | | Δ '99 - '04 | | Δ '04 - '09 | | | | % | Count | % | Count | % | Count | % | Count | % | Count | Revenue/Retail Sales | Revenue/Capita | 1999 | 2004 | 1999 | 2004 | 1999 | 2004 | 1999 | 2004 | 1999 | 2004 | NA 1/ | \$66.54 | \$4,558/1,000 | \$4,558/1,000 | NA 1/ | \$64.04 | \$73.10 | \$73.10 | NA 1/ | \$66.54 | \$73.10 | \$73.10 |
| | | 1999 | | 2004 | | 2009 | | Δ '99 - '04 | | Δ '04 - '09 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | % | Count | % | Count | % | Count | % | Count | % | Count | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Revenue/Retail Sales | Revenue/Capita | 1999 | 2004 | 1999 | 2004 | 1999 | 2004 | 1999 | 2004 | 1999 | 2004 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| NA 1/ | \$66.54 | \$4,558/1,000 | \$4,558/1,000 | NA 1/ | \$64.04 | \$73.10 | \$73.10 | NA 1/ | \$66.54 | \$73.10 | \$73.10 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Nashville, TN Competitive Overview

| Calls | City Of License | Ch | Visual Power (kW) | HAAT | Ch A | DTV M | L | Rep | Owner | Year Date Acqd | Sales Revenue '04 (\$000) | Est '04 Ratio | Avg LBS | SHARE SUMMARY 8:00AM - MIDNIGHT (%) | | | | | | | | | | | |
|---------|------------------|----|-------------------|-------|-------|-------|-------|----------------------|---------|----------------|---------------------------|---------------|---------|-------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| | | | | | | | | | | | | | | Feb 04 | Mar 04 | Nov 03 | Dec 03 | Jan 04 | Feb 04 | Mar 04 | Apr 03 | May 03 | Jun 03 | Jul 03 | Aug 03 |
| WKRN-TV | Nashville | 2 | 100 | 1,348 | -27 | A3C | Young | Young Bessig Inc | 53 8804 | 51,000 | 2,290 | 1.03 | 18% | 8 | 9 | 8 | 8 | 10 | 10 | 8 | 10 | 10 | 10 | 10 | |
| WISN-TV | Nashville | 4 | 100 | 1,424 | *10 | NBC | TeiRP | Meredith Corp | 50 9411 | 159,000 | -39,200 | 0.96 | 27% | 13 | 14 | 11 | 14 | 15 | 14 | 13 | 15 | 14 | 13 | 15 | |
| WTVF | Nashville | 5 | 100 | 1,994 | *56 | CBS | KaizT | Landmark Comm | 54 9109 | 46,000 | 45,200 | 0.94 | 32% | 15 | 16 | 14 | 15 | 15 | 20 | 14 | 16 | 15 | 16 | | |
| WZLX | Nashville | 17 | 3,240 | cp | 1,408 | *15 | FOX | Milmm | 76 9807 | 9 | 15,650 | 1.31 | 10% | 7 | 5 | 4 | 5 | 5 | 5 | 5 | 6 | 6 | 6 | | |
| WNNX | Cookeville | 28 | 5,000 | cp | 1,296 | *36 | PAX | Paxon Comm Corp | 88 9710 | 4,300 | 1,100 | | | 9 | | | | | | | | | | | |
| WUXP-TV | Nashville | 39 | 5,000 | cp | 1,417 | *21 | UPN | Milmm | 84 0201 | g3 | 9,700 | 0.81 | 8% | 4 | 5 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | | |
| WUPB-TV | Murfreesboro | 39 | 5,000 | cp | 820 | *38 | TBN | Christian TV Network | 83 8608 | 1,600 | 300 | | | | | | | | | | | | | | |
| WHDN-TV | Hendersonville | 50 | 4,470 | cp | 771 | *51 | IND | Trinity Bessig Bkink | 92 0006 | g5 | | | | | | | | | | | | | | | |
| WPID-TV | Headspringsville | 59 | 5,470 | cp | 1,391 | *23 | A1 | WB | Peary | 95 9808 | 30,000+ | -- | 7.450 | 1.24 | 4% | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | | |
| WJNB | Nashville | 56 | 3,250 | cp | 1,281 | *4 | IND | Landmark Bessig LLC | 86 | | | | | | | | | | | | | | | | |
| WJBN | Lebanon | 68 | 2,240 | cp | 528 | | WB | Bryan Broadcasting | 88 | | | | | | | | | | | | | | | | |
| WNPT | Nashville | 8 | 316 | | 1,280 | *46 | PBS | WNPT | 62 | | | | | | | | | | | | | | | | |
| *WCTE | Cookeville | 22 | 1,320 | | 1,394 | *52 | PBS | Upper Cumberland Bct | 78 | | | | | | | | | | | | | | | | |
| TOTAL | | | | | | | | | | | | | | 52 | 54 | 46 | 50 | 54 | 58 | 49 | 56 | | | | |
| HLUT % | | | | | | | | | | | | | | 49 | 50 | 46 | 46 | 49 | 48 | 46 | 47 | | | | |

Allocations: Ch 33, McMinnville; Ch 64, Tullahoma; Ch 42, Nashville; Ch 51, Hopkinsville, KY

● Indicates a change since last edition
1/ Estimate not available. See page 6. 2/ EBI estimates are for previous year than noted in column header. 3/ See introduction section for interpretation of revenue estimates
Investing in Television 2005 1st Edition. Copyright (c) 2004 BIA Financial Network, Inc. All rights reserved. (703) 818-2425 www.bia.com

DMA Rank: 30

ATTACHMENT B

[Redacted Confidential Information]

ATTACHMENT C

DECLARATION OF J.P. HANNAN

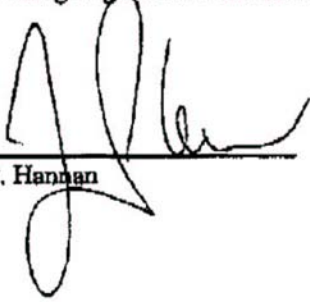
I, J.P. Hannan, hereby declare the following:

1. I am a Member of Tennessee Broadcasting LLC, which is the General Partner of Nashville Broadcasting Limited Partnership, which is the Sole Member of Nashville License Holdings, LLC ("Nashville"). I have been a Member of Tennessee Broadcasting LLC since it was formed in 1998. In addition, from 1998 until 2003, I had chief responsibility for the finances of WNAB(TV) ("WNAB" or the "Station"). I was personally involved in the efforts of Nashville to sell WNAB between 1999 and 2002.
2. Between 1999 and 2002 prior to the transaction with Sinclair Broadcast Group, Inc. ("Sinclair"), Nashville made extensive efforts to sell WNAB. During this time, approximately eleven parties, including major broadcasters, contacted Nashville regarding their interest in the Station, but none of these discussions resulted in a reasonable offer to purchase the Station.
3. Around 1999, a major broadcaster took an interest in purchasing WNAB and its commonly-owned station, but discussions with the major broadcaster did not materialize into an agreement.
4. In 1999, Nashville hired Bear Stearns to market WNAB, another station in a different market that was owned by principals of Nashville, and an option and local marketing agreement held by principals of Nashville in another station in another market. In late 1999, Bear Stearns organized and conducted an auction for the stations. Bear Stearns sent sales information to almost all of the broadcasters who had a WB or UPN affiliated station, and broadcasters were provided with a period of time to conduct due diligence and submit bids for the station(s). No bids offering to purchase the stations were submitted.
5. After the auction did not yield a buyer for WNAB, another broadcaster that had previously contacted Nashville re-expressed its interest in the station. Nashville and this broadcaster entered into negotiations, and the negotiations led to the parties preparing a purchase agreement. The broadcaster proposed to fund the purchase price with mostly stock. The broadcaster's stock prices severely declined soon thereafter, however, which caused the deal to fall through.
6. Between 1999 and 2002, approximately nine additional potential purchasers contacted Nashville or were contacted by Nashville and expressed an interest in WNAB. None of these talks materialized into an agreement for purchase of the station. These potential purchasers either determined that they were no longer interested in buying the station, were unable to secure financing, or proposed a price for the station that Nashville believed was inadequate.



7. In May 2002, Sinclair and Nashville executed an Option Agreement and a Put Agreement for the purchase/sale of the Station. At the same time, the parties entered into a Servicing Agreement.

I hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



J.P. Hannan

Dated: June 22, 2005

ATTACHMENT D

Full Power Television Stations Serving the Nashville, TN DMA (30)¹

| Voice | Call Sign | Location | Licensee (Group Owner) | Affiliation | NTSC Channel | DTV Channel |
|--------------|------------------|--------------------|--|--------------------|---------------------|--------------------|
| 1 | WKRN-TV | Nashville, TN | WKRN, G.P. (Young Broadcasting) | ABC | 2 | 27 |
| 2 | WSMV-TV | Nashville, TN | Meredith Corporation | NBC | 4 | 10 |
| 3 | WTVF(TV) | Nashville, TN | Newschannel 5 Network, LP (Landmark Communications) | CBS | 5 | 56 |
| 4 | WZTV(TV) | Nashville, TN | WZTV Licensee, LLC (Sinclair Broadcast Group) | FOX | 17 | 15 |
| | WUXP-TV | Nashville, TN | WUXP Licensee, LLC (Sinclair Broadcast Group) | UPN | 30 | 21 |
| 5 | WNPX(TV) | Cookeville, TN | Paxon Communications License Company, LLC | PAX | 28 | 36 |
| 6 | WHTN(TV) | Murfreesboro, TN | Christian Television Network, Inc. | IND | 39 | 38 |
| 7 | WPGD-TV | Hendersonville, TN | Trinity Broadcasting Network | TBN | 50 | 51 |
| 8 | WNAB(TV) | Nashville, TN | Nashville License Holdings, LLC | WB | 58 | 23 |
| 9 | WJFB(TV) | Lebanon, TN | Bryant Broadcasting, Inc. | IND | 66 | 44 |
| 10 | WNPT(TV) | Nashville, TN | Nashville Public Television, Inc. | PBS | 8 | 46 |
| 11 | WCTE(TV) | Cookeville, TN | Upper Cumberland Broadcast Council | PBS | 22 | 52 |

¹ Sources: BIA's Investing in Television 2005, 1st Edition; FCC's CDBS database.

Cable Systems Serving Nashville, TN DMA (30)¹

| Voice | Cable System | Owner | Subscribers | Channel Capacity |
|-------|------------------------|-----------------------------|-------------|------------------|
| 1 | Corinth (KY) | Adelphia Communications | 68 | 36 |
| 2 | Adairville (KY) | Cebridge Connections | 151 | 32 |
| | Auburn (KY) | Cebridge Connections | 281 | 111 |
| | Russellville (KY) | Cebridge Connections | 2,568 | N/A |
| 3 | Celina (TN) | Celina Cable | N/A | 36 |
| 4 | Hopkinsville (KY) | Charter Communications | 10,342 | 54 |
| | Anthony Hill (TN) | Charter Communications | 331 | 32 |
| | Camden (TN) | Charter Communications | 1,831 | 60 |
| | Clarksville (TN) | Charter Communications | 26,855 | 34 |
| | Clifton (TN) | Charter Communications | 267 | 42 |
| | Columbia (TN) | Charter Communications | 19,093 | 60 |
| | Cookeville (TN) | Charter Communications | 19,380 | 78 |
| | Hohenwald (TN) | Charter Communications | 3,718 | 39 |
| | Lawrenceburg (TN) | Charter Communications | 4,640 | N/A |
| | Lebanon (TN) | Charter Communications | 10,315 | 35 |
| | Lewisburg (TN) | Charter Communications | 3,846 | 61 |
| | Loretto (TN) | Charter Communications | 2,447 | 61 |
| | McEwen (TN) | Charter Communications | 452 | 42 |
| | Montgomery County (TN) | Charter Communications | 3,345 | 54 |
| | Paris (TN) | Charter Communications | 7,859 | 70 |
| | Parsons (TN) | Charter Communications | 1,353 | 50 |
| | Pulaski (TN) | Charter Communications | 4,058 | 60 |
| | Tullahoma (TN) | Charter Communications | 19,000 | 78 |
| | Waynesboro (TN) | Charter Communications | 1,707 | 42 |
| | Westpoint (TN) | Charter Communications | 53 | 42 |
| 5 | Byrdstown (TN) | Comcast of Central Kentucky | 322 | 36 |
| | Livingston (TN) | Comcast of Central Kentucky | N/A | 36 |
| 6 | Fort Campbell (KY) | Comcast of Middle Tennessee | 5,642 | 59 |
| | Franklin (KY) | Comcast of Middle Tennessee | 2,554 | 52 |

¹ Cable systems serving communities in the DMA counties. Sources: TELEVISION AND CABLE FACTBOOK, Vol. 73 (2005); BROADCASTING & CABLE YEARBOOK 2005 at B-199, D-637 – D-679 and D-1468 – D-1492. The systems are listed according to the town in which the cable head-end is located; each system may serve additional communities as well.

| Voice | Cable System | Owner | Subscribers | Channel Capacity |
|--------------|--|------------------------------|--|-------------------------|
| | Ashland City (TN) | Comcast of Middle Tennessee | 1,659 | 36 |
| | Hartsville (TN) | Comcast of Middle Tennessee | 748 | N/A |
| | Lynchburg (TN) | Comcast of Middle Tennessee | 217 | 67 |
| | Smithville (TN) | Comcast of Middle Tennessee | 2,557 | 56 |
| | Westmoreland (TN) | Comcast of Middle Tennessee | 612 | N/A |
| 7 | Nashville (TN) | Comcast of Nashville | 317,290 | 77 |
| 8 | Columbia (TN) | CPWS Broadband | N/A | N/A |
| 9 | Albany (KY) | Mediacom | 1,072 | 41 |
| | Burkesville (KY) | Mediacom | 1,098 | 40 |
| | Cadiz (KY) | Mediacom | 2,093 | 40 |
| | Clinton County (KY) | Mediacom | 1,000 | 30 |
| | Elkton (KY) | Mediacom | 505 | 40 |
| | Oak Grove (KY) | Mediacom | 1,413 | 41 |
| | Pembroke (KY) | Mediacom | 1,036 | 41 |
| | Tompkinsville (KY) | Mediacom | 1,783 | 40 |
| | Dover (TN) | Mediacom | 1,018 | 41 |
| | Huntland (TN) | Mediacom | 326 | 36 |
| 10 | Eagleville (TN) | Mid South Cable TV Inc. | N/A | 27 |
| 11 | Scottsville (KY) | North Central Communications | 1,002 | 25 |
| 12 | Livingston (TN) | Overton County Cable TV | 2,000 | 40 |
| 13 | Linden (TN) | Pat's Cable TV | N/A | 12 |
| | Lobelville (TN) | Pat's Cable TV | N/A | 12 |
| | Scotts Hill (TN) | Pat's Cable TV | N/A | 12 |
| 14 | Tennessee Ridge (TN) | Peoples CATV Co. | 1,556 | 36 |
| 15 | Chapel Hill (TN) | Small Town Cable | 852 | 36 |
| | Cornersville (TN) | Small Town Cable | 240 | 24 |
| | Lynnville (TN) | Small Town Cable | 107 | 32 |
| | Total: 56 Systems | | 492,662 Subscribers (54.5% of DMA TV Households)* | |

* Based on 904,380 DMA TV Households in the Nashville, TN DMA, as reported in BROADCASTING & CABLE YEARBOOK 2005 at B-199. Note that BROADCASTING & CABLE YEARBOOK 2005 at C-11 calculates (without an itemization) a higher subscriber figure and penetration rate: 548,180 subscribers yielding a 61% cable penetration rate.

Daily Newspapers Serving Nashville, TN DMA¹

| Voice | Title | Counties Served | Owner | Households (000) |
|-------|---|---|------------------------------------|------------------|
| 1 | <i>Commercial Appeal</i> Memphis, TN | Henry, TN | The Commercial Appeal | 13.2 |
| 2 | <i>Glasgow Daily Times</i> Glasgow, KY | Monroe, KY | Community Newspaper Holdings, Inc. | 4.8 |
| 3 | <i>Herald-Citizen</i> Cookeville, TN | Jackson, Overton, Putnam and White, TN | Cookeville Newspapers, Inc. | 48.9 |
| 4 | <i>Daily Herald</i> Columbia, TN | Giles, Lawrence, Marshall and Maury, TN | Donrey Media Group | 66.4 |
| 5 | <i>Courier-Journal</i> Louisville, KY | Logan, Monroe and Simpson, KY | Gannett Company, Inc. | 22.2 |
| | <i>Jackson Sun</i> Jackson, TN | Decatur, TN | Gannett Company, Inc. | 4.9 |
| | <i>The Tennessean</i> Nashville, TN | Christian, KY and Bedford, Benton, Cannon, Cheatham, Clay, Coffee, Davidson, De Kalb, Dickson, Franklin, Giles, Henry, Hickman, Humphreys, Jackson, Lawrence, Lewis, Macon, Marshall, Maury, Montgomery, Moore, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Smith, Sumner, Trousdale, Warren, Wayne, White, Williamson and Wilson, TN | Gannett Company, Inc. | 852.1 |

¹ Sources: SRDS CIRCULATION 2005 at 442 – 446 and 802 – 807; EDITOR & PUBLISHER INTERNATIONAL YEARBOOK (2004) at I-164 – I-171 and I-386 – I-394; www.ulrichsweb.com. Figures based on total number of households located in counties that are both served by the newspaper and located in the Nashville, TN DMA.

| Voice | Title | Counties Served | Owner | Households (000) |
|--------------|---|---|--|-----------------------------|
| | <i>The Leaf-Chronicle</i> Clarksville, TN | Christian, KY and Dickson, Houston, Montgomery, Robertson and Stewart, TN | Gannett Company, Inc. | 123.4 |
| 6 | <i>Kentucky New Era</i> Hopkinsville, KY | Christian, Todd and Trigg, KY | Kentucky New Era, Inc. | 34.7 |
| 7 | <i>Lexington Herald-Leader</i> Fayette, KY | Clinton, KY | Knight Ridder, Inc. | 4.2 |
| 8 | <i>Review Appeal</i> Franklin, TN | Williamson, TN | Morris Communications Company LLC | 51.1 |
| | <i>The Daily News Journal</i> Murfreesboro, TN | Cannon and Rutherford, TN | Morris Communications Company LLC | 80.0 |
| 9 | <i>Daily News</i> Bowling Green, KY | Allen, Logan and Simpson, KY | News Publishing LLC | 24.6 |
| 10 | <i>The Paris Post- Intelligencer</i> Paris, TN | Henry, TN | Paris Publishing Company, Inc. ² | 13.2 |
| 11 | <i>The Lebanon Democrat</i> Lebanon, TN | Wilson, TN | Sandusky Newspapers, Inc. | 35.8 |
| 12 | <i>Shelbyville Times-Gazette</i> Shelbyville, TN | Bedford, TN | Shelbyville Publishing Co., Inc. | 15.0 |

² Information was obtained by speaking with the owner, Michael Williams, via telephone on May 2, 2005.

Weekly Newspapers Serving Nashville, TN DMA¹

| Voice | Title | Counties Served | Owner | Circulation (per issue) |
|--------------|--|------------------------|--|------------------------------------|
| 1 | <i>The Shopper</i> Manchester, TN | Coffee, TN | ADS, Inc. | 21,500 (est.) |
| 2 | <i>American Classifieds</i> Hermitage, TN | Davidson, TN | American Classifieds LLC | 30,000 (est.) |
| 3 | <i>Jackson County Sentinel</i> Gainesboro, TN | Jackson, TN | Andy Mitchell | 3,400 |
| | <i>Livingston Enterprise</i> Livingston, TN | Overton, TN | Andy Mitchell | 5,500 |
| 4 | <i>Peddler</i> Clarksville, TN | Montgomery, TN | Ann Poe | 28,000 (est.) |
| 5 | <i>Buffalo River Review</i> Linden, TN | Perry, TN | Buffalo Review, Inc. | 3,000 |
| 6 | <i>Lewis County Herald</i> Hohenwald, TN | Lewis, TN | Byrne K. Dunn | 3,500 |
| 7 | <i>Cannon Courier</i> Woodbury, TN | Cannon, TN | Cannon Courier Inc. | 4,400 |
| 8 | <i>Overton County News</i> Livingston, TN | Overton, TN | Carson & Vicki Oliver | 5,500 |
| 9 | <i>The Monroe County Citizen</i> Cave City, KY | Monroe, KY | Cave Country Newspapers, Inc. | 1,026 |
| 10 | <i>Macon County Times</i> Lafayette, TN | Macon, TN | Community Newspaper Holdings, Inc. | 6,000 |
| 11 | <i>Wayne County News</i> Waynesboro, TN | Wayne, TN | Dan Cole | 7,000 |
| 12 | <i>Westview</i> Nashville, TN | Davidson, TN | Evelyn Underwood | 10,000 |
| 13 | <i>Cheatham County Shopper</i> Ashland City, TN | Cheatham, TN | Gannett Company, Inc. | 55,000 (est.) |
| | <i>Ashland City Times</i> Ashland City, TN | Cheatham, TN | Gannett Company, Inc. | 6,500 |
| | <i>The Sumner County Shopper</i> Gallatin, TN | Sumner, TN | Gannett Company, Inc. | 10,600 (est.) |
| | <i>Nashville Record</i> Nashville, TN | Davidson, TN | Gannett Company, Inc. | 800 (est.) |

¹ Sources: EDITOR & PUBLISHER INTERNATIONAL YEARBOOK (2004) at Comm-125 – Comm-131, Comm-308 – Comm-314, Spec-19, Shop-70 – Shop-71; www.ulrichsweb.com.

| Voice | Title | Counties Served | Owner | Circulation (per issue) |
|--------------|--|------------------------|---|------------------------------------|
| | <i>Robertson County Times</i> Springfield, TN | Robertson, TN | Gannett Company, Inc. | 10,000 |
| 14 | <i>Carthage Courier</i> Carthage, TN | Smith, TN | Hershel Lake | 5,700 |
| 15 | <i>Pickett County Press</i> Byrdstown, TN | Pickett, TN | Jamie Hill Garrett | 2,000 |
| 16 | <i>Shopper's Guide</i> Waverly, TN | Humphreys, TN | Kennedy Newspapers, Inc. | 9,500 (est.) |
| 17 | <i>Manchester Times</i> Manchester, TN | Coffee, TN | Lakeway Publishers, Inc. | 6,500 |
| 18 | <i>Lewisburg Tribune</i> Lewisburg, TN | Marshall, TN | Lewisburg Tribune, Inc. | 7,800 |
| | <i>Marshall Gazette</i> Lewisburg, TN | Marshall, TN | Lewisburg Tribune, Inc. | 7,800 |
| 19 | <i>The Camden Chronicle</i> Camden, TN | Benton, TN | Magic Valley Publishing | 6,700 |
| 20 | <i>Moore County News</i> Lynchburg, TN | Moore, TN | Marilyn Craig | 1,500 |
| 21 | <i>The Messenger</i> Mt. Juliet, TN | Wilson, TN | Messenger Newspapers, Inc. | 8,000 (est.) |
| 22 | <i>The Todd County Standard</i> Elkton, KY | Todd, KY | Mike Finch | 2,300 |
| 23 | <i>Tompkinsville News</i> Tompkinsville, KY | Monroe, KY | Monroe County Press Inc. | 4,612 |
| 24 | <i>Smithville Review</i> Smithville, TN | De Kalb, TN | Morris Communications Company LLC | 4,500 |
| | <i>The Rutherford Courier</i> Smyrna, TN | Rutherford, TN | Morris Communications Company LLC | 23,000 |
| 25 | <i>Chronicle of Mt. Juliet</i> Mount Juliet, TN | Wilson, TN | Mt. Juliet Communications Inc. | 12,000 (est.) |
| 26 | <i>Cumberland County News</i> Burkesville, KY | Cumberland, KY | Patsy Judd | 3,000 |
| | <i>Citizen-Statesman</i> Celina, TN | Clay, TN | Patsy Judd | 2,600 |
| 27 | <i>The Cadiz Record</i> Cadiz, KY | Trigg, KY | Paxton Media Group LLC | 5,000 |
| | <i>The Portland Leader</i> Portland, TN | Sumner, TN | Paxton Media Group LLC | 3,000 |
| 28 | <i>Tennessee Tribune</i> Nashville, TN | Davidson, TN | Perry, Perry and Associates | 25,000 |

| Voice | Title | Counties Served | Owner | Circulation (per issue) |
|--------------|--|-----------------------------|------------------------------|------------------------------------|
| 29 | <i>Scottsville Citizen-Times</i> Scottsville, KY | Allen, KY | Robert B. Pitchford, III | 5,633 |
| 30 | <i>Murfreesboro Vision</i> Nashville, TN | Davidson, TN | Pride Newspaper Group | 12,000 (est.) |
| | <i>Nashville Pride</i> Nashville, TN | Davidson, TN | Pride Newspaper Group | 30,000 (est.) |
| 31 | <i>Pulaski Citizen/Giles Free Press</i> Pulaski, TN | Giles, TN | S. Hershel Lake | 8,400 |
| 32 | <i>The News Leader</i> Parsons, TN | Decatur, TN | Sam Kennedy | 4,100 (est.) |
| | <i>The News-Democrat</i> Waverly, TN | Humphreys, TN | Sam Kennedy | 4,000 |
| 33 | <i>The Hartsville Vidette</i> Hartsville, TN | Trousdale, TN | Sandusky Newspapers, Inc. | 2,300 |
| | <i>Mt. Juliet News</i> Mount Juliet, TN | Wilson, TN | Sandusky Newspapers Inc. | 4,500 (est.) |
| 34 | <i>The Expositor</i> Sparta, TN | White, TN | Smith Newspapers, Inc. | 11,200 |
| 35 | <i>Peddler</i> Cookeville, TN | Putnam, TN | Tim Sneed | 17,000 (est.) |
| 36 | <i>Bargain Browser</i> White House, TN | Robertson and Sumner, TN | W. Douglas Lee | 20,758 (est.) |

Semi-weekly Newspapers Serving Nashville, TN DMA¹

| Voice | Title | Counties Served | Owner | Circulation (per issue) |
|--------------|--|----------------------------|---|------------------------------------|
| 1 | <i>Tennessee Register: A Voice of Tennessee Catholic Life</i> Nashville, TN | Davidson, TN | Diocese of Nashville | 15,000 |
| 2 | <i>News-Examiner</i> * Gallatin, TN | Sumner, TN | Gannett Company, Inc. | 11,400 |
| | <i>Hendersonville Star News</i> Hendersonville, TN | Sumner, TN | Gannett Company, Inc. | 14,280 |
| 3 | <i>The Democrat-Union</i> Lawrenceburg, TN | Lawrence, TN | Jim Crawford | 7,600 (est.) |
| 4 | <i>Lawrence County Advocate</i> Lawrenceburg, TN | Lawrence, TN | Kennedy Newspaper, Inc. | 30,796 |
| 5 | <i>The Tullahoma News</i> * | Coffee and Franklin, TN | Lakeway Publishers, Inc. | 8,500 12,600 (Su.) |
| 6 | <i>Southern Stand</i> * McMinnville, TN | Warren, TN | Morris Communications Company LLC | 8,400 |
| 7 | <i>Wilson Post LLC</i> Lebanon, TN | Wilson, TN | Wilson Post, LLC | 9,600 |

¹ Sources: EDITOR & PUBLISHER INTERNATIONAL YEARBOOK (2004) at Comm-308 – Comm-314, Spec-63; www.ulrichsweb.com.

* Published three times a week. All others are published twice a week.

Semi-monthly Newspapers Serving Nashville, TN DMA¹

| Voice | Title | Counties Served | Owner | Circulation (per issue) |
|--------------|---|------------------------|--|------------------------------------|
| 1 | <i>Nashville Parent Magazine</i> * Nashville, TN | Davidson, TN | Day Communications | 49,000 |
| | <i>Rutherford Parent</i> * Nashville, TN | Davidson, TN | Day Communications | 18,000 |
| 2 | <i>The Senior Sentinel</i> * Nashville, TN | Davidson, TN | Janet Jernigan | 16,000 |
| 3 | <i>Observer</i> Nashville, TN | Davidson, TN | Jewish Federation of Nashville | 3,300 |
| 4 | <i>Fort Campbell Courier</i> Hopkinsville, KY | Christian, TN | Kentucky New Era | 23,000 |
| 5 | <i>Chronicle of Mt. Juliet</i> Mt. Juliet, TN | Wilson, TN | Mt. Juliet - West Wilson County Historical Society | 12,000 (est.) |

Newspaper Totals

| Type | Total located in Nashville, TN DMA | Total number of separate owners² |
|-----------------------|---|--|
| Daily Newspapers | 16 | 12 |
| Weekly Newspapers | 48 | 36 |
| Other Newspapers | 14 | 12 |
| All Newspapers | 78 | 51 |

¹ Sources: EDITOR & PUBLISHER INTERNATIONAL YEARBOOK (2004) at Comm-308 – Comm-314, Spec-47, Spec-50, Spec-74, Spec-85; www.ulrichsweb.com.

² The numbers in each row represent the number of separate owners only for the type of newspaper listed. Some owners own several types of newspapers.

* Published monthly.