

### **Multiple Ownership Compliance**

The instant application proposes a transfer of control of Fox Television Holdings, Inc. ("FTH") from K. Rupert Murdoch, an individual, to Fox Entertainment Group, Inc. ("FEG"), a wholly-owned subsidiary of News Corporation. FTH holds 100 percent of the stock of Fox Television Stations, Inc. ("FTS"), which is the licensee of television stations WNYW(TV), New York, NY, and WWOR-TV, Secaucus, NJ – both of which are licensed to the New York, NY Designated Market Area ("DMA"). News Corporation also wholly owns a subsidiary that publishes the *New York Post* (the "*Post*"), a daily newspaper.

As demonstrated in the application, the proposed transfer is intended merely to accomplish a recapitalization of FTH that would reduce Mr. Murdoch's voting interest in FTH (from 76 percent to 14.8 percent) while increasing the voting interest of FEG (from 24 percent to 85.2 percent), and in turn, News Corporation and its public shareholders. There will be no change with respect to the equity held in FTH. FEG will continue to hold nearly all of the equity (*i.e.*, more than 99 percent) and Mr. Murdoch will continue to own his fixed-return interest.<sup>1</sup>

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<sup>1</sup> See Exhibit No. 5 to this application, at Note 2. Mr. Murdoch holds an attributable interest in WNYW(TV) and WWOR-TV by virtue of his ownership of all of the preferred stock in FTH, which entitles him to 76 percent of the vote. Although Mr. Murdoch is a single majority shareholder, News Corporation also holds an attributable interest in the stations by virtue of the Commission's Equity-Debt/Plus rule. News Corporation owns 100 percent of FEG, which holds all of the common stock of FTH (entitling it to 24 percent of the vote) and more than 99 percent of the equity in FTH; News Corporation also wholly owns a subsidiary that publishes a daily newspaper (the *New York Post*) in the same DMA as the stations. See 47 C.F.R. § 73.3555, Note 2(i).

The recapitalization will not result in the acquisition by any new party of an attributable interest in WNYW(TV) and WWOR-TV. The application seeks consent only to the realignment of voting interests between the two existing stockholders of FTH. No changes are proposed regarding the management, officers or directors of FTH or FTS. Mr. Murdoch, who is the Chairman, Chief Executive Officer and a director of both FEG and News Corporation, will continue to serve as Chairman and director of FTH. No changes in the day-to-day operations of FTH and its license-holding subsidiaries will occur as a result of the recapitalization. Nor would any party pay or receive any consideration as part of the reorganization. Rather, the recapitalization merely would result in the reduction of Mr. Murdoch's voting interest and an increase in FEG's voting interest.

As we shall demonstrate, the application has no bearing on the existing waivers held by Mr. Murdoch, News Corporation and FTS permitting common ownership of WNYW(TV), WWOR-TV and the *Post*. All of the parties would remain in compliance with the Commission's multiple ownership rules if this application is granted.

#### Background

The Commission granted News Corporation and Mr. Murdoch a permanent waiver of the newspaper-broadcast cross-ownership rule (the "NBCO rule"), 47 C.F.R. 73.3555(d), in 1993, which permits the common ownership of both WNYW(TV) and the *Post*.<sup>2</sup> In addition, when FTS acquired WWOR-TV, the

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<sup>2</sup> See *Fox Television Stations Inc., Licensee of Television Station WNYW, New York, New York, Request for Waiver of the Broadcast-Newspaper Cross-Ownership Rule Relating to WNYW and the New York Post*, Declaratory Ruling, 8 FCC Rcd

Commission granted FTS a 24-month temporary waiver of the NBCO rule to permit common ownership of the *Post* along with a second television station in the New York DMA.<sup>3</sup> At the time, the *2001 Temporary Waiver* appeared adequate in duration to permit the Commission to complete proceedings looking toward the repeal of the NBCO rule, and in fact the Commission did repeal the rule as part of the 2002 biennial review of the media ownership rules.<sup>4</sup> And while the U.S. Court of Appeals for the Third Circuit affirmed the Commission's decision to eliminate the NBCO rule, the court stayed the repeal of the rule and most of the other rule changes adopted in the *Biennial Review Report and Order* pending completion of remand proceedings.<sup>5</sup>

In September 2004, FTS and News Corporation filed a petition asking the Commission to modify the permanent waiver of the NBCO rule to permit common

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5341, 5341-43, ¶¶ 3-12 (1993), *aff'd sub nom. Metropolitan Council of NAACP Branch v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995) (the "1993 Permanent Waiver").

<sup>3</sup> See *Applications of UTV of San Francisco, Inc., et al. (Assignor) and Fox Television Stations, Inc. (Assignee)*, Memorandum Opinion & Order, 16 FCC Rcd 14975 (2001) (the "2001 Temporary Waiver").

<sup>4</sup> See *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report & Order & Notice of Proposed Rulemaking, 18 FCC Rcd 13620 (2003) ("*Biennial Review Report and Order*"), *rev'd and remanded, Prometheus Radio Project v. Federal Communications Commission*, 373 F.3d 372, 382 (3d Cir. 2004). Given the Commission's decision to repeal the NBCO rule, FTS sought an extension of the *2001 Temporary Waiver* pending the effective date of the repeal. See Letter from John C. Quale to W. Kenneth Ferree, Chief, Media Bureau, Federal Communications Commission dated July 21, 2003. The temporary waiver remains in effect inasmuch as the Commission has not yet acted on FTS' extension request.

<sup>5</sup> See *Prometheus Radio Project*, 373 F.3d at 382 ("reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest").

ownership of the *Post* and WWOR-TV.<sup>6</sup> In the alternative, the Modification Petition asked the Commission, at a minimum, to extend FTS' temporary waiver pending the conclusion of the remand of the 2002 biennial review proceeding. The Modification Petition remains pending.

*The Application Does Not Affect the Existing Permanent Waiver*

The application has no bearing on the *1993 Permanent Waiver*. When it granted the *1993 Permanent Waiver*, the Commission took the unusual step of declaring that the waiver was granted "personal[ly] to Murdoch and News Corp., as controlling entities of both WNYW and . . . the *Post*. Consequently, waiver of the cross-ownership rule terminates upon a long-form *transfer of control of either entity or assignment of either media outlet*."<sup>7</sup> The application proposes no transfer of control of either "entity" – News Corporation or Mr. Murdoch. Nor would the transaction result in the assignment of either media outlet to any new entity. Rather, this transaction contemplates only a change to the respective voting rights in FTH ultimately held by the same two recipients that were granted the waiver personally by the Commission.

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<sup>6</sup> See *In Re Fox Television Stations, Inc., et. al.*, Petition for Modification of Permanent Waiver, September 22, 2004 (the "Modification Petition").

<sup>7</sup> See *Fox Television Stations Inc.*, 8 FCC Rcd at 5353, ¶ 52. Including the relief afforded with respect to WNYW(TV) and the *Post*, the Commission has only granted four permanent waivers of the NBCO rule – and in none of the other three decisions did the Commission describe the waiver as joint and personal. See *Kortes Communications, Inc. (Assignor) and Stafford Broadcasting, L.L.C. (Assignee)*, 15 FCC Rcd 11846 (2000); *Columbia Montour Broadcasting Co., Inc. (Assignor) and Community Communications, Inc. (Assignee)*, 13 FCC Rcd 13007 (1998); *Field Communications Corporation (Assignee) and Kaiser Broadcasting Corporation (Assignor)*, 65 F.C.C.2d 959 (1977).

The proposed transfer has none of the hallmarks of a purchase and sale transaction. The recapitalization of FTH's stock would not result in any party paying or receiving consideration. It would not affect the equity ownership of FTH or FTS (the licensee of WNYW(TV)), and it would not cause any changes to the management of FTH or the operation of WNYW(TV). Perhaps most importantly, the proposed transaction would not add any new parties holding attributable interests in FTH or FTS, nor would it result in any change in the management or ownership of the *Post* and WNYW(TV). In short, the proposed transfer would not implicate in any way the condition to the *1993 Permanent Waiver*.

Moreover, when the Commission granted Field Communications Corp. a permanent waiver of the NBCO rule to permit common ownership of a broadcast station and newspaper in Chicago, it stressed that the NBCO rule "would not be applied to *existing ownership patterns . . .*"<sup>8</sup> Although that transaction was "not one which is considered to be pro forma, the facts do not justify treating Field's acquisition . . . as creating a new ownership pattern in Chicago."<sup>9</sup> Field proposed to acquire control of a Chicago television station from Kaiser Broadcasting Company, a partnership. Like News Corporation, prior to the transaction, Field (the publisher of two daily newspapers in Chicago) already owned a minority (22.5 percent) voting interest in Kaiser. Thus, the Commission determined that Field was not "a new entrant in [the] market" because it

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<sup>8</sup> *Field Communications Corp.*, 65 F.C.C. 2d at 961 (emphasis supplied); *see also In Re Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules*, 50 F.C.C. 2d 1046, ¶ 103 (1975) ("The rule will apply to new ownership patterns however created, *whether by initial application and construction or by acquisition. . .* In addition, *once a sale is to take place*, the rule would require a split in an existing combination.") (emphasis supplied).

<sup>9</sup> *Field Communications Corp.*, 65 F.C.C. 2d at 961.

previously had owned the station and had retained a minority interest in the subsequent licensee.<sup>10</sup> The Commission said that facts did not "justify treating" the transaction "strictly as one in which a party with a minority interest in the licensee is now seeking consent to acquire positive control."<sup>11</sup>

Similarly, the transaction proposed here would not constitute a new ownership pattern in New York. As noted above, the application requests consent only to a realignment of voting interests between existing attributable owners, while leaving management and equity ownership of the *Post* and WNYW(TV) unchanged. In other words, like Field Communications, News Corporation – a preexisting owner – is seeking to increase its voting stake in the licensee while leaving unchanged its equity stake of more than 99 percent.

Likewise, when the Commission has indicated that a media ownership combination held pursuant to a waiver or grandfathered status cannot be sold intact, its focus has been on third-party purchase and sale transactions – not a mere realignment of the interests held by the two recipients of a waiver, as proposed here.<sup>12</sup> For example, in the *Biennial Review Report and Order*, the Commission decided to "prohibit the *sale* of existing combinations that violate the modified local radio ownership rule, the local television ownership rule, or the cross media limits" in large part because "[b]uyers will be on notice that ownership combinations must comply *at the time of the acquisition* of

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *See Biennial Review Report and Order*, 18 FCC Rcd at 13809, ¶ 487, n. 1039 (citations omitted).

the stations."<sup>13</sup> Similarly, the limited precedent addressing the impact of a transfer of control on a media combination held pursuant to waiver or grandfathered status has focused on third-party purchase and sale transactions. In each case in which the Commission has held that a waiver or grandfathered status terminates upon a transfer of control, the transfer has stemmed from a sales transaction between unrelated parties.<sup>14</sup>

Because the application proposes neither the addition of a new third party nor even the departure of any existing owner (as in the Field case), there is no policy reason that would justify termination of the *1993 Permanent Waiver*.

*The Permanent Waiver Should Be Modified to Include  
WWOR-TV for the Same Reasons Set Forth in the Modification Petition*

In the Modification Petition (attached as part of and hereby incorporated by reference into this Exhibit No. 18), News Corporation and FTS asked the Commission to expand the *1993 Permanent Waiver* to encompass common ownership of a second television station in the New York DMA – WWOR-TV – along with WNYW(TV) and the *Post*. News Corporation and FTS explained how the *1993 Permanent Waiver* saved the *Post* from extinction, preserving a unique and diverse media voice (as well as hundreds of jobs). The Modification Petition also described how the waiver permitted News Corporation to invest in the *Post*'s expansion by adding a Sunday edition and building a new \$300 million state-of-the-art plant in the economically depressed South

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<sup>13</sup> *Id.* (emphasis supplied).

<sup>14</sup> See, e.g., *In Re Stauffer Communications, Inc. and Morris Communications Corp.*, 10 FCC Rcd 5165 (1995) (owner of grandfathered television station/newspaper combination could not transfer control of the company to a third party buyer with the combination intact); *In Re Multimedia, Inc. and Gannett Co., Inc.*, 11 FCC Rcd 4883 (1995) (same with respect to a grandfathered television station/radio station combination).

Bronx area. Finally, News Corporation and FTS illustrated the ways in which the New York DMA is astoundingly diverse and competitive, with 18 independently-owned television stations, nearly 150 independent owners of commercial and noncommercial radio stations and 30 daily newspapers.<sup>15</sup>

These characteristics – which can be found in many large markets but are especially pronounced in New York, the nation's largest media market – helped convince the Commission to repeal the NBCO rule as part of the 2002 biennial review. Despite the Commission's decision, however, the Third Circuit stay has thrown News Corporation's ownership of the *Post* into uncertainty. As the company explained in the Modification Petition, News Corporation cannot rationally continue to invest in the future of the *Post* without the regulatory certainty that would be afforded by expansion of the permanent waiver to include WWOR-TV. Since the court agreed with the Commission's decision to repeal the NBCO rule, the Commission should modify the *1993 Permanent Waiver*.

At the very least, News Corporation and FTS argued in the Modification Petition, the decision to repeal the rule warrants an extension of the *2001 Temporary Waiver* until completion of the biennial review remand. The Commission and the court already have recognized that the NBCO rule disserves the public interest in markets such as New York, and News Corporation and FTS pointed out that it would be particularly inequitable to compel a divestiture prior to any final determination on remand with respect to the rule.

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<sup>15</sup> The Modification Petition also explained how common ownership of the *Post*, WNYW(TV) and WWOR-TV poses no threat to economic competition in any product market, given the degree to which the New York market remains unconcentrated.

For all of the reasons set forth in the Modification Petition, FTS and News Corporation continue to believe that their request for modification of the *1993 Permanent Waiver* to encompass common ownership of the *Post* and WWOR-TV is reasonable and would serve the public interest. In any event, it would be entirely unfair to compel a divestiture while the remand remains pending, especially in the context of a transfer application filed merely to effect a voluntary corporate reorganization.<sup>16</sup>

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<sup>16</sup> As indicated in Exhibit No. 5 to this application, the proposed transaction would reduce corporate complexity and yield financial savings for News Corporation, thereby benefiting its shareholders.

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

In the matter of )  
)  
FOX TELEVISION STATIONS, INC. )  
)  
Licensee of Television Stations )  
WNYW(TV), New York, New York, and )  
WWOR-TV, Secaucus, New Jersey )  
)  
THE NEWS CORPORATION LIMITED )  
)  
Request for Waiver of the Newspaper- )  
Broadcast Cross-Ownership Rule )  
Relating to WNYW(TV), WWOR-TV )  
and the New York Post )

**PETITION FOR MODIFICATION OF PERMANENT WAIVER**

Ellen S. Agress  
Senior Vice President and Deputy  
General Counsel  
News America Incorporated  
1211 Avenue of the Americas  
New York, New York 10036  
(212) 852-7204

John C. Quale  
Brian D. Weimer  
Malcolm J. Tuesley  
of  
Skadden, Arps, Slate, Meagher &  
Flom LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005  
(202) 371-7000

Maureen A. O'Connell  
Vice President Regulatory and  
Government Affairs  
The News Corporation Limited  
444 North Capitol Street, N.W.  
Suite 740  
Washington, D.C. 20001  
(202) 824-6500

Dated: September 22, 2004

## SUMMARY

Fox Television Stations, Inc. ("FTS") and The News Corporation Limited ("News Corp") hereby request modification of FTS' existing permanent waiver of the newspaper-broadcast cross-ownership rule ("NBCO rule") to encompass ownership of a second television station in New York, New York, the nation's largest media market. Pursuant to a permanent waiver of the NBCO rule granted by the Commission in 1993, FTS has operated WNYW(TV), New York, New York, while News Corp, through a subsidiary, operates the *New York Post*, a daily newspaper. In 2001, the Commission granted FTS a temporary waiver of the NBCO rule to permit common ownership of the *Post* and a second television station, WWOR-TV, Secaucus, New Jersey.

The Commission has now repealed the NBCO rule as part of its biennial review process, replacing it with cross media limits ("CML"), which would permit common ownership of the *Post* and two television stations in the New York market. The U.S. Court of Appeals for the Third Circuit, moreover, affirmed in June 2004 the Commission's findings that the NBCO rule may harm diversity and localism without furthering competition. The court questioned only the Commission's line drawing — whether the CML correctly delineated the markets where no newspaper-broadcast cross-ownership restrictions should apply.

Whatever limit the Commission ultimately adopts and the court sustains, there can be no doubt that the revised rule will not include a ban applicable to New York, the nation's largest media market. Not only is New York the most diverse media market,

it is also unconcentrated. The Herfindahl-Hirschman Index (used by the Department of Justice ("DOJ") to analyze concentration) is lower today than in 2001 when FTS acquired WWOR-TV without objection from the DOJ.

While it seems certain that the NBCO rule no longer will apply to New York, the court stayed the Commission's repeal of the rule pending the completion of remand proceedings not only with respect to the CML, but also with respect to most other aspects of the *Biennial Review Report and Order*. Because the NBCO rule will remain in effect during these proceedings, which are likely to be lengthy, and possibly during any appeal back to the Third Circuit (which has retained jurisdiction) from the decision on remand, it may be several more years before the rule is finally repealed as to the New York market.

This continuing period of uncertainty fails to serve the interest of the public and threatens the continued development of the *Post*. News Corp and its executives have been unwavering in their commitment to the *Post* since rescuing it from bankruptcy in 1993, but they cannot rationally continue to invest in the paper's future without the certainty afforded by a modification of the permanent waiver to include WWOR-TV. In the expectation of long-term ownership of the *Post* based on the 1993 *Permanent Waiver*, News Corp has invested hundreds of millions of dollars in the paper, vindicating the Commission's reasons for granting relief from the NBCO rule. The modification sought herein is therefore not only equitable, it will also serve the public interest — as the Commission recognized when it repealed the flat ban in the *Biennial Review Report and Order*. Because the *Biennial Review Report and Order* has

thoroughly discredited the rationale of the NBCO rule as applied to combinations such as the *Post*, WNYW(TV) and WWOR-TV, moreover, denial of the request to modify the permanent waiver would deprive News Corp and FTS of their First Amendment rights.

News Corp brings to the New York market extraordinarily broad experience and a lengthy history in the newspaper and television industries. Its newspaper acumen and devotion to the *Post* have sustained a unique and diverse voice in the New York market for many years. The Commission should promptly grant this request to ensure the continued development of the *Post* and to permit the efficient combination of newspaper and broadcast stations as the Commission contemplated in repealing the NBCO rule. If, however, the Commission does not modify the permanent waiver, it should at a minimum extend FTS' temporary relief from the NBCO rule — at least until 24 months after the remand proceedings are finally concluded. It would be highly unfair to require divestiture of the *Post* if repeal of the NBCO rule for the New York market is, as appears likely, subsequently reaffirmed by the Commission and sustained by the court.

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Fox Television Stations, Inc. ("FTS") and The News Corporation Limited ("News Corp") hereby request modification of FTS' existing permanent waiver of the newspaper-broadcast cross-ownership rule ("NBCO rule") to encompass operation of a second television station in New York, New York, the nation's largest media market. Pursuant to a permanent waiver of the NBCO rule granted by the Commission in 1993, FTS has operated WNYW(TV), New York, New York, while News Corp, through a subsidiary, operates the *New York Post*, a daily newspaper. K. Rupert Murdoch is the controlling stockholder of FTS, the licensee of WNYW(TV), and, directly and indirectly through family companies and trusts, is the holder of an attributable interest in News Corp.<sup>1</sup> In 2001, the Commission granted FTS a temporary waiver of the NBCO rule to

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<sup>1</sup> In April 2004, News Corp announced that it will pursue a reorganization that would change its place of incorporation from Australia to the United States. *See*

permit common ownership of the *Post*, and a second television station, WWOR-TV, Secaucus, New Jersey.

The Commission has now repealed the NBCO rule, replacing it with cross media limits ("CML"), which would permit common ownership of the *Post* and two television stations in the New York market. Given the continued uncertainty as to the status of the NBCO rule, however — the U.S. Court of Appeals for the Third Circuit affirmed the FCC's repeal of the rule, but nonetheless stayed the Commission's decision pending the completion of remand proceedings — FTS hereby requests modification of its existing permanent waiver to cover the cross-ownership of WWOR-TV.

The continuing cloud over News Corp's ownership of the *Post* harms the public interest by discouraging investment by News Corp in the further development of the newspaper. While the ultimate repeal of the rule seems certain in view of the Commission's findings that it may harm diversity and localism without furthering competition, News Corp, which has spent hundreds of millions of dollars improving the facilities and operations of the *Post* in reliance on the permanent waiver, cannot rationally continue to invest in further improvements to the paper during this period of regulatory uncertainty.

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Press Release, News Corp, *News Corporation Plans to Reincorporate in the United States* (Apr. 6, 2004). Existing holders of News Corp's ordinary and preferred shares, including those ordinary shares and preferred shares represented by American Depositary Shares, will exchange their shares for equivalent shares of voting and non-voting common stock in New News Corporation, a Delaware corporation that will become the new parent company of the *Post*. The new shares will have essentially the same rights as the existing ordinary and preferred shares. Following the reorganization, the Board of Directors of New News Corporation will consist of the existing directors of News Corp and New News Corporation will be renamed "News Corporation". The proposed change, which is expected to be completed in November 2004 if all required approvals are obtained, will not affect the ownership structure of FTS.

The Commission granted a permanent waiver of the rule in 1993 precisely for the purpose of encouraging News Corp to preserve and nurture the *Post* as a competitive force in the New York media market. Given the Commission's decision, affirmed by the court, to repeal the rule, there is no reason to delay removal of the debilitating uncertainty as to News Corp's ownership of the *Post* by modifying the existing permanent waiver to include ownership of WWOR-TV.

**I. THE GRANT OF A PERMANENT WAIVER IN 1993 WAS ESSENTIAL TO NEWS CORP'S RESCUE OF THE NATION'S OLDEST DAILY NEWSPAPER FROM OBLIVION**

The efforts of News Corp to promote newspaper competition and diversity in New York date back nearly 30 years. News Corp first acquired the *New York Post* — the nation's oldest continuously published daily newspaper — in 1976. Fox entered television broadcasting a decade later with its acquisition of six television stations from Metromedia, Inc.<sup>2</sup> The Commission's cross-ownership prohibition, however, required News Corp to choose television over its daily newspaper holdings in the New York and Chicago markets.<sup>3</sup> News Corp was forced to divest the *Post* in March 1988, but a

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<sup>2</sup> The five former Metromedia television stations, which are still operated and owned by Fox, are WNYW(TV), New York, New York; KTTV-TV, Los Angeles, California; WFLD-TV, Chicago, Illinois; WTTG-TV, Washington, DC; and KRIV-TV, Houston, Texas.

<sup>3</sup> See *Applications of Metromedia Radio & Television Inc. (Assignor) to News America Television Incorporated (Assignee)*, Memorandum Opinion & Order, 102 F.C.C. 2d 1334, 1349, ¶ 28 (1985) (granting News Corp a 24-month waiver to comply with the cross-ownership rule in New York and Chicago and concluding that the "existence of the numerous media outlets serving New York, Chicago and surrounding areas supports [the Commission's] conclusion that no undue concentration of the media would result from a limited waiver"). News Corp divested the *Chicago Sun Times* in 1986 soon after grant of the temporary waiver.

subsequent purchaser of the *Post* ultimately proved unsuccessful in running the newspaper, and its corporate parent was forced to seek bankruptcy protection in 1993.<sup>4</sup>

Due to the lack of qualified purchasers or other viable alternatives that would ensure the survival of the *Post*, News Corp agreed to assume management of the *Post* conditioned upon obtaining a permanent waiver of the cross-ownership rule.<sup>5</sup> The Commission granted News Corp's request for the permanent waiver in the summer of 1993.<sup>6</sup> In doing so, the FCC found that News Corp had "amply justified" its request for the permanent waiver and expressly concluded that the permanent waiver would not endanger competition or diversity.<sup>7</sup> Only through a permanent waiver of the cross-ownership rule — one which guaranteed that it would not again be forced to divest the *Post* — could News Corp have justified in 1993 and subsequent years the large investment needed to stabilize the newspaper and implement a long-term plan to

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News Corp was similarly required to choose television over newspaper ownership in Boston where it sold the *Boston Herald* in 1994 in order to repurchase WFXT(TV). See John R. Wilke, *News Corp. Plans to Sell Boston Herald to Purcell, Paper's Longtime Publisher*, Wall St. J., Feb. 7, 1994, at B3B.

<sup>4</sup> See *Fox Television Stations Inc., Licensee of Television Station WNYW, New York, New York, Request for Waiver of the Broadcast-Newspaper Cross-Ownership Rule Relating to WNYW and the New York Post*, Declaratory Ruling, 8 FCC Rcd 5341, 5341-42, ¶¶ 3-12 (1993), *aff'd sub nom. Metropolitan Council of NAACP Branch v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995) ("1993 Permanent Waiver").

<sup>5</sup> See *1993 Permanent Waiver*, 8 FCC Rcd at 5343, ¶ 12. News Corp acquired the *Post* through an indirect wholly owned subsidiary.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.* at 5350, 5353, ¶¶ 44, 52. As the Commission noted, then Governor Cuomo, one of New York's United States Senators and various community leaders strongly supported News Corp.'s acquisition of the *Post*. *Id.* at 5343, ¶ 12.

negotiate with labor unions, suppliers, and distributors and to win back advertisers and readers.<sup>8</sup>

These justifications for a permanent waiver have been validated by News Corp's stewardship of the *Post* over the past 11 years. Since its reacquisition of the newspaper and in reliance on the permanent waiver, News Corp has launched a Sunday edition and has built a \$300 million, state-of-the-art plant in the economically depressed South Bronx. The printing facility, which was built on a site that had not been utilized since the 1970s, has brought numerous employment opportunities to an otherwise economically disadvantaged area of New York City. Despite the fact that it would have been much less costly to move this facility outside of the city and state of New York, News Corp kept the newspaper's operations in New York City. Absent the grant of the permanent waiver in 1993, enforcement of the cross-ownership prohibition would have resulted in the demise of the *Post* as an alternative voice in the market and the loss of hundreds of jobs for current and future workers.<sup>9</sup>

In granting the permanent waiver, the Commission specifically found that the proposed combination would not result in undue market power in the uniquely competitive New York market.<sup>10</sup> Moreover, the Commission concluded that preserving the *Post* would benefit diversity.<sup>11</sup> In short, the *1993 Permanent Waiver* ensured the

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<sup>8</sup> See *id.* at 5350-51, ¶ 45.

<sup>9</sup> See *id.* at 5349-50, ¶ 43 (Commission noting that "absent a waiver, its [the *Post*'s] future is in doubt").

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*; see also *Applications of UTV of San Francisco, Inc., et al. (Assignor) and Fox Television Stations, Inc. (Assignee)*, Memorandum Opinion & Order, 16 FCC

survival of the *Post* and has enabled News Corp to contribute to the diversity of viewpoints and competition in the New York media market.

## **II. FTS' ACQUISITION OF WWOR-TV IN 2001 FULLY COMPLIED WITH THE LOCAL TELEVISION OWNERSHIP RULE**

FTS acquired WWOR-TV, Secaucus, New Jersey, in connection with its 2001 acquisition of the 10 television stations previously controlled by Chris-Craft Industries, Inc.<sup>12</sup> FTS' purchase of WWOR-TV fully complied with the Commission's local television ownership rule, which the Commission had revised in 1999. The modified rule permitted common ownership of two television stations in the same Nielsen Designated Market Area ("DMA") if, at the time the assignment application was filed: (1) at least one of the stations was not ranked among the top four stations in the DMA based on the most recent all-day (9:00 a.m. – midnight) audience share as measured by Nielsen Media Research; and (2) more than eight independently owned, full-power and operational stations (commercial and noncommercial) were licensed in the DMA.<sup>13</sup> At the time of FTS' acquisition, neither WNYW(TV) nor WWOR-TV were ranked in the top-four in terms of audience ratings and there were 20 independently owned and operating full-power stations in the DMA.<sup>14</sup>

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Rcd 14975, 14985-87, ¶¶ 35-38 (2001) ("*Fox/Chris-Craft Order*") (summarizing history of grant of permanent waiver in 1993).

<sup>12</sup> See *Fox/Chris-Craft Order*, 16 FCC Rcd at 14987-89, ¶¶ 40-45.

<sup>13</sup> *Id.* at 14982, ¶ 26.

<sup>14</sup> See Applications for Assignment of License, File Nos. BALCT-20000918ABB *et al.*, Exhibit 4.

FTS argued in the application for assignment of license that the *1993 Permanent Waiver* also permitted it to acquire WWOR-TV. It pointed out that in relaxing the local television rule, the Commission analyzed the television market only and found that the number of newspapers in the market was not relevant to the criteria for determining permissible two-station combinations.<sup>15</sup> Accordingly, FTS argued that the creation of a two-station combination in New York would have no unacceptable or otherwise adverse effect on diversity, nor would it undermine the rationale of the 1993 waiver decision. Although News Corp's contentions correctly presaged the analysis and conclusions of the *Biennial Review Report and Order* in which the Commission, as discussed *infra*, repealed the NBCO rule, the Commission, without addressing this argument, concluded that the existing permanent waiver did not cover the new combination of WWOR-TV, WNYW(TV) and the *Post*.

FTS alternatively requested a temporary waiver of the NBCO rule pending conclusion of the rulemaking proceeding that the Commission committed to initiate in the *1998 Biennial Review Report*.<sup>16</sup> The Commission, however, noted that the mere initiation of a proceeding stating that the rule would be examined was an insufficient basis for an interim waiver.<sup>17</sup> Although the anticipated proceeding did in fact lead to repeal of the rule, the Commission in 2001 denied the petition for interim relief as specifically requested by FTS. Instead, the Commission crafted its own solution,

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<sup>15</sup> See Joint Opposition of FTS and Chris-Craft, November 9, 2000, at 22.

<sup>16</sup> See *1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Biennial Review Report, 15 FCC Rcd 11058, 11109, ¶ 95 (2000) ("*1998 Biennial Review Report*"); see also n.23 *infra*.

<sup>17</sup> See *Fox/Chris-Craft Order*, 16 FCC Rcd at 14988, ¶ 41.

granting FTS a temporary 24-month waiver ("*2001 Waiver*") to come into compliance with the NBCO rule. The Commission based its decision to grant the interim relief on "the diverse nature of the New York market, the clearly non-dominant position of the *Post* in that market, as well as the *Post*'s unique history of significant financial difficulties."<sup>18</sup>

At the time, the 24-month waiver seemed to FTS to be more than adequate in duration to permit the Commission to complete proceedings looking toward repeal of the NBCO rule. In fact, in the ordering clause of the *2001 Waiver*, the Commission expressly acknowledged that a waiver of 24 months' duration may not be necessary because the Commission either would earlier repeal the NBCO rule or grant a modification of the *1993 Permanent Waiver* as requested herein: ". . . Fox Television Stations is granted a temporary 24-month period within which to come into compliance with the television/newspaper cross-ownership rule, 47 C.F.R. §73.3555(d)(3), insofar as it is necessary under our rules at that time, and to the extent compliance has not been waived by the existing waiver permitting common ownership of WNYW(TV) and the *Post*."<sup>19</sup> The Commission has now repealed the NBCO rule, but contrary to both its and FTS' expectations, the rule remains in effect due to the Third Circuit's stay. But, the reasoning of the Commission in repealing the rule has been affirmed by the court and demonstrates that modification of the *1993 Permanent Waiver* will serve the public interest.<sup>20</sup>

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<sup>18</sup> *Id.* at 14989, ¶ 45.

<sup>19</sup> *Fox/Chris-Craft Order*, 16 FCC Rcd at 14990, ¶ 50.

<sup>20</sup> The waiver was set to expire on July 31, 2003. *Id.* On June 2, 2003, however, the FCC adopted the *Biennial Review Report and Order*, which repealed the rule. *See*

### III. IN REPEALING THE NBCO RULE, THE COMMISSION FOUND, AND THE COURT CONCURRED, THAT THE RULE MAY HARM DIVERSITY AND LOCALISM WITHOUT FURTHERING COMPETITION

#### A. *The Biennial Review Report and Order*

The Commission originally promulgated the NBCO rule on the primary theory that it would promote diversity — though it lacked conclusive evidence that the ban would in fact achieve that result.<sup>21</sup> The subordinate goal of promoting economic competition provided the second of the rule's "two foundations."<sup>22</sup> However, doubts as to the efficacy of the rule, and concern that it may in fact harm diversity by hastening the demise of newspapers, culminated in a series of rulemakings that ultimately led to rejection of the underlying rationale for the NBCO rule and to its repeal.<sup>23</sup>

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*2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report & Order & Notice of Proposed Rulemaking, 18 FCC Rcd 13620 (2003) ("*Biennial Review Report and Order*"), *rev'd and remanded*, *Prometheus Radio Project v. Federal Communications Commission*, 373 F.3d 372, 382 (3d Cir. 2004). Accordingly, on July 21, 2003, FTS sought temporary extension of the *2001 Waiver* pending the effective date of the new media ownership rules. *See* Letter from John C. Quale to W. Kenneth Ferree, Chief, Media Bureau, Federal Communications Commission dated July 21, 2003. The temporary waiver remains in effect in as much as the Commission has not yet acted on FTS' extension request.

<sup>21</sup> *See Cross-Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, Order & Notice of Proposed Rulemaking, 16 FCC Rcd 17283, 17284, ¶ 2 (2001).

<sup>22</sup> *Id.*

<sup>23</sup> *See Newspaper/Radio Cross-Ownership Waiver Policy*, Notice of Inquiry, 11 FCC Rcd 13003 (1996). Comments filed in that proceeding were then consolidated into the Commission's 1998 Biennial Regulatory Review. *See 1998 Biennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Inquiry, 13 FCC Rcd 11276 (1998). In 2000, the Commission

In July of last year, the FCC dealt what appeared to be the final blow to the NBCO rule when it concluded that the rule is no longer necessary in the public interest.<sup>24</sup> Specifically, the Commission concluded that "[m]ost media markets are diverse, obviating a prophylactic ban on newspaper-broadcast combinations in all markets."<sup>25</sup> "[T]he magnitude of the growth in local media voices shows that there will be a plethora of voices in most or all markets absent the rule."<sup>26</sup> In fact, the Commission concluded that the NBCO rule may actually harm diversity. The NBCO rule "may be preventing efficient combinations that would allow for the production of high quality news coverage and broadcast programming, including coverage of local issues, thereby

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adopted the *1998 Biennial Review Report*, in which it determined that the NBCO rule should be retained, but indicated that there may be circumstances in which the rule may not be necessary to achieve its intended public interest benefits. The Commission specifically indicated that it would consider whether the rule appropriately reflected "contemporary market conditions" and whether, based on the size of the market and the particular newspaper and station involved, diversity and competition would remain after a combination. Accordingly, the Commission stated that it would initiate a proceeding to consider tailoring the rule. *See 1998 Biennial Review Report*, 15 FCC Rcd at 11109, ¶ 95. The Commission then released a notice of proposed rulemaking in late 2001, with the Commission noting that the local media market had changed dramatically since the rule was adopted. *See Cross-Ownership of Broadcast Stations and Newspapers*, Order & Notice of Proposed Rulemaking, 16 FCC Rcd 17283, 17287, ¶ 8 (2001). The Commission found that while there had been a substantial increase in the number of media outlets, the number of daily newspapers had decreased since 1975. *See id.* at 17288, ¶¶ 9-10. After comments were received at the Commission, and the record appeared ripe for decision, the Commission consolidated the NBCO comments along with other ownership proceedings into the larger 2002 Biennial Review. *See Biennial Review Report and Order*, 18 FCC Rcd at 13621, ¶ 1.

<sup>24</sup> *See Biennial Review Report and Order*, 18 FCC Rcd at 13767, ¶ 369.

<sup>25</sup> *Id.* at 13748, ¶ 330.

<sup>26</sup> *Id.* at 13766-67, ¶ 367.

harming diversity."<sup>27</sup> The Commission also noted that "commonly-owned newspapers and broadcast stations do not necessarily speak with a single, monolithic voice."<sup>28</sup> For example, the Commission's MOWG Study No. 2 specifically concluded that the *Post* and WNYW(TV), along with several other commonly owned newspaper-broadcast combinations, presented diverse views about the 2000 presidential campaign, the focus of the study.<sup>29</sup> Accordingly, the Commission concluded that the NBCO rule is simply not necessary to preserve diversity of viewpoint.<sup>30</sup>

The Commission also decided that "the rule cannot be sustained on competitive grounds."<sup>31</sup> It first noted that advertising is the relevant product market,<sup>32</sup> and found that "most advertisers do not view newspapers, television stations, and radio stations as close substitutes."<sup>33</sup> As a result, the Commission determined that newspaper and broadcast combinations have no adverse effect on competition in any relevant product market.<sup>34</sup> In short, the Commission forcefully repudiated its earlier conclusions regarding the connection between the rule and its twin foundations of diversity and competition.

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<sup>27</sup> *Id.* at 13761-62, ¶ 359.

<sup>28</sup> *Id.* at 13762-63, ¶ 361 (citing Media Ownership Working Group ("MOWG") Study No. 2).

<sup>29</sup> *See id.*

<sup>30</sup> *See id.* at 13767, ¶ 369.

<sup>31</sup> *Id.* at 13748, ¶ 330.

<sup>32</sup> *See id.* at 13748-49, ¶ 331.

<sup>33</sup> *Id.* at 13749, ¶ 332.

<sup>34</sup> *See id.* at 13767, ¶ 368.

But the Commission did not stop there — it went on to conclude that the rule undermines additional regulatory objectives, including the promotion of localism and high-quality programming. The Commission's "rules should promote the ability of newspapers, television stations, and all other sources of local news and information to serve their communities."<sup>35</sup> The Commission explicitly concluded, however, that the NBCO rule is not necessary to promote localism — in fact, the rule is likely to hinder its attainment.<sup>36</sup> The NBCO rule prohibits the formation of newspaper-broadcast combinations, which "can promote the public interest by producing more and better overall local news coverage."<sup>37</sup> Moreover, the Commission found that newspaper-affiliated stations provide more local news and public affairs programming.<sup>38</sup> Thus, the NBCO rule had not only undermined its original objectives, it was impeding other vital Commission policies.

Accordingly, the *Biennial Review Report and Order* replaced the previous newspaper/broadcast cross-ownership ban and the radio/TV cross ownership restriction with a new set of cross-media limits. The Commission concluded that it would only review proposed license transfers and renewals involving daily newspapers and broadcast stations to the extent that its cross-media limits were implicated.<sup>39</sup> Under the new rules, in markets with nine or more television stations, a single entity may own

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<sup>35</sup> *Id.* at 13753-54, ¶ 342.

<sup>36</sup> *See id.* at 13748, 13759-60, ¶¶ 330, 354.

<sup>37</sup> *Id.* at 13767, ¶ 368.

<sup>38</sup> *See id.* at 13754-55, ¶ 344 (citing MOWG Study No. 7).

<sup>39</sup> *See id.* at 13748, ¶ 330.

daily newspapers and up to the maximum number of television and radio stations permitted by the local television and radio ownership rules. In other words, there are no cross-media restrictions in the largest markets.<sup>40</sup> The common ownership of the *Post*, WNYW(TV) and WWOR-TV fully complies with the new ownership rules and no divestiture would be required.

*B. The Third Circuit Decision*

Before the new rules went into effect, however, the United States Court of Appeals for the Third Circuit stayed implementation of the *Biennial Review Report and Order*, including repeal of the NBCO rule, pending the court's review.<sup>41</sup> While the court reversed much of the Commission's decision and remanded the case back to the agency for further consideration, it specifically found 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>42</sup> Nonetheless, the court continued the effectiveness of its blanket stay of the *Biennial Review Report and Order's* implementation,<sup>43</sup> delaying repeal of the NBCO rule indefinitely.<sup>44</sup> As noted above, but for the fact that the Third Circuit maintained a blanket stay keeping the old rules in place,

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<sup>40</sup> See *id.* at 13804, ¶ 472.

<sup>41</sup> See *Prometheus Radio Project v. Federal Communications Commission*, 373 F.3d 372, 382 (3d Cir. 2004) ("*Third Circuit Opinion*").

<sup>42</sup> See *id.* at 398.

<sup>43</sup> See *id.* at 382.

<sup>44</sup> On September 3, 2004, the court denied a request by Tribune Company to lift the stay with respect to elimination of the NBCO rule in large markets. See *Prometheus Radio Project v. Federal Communications Commission*, Third Circuit Order dated September 3, 2004.

ownership of the *Post*, WNYW(TV) and WWOR-TV would be consistent with the FCC's rules.

Since a flat ban is no longer in the public interest, common ownership of the *Post*, WNYW(TV) and WWOR-TV in the nation's largest market surely will comply with whatever rule is ultimately adopted by the Commission on remand. While the court faulted the Commission's line drawing in setting the CML, there can be no question that New York, at the least, is among the markets requiring no regulatory intervention.

**IV. THE COMMISSION SHOULD ACT NOW TO REMOVE ONCE AND FOR ALL THE CLOUD OVER NEWS CORP'S OWNERSHIP OF THE *POST***

*A. News Corp Cannot Continue to Invest in the Post During This Period of Uncertainty*

While the demise of the NBCO rule is likely, News Corp is compelled at this time to request modification of the *1993 Permanent Waiver* to gain the regulatory certainty necessary for continued investment in and further development of the *Post*. Because the NBCO rule will remain in effect during remand proceedings, which are likely to be lengthy, and possibly during any appeal back to the Third Circuit (which has retained jurisdiction) from the decision on remand, it may be several more years before the rule is finally repealed. This continuing period of uncertainty fails to serve the interest of the public, threatens the continued development of the *Post* and warrants modification of FTS' permanent waiver.

News Corp and its executives have been unwavering in their commitment to the paper since rescuing it from bankruptcy in 1993, but they cannot rationally continue to invest in its future without the certainty afforded by a modification of the permanent waiver to include WWOR-TV. As Geoff Booth, General Manager of the *Post*

since 2001, explains in his attached declaration, the paper's willingness to continue to invest in the future has been severely hampered by the court decision delaying implementation of the new cross-ownership rules.<sup>45</sup> For the last several years, News Corp had been able to devote its full resources toward improving the paper. For example, the paper was able to greatly enhance the quality of the publication by constructing a \$300 million plant in the South Bronx, bringing 500 jobs to an economically depressed area of the city. In addition, the *Post* has invested in its editorial operations and created jobs by launching a Sunday edition in 1996. The paper also was able to make a major investment in circulation growth and sustain a loss in revenue when it reduced the price from 50 cents to 25 cents per copy in late 2000 to better compete in the extraordinarily competitive New York market, which now has four other dailies and two free metro papers. All of these long-term investments were made with the expectation of continued ownership of the paper in light of the permanent waiver. These changes have not only improved an important media outlet in the New York market, they have enabled hundreds of employees to keep their jobs. Management is working hard to increase circulation,<sup>46</sup> but to make major investments in the future of the paper, the threat of divestiture must be removed.

When News Corp reacquired the *Post*, the FCC granted a permanent waiver with the intention of providing the certainty of ownership continuity necessary to assure the paper's viability. The Commission noted that "there is evidence that

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<sup>45</sup> See Declaration of Geoff Booth, General Manager of the *New York Post*, attached hereto as Exhibit A.

<sup>46</sup> See Martin Peers, *Murdoch's Son Tries New Tactic at Post: Turning a Profit*, Wall St. J., July 19, 2004, at B1.

Murdoch's ownership may be pivotal to the newspaper's survival.<sup>47</sup> News Corp's investment in the *Post* has vindicated the Commission's reasoning for granting a permanent waiver and further supports the modification sought herein to permit ownership of WWOR-TV. Modification of the waiver now to encompass a second station in the New York market is not only equitable, given News Corp's huge investment in the *Post*, it also best serves the Commission's diversity and competition interests.

*B. For the Reasons Set Forth in the Biennial Review Report and Order, Modification of the Permanent Waiver Best Serves the Commission's Diversity and Competition Objectives*

As the Commission explained in the *1993 Permanent Waiver*, "[d]espite the broad nature of the rule, or because of it, the Commission expressly contemplated waivers for new cross-ownership patterns, as a 'protection' in cases where application would be 'unduly harsh.'<sup>48</sup> Waivers were devised to accommodate four such situations, with the first three reasons relating to an entity's inability to sell, obtain a fair price, or sustain a station. The fourth reason, the catch all, existed in case "where, for whatever reason, the purposes of the rule would be disserved by divestiture."<sup>49</sup> All four permanent waivers granted by the Commission to date have been under this fourth standard, including the *1993 Permanent Waiver* granted to FTS.<sup>50</sup> The Commission has specified

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<sup>47</sup> *1993 Permanent Waiver*, 8 FCC Rcd at 5349-50, ¶¶ 42, 44.

<sup>48</sup> *Id.* at 5348, ¶ 38.

<sup>49</sup> *See id.*

<sup>50</sup> *See Kortez Communications, Inc. (Assignor) and Stafford Broadcasting, L.L.C. (Assignee); For Consent to the Assignment of License of Stations WPLB(AM), Greenville, MI and WPLB-FM, Lakeview, MI*, Memorandum Opinion & Order, 15 FCC Rcd 11846 (2000); *Columbia Montour Broadcasting Co., Inc. (Assignor) and Community Communications, Inc. (Assignee); For Consent to the Assignment of License of Station WCNR(AM), Bloomsburg, PA*, Memorandum Opinion &

that a waiver would be warranted under the fourth category if it could be shown that the goals of diversity and competition would be better served by the proposed combination.<sup>51</sup>

Given the conclusions of the *Biennial Review Report and Order*, the goals of ensuring program and viewpoint diversity and preventing undue concentration of economic power would be best served by common ownership of the *Post*, WNYW(TV) and WWOR-TV. A modification of the existing permanent waiver to add WWOR-TV would pose no threat to programming or viewpoint diversity and would, in fact, enhance diversity. Thus, forced divestiture would deny the New York market the efficient combination of newspaper and broadcast properties that the Commission has found allows "for the production of high quality news coverage and broadcast programming, including coverage of local issues."<sup>52</sup>

In remanding the *Biennial Review Report and Order* to the Commission, the court approved the Commission's reasoning and conclusions that a flat ban on cross-ownership is no longer necessary. The court questioned only the Commission's line drawing — whether the CML correctly delineated the markets where no newspaper-broadcast cross-ownership restriction should apply. Whatever the limit the Commission ultimately adopts and the court sustains, there can be no question that common ownership of two television stations and a newspaper in the nation's largest media market will serve

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Order, 13 FCC Rcd 13007 (1998); *1993 Permanent Waiver*, 8 FCC Rcd 5341; *Field Communications Corporation (Assignee) and Kaiser Broadcasting Corporation (Assignor) for Assignment of Licenses of Stations WLVI-TV, WKBD, KBHK-TV, WFLD-TV and WKBS-TV*, Applications, 65 F.C.C.2d 959 (1977).

<sup>51</sup> See *1993 Permanent Waiver*, 8 FCC Rcd at 5348, ¶ 39.

<sup>52</sup> *Biennial Review Report and Order*, 18 FCC Rcd at 13761-62, ¶ 359.

the public interest, as the Commission concluded in the *Biennial Review Report and Order*.

*Diversity.* As demonstrated below and in the tables attached hereto as Exhibit B, New York is an extremely diverse media market, serving as a prime example of why the NBCO rule no longer makes sense and why modification of FTS' permanent waiver is warranted.<sup>53</sup>

- Even taking into account Fox's television duopoly (WNYW/WWOR-TV), the New York DMA is still served by 18 independent owners that operate full power television stations.<sup>54</sup>
- Over 245 commercial and noncommercial radio stations, with over 140 separate owners, are licensed to communities within the New York DMA.<sup>55</sup>
- Cable penetration in the New York DMA is 80 percent,<sup>56</sup> and at least 10 independently owned cable television systems serve communities within the New York DMA.<sup>57</sup>
- Over 200 additional program channels are available over the various cable systems serving the New York DMA, many of which are devoted to the provision of news and information. In particular, two cable channels — News 12 and New York 1 News — offer New York viewers 24 hours of news programming each day with a *local* focus. Additional channels focus on financial news, sports news, and weather.<sup>58</sup>

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<sup>53</sup> See *id.* at 13760, ¶ 355 ("Against the backdrop of the last 27 years' growth in the number, breadth, and scope of informational and entertainment media available and the benefits that may accrue from common ownership, we conclude that a blanket prohibition on the common ownership of broadcast stations and daily newspapers in all communities and in all circumstances can no longer be justified as necessary to achieve and protect diversity.").

<sup>54</sup> See attached Table 4.

<sup>55</sup> See attached Table 5.

<sup>56</sup> See *Broadcasting & Cable Yearbook 2003-2004*, at C-53.

<sup>57</sup> See attached Table 6.

<sup>58</sup> See attached Table 7.

- Direct broadcast satellite (DBS) services, such as DirecTV, EchoStar and VOOOM, offer hundreds of channels of digital entertainment and informational programming to households in the New York DMA.<sup>59</sup>
- As to the level of print media diversity in New York, 30 daily newspapers are published within the New York DMA.<sup>60</sup> Indeed, New York City is one of the few remaining cities in the country with more than one daily newspaper. The *Post* ranks fifth among the five largest daily newspapers serving New York City in terms of advertising dollars.<sup>61</sup> In addition, hundreds of weekly newspapers are published within the New York DMA.<sup>62</sup>
- At least 24 weekly and monthly magazines have average circulations in excess of 100,000 in the New York DMA. For example, *Time* sells 390,237 copies on average each week; *Newsweek*, 243,773; and *U.S. News and World Report*, 147,072.<sup>63</sup>
- And, the Internet has exploded onto the scene as yet another source of diverse viewpoints. As of mid-2004, 73 percent of U.S. adults were online,<sup>64</sup> and hundreds of different websites are New York based and oriented.

Further undermining the speculation that once supported the NBCO rule is the fact that "commonly-owned newspapers and broadcast stations do not necessarily

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<sup>59</sup> See *Broadcasting & Cable Yearbook 2003-2004*, at E-5. Fox Entertainment Group, Inc., an 82 percent-owned subsidiary of News Corp, owns a 34 percent stake in DirecTV.

<sup>60</sup> See attached Table 1.

<sup>61</sup> See attached Table 9.

<sup>62</sup> See attached Table 2.

<sup>63</sup> See attached Table 3.

<sup>64</sup> See *More Than Four in Ten Internet Users Now Have Broadband – Doubled in Two Years*, PR Newswire, Sept. 8, 2004. The Internet penetration rate is up from 69 percent in late 2003. *Id.*

speak with a single, monolithic voice."<sup>65</sup> "[C]ommon ownership 'does not result in a predictable pattern of news coverage and commentary about important political events."<sup>66</sup> As noted above, MOWG Study No. 2 specifically concluded that the *Post* and WNYW(TV) presented diverse views during the 2000 presidential election. In sum, the modification of the *1993 Permanent Waiver* to include WWOR-TV would pose no threat to programming or viewpoint diversity in the New York market — to the contrary, it would actually promote diversity by ensuring continued development of the *Post* and by permitting the *Post*, WNYW(TV) and WWOR-TV to enhance news coverage and broadcast programming throughout the metropolitan area as contemplated by the *Biennial Review Report and Order*.

*Competition.* The Commission also determined in the *Biennial Review Report and Order* that "[a] newspaper-broadcast combination . . . cannot adversely affect competition in any relevant product market. Accordingly, we cannot conclude that the current newspaper-broadcast cross-ownership rule is necessary to promote competition."<sup>67</sup> In light of this conclusion, the addition of WWOR-TV in 2001 to the combination of the *Post* and WNYW(TV) had *no* effect on competition in any product market in New York and modification of the permanent waiver poses no threat to competition.

In 2001, moreover, the DOJ did not object to the combination of WWOR-TV with the *Post* and WNYW(TV). Likewise, in 1993, the DOJ did not object to FTS'

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<sup>65</sup> *Biennial Review Report and Order*, 18 FCC at 13762-63, ¶ 361 (citing MOWG Study No. 2).

<sup>66</sup> *Id.*

<sup>67</sup> *Biennial Review Report and Order*, 18 FCC Rcd at 13753, ¶ 341.

request for permanent waiver of the NBCO rule. And, as the FCC noted in 1993, the DOJ and the Federal Trade Commission generally have primary antitrust jurisdiction regarding competitive matters. The Commission further specifically noted that objecting parties are always free to file civil suits under the antitrust laws or to seek redress at the DOJ.<sup>68</sup>

Common-ownership of WWOR-TV, WNYW(TV) and the *Post* does not raise concentration concerns even if, contrary to the conclusion of the *Biennial Review Report and Order*, the relevant market is defined to include both broadcast stations and newspapers. In fact, as demonstrated in the report of Mark Fratrick, Ph.D. and Vice President of BIA Financial Network, attached hereto as Exhibit C, the New York market as so defined is even less concentrated now than when FTS acquired WWOR-TV in 2001 without objection from the DOJ. In a product market defined to include only the five largest daily newspapers, the commercial radio stations in the New York City radio market as defined by Arbitron, and the commercial television stations in the New York DMA, common ownership of WNYW(TV), WWOR-TV, and the *Post* produces a Herfindahl-Hirschman Index (“HHI”) of 1085, which is just slightly above the HHI cut-off for unconcentrated markets and indicates only a moderately concentrated market.<sup>69</sup> The addition of WWOR-TV to News Corp's and FTS' other New York properties increases the HHI by a modest 64 points. Moreover, the post-merger HHI is 24 points *lower* than in 2001, based upon an analysis of the same relevant market that News Corp

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<sup>68</sup> 1993 *Permanent Waiver*, 8 FCC Rcd at 5353, n.43.

<sup>69</sup> Under the Department of Justice Horizontal Merger Guidelines, a market with post-merger HHI of between 1000 and 1800 is considered only moderately concentrated, and markets with HHI below 1000 are considered unconcentrated. See Department of Justice, Horizontal Merger Guidelines, Section 1.57.

submitted to the Commission shortly after the Chris-Craft merger.<sup>70</sup> Common ownership of the two-station combination and the non-dominant *New York Post* therefore raises no concerns of undue market concentration in a product market defined to include only newspapers and broadcast (radio and television) stations.

This conclusion is not surprising in view of the intense competition the *Post* faces from other daily newspapers published in the DMA that have the largest circulation.

- In 2003, the *Post* ranked fifth in terms of advertising dollars in the New York DMA, behind *The New York Daily News*, *The New York Times*, *Newsday*, and *The Newark Star-Ledger*.<sup>71</sup>
- In 2003, the *Post* ranked fourth in terms of circulation, behind *The New York Times*, *The New York Daily News*, and *Newsday*.<sup>72</sup>
- The circulation of the *New York Post* covers only 7.3 percent of the households in the New York DMA on any given day. And the *Post* accounts for approximately only 6.3 percent of advertising dollars spent on the top five daily newspapers in the New York DMA, which obviously translates to an even smaller percentage of the ad dollars spent on all newspapers in the New York DMA.<sup>73</sup>

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<sup>70</sup> See Comments of The News Corporation Limited and Fox Television Holdings, Inc., Declaration of Isabelle Richoz, *Cross-Ownership of Broadcast Stations and Newspapers*, MM Docket Nos. 01-235 and 96-197, filed December 3, 2001. As Dr. Fratrick notes, the definition of the market used in the 2001 study and in his study overstates the concentration levels of the local media market within the larger New York City DMA. Thus, the analysis does not include (1) embedded radio markets within the New York City metro and (2) local cable television advertising sales (which compete against the local sales of television stations). Since neither FTS nor News Corp owns radio stations or cable television systems within the DMA, their overall revenue share would be lower if radio and local cable advertising revenue were included. See Exhibit C, at 2.

<sup>71</sup> See attached Table 9.

<sup>72</sup> See *id.*

<sup>73</sup> See *id.*

In short, the New York media market is both extraordinarily diverse and intensely competitive. There is no reason whatsoever not to modify FTS' and News Corp's cross-ownership waiver in New York, the nation's largest media market.

*First Amendment.* Because, as the Commission now recognizes, application of the NBCO rule to News Corp and FTS will not promote diversity and competition, forced divestiture of the *Post* would violate the First Amendment to the Constitution. Contrary to the original unsupported Commission predictions that formed the basis for the NBCO rule, the Commission now recognizes that cross-ownership not only poses no threat to diversity, it actually leads to increased local news coverage and diversity. *NCCB* and *Red Lion* presumed that limiting a broadcasters' speech rights could be justified by the "First Amendment goal of achieving 'the widest possible dissemination of information from diverse and antagonistic sources.'"<sup>74</sup> Given the Commission's recent findings regarding diversity and localism, however, the rule can no longer survive even rational basis constitutional scrutiny.

Even if the *NCCB* standard, which only requires careful examination of an ownership rule affecting speech,<sup>75</sup> were still controlling, the NBCO rule is not reasonable under that framework given the conclusions of the *Biennial Review Report and Order*. In fact, though, a heightened level of scrutiny is required because the scarcity rationale that led the *NCCB* Court to apply the lesser "reasonableness" standard has now been

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<sup>74</sup> *Federal Communications Commission v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 795 (1978) ("*NCCB*"); *see also Red Lion Broadcasting Co. v. Federal Communications Commission*, 395 U.S. 367, 390 (1969) ("*Red Lion*").

<sup>75</sup> *See NCCB*, 436 U.S. at 796-97 (citing *U.S. v. O'Brien*, 391 U.S. 367, 377 (1968)).

discredited.<sup>76</sup> The FCC suggested as much in its 1998 Biennial Review Order, which concluded that the *O'Brien* intermediate scrutiny standard of review was controlling.<sup>77</sup> The Commission noted that "it is well-established that a content-neutral regulation, such as the [NBCO rule], will be sustained against claims that it violates the First Amendment if: 1) it advances important governmental interests unrelated to the suppression of free speech; and 2) does not burden substantially more speech than necessary to further those interests (the '*O'Brien* test')."<sup>78</sup> The Commission has now specifically concluded that the ends sought by the NBCO rule "can be achieved with more precision and with greater deference to First Amendment interests . . . ."<sup>79</sup> Accordingly, failure to modify the permanent waiver to include WWOR-TV would violate the First Amendment.

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<sup>76</sup> See, e.g., Telecommunications Act of 1996, § 202(a)-(h) (relaxing many media ownership regulations); *Tribune v. FCC*, 133 F.3d 61, 68 (D.C. Cir. 1998) (finding that it would be "arbitrary and capricious if [the FCC] refused to reconsider [the NBCO rule] in light of persuasive evidence that the scarcity rationale is no longer tenable"); *Syracuse Peace Council*, Order, 2 FCC Rcd 5043, 5053 (1987) (noting that "the scarcity rationale developed in the *Red Lion* decision and successive cases no longer justifies a different standard of First Amendment review for the electronic press").

<sup>77</sup> See *1998 Biennial Review Report*, 15 FCC Rcd at 11121-22, ¶¶ 115-117.

<sup>78</sup> *Id.* at 11121, ¶ 116.

<sup>79</sup> *Biennial Review Report and Order*, 18 FCC Rcd 13747, ¶ 327. The Commission, therefore, in seeking to maintain cross-ownership regulations, was compelled to depart from its conclusion in the *1998 Biennial Review Report* that the *O'Brien* standard was applicable. See *Biennial Review Report and Order*, 18 FCC Rcd at 13624-27, ¶¶ 13-16.

**V. THE COMMISSION SHOULD, AT A MINIMUM, EXTEND FTS' TEMPORARY WAIVER PENDING CONCLUSION OF THE REMAND PROCEEDING**

Should the Commission decide not to modify the *1993 Permanent Waiver* to include WWOR-TV, News Corp and FTS request that the Commission extend FTS' temporary waiver until 24 months after the remand proceeding becomes final. The public interest would be best served by modification of the permanent waiver, but the extension of FTS' temporary waiver also would serve the public interest by providing a reasonable period of time within which to come into compliance in the unlikely event that a new rule adopted on remand precludes common ownership of the *Post*, WWOR-TV and WNYW(TV).

While the Commission has previously indicated that the mere initiation of a proceeding to review a rule is generally insufficient to warrant an interim waiver,<sup>80</sup> the Commission has done far more than initiate a rulemaking proceeding to consider repealing the NBCO rule — it has concluded that the rule no longer serves the public interest, a determination affirmed by the Third Circuit. Given that determination, it would be highly inequitable to force News Corp to undertake divestiture prior to any final determination as to its necessity.

**VI. CONCLUSION**

News Corp brings to the New York market extraordinarily broad experience and a lengthy history in the newspaper and television industries. Its

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<sup>80</sup> See *Stockholders of Renaissance Communications Corp. (Transferor); Tribune Company (Transferee) for Transfer of Control of Renaissance Communications Corporation, Parent of: Channel 39 Licensee, Inc. Licensee of WDZL(TV), Miami, FL*, Order, 13 FCC Rcd 4717 (1998).

newspaper acumen and devotion to the *Post* have sustained a unique and diverse voice in the New York market for many years. In granting a permanent waiver in 1993, the Commission sought to create a stable environment to ensure the survival of the *Post*. News Corp has made great strides in ensuring the viability of the paper and preserving the jobs it offers. Given this stability, the Commission's reasoning in the *Biennial Review Report and Order* is fully borne out in New York — the combination of the *Post*, WNYW(TV) and WWOR-TV promotes diversity and localism and poses no threat to competition. Because of the cloud of uncertainty and the threat of divestiture discourages continued investment in and development of the *Post*, the Commission should promptly grant this request and modify the existing permanent waiver to include ownership of WWOR-TV.

Respectfully submitted,

FOX TELEVISION STATIONS, INC.  
THE NEWS CORPORATION LIMITED

By: /s/ John C. Quale  
John C. Quale  
Brian D. Weimer  
Malcolm J. Tuesley  
of  
Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005  
(202) 371-7200

Ellen S. Agress  
Senior Vice President and Deputy  
General Counsel  
News America Incorporated  
1211 Avenue of the Americas  
New York, New York 10036  
(212) 852-7204

Maureen A. O'Connell  
Vice President Regulatory and  
Government Affairs  
The News Corporation Limited  
444 North Capitol Street, N.W.  
Suite 740  
Washington, D.C. 20001  
(202) 824-6500

Their Attorneys

Dated: September 22, 2004

## EXHIBIT A

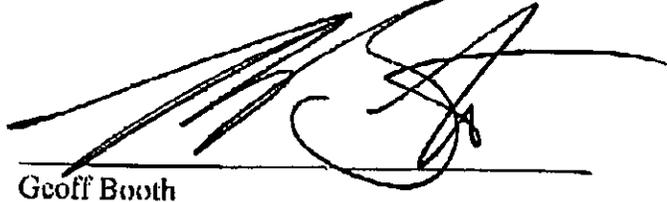
### DECLARATION

I, Geoff Booth, hereby state as follows:

1. I am General Manager of the *New York Post* ("*Post*") and have held that position since August 6, 2001.
2. News Corp first acquired the *Post* in 1976. News Corp was subsequently forced to divest the *Post* in March 1988 after its affiliate Fox Television Stations, Inc. ("FTS") entered the television broadcasting market with the acquisition of six television stations from Metromedia, Inc. However, a subsequent purchaser of the *Post* ultimately proved unsuccessful in running the newspaper, and its corporate parent was forced to seek bankruptcy protection in 1993. Due to the lack of qualified purchasers or other viable alternatives that would ensure the survival of the *Post*, News Corp agreed to assume management of the *Post* conditioned upon obtaining a permanent waiver of the cross-ownership rule, which was granted by the Commission in the summer of 1993.
3. WWOR-TV was then added to News Corp's and FTS' New York market holdings in 2001 as part of its acquisition of several stations from Chris-Craft Industries. At the time of the Chris-Craft acquisition, the Commission granted a temporary waiver to permit common ownership of WWOR-TV and the *Post*.
4. The paper's ability to invest in its future has been severely hampered by the continuing threat of divestiture. For the last several years, News Corp had been able to devote its full resources toward improving the paper. For example, the paper was able to greatly enhance the quality of the publication by constructing a \$300 million plant in the South Bronx, bringing 500 jobs to an economically depressed area of the city. In addition, the *Post* has invested in its editorial operations and created jobs by launching a Sunday edition in 1996. The paper also was able to make a major investment in circulation growth and sustain a loss in revenue when it reduced the price from 50 cents to 25 cents per copy in late 2000 to better compete in the extraordinarily competitive New York market, which now has four other dailies and two free metro papers.
5. All of these long-term investments were made with the expectation of long-term ownership of the paper based upon the permanent waiver. This critical investment in the *Post* greatly enhanced its ability to serve the public and maintain its unique voice in New York City. It has also enabled scores of hard-working, dedicated employees to keep their jobs and even allowed the *Post* to grow its staff and create new jobs.

6. Management is working hard to increase circulation. For management to make major investments in the future of the paper, the threat of divestiture must be removed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 22, 2004.



Geoff Booth

**Media Voices in the New York DMA**

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**Table 1**  
**MASS CIRCULATION DAILY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

Daily September 2003  
DMA Circulation

Asbury Park Press	167,284
Bergen County Record ("The Record")	179,270
Bridgeport Connecticut Post ("Connecticut Post")	76,197
Bridgewater Courier News ("Courier News")	40,932
The Daily Challenge	56,544
Daily Record	41,354
Danbury News-Times ("The News-Times")	31,793
Greenwich Time	12,011
Homes News Tribune	63,315
Jersey City Jersey Journal ("The Jersey Journal")	30,722
Kingston Freeman ("Daily Freeman")	21,664
Long Island Newsday ("Newsday")	580,069
Middletown Times Herald Record ("The Times Herald-Record")	83,163
New York Daily News ("Daily News")	729,124
New York El Diario/la Prensa ("El Diario La Prensa")	50,040
New York Post	652,426
New York Sun	40,483
New York Times ("The New York Times")	1,118,565
Newark Star Ledger ("The Star-Ledger")	408,672
Newton New Jersey Herald ("The New Jersey Herald")	15,936
Norwalk Hour ("The Hour")	17,120
Nyack Rockland Journal News ("The Journal News")	142,873
Passaic North Jersey Herald & News ("North Jersey Herald & News")	49,571
Poughkeepsie Journal	39,990
Record/Herald News	183,057
Stamford Advocate ("The Stamford Advocate")	26,547
Staten Island Advance	64,487
The Wall Street Journal (Eastern, Central & Western Editions)	2,091,062
Time (Greenwich, CT)	12,216
Times Herald Record	83,917

*Based upon data recorded in Editor & Publisher International Yearbook (2004) and Circulation 2004.*

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

**New York**

The Harlem Valley Times	Amenia, NY
The Amityville Record	Amityville, NY
Photo News	Babylon, NY
The Beacon	Babylon/Islip Townships, NY
Baldwin Herald	Baldwin, NY
The Baldwin Citizen	Baldwin/Freeport, NY
Astoria Times	Bayside, NY
The Bayside Times	Bayside/Bay Terrace/Oakland Gordon, NY
Beacon Free Press	Beacon, NY
Record-Review	Bedford, NY
Bellmore Life	Bellmore, NY
Bethpage Tribune	Bethpage, NY
Brewster Times	Brewster, NY
Bronx Press-Review	Bronx, NY
Co-op City News	Bronx, NY
The Bronx News	Bronx, NY
Parkchester News	Bronx, NY
Riverdale Review	Bronx, NY
Brookhaven Review	Brookhaven Township, NY
Community Journal	Brookhaven/Riverhead, NY
Bay News	Brooklyn, NY
Brooklyn Heights	Brooklyn, NY
Press & Cobble Hill News	Brooklyn, NY

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

The Phoenix	Brooklyn, NY
Canarsie Digest	Brooklyn, NY
Home Reporter and Sunset News	Brooklyn, NY
Kings Courier	Brooklyn, NY
The Brooklyn Spectator	Brooklyn, NY
The Brooklyn Papers	Brooklyn, NY
Bay Ridge Courier	Brooklyn, NY
Flatbush Life	Brooklyn, NY
Brooklyn Graphic	Brooklyn, NY
Harbor Watch	Brooklyn, NY
Canarsie Courier	Canarsie, NY
The Mid Island News	Centereach, NY
Commack News	Commack, NY
The Cornwall Local	Cornwall, NY
The Walton Reporter	Delaware/Western Sullivan, NY
East Fishkill Record	East Fishkill, NY
The East Hampton Star	East Hampton, NY
East Hampton Independent	East Hampton, NY
East Meadow Beacon	East Meadow, NY
East Meadow Herald	East Meadow/Westbury/Levittown, NY
East Rockaway/Lynbrook Observer	East Rockaway/Lynbrook, NY
The Press	Ellenville, NY
Three Village Times	Elmont/Franklin Square, NY
Farmingdale Observer	Farmingdale/N. Massapequa, NY

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

Merrick Herald	Far Rockaway, NY
Fishkill Standard	Fishkill, NY
Floral Park Dispatch	Floral Park, NY
The Gateway	Floral Park/Bellerose, NY
The Flushing Times	Flushing/Kew Gardens/Auburndale, NY
Forest Hill/Rego Park Times	Forest Hills/Rego Park, NY
Franklin Square Bulletin	Franklin Square/Garden City Square, NY
The Leader	Freeport/Baldwin, NY
The Press of Southeast Queens	Fresh Meadows, NY
The Fresh Meadows Times	Fresh Meadows/Jamaica Estates/Hollis Hills, NY
Franklin Square Elkmont West Hempstead Journal	Freeport/Roosevelt, NY
Garden City News	Garden City, NY
Garden City Life	Garden City/Steward Manor, NY
Glen Cove Record Pilot	Glen Cove/Glenhead/Sea Cliff/Glenwood Land- ing/Locust Valley, NY
The Chronicle	Glens Falls/Lake George, NY
Glendale Register	Glendale/Ridgewood, NY
The Glen Oaks Ledger	Glen Oaks/Bellerose/N. Shore Towers/Floral Park/New Hyde, NY
Independent Republican	Goshen/Chester, NY
Great Neck News	Great Neck, NY
Great Neck Record	Great Neck/Lake Success, NY
Greenpoint Gazette & Advertiser	Greenpoint, NY
The Villager	Greenwich Village/Lower Manhattan, NY
The Greenwood Lake News and West Milford News	Greenwood Lake/W. Milford, NY

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

The Rivertowns Enterprise	Hastings-on-Hudson, NY
The Rockland County Times	Haverstraw/Clarkstown/Stony Point/ Thiells/Garnerville/Tomkin, NY
The Hempstead Beacon	Hempstead, NY
Hicksville Illustrated News	Hicksville, NY
Hicksville Mid-Island Times	Hicksville, NY
The News of the Highlands	Highland Falls, NY
The Record	Huntington/Northport, NY
The Long-Islander	Huntington, NY
Hyde Park Townsman	Hyde Park, NY
Islip News	Islip, NY
Jamaica Times	Jamaica/Rockdale Village/Springfield Gardens, NY
Jericho News Journal	Jericho, NY
Syosset/Jericho Tribune	Jericho/Syosset, NY
The Voice-Ledger	LaGrange/Union Vale/Beekman/Pleasant Valley, NY
La Grangeville La Grange Independent	LaGrangeville, NY
Laurelton Times	Laurelton/Rosedale, NY
Forest Hills Ledger	Laurelton/Rosedale, NY
Bellmore Herald	Lawrence/Cedarhurst/Woodmere/Hewlett/ Inwood/Atlantic Beach, NY
Levittown Tribune	Levittown, NY
The Lewisboro Ledger	Lewisboro, NY
The Little Neck Ledger	Little Neck/Douglaston, NY
The Leader	Locust Valley, NY
Long Beach Herald	Long Beach/Point Lookout, NY

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

Long Island City/Astoria/Jackson Heights Journal	Long Island City/Astoria, NY
Village Herald	Lynbrook/East Rockaway/Malverne, NY
Putnam County Press	Mahopac, NY
The Malverne-Lynbrook Community Times	Malverne/Lynbrook, NY
Manhasset Press	Manhasset/Munsey Park, NY
Chelsea Clinton News	Manhattan, NY
Our Town Newspaper	Manhattan, NY
Downtown Resident	Manhattan, NY
Manhattan Spirit	Manhattan, NY
Upper West Side Resident	Manhattan, NY
Midtown Resident	Manhattan, NY
Upper East Side Resident	Manhattan, NY
The Westsider	Manhattan, NY
Queens Ledger	Maspeth/Glendale, NY
Massapequa Post	Massapequa, NY
Massapequan Observer	Massapequa, NY
Merrick Life/The Community Newspapers	Merrick, NY
The Merrick Beacon	Merrick, NY
Millbrook Round Table	Millbrook/Union Vale, NY
Taconic Weekend	Millbrook/Union Vale, NY
The Millerton News	Millerton/N.E. Ardenia, NY
New Hyde Park Illustrated	Mineola/New Hyde Park, NY
Mineola American	Mineola/Williston Park, NY
Photo News	Monroe/Woodbury, NY

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

Montauk Pioneer	Montauk, NY
The River Reporter	Narrowsburg, NY
The Times	Nesconset, NY
Mid-Hudson Times	Newburgh, NY
The Herald	New Paltz/Highland/Rosendale/Gardiner/ Plattekill, NY
Review Press	New Rochelle, NY
The Sentinel	New Windsor, NY
Standard Star	New Rochelle, NY
People's Weekly World	New York, NY
The New York Observer	New York - Statewide
The Northport Journal	Northport, NY
Observer	Northport, NY
The Patent Trader	Northern Westchester, NY
Oceanside-Island Park Herald	Oceanside/Island Park, NY
Nassau Herald	Oceanside/Rockville Centre, NY
Oyster Bay Guardian	Oyster Bay Township, NY
Oyster Bay Enterprise Pilot	Oyster Bay/E. Norwich/Oyster Bay Cove/Bayville, NY
Islip Bulletin	Patchogue, NY
Long Island Advance	Patchogue, NY
Pawling News - Chronicle	Pawling/Holmes/Patterson, NY
The Pelham Weekly	Pelham/Pelham Manor, NY
Register Herald	Pine Plains/Stanford, NY
Plainview/Old Bethpage Herald	Plainview/Old Bethpage, NY
Westmore News	Port Chester/Rye Brook, NY

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

The Sound Shore Review	Port Chester/Rye Brook, NY
The Port Times-Record	Port Jefferson/Port Jefferson Station, N
The Gazette	Port Jervis, NY
Port Washington News	Port Washington, NY
The Putnam County Courier	Putnam County, NY
Floral Park Bulletin	Queens, NY
The Forum of Queens	Queens, NY
Queens Examiner	Queens, NY
Queens Resident	Queens, NY
The Queen Courier	Queens County, NY
Times Newsweekly	Queens County, NY
Queens Tribune	Queens County, NY
Queens Village Times	Queens Village/Cambria Heights/Hollis, NY
The Gazette Advertiser	Rhinebeck, NY
Richmond Hill Times	Richmond Hill, N
Ridgewood Ledger	Ridgewood, NY
The Riverdale Press	Riverdale, NY
The News-Review	Riverhead/Brookhaven, NY
The Wave	Rockaway Peninsula, NY
Rockland County Times	Rockland County, NY
Rockville Centre Herald	Rockville Centre, NY
The Village Beacon-Record	Rocky Point/Miller Place/Shoreham/Wading River/Sound Beach/Ridge, NY
Roslyn News	Roslyn/East Hills, NY
The Sag Harbor Express	Sag Harbor, NY

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

Post Star	Saugerties, NY
Suffolk County News	Sayville/Suffolk County, NY
Seaford/Wantagh Observer	Seaford, NY
The Village Times	Setauket/Stony Brook/Old Field/Poquott, NY
Shelter Island Reporter	Shelter Island, NY
The Smithtown News	Smithtown, NY
Smithtown Messenger	Smithtown Township, NY
South Bay's Official Shopping Newspaper	S. Shore Long Island, NY
The Southampton Press	Southampton, NY
Southampton Independent	Southampton, NY
The Suffolk Times	Southold Town/Shelter Island, NY
The Traveler-Watchman	Southold/Riverhead, NY
Spring Creek Sun	Spring Creek, NY
Staten Island Register	Staten Island, NY
Suffolk Life Newspapers	Suffolk County, NY
Sullivan County Democrat	Sullivan County, NY
New Paltz News	Ulster County, NY
Southern Ulster Pioneer	Ulster County, NY
The Uniondale Beacon	Uniondale, NY
Valley Stream Herald	Valley Stream, NY
Wallkill Valley Times	Walden, NY
The Citizen	Wantagh/Seaford, NY
Southern Dutchess News	Wappingers Falls/E. Fishkill/Fishkill/Hopewell Junction, NY
The Warwick Advertiser	Warwick, NY

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

Warwick Valley Dispatch	Warwick, NY
Orange County Post	Washingtonville/Chester, NY
West Hempstead Beacon	West Hempstead, NY
Westbury Times	Westbury/Carle Place, NY
The Item	White Plains, NY
The Whitestone Times	Whitestone/College Point, NY
The Times	White Plains, NY
New Hyde Park Herald Courier	Williston Park, NY
Williston Times	Williston Park, NY
South Shore Record	Woodmere, NY
The Leader - Observer of Woodhaven	Woodhaven, NY
Woodside Herald	Woodside/Long Island City/Sunnyside, NY
Ulster County Townsman	Woodstock, NY
Yonkers Home News & Times	Yonkers, NY
The North County News	Yorktown, NY
<b><u>New Jersey</u></b>	
The Township Journal	Andover/Byram/Stanhope, NJ
The Coaster	Asbury Park, NJ
The Times at the Jersey Shore	Asbury Park/Avon/Belmar/Bradley Beach/Neptune/ Ocean Grove, NJ
Bayonne Community News	Bayonne, NJ
Belleville Post	Belleville, NJ
The Belleville Times	Belleville, NJ
The News	Belvidere, NJ

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

Bernardsville News	Bernardsville, NJ
Twin-Boro News	Bergenfield/Cresskill/Dumont/New Milford/Tenafly, NJ
Bloomfield Life	Bloomfield, NJ
The Independent Press	Bloomfield, NJ
Register-News	Bordentown/Florence, NJ
Cranford Chronicle	Bound Brook, NJ
Brick Township Town News	Brick Township, NJ
The Coast Star	Brielle/Belmer/Manasquan/Sea Girt/Spring Lake, NJ
The Progress	Caldwell, NJ
Chatham Courier	Chatham, NJ
Clark Eagle	Clark, NJ
Patriot	Clark, NJ
Clifton Journal	Clifton, NJ
The North Jersey Prospector	Clifton/Wayne/Paterson/Passaic/Parsippany/East Hanover, NJ
The Cranbury Press	Cranbury/Monroe, NJ
Cranford Chronicle	Cranford/Kenilworth, NJ
The Teaneck Suburbanite	Cresskill, NJ
Neighbor News	Denville, NJ
The Citizen	Denville/Rockaway, NJ
Palisadian	East Bergen County, NJ
Sentinel	East Brunswick, NJ
East Orange Record	East Orange, NJ
Gazette Leader	Elizabeth, NJ
Press Journal	Englewood/Closter, NJ

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

Northern Valley Suburbanite	Englewood/Teaneck, NJ
The Shopper News	Fair Lawn/Garfield/Lodi/Hawthorne, NJ
The News Beacon	Fairlawn, NJ
Florham Park Eagle	Florham Park, NJ
Bergen News - Sun Bulletin	Fort Lee/Palisades Park/Cliffside Park, NJ
Suburban News	Franklin Lakes/Ridgewood/Wyckoff, NJ
The Franklin News-Record	Franklin Township, NJ
Examiner	Freehold, NJ
The Sentinel	Franklin Township, NJ
Brick Bulletin	Freehold, NJ
News Transcript	Freehold/W. Monmouth, NJ
Delaware Valley News	Frenchtown, NJ
Howell Tri-Town News	Freehold, NJ
Red Bank HUB	Freehold, NJ
The Messenger	Garfield/Wallington, NJ
The Glen Ridge Paper	Glen Ridge, NJ
Glen Ridge Voice	Glen Ridge, NJ
The Glen Rock Gazette	Glen Rock, NJ
Community Forum	Hackettstown, NJ
The Star Gazette	Hackettstown/Washington, NJ
Hanover Eagle	Hanover/Whippany/Cedar Knolls, NJ
The Observer	Hasbrouck Heights, NJ
The Independent	Hazlet/Matawan/Middletown, NJ
Windsor-Hights Herald	Highstown/East Windsor, NJ

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

Hillsborough Beacon	Hillsborough Township, NJ
Hillside Leader	Hillside, NJ
The Hoboken Reporter	Hoboken, NJ
Union City Reporter	Hoboken, NJ
Hopewell Valley News	Hopewell, NJ
West New York Reporter	Hoboken, NJ
Hunterdon County Democrat	Hunterdon County, NJ
The Current	Hudson County, NJ
Hunterdon Observer	Hunterdon County, NJ
Irvington Herald	Irvington, NJ
The Jersey City Reporter	Jersey City, NJ
The Leader	Kenilworth, NJ
The Lacey Beacon	Lacey, NJ
The Beacon	Lambertville/W. Amwell Township/Stockton, NJ
Roxbury Register	Landing, NJ
The Lawrence Ledger	Lawrence Township, NJ
Linden Leader	Linden, NJ
West Essex Tribune	Livingston, NJ
Beach Haven Times	Long Beach/Long Beach Island, NJ
Atlanticville	Long Branch, NJ
Commercial Leader	Lyndhurst, NJ
Madison Eagle	Madison, NJ
Beacon Mailbag	Manahawkin, NJ
The Manville News	Manville, NJ

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

News-Record	Maplewood/South Orange, NJ
Our Town	Maywood/Rochelle Park, NJ
Observer Tribune	Mendham/Chester, NJ
Metuchen/Edison Review	Metuchen/Edison, NJ
The Chronicle	Middlesex/Dunellan, NJ
The Courier	Middletown/Hazlet, NJ
The Item of Millburn & Short Hills	Millburn/Short Hills, NJ
Monroe Sentinel	Monroe/Spotswood/Jamesburg/Helmetta, NJ
The Montclair Times	Montclair, NJ
Morris News-Bee	Morristown/Morris Plains, NJ
Echo Leader	Mountainside, NJ
Mount Olive Chronicle	Mt. Olive Township, NJ
News-Leader	Netcong, NJ
The New Egypt Press	New Egypt, NJ
Aim Community News	Newfoundland, NJ
North Arlington Leader	North Arlington, NJ
The North Bergen Reporter	North Bergen, NJ
North Brunswick Sentinel	North Brunswick Township, NJ
Hunterdon Review	Northern Hunterdon County, NJ
The Nutley Sun	Nutley, NJ
Nutley Journal	Nutley, NJ
Advance News	Ocean County, NJ
Suburban	Old Bridge/Sayreville/Parlin, NJ
Orange Transcript	Orange, NJ

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

Pasack Valley Community Life	Pascack Valley, NJ
Suburban Trends	Passaic County/Morris County, NJ
Perth Amboy Gazette	Perth Amboy, NJ
The Free Press	Phillipsburg, NJ
Piscataway Review	Piscataway, NJ
Princeton Packet	Princeton/Plainsboro/Montgomery/Junction/West Windsor, NJ
Town Topics	Princeton, NJ
News-Record	Rahway, NJ
The Atom Tabloid Citizen Gazette	Rahway, NJ
Rahway Progress	Rahway, NJ
The Home and Store News	Ramsey/Sufferin, NJ
The Ramsey Reporter	Ramsey/Mahwah, NJ
The Randolph Reporter	Randolph/Mine Hill Townships, NJ
The Two River Times	N.E. Monmouth County, NJ
The Ridgewood News	Ridgewood, NJ
Franklin Lakes/Oakland Suburban News	Ridgewood, NJ
Midland Park Suburban News	Ridgewood, NJ
Suburban News/Village Gazette	Ridgewood, NJ
The Town Journal	Ridgewood, NJ
Spectator Leader	Roselle, NJ
Roselle Park Leader	Roselle Park, NJ
South Bergenite	Rutherford, NJ
The Times of Scotch Plains - Fanwood	Scotch Plains/Fanwood, NJ
Town News	Ridgewood, NJ

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

Secaucus Reporter	Secaucus, NJ
Waldwick Suburban News	Ridgewood, NJ
Wyckoff Suburban News	Ridgewood, NJ
Pasippany Life	Rockaway, NJ
Home News	Secaucus, NJ
The Hills-Bedminster Press	Somerset, NJ
The Somerset Spectator	Somerset/Franklin Township, NJ
Somerset Messenger-Gazette	Somerset/Manville, NJ
South Brunswick Post	South Brunswick, NJ
South Plainfield Reporter	South Plainfield, NJ
Sparta Independent	Sparta, NJ
Springfield Leader	Springfield, NJ
The Beacon	Stafford/Barneгат, NJ
Summit Observer	Summit, NJ
The Sandpaper	Surf City, NJ
The Summit Herald & Dispatch	Summit/New Providence/Millburn/Short Hills/Berkeley Heights, NJ
Independent Press	Summit/New Providence/Millburn/Short Hills/Berkeley Heights, NJ
Sun Bulletin	Teaneck/Ridgefield Park/Fort Lee, NJ
Ocean County Reporter	Toms River/Bricktown, NJ
Tuckerton Beacon	Tuckerton/Little Egg Harbor, NJ
Union Leader	Union, NJ
Suburban News	Union County, NJ
Vailsburg Leader	Vailsburg/Newark, NJ

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

The Advertiser - News	Vernon, NJ
Verona-Cedar Grove Times	Verona/Cedar Grove, NJ
Warren Reporter	Warren, NJ
Echoes-Sentinel	Warren/Watchung, NJ
The News Report	Washington Township, NJ
Wayne Today	Wayne/Lakeland/Passaic Valley, NJ
The Independent News	Wayne/Pompton Lakes/Fairfield/Lincoln Park/Pequannok, NJ
The Weehawken Reporter	Weehawken, NJ
West Orange Chronicle	West Orange, NJ
Argus	West Paterson, NJ
The Messenger-Press	Western Monmouth County, NJ
Fort Lee Suburbanite	West Paterson, NJ
Record Press	Westfield, NJ
Suburban Life	West Paterson, NJ
The Westfield Leader	Westfield, NJ

**Connecticut**

Bridgeport News	Bridgeport, CT
The Bridgeport Inquirer	Bridgeport, CT
Brookfield Journal	Brookfield, CT
Darien News - Review	Darien, CT
Darien Times	Darien, CT
Easton Courier	Easton, CT
Fairfield Citizen - News	Fairfield/Southport, CT

**Table 2**  
**MASS CIRCULATION WEEKLY NEWSPAPERS**  
**PUBLISHED IN THE NEW YORK DMA**

Fairfield Minuteman	Fairfield/Southport/Easton, CT
Greenwich Citizen	Greenwich, CT
Greenwich Post	Greenwich, CT
Monroe Courier	Monroe, CT
New Canaan Advertiser	New Canaan, CT
The Newtown Bee	Newtown, CT
Norwalk Citizen-News	Norwalk, CT
Redding Pilot	Redding, CT
Ridgefield Paper	Ridgefield, CT
Ridgefield Press	Ridgefield, CT
Huntington Herald	Shelton, CT
Stratford Star	Stratford, CT
Stratford Bard	Stratford, CT
Trumbull Times	Trumbull, CT
Weston Forum	Weston, CT
Westport News	Westport/Weston, CT
Westport Minuteman	Westport/Weston, CT
Wilton Bulletin	Wilton, CT
The Wilton Villager	Wilton, CT

**Pennsylvania**

Pike County Dispatch	Milford, PA
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**Table 3**  
**EXAMPLES OF MAJOR NATIONAL PERIODICALS**  
**WITH SIGNIFICANT CIRCULATION IN THE NEW YORK DMA**

<b><u>PERIODICAL</u></b>	<b><u>TOTAL NY DMA CIRCULATION</u></b>
Better Homes & Garden	424,611
Cosmopolitan	206,524
Family Circle	266,893
Glamour	186,693
Good Housekeeping	291,642
Ladies Home Journal	264,887
Martha Stewart Home Living	150,689
Modern Maturity	387,832
Money	165,791
National Geographic	306,935
Newsweek	243,773
Parents	151,092
People Weekly	258,283
Playboy	150,624
Prevention	196,454
Redbook	146,163
Seventeen	153,884
Smithsonian	132,214
Southern Living	28,092
Sports Illustrated	255,395
Time	390,237
TV Guide	1,066,797
U.S News & World Report	147,072
Woman's Day	317,176
YM	153,514

Source: *Circulation 2004* (Newspaper Rates & Data Service) at 900.

**Table 4**  
**Independently Owned and Operating Full-Power Television Stations**  
**New York, NY (DMA Market No. 1)**

<b>Call Sign/Channel</b>	<b>Affiliation</b>	<b>Community of License</b>	<b>Licensee</b>
1. WNYW* (5)	FOX	New York, NY	Fox Television Stations, Inc.
WWOR-TV* (9)	IND	Secaucus, NJ	Fox Television Stations, Inc.
2. WABC-TV* (7)	ABC	New York, NY	American Broadcast Companies, Inc.
3. WCBS-TV* (2)	CBS	New York, NY	CBS Broadcasting, Inc.
4. WEDW (49)	ETV	Bridgeport, CT	Connecticut Public Broadcasting, Inc.
5. WFME-TV (66)	ETV	West Milford, NJ	Family Stations, Inc.
6. WFUT-TV (68)	TeleFutura	Newark, NJ	Univision New York LLC
WFTY-TV* (67)	IND	Smithtown, NY	Univision New York LLC
7. WLIW (21)	ETV	Garden City, NY	Educational Broadcasting Corporation
8. WLNY (55)	IND	Riverhead, NY	WLNY-TV, Inc.
9. WMBC-TV* (63)	IND	Newton, NJ	Mountain Broadcasting Corporation
10. WNBC* (4)	NBC	New York, NY	NBC Telemundo License Co.
WNJU (47)	Telemundo	Linden, NJ	NBC Telemundo License Co.
11. WNET (13)	ETV	Newark, NJ	Educational Broadcasting Corp.
12. WNJB (58)	ETV	New Brunswick, NJ	New Jersey Public Broadcasting Authority
WNJN (50)	ETV	Montclair, NJ	New Jersey Public Broadcasting Authority
13. WNYE-TV (25)	ETV	New York, NY	Board of Education, City of New York
14. WPIX* (11)	WB	New York, NY	WPIX, Inc.
15. WPXN-TV (31)	IND	New York, NY	Paxson Communications License Company
16. WRNN-TV (63)	IND	Kingston, NY	WRNN-TV License Company, LLC
17. WSAH (43)	Azteca America	Bridgeport, CT	WSAH License, Inc.
18. WTBY-TV* (54)	IND	Poughkeepsie, NY	Trinity Broadcasting of New York, Inc.
19. WXTV* (41)	Univision	Paterson, NJ	WXTV License Partnership, G.P.

\* Call Signs also currently operating DTV stations in the New York market area.

Based upon data recorded in the *2003-2004 Broadcasting & Cable Yearbook* (Reed Publishing) and *Television & Cable Factbook 2004* (Warren Communications).

**Table 5**  
**INDEPENDENTLY OWNED RADIO STATIONS**  
**IN THE NEW YORK DMA**

- The stations marked with an asterisk (\*) are non-commercial radio broadcast stations.
- The information in this chart was gathered from a pre-existing list of independently owned radio stations in the New York Market and the *2003-2004 Broadcasting & Cable Yearbook*.

<b><u>#</u></b>	<b><u>Parent/Licensee</u></b>	<b><u>Call Sign</u></b>	<b><u>Service</u></b>	<b><u>Community of License</u></b>
01	AAA Entertainment, LLC	WBAZ	FM	Bridgehampton, NY
	AAA Entertainment, LLC	WHBE	FM	East Hampton, NY
	AAA Entertainment, LLC	WBEA	FM	Southold, NY
	AAA Entertainment, LLC	WEHM	FM	South Hampton, NY
02	AMFM New York Licenses, LLC	WAXQ	FM	New York, NY
	AMFM New York Licenses, LLC	WHTZ	FM	Newark, NJ
	AMFM New York Licenses, LLC	WKTU	FM	Lake Success, NY
	AMFM New York Licenses, LLC	WLTW	FM	New York, NY
	AMFM Radio Licenses, LLC	WWPR	FM	New York, NY
	AMFM Radio Licenses, LLC	WALK	AM	Patchogue, NY
	AMFM Radio Licenses, LLC	WHTZ	FM	Newark, NJ
	AMFM Radio Licenses, LLC	WKTU	FM	New York, NY
03	Access.1 Communications Corp.	WWRL	AM	New York, NY
04	Alexander Broadcasting, Inc.	WRCR	AM	Spring Valley, NY
05	Auricle Communications	WFMU*	FM	East Orange, NJ
	Auricle Communications	WXHD*	FM	Mount Hope, NY
06	Barnstable Broadcasting, Inc.	WBZO	FM	Bay Shore, NY
	Barnstable Broadcasting, Inc.	WHLI	AM	Hempstead, NY
	Barnstable Broadcasting, Inc.	WKJY	FM	Hempstead, NY
	Barnstable Broadcasting, Inc.	WMJC	FM	Smithtown, NY

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<b><u>#</u></b>	<b><u>Parent/Licensee</u></b>	<b><u>Call Sign</u></b>	<b><u>Service</u></b>	<b><u>Community of License</u></b>
	Barnstable Broadcasting, Inc.	WRCN	FM	Riverhead, NY
07	Berkshire Broadcasting Corp.	WDAQ	FM	Danbury, CT
	Berkshire Broadcasting Corp.	WLAD	AM	Danbury, CT
08	Bloomberg Communications, Inc.	WBBR	AM	New York, NY
09	Board of Education Piscataway High School	WVPH*	FM	Piscataway, NJ
10	Board of Education Union Free School District #1	WOSS*	FM	Ossining, NY
11	Board of Governors Rutgers University	WRSU*	FM	New Brunswick, NJ
12	Board of Trustees of Adironadack College	WGFR*	FM	Glens Falls, NY
13	Brentwood Public School District	WXBA*	FM	Brentwood, NY
14	Bridgelight, LLC	WJUX	FM	Monticello, NY
	Bridgelight, LLC	WRDR*	FM	Freehold Township, NJ
15	Brookdale Community College	WBJB*	FM	Lincroft, NJ
16	Buckley Broadcasting Corp.	WOR	AM	New York, NY
17	Canandaigua Broadcasting, Inc.	WLKA	AM	Canandaigua, NY
18	Capital Media Corporation	WBAR	FM	Lake Luzerne, NY
19	Centenary College for Women	WNTI*	FM	Hackettstown, NJ
20	CHET-5 Broadcasting, LP	WDST	FM	Woodstock, NY
21	Christian Media Associates, Inc.	WFSO*	FM	Olivebridge, NY

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<u>#</u>	<u>Parent/Licensee</u>	<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>
22	Citadel Broadcasting Co.	WMOS	FM	Montauk, NY
23	Citicasters Licenses, LP	WISY	FM	Canandaigua, NY
24	City College of New York	WHCR*	FM	New York, NY
25	Clear Channel Communications, Inc.	WSUS	FM	Franklin, NJ
	Clear Channel Communications, Inc.	WNNJ	AM	Newton, NJ
	Clear Channel Communications, Inc.	WNNJ	FM	Newton, NJ
	Clear Channel Communications, Inc.	WHCY	FM	Blairstown, NJ
	Clear Channel Communications, Inc.	WKIP	AM	Poughkeepsie, NY
	Clear Channel Communications, Inc.	WRNQ	FM	Poughkeepsie, NY
	Clear Channel Communications, Inc.	WPKF	FM	Poughkeepsie, NY
	Clear Channel Communications, Inc.	WELV	AM	Ellenville, NY
	Clear Channel Communications, Inc.	WFKP	FM	Ellenville, NY
26	Cleveland Radio Licenses, LLC	WGHQ	AM	Kingston, NY
	Cleveland Radio Licenses, LLC	WRWD	FM	Highland, NY
27	The College of Seneca	WEOS*	FM	Geneva, NY
28	The College of Staten Island	WSIA*	FM	New York, NY

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<u>#</u>	<u>Parent/Licensee</u>	<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>
29	Concord Media Group, Inc.	WBPM	FM	Kingston, NY
30	Connecticut Public Broadcasting, Inc.	WEDW*	FM	Stamford, CT
	Connecticut Public Broadcasting, Inc.	WRLI*	FM	Southampton, NY
31	Cox Radio, Inc.	WEFX	FM	Norwalk, CT
	Cox Radio, Inc.	WEZN	FM	Bridgeport, CT
	Cox Radio, Inc.	WKHL	FM	Stamford, CT
	Cox Radio, Inc.	WNLK	AM	Norwalk, CT
	Cox Radio, Inc.	WSTC	AM	Stamford, CT
	Cox Radio, Inc.	WBLI	FM	Long Island, NY
	Cox Radio, Inc.	WBAB	FM	Long Island, NY
	Cox Radio, Inc.	WHFM	FM	Long Island, NY
32	Crystal Coast Communications, Inc.	WRIV	AM	Riverhead, NY
33	Cumulus Licensing, LLC	WDBY	FM	Patterson, NY
	Cumulus Licensing, LLC	WFAF	FM	Mount Kisco, NY
	Cumulus Licensing, LLC	WRKI	FM	Brookfield, CT
	Cumulus Licensing, LLC	WRRB	FM	Arlington, NY
	Cumulus Licensing, LLC	WALL	AM	Middletown, NY
	Cumulus Licensing, LLC	WRRV	FM	Middletown, NY
	Cumulus Licensing, LLC	WEBE	FM	Westport, CT

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<u>#</u>	<u>Parent/Licensee</u>	<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>
	Cumulus Licensing, LLC	WFAS	FM	White Plains, NY
	Cumulus Licensing, LLC	WPUT	AM	Brewster, NY
	Cumulus Licensing, LLC	WICC	AM	Bridgeport, CT
	Cumulus Licensing, LLC	WINE	AM	Brookfield, CT
	Cumulus Licensing, LLC	WRKI	FM	Brookfield, CT
	Cumulus Licensing, LLC	WCZX	FM	Hyde Park, NY
	Cumulus Licensing, LLC	WEOK	AM	Poughkeepsie, NY
	Cumulus Licensing, LLC	WPDH	FM	Poughkeepsie, NY
	Cumulus Licensing, LLC	WPUT	AM	Brewster, NY
	Cumulus Licensing, LLC	WPDA	FM	Jeffersonville, NY
	Cumulus Licensing, LLC	WZAD	FM	Wurtsboro, NY
	Cumulus Licensing, LLC	WKNY	AM	Kingston, NY
34	Danbury Community Radio, Inc.	WFAR*	FM	Danbury, CT
35	David Wolfe	WRSB	AM	Canandaigua, NY
36	de Wit Broadcasting Corp.	WDNB	FM	Jeffersonville, NY
37	Drew University	WMNJ*	FM	Madison, NJ
38	Emmis Communications	WQCD	FM	New York, NY
	Emmis Communications	WQHT	FM	New York, NY
	Emmis Communications	WRKS	FM	New York, NY
39	Entertronics, Inc.	WWSC	AM	Glens Falls, NY
	Entertronics, Inc.	WCQL	FM	Glens Falls, NY

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<u>#</u>	<u>Parent/Licensee</u>	<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>
	Entertronics, Inc.	WCKM	FM	Lake George, NY
40	Fairfield University	WVOF*	FM	Fairfield, CT
41	Family Life Network	WCIY*	FM	Canandaigua, NY
42	Family Stations, Inc.	WFME*	FM	Newark, NJ
	Family Stations, Inc.	WFRS*	FM	Smithtown, NY
	Family Stations, Inc.	WFRH*	FM	Kingston, NY
43	Five Towns College	WFTU	AM	Riverhead, NY
44	FST Broadcasting Corp.	WTBQ	AM	Warwick, NY
45	Fordham University	WFUV*	FM	New York, NY
46	Forsythe Broadcasting Inc.	WNJC	AM	Washington Township, NJ
47	The Forward Association, Inc.	WEVD	AM	New York, NY
48	Geneva Broadcasting, Inc.	WGVA	AM	Geneva, NY
49	Greater Media, Inc.	WCTC	AM	New Brunswick, NJ
	Greater Media, Inc.	WMGQ	FM	New Brunswick, NJ
	Greater Media, Inc.	WDHA	FM	Dover, NJ
	Greater Media, Inc.	WWTR	AM	Bridgewater, NJ
50	The Greenwich Broadcasting Corp.	WGCH	AM	Greenwich, CT
51	Hofstra University	WRHU*	FM	Hempstead, NY
52	Hudson-Westchester Radio, Inc.	WRTN	FM	New Rochelle, NY
	Hudson-Westchester Radio, Inc.	WVOX	AM	New Rochelle, NY

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<u>#</u>	<u>Parent/Licensee</u>	<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>
53	Hunterdon Central H.S. Board of Education	WCVH*	FM	Flemington, NJ
54	Infinity Broadcasting Corp.	WCBS	AM	New York, NY
	Infinity Broadcasting Corp.	WCBS	FM	New York, NY
	Infinity Broadcasting Corp.	WFAN	AM	New York, NY
	Infinity Broadcasting Corp.	WINS	AM	New York, NY
	Infinity Broadcasting Corp.	WNEW	FM	New York, NY
	Infinity Broadcasting Corp.	WXRK	FM	New York, NY
55	Inner City Broadcasting Corporation	WBLS	FM	New York, NY
	Inner City Broadcasting Corporation	WLIB	AM	New York, NY
56	IW Limited Liability Company	WLVG	FM	Center Moriches, NY
57	James Chladek	WXMC	AM	Parsippany-Troy Hills, NJ
58	Jarad Broadcasting Company, Inc.	WLIR	FM	Garden City, NY
	Jarad Broadcasting Company, Inc.	WBON	FM	Hampton Bays, NY
	Jarad Broadcasting Company, Inc.	WDRE	FM	Westhampton, NY
59	Jersey Shore Broadcasting Corp.	WJRZ	FM	Manahawkin, NJ
60	Joseph-Paul Ferrero	WHVW	AM	Hyde Park, NY
61	Kean University	WKNJ*	FM	Union Township, NJ
62	Kingsborough Community College	WKRB*	FM	New York, NY

**Table 5**  
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**IN THE NEW YORK DMA**

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<u>#</u>	<u>Parent/Licensee</u>	<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>
63	Long Island Multimedia LLC	WLIE	AM	Islip, NY
64	Main Street Broadcasting Co., Inc.	WLNG	FM	Sag Harbor, NY
65	Manahawkin Communications <sup>1</sup> Corp.	WCHR	FM	Manahawkin, NJ
66	Mariana Broadcasting, Inc.	WGHT	AM	Pompton Lakes, NJ
67	MB Communications, Inc.	WFLK	FM	Geneva, NY
68	Mercer County Community College	WWNJ*	FM	Dover Township, NJ
69	Millenium Shore License Holdco, LLC	WADB	AM	Asbury Park, NJ
	Millenium Shore License Holdco, LLC	WJLK	FM	Asbury Park, NJ
70	Minority Business & Housing Development, Inc.	WYGG*	FM	Asbury Park, NJ
71	Monmouth University	WMCX*	FM	West Long Beach, NJ
72	Monroe Board of Education	WMNR*	FM	Monroe, CT
	Monroe Board of Education	WRXC*	FM	Shelton, CT
73	Morris School District Board of Education	WJSV*	FM	Morristown, NJ
74	Mountain Broadcasting Corporation	WVOS	FM	Liberty, NY

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<sup>1</sup> A transfer of control application, FCC File No. BTCH-19990913GI, is currently pending before the Commission for this station.

**Table 5**  
**INDEPENDENTLY OWNED RADIO STATIONS**  
**IN THE NEW YORK DMA**

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<u>#</u>	<u>Parent/Licensee</u>	<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>
75	Multicultural Radio Broadcasting Licensee, LLC	WKDM	AM	New York, NY
	Multicultural Radio Broadcasting, Inc.	WNSW	AM	Newark, NJ
	Multicultural Radio Broadcasting, Inc.	WNYG	AM	Babylon, NY
	Multicultural Radio Broadcasting, Inc.	WPAT	AM	Paterson, NJ
	Multicultural Radio Broadcasting, Inc.	WJDM	AM	Elizabeth, NJ
	Multicultural Radio Broadcasting, Inc.	WWRU	AM	Elizabeth, NJ
	Multicultural Radio Broadcasting, Inc.	WZRC	AM	New York, NY
76	Nassau Broadcasting Partners, LP	WWYY	FM	Belvidere, NJ
	Nassau Broadcasting Partners, LP	WXPK	FM	Briarcliff Manor, NY
	Nassau Broadcasting Partners, LP	WOBM	AM	Lakewood, NJ
	Nassau Broadcasting Partners, LP	WOBM	FM	Lakewood, N J
	Nassau Broadcasting Partners, LP	WJLK	FM	Asbury Park, NJ
77	Nassau Community College	WHPC*	FM	Garden City, NY
78	Newark Public Radio, Inc.	WBGO*	FM	Newark, NJ
79	New Jersey Broadcasting Partners, LP	WRAT	FM	South Belmar, NJ

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<u>#</u>	<u>Parent/Licensee</u>	<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>
80	New Jersey Public Broadcasting Authority	WNJM*	FM	Manahawkin, NJ
	New Jersey Public Broadcasting Authority	WNJP*	FM	Sussex, NJ
81	New York City Board of Education	WNYE*	FM	New York, NY
82	New York AM Radio, LLC	WEPN	AM	New York, NY
883	New York Times Co.	WQEW	AM	New York, NY
	New York Times Co.	WQXR	FM	New York, NY
84	New York University	WNYU*	FM	New York, NY
85	Nyack College	WNYK*	FM	Nyack, NY
86	Pacifica Foundation, Inc.	WBAI*	FM	New York, NY
87	Penn Jersey Educational Radio Corp.	WYRS*	FM	Manahawkin, NJ
	Penn Jersey Educational Radio Corp.	WDVR*	FM	Delaware Township, NJ
88	People's Broadcast Network, LLC	WDJZ	AM	Bridgeport, CT
89	Pillar of Fire, Inc.	WAWZ*	FM	Zarephath, NJ
90	Plainville-Old Bethpage Central School District	WPOB*	FM	Plainview, NY
91	Polnet Communications, Ltd.	WLIM	AM	Patchogue, NY
	Polnet Communications, Ltd.	WRKL	AM	New City, NY
92	Port Jervis Broadcasting Co., Inc.	WTSX	FM	Port Jervis, NY

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<u>#</u>	<u>Parent/Licensee</u>	<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>
	Port Jervis Broadcasting Co., Inc.	WDLC	AM	Port Jervis, NY
93	Press Communications, LLC	WHTG	AM	Eatontown, NJ
	Press Communications, LLC	WHTG	FM	Eatontown, NJ
	Press Communications, LLC	WWZY	FM	Long Branch, NJ
94	Radio Catskill	WJFF*	FM	Jeffersonville, NY
95	Radio Cumbre Broadcasting, Inc.	WCUM	AM	Bridgeport, CT
96	Radio Vision Christiana Management Corp.	WWRV	AM*	New York, NY
	Radio Vision Christiana Management Corp.	WVIP	AM	Mount Kisco, NY
97	Ramapo College of New Jersey	WRPR*	FM	Mahwah, NJ
98	Reynolds Communications, Inc.	WSUL	FM	Monticello, NY
99	Rose City Radio Corp.	WSNR	AM	Jersey City, NJ
100	Sachem Central School District Holbrook	WSHR*	FM	Lake Ronkonkoma, NY
101	Sacred Heart University, Inc.	WSHU*	FM	Fairfield, CT
102	Salem Communications Corp.	WMCA	AM	New York, NY
	Salem Communications Corp.	WWDJ	AM	Hackensack, NJ
103	Seton Hall University	WSOU*	AM	South Orange, NJ
104	Sound of Life, Inc.	WLJP*	FM	Monroe, NY
	Sound of Life, Inc.	WPGP*	FM	Tafton, PA
	Sound of Life, Inc.	WRPJ	FM	Port Jervis, NY

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<u>#</u>	<u>Parent/Licensee</u>	<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>
	Sound of Life, Inc.	WLJH*	FM	Glens Falls, NY
	Sound of Life, Inc.	WGWR	FM	Liberty, NY
	Sound of Life, Inc.	WFGB*	FM	Kingston, NY
105	Spanish Broadcasting System, Inc.	WSKQ	FM	New York, NY
	Spanish Broadcasting System, Inc.	WPAT	FM	Paterson, NJ
106	The St. Lawrence University	WXLG*	FM	North Creek, NY
107	St. Luke's Foundation, Inc.	WSLX*	FM	New Canaan, CT
108	State University of New York	WUSB*	FM	Stony Brook, NY
	State University of New York	WFNP	FM	Rosendale, NY
109	Sunrise Broadcasting Corp.	WGNY	FM	Beacon, NY
110	Syosset Central School District	WKWZ*	FM	Syosset, NY
111	Tele-Media of Southern California LLC	WKBE	FM	Warrensburg, NY
112	Trustees of Columbia University	WKCR*	FM	New York, NY
113	Trustees of Hamilton College	WHCL*	FM	Clinton, NY
114	Universal Broadcasting of New York, Inc.	WTHE	AM	Mineola, NY
	Universal Broadcasting of New York, Inc.	WVNJ	AM	Oakland, NJ
115	University Public Radio Network	WCWB*	FM	Brookville, NY
116	Vassar College	WVKR*	FM	Poughkeepsie, NY
117	Vox Media Corp.	WENU	FM	Glens Falls, NY

**Table 5**  
**INDEPENDENTLY OWNED RADIO STATIONS**  
**IN THE NEW YORK DMA**

- The stations marked with an asterisk (\*) are non-commercial radio broadcast stations.
- The information in this chart was gathered from a pre-existing list of independently owned radio stations in the New York Market and the *2003-2004 Broadcasting & Cable Yearbook*.

<u>#</u>	<u>Parent/Licensee</u>	<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>
	Vox Media Corp.	WHTR	FM	Glens Falls, NY
	Vox Media Corp.	WMML	AM	Glens Falls, NY
118	Walt Disney Co./ABC	WABC	AM	New York, NY
	Walt Disney Co./ABC	WPLJ	FM	New York, NY
	Walt Disney Co./ABC	WEPN	AM	New York, NY
119	Westchester Community College	WARY*	FM	Valhalla, NY
	Westchester Council for Public Broadcasting	WDFH	FM	Ossining, NY
120	Western Connecticut State University Board of Trustees	WXCI*	FM	Danbury, CT
121	Westport, Connecticut Board of Education	WWPT*	FM	Westport, CT
122	World Harvest Communications	WKMB	AM	Stirling, NJ
123	WADO-AM License Corp.	WADO	AM	New York, NY
	WADO-AM License Corp.	WCAA	FM	Newark, NJ
124	WAMC/Northeast Public Radio	WAMK	FM	Kingston, NY
125	WAMC/Northeast Public Radio	WOSR	FM	Middletown, NY
126	WGBB-AM, Inc.	WGBB	AM	Freeport, NY
127	WHTG, Inc.	WHTG	AM	Asbury Park, NJ
	WHTG, Inc.	WHTG	FM	Eatontown, NJ
128	WMHT Educational Telecommunications	WRHV*	FM	Poughkeepsie, NY

**Table 5**  
**INDEPENDENTLY OWNED RADIO STATIONS**  
**IN THE NEW YORK DMA**

- The stations marked with an asterisk (\*) are non-commercial radio broadcast stations.
- The information in this chart was gathered from a pre-existing list of independently owned radio stations in the New York Market and the *2003-2004 Broadcasting & Cable Yearbook*.

<u>#</u>	<u>Parent/Licensee</u>	<u>Call Sign</u>	<u>Service</u>	<u>Community of License</u>
129	WNYC Radio	WNYC*	FM	New York, NY
	WNYC Radio	WNYC*	AM	New York, NY
130	WRNJ Radio, Inc.	WRNJ	AM	Hackettstown, NJ
131	WPKN, Inc.	WPKN*	FM	Bridgeport, CT
132	WRWD/WBWZ, LLC	WBWZ	FM	New Paltz, NY
133	WVRM, Inc.	WCNJ*	FM	Hazlet, NJ
134	William Paterson University of New Jersey	WPSC*	FM	Wayne, NJ
135	6 Johnson Road Licenses, Inc.	WHUD	FM	Peekskill, NY
	6 Johnson Road Licenses, Inc.	WLNA	AM	Peekskill, NY
	6 Johnson Road Licenses, Inc.	WBNR	AM	Beacon, NY
	6 Johnson Road Licenses, Inc.	WSPK	FM	Beacon, NY
136	1170 Broadcast Radio, Inc.	WWLE	AM	Cornwall, NY

**Table 6**  
**CABLE TELEVISION SYSTEMS**  
**SERVING COMMUNITIES IN THE NEW YORK DMA**

**NEW YORK**

<u>Area</u>	<u>Cable Company</u>	<u>Number of Subscribers</u>	<u>Channel Capacity/ Channels Not In Use</u>
Manhattan	RCN Corp. of New York (overbuild system)	50,498	108/N/A
Brookhaven	Cablevision of Brookhaven	70,000	98/0
Bronx/Brooklyn	Cablevision of New York City	279,150	91/0(Bronx) 91/18 (Brooklyn)
Carmel	RCN Corp.	29,800	80/0
Dover Plains	Cablevision of Dutchess County	4,635	48/0
East Hampton	Cablevision Systems Corp. of East Hampton	9,432	86/0
Mount Tremper	Time Warner Cable	N/A	12/N/A
New Paltz	Time Warner Cable	3,170	37/0
New York	Time Warner Cable of New York City/QUICS	993,572	77/0
North Salem	Cablevision Systems Corp.	5,436	80/0
Olive	Time Warner Cable	1,399	60/25
Phoenicia	Time Warner Cable	N/A	12/5
Pine Hill	Time Warner Cable	2,342	52/17
Port Jervis	Time Warner Cable	5,583	37/0
Queens	RCN of New York (overbuild system)	N/A	108/N/A
Rhinebeck	Time Warner Cable	3,675	64/0
Rosendale	Time Warner Cable	3,469	21/NA
Saugerties	Time Warner Cable	6,484	60/17
Tusten	Time Warner Cable	1,423	60/21
Walden	Time Warner Cable	12,663	37/0
Washingtonville	Time Warner Cable	2,937	58/NA
Woodridge	Time Warner Cable	2,752	23/4
Woodstock	Time Warner Cable	3,484	48/N/A
Staten Island	Staten Island Cable	98,661	96/16

**Table 6**  
**CABLE TELEVISION SYSTEMS**  
**SERVING COMMUNITIES IN THE NEW YORK DMA**

Ellenville	Time Warner Cable	7,013	Not Available
Islip	Cablevision Systems Corp. of Islip	14,814	86/NA
Kingston	Time Warner Cable	21,802	47/0
Fort Hamilton Army Base	Americable International	405	60/4
Lynbrook	Cablevision of Lynbrook	7,721	86/0
Mamaroneck	Cablevision Systems	101,800	78/N/A
Minisink	Cablevision of Matamoras NY Areas	4,151	87/0
Middletown	Time Warner Cable	24,310	80/12
Highland Falls (Village)	Time Warner Cable	2,954	38/N/A
Mount Vernon	Time Warner Cable	15,971	62/12
Newburgh	Time Warner Cable	26,664	60/1
Ossining	Cablevision Systems	125,000	80/0
Port Chester	Cablevision of Port Chester	11,645	95/0
Poughkeepsie	Time Warner Cable	19,697	56/N/A
Ramapo	Cablevision of Ramapo	15,672	83/0
Riverhead	Cablevision	47,978	63/0
Rockland	Cablevision of Rockland	53,872	83/0
Suffolk County	Cablevision Systems Corp.	161,096	84/3
Sullivan County	Time Warner Cable	18,088	77/16
Warwick	Cablevision of Warwick	20,905	121/35
Woodbury	Cablevision Systems Corp.	460,000	86/1
Yonkers	Cablevision of Westchester	53,601	90/0
Yorktown/ Mount Kisco	Cablevision of Yorktown	28,000	Not Available 36/0

**Table 6**  
**CABLE TELEVISION SYSTEMS**  
**SERVING COMMUNITIES IN THE NEW YORK DMA**

**NEW JERSEY**

<b><u>Area</u></b>	<b><u>Cable Company</u></b>	<b><u>Number of Subscribers</u></b>	<b><u>Channel Capacity/ Channels Not In Use</u></b>
Allamuchy Township	Cablevision of Morris	1,309	35/N/A
Bay Head	Comcast Cablevision of Ocean County	40,958	73/5
Bayonne	Cablevision of Bayonne	16,000	87/0
Bergenfield	Cablevision of Cresskill/Bergen	58,355	84/0
Berkeley Twp.	Comcast Cablevision of Toms River	120,662	110/N/A
Carlstadt Borough	Comcast Cable of the Meadowlands	35,529	46/N/A
Dover	Cablevision of Morris	126,403	62/2
East Windsor	Comcast Cable of Central New Jersey	63,395	44/0
Eatontown	Comcast of Monmouth County, Inc.	74,800	78/0
Elizabeth	Cablevision of Elizabeth	25,667	116/24
Hillsborough	Patriot Media & Communications LLC	57,377	61/N/A
Hoboken	Cablevision of Hudson County	49,700	90/8
Jersey City	Comcast Cablevision of Jersey City	45,661	82/0
Lambertville	Comcast Cablevision of Southeast Pennsylvania	7,362	62/2
Long Hill Twp.	Patriot Media & Communications LLC	16,891	60/N/A
Millstone Twp.	Cablevision of Monmouth	N/A	78/22
Monmouth County	Cablevision of Wall	135,275	82/0
Newark	Cablevision of Newark/South Orange	56,296	80/0
North Plainfield	Comcast Cablevision of Plainfield Inc.	22,866	Not Available
Oakland	Cablevision of Oakland	220,906	67/N/A
Palisades Park	Time Warner Cable	58,000	82/2
Paterson	Cablevision of Paterson	27,721	96/1
Piscataway	Cablevision of Raritan	164,048	90/0
Port Murray	Comcast Cablevision of Northwest	26,468	35/N/A

**Table 6**  
**CABLE TELEVISION SYSTEMS**  
**SERVING COMMUNITIES IN THE NEW YORK DMA**

<u>Area</u>	<u>Cable Company</u>	<u>Number of Subscribers</u>	<u>Channel Capacity/ Channels Not In Use</u>
Princeton	Patriot Media & Communications LLC	6,882	100/N/A
Sparta	Service Electric Cable TV of New Jersey Inc.	38,341	77/0
Paramus	US Cable of Paramus-Hillsdale	5,399	75/3
Phillipsburg	Service Electric Cable TV of Hunterdon	12/060	73/0
Hunterdon County	Service Electric Cable TV of New Jersey, Inc.	4,191	86/N/A
Long Beach Twp.	Comcast Cablevision	18,624	80/N/A
Union	Comcast Cablevision of New Jersey	276,616	80/0

**CONNECTICUT**

<u>Area</u>	<u>Cable Company</u>	<u>Number of Subscribers</u>	<u>Channel Capacity/ Channels Not In Use</u>
Bridgeport	Cablevision of Connecticut	94,000	110/N/A
Danbury	Comcast Cablevision of Danbury Inc.	37,000	Not Available
Meriden	Cox Cable of Greater Hartford Inc.	40,000	79/20
Norwalk	Cablevision of Connecticut LP	109,809	110/N/A
New Haven	Charter Communications of Western Connecticut	62,972	79/0

Source: *Television & Cable Factbook (2004)*. Cable Systems (Warren Publishing).

**Table 7**  
**ADDITIONAL CABLE TELEVISION**  
**PROGRAM SERVICES**

In addition to local over-the-air broadcast signals, public access, educational and government channels and other local services, at least 80 additional program services are available over cable systems serving the New York, New York DMA:

ABC Family Channel	ESPN Classic Sports
American Movie Classics	ESPN Extra
America's Store	ESPN Full Court
Animal Planet	ESPN Gameplan
Anime Network	ESPN Now
Arabic Channel	ESPNews
ART America	ETC
Arts & Entertainment Network (A&E)	Eternal Word TV Network
BBC America	EuroNews
BET On Jazz	Filipino Channel
Biography	Fine Living
Black Entertainment Television (BET)	Fit TV
Bloomberg Information TV	Flix
Boomerang	Food Network
Bravo	Fox Movie Channel
Canales N	Fox News Channel
Cartoon Network	Fox Sports Net
CCTV-4	Fox Sports Net New York
Chinese Television Network	Fox Sports Net Pro Live
Cinemax	Fox Sports World
CN8	Fox Sports World Espanol
CN8 Creative	Fox Sports Net New England
CNBC	FSN Digital Atlantic
CNBC World	FSN Digital Central
CNN	FSN Digital Pacific
CNN International	Fuse
CNNfn	FX
Comcast Sports Net Philly	G4
Comedy Central	GalaVision
Country Music TV	Game Show Network
Court TV	GAS
C-Span	Golf Channel
C-Span 3	Goodlife TV Network
C-Span II	Great American Country
Discovery Channel	Greek Channel
Discovery Digital Networks	GRTV Network
Discovery Health Channel	Hallmark Channel
Discovery Kids Channel	HBO Ole
Discovery Channel	Headline News
DMX Music	History Channel
Do-It-Yourself	History Channel International
E! Entertainment Television	Home and Garden Television (HGTV)
Electronic Program Guide	Home Box Office (HBO)
Encore Movie Networks	Home Shopping Network (HSN)
ESPN	Hot Choice
ESPN 2	Hot Network

HSN2	Product Information Network
ilifetv	QVC
inDemand	RAI International
Independent Film Channel	RAI USA
INSP	RTP-USA
International Channel	Russian Television Network
International Television	SBN-Vietnamese
Korean Channel	Science Television
La Television International	Sci-Fi Channel
Learning Channel	Shop At Home
Lifetime	ShopNBC
Lifetime Movie Network	Showtime
Lifetime Real Women	Sneak Prevue
Madison Square Garden Network (MSGN)	SoapNet
Mag Rack	Society of Portuguese Tel.
Magazine Network	Speed Channel
MarketConnect Network	Spice
Metro Stories	Spice 2
Metro Traffic & Weather	Spike TV
Metro TV	Sports PPV
MLB Extra Innings	Starz Encore Super Pak
MOVIEplex	Starz!
MSNBC	Style
MTV	Suite from MTV & VH1
MTV Hits	Sundance Channel
MTV Latin America	TBS Superstation
MTV2	TechTV
Mun2	Telecare
Music Choice	Tennis Channel
NASA TV	The Erotic Network (TEN)
National Geographic Channel	The Movie Channel (TMC)
NBA League Pass	The New Encore (TNE)
NBA.com TV	Toon Disney
New England Cable News	Travel Channel
New York 1 News	Trinity Broadcasting Network (TBN)
News 12 Connecticut	Trio
News 12 Long Island	Turner Classic Movies
News 12 New Jersey	Turner Network TV (TNT)
News 12 The Bronx	TV Asia
News 12 Westchester	TV Guide Channel
News Plus	TV Land
Newsworld International	TV5
NHL Center Ice	TV-Japan
Nick Too	TVN Entertainment Corp.
Nickelodeon	Univision
NickToons TV	USA Cable
Noggin	VH1
oh! Oxygen	VH1 Classic
Outdoor Channel	WALN Cable Radio
Outdoor Life Network	WAM! America's Kidz Network
Ovation	Weather Channel
Pax Net	Weatherscan
PBS Kids Channel	WGN-TV Chicago
Playboy TV	WNBA Season Pass
Pleasure	Women's Entertainment
Portuguese Channel	Word Network

Yankees Entertainment & Sports (YES)  
Yesterday USA  
Zee TV

**Table 8**  
**SOURCES OF CABLE TELEVISION NEWS**  
**AVAILABLE TO CABLE SUBSCRIBERS IN THE NEW YORK MARKET**

In addition to local over-the-air broadcast news, public access, educational and government channels, the following additional sources of news programming are available over various cable and satellite systems serving the New York DMA:

<u>Cable Channel</u>	<u>Call Letters</u>
BBC America	BBC
Bloomberg Information TV	
Cable News Network	CNN
CNBC	CNBC
CNBC World	
CNN	CNN
CNNfn	
CNN International	CNNI
Court TV	CRT
C-SPAN	CSPN
C-SPAN 3	
C-SPAN II	
EuroNews	
Fox News Channel	FXNC
Headline News	HLN
Metro Traffic & Weather	
MSNBC	MNBC
New England Cable News	NECN
New York 1 News	ZNY1
News 12 The Bronx	NWBX
News 12 Connecticut	NWCT
News 12 Long Island	NWT
News 12 New Jersey	NWNJ
News 12 Westchester	NWWC
News Plus	
Newsworld International	NWI
The Weather Channel	TWC
Weatherscan	

**Table 9**  
**POSITION OF THE *NEW YORK POST***  
**IN THE NEW YORK MARKET**

	<b>Circulation</b>	<b>Penetration of Households in the DMA (%)</b>	<b>Amount of Advertising Expenditures in 2003 in millions / (%)</b>
New York Daily News	686,869	9.2%	\$301.3 (18.1%)
New York Times (local)	633,168	8.4%	\$629.1 (37.9%)
Newsday	577,661	7.7%	\$420.1 (25.3%)
New York Post	495,285	7.3%	\$102.5 ( 6.3%)
Newark Star Ledger	402,642	5.4%	\$209.1 (12.6%)

Total = \$1,662.1 billion (100%)

Sources: *Circulation 2004* at 899 (reporting circulation figures available through the Audit Bureau of Circulations, June 2003); *Ad Spies* (Ad Track) (a subscription reporting service, available at <<http://www.adspies.com>>, that reports, among other things, ad revenues in 2003 for newspapers throughout the country).

**EXHIBIT C**

***EXAMINING THE LEVEL OF CONCENTRATION  
IN THE NEW YORK MEDIA MARKET***

**Mark R. Fratrick, Ph.D., Vice President**

**and**

**Kim Randolph, Financial Analyst**

**September 13, 2004**

**PREPARED FOR**

**Fox Television Stations, Inc.**

**The News Corporation Limited**

**Project No. 4504015**



## EXAMINING THE CONCENTRATION IN THE NEW YORK CITY MEDIA MARKET

### **Introduction**

Fox Television Stations, Inc. ('FTS') and The News Corporation Limited have asked us to evaluate the level of concentration in the New York City media marketplace in connection with FTS' acquisition of WWOR-TV, Secaucus, New Jersey. Such an analysis was conducted in 2001 and presented to the FCC,<sup>1</sup> and it showed that the increase in concentration occurring from that acquisition was below the thresholds of the U.S. Department of Justice. The purpose of this paper is to update that analysis. Using the same data sources as were used in that analysis, we, once again, find that the change in the concentration levels caused by this acquisition is smaller than the thresholds used by antitrust agencies.

### **Data Sources**

Ownership information and estimated 2003 revenues for the radio and television stations used in this analysis were obtained from BIA*fn*'s MEDIA Access Pro<sup>TM</sup>. Estimated 2003 revenues for the five newspapers used in this analysis were from AdSpies.com.<sup>2</sup> As in the 2001 analysis, we included the commercial radio stations that

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<sup>1</sup> Comments of The News Corporation Limited and Fox Television Holdings, Inc., Declaration of Isabelle Richoz, *Cross-Ownership of Broadcast Stations and Newspapers*, MM Docket Nos. 01-235 and 96-197, filed December 3, 2001.

<sup>2</sup> Adspies.com's AD\*VIEWS, is "a comprehensive, online service reporting all major, local market competitive activity under a single, reporting platform. AD\*VIEWS reports all activity occurring with the important media players within top 75 DMAs." "AdSpies reports who spent what, when and where in national and local newspaper advertising throughout nearly 300 local markets across North America, including the top 60 U.S. DMAs." [www.adspies.com](http://www.adspies.com)

compete in the New York City radio market as defined by Arbitron, the commercial television stations in the New York DMA, and five daily newspapers (See Table 1). Only radio and television stations for which BIAfn estimated 2003 revenues were included in this analysis.

Including only the radio stations in the New York City radio market (metro) actually understates the radio revenues and thus overstates the concentration levels of the local media market within the larger New York City DMA. There are other embedded radio markets within the New York City metro with additional revenues not ascribed to the New York City metro. Since neither FTS nor News Corporation owns any radio stations anywhere within the New York City DMA, their overall revenue share would be lower if these additional radio revenues were included. The analysis also does not include local cable television advertising sales (which compete against the local sales of television stations). Since neither FTS nor News Corporation owns cable systems anywhere within the New York City DMA, their overall revenue share would be lower if these additional advertising revenues were included.

### **Results**

In order to determine whether the level of concentration in the New York market was significantly offset by News Corporation's acquisition of WWOR-TV, we calculated the Herfindahl-Hirschman Index<sup>3</sup> ("HHI") for two scenarios. In the first scenario, we

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<sup>3</sup> HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. (DOJ/Antitrust: Herfindahl-Hirschman Index)

calculated the HHI assuming that WWOR-TV was owned independently of the *New York Post* and WNWY(TV). In the second scenario, we calculated the HHI assuming that all three media properties were commonly owned.

Assuming that WWOR-TV is not under common ownership with the other News Corporation local media properties, the HHI is 1,021, which according to the Department of Justice/Federal Trade Commission's Horizontal Merger Guidelines, indicates a moderately concentrated market.<sup>4</sup> In contrast, the HHI is 1,085, with all three properties being commonly owned. The difference between the two is 64 points, still well below the 100-point increase used by the DOJ/FTC to raise antitrust concerns. Therefore, in 2003, we can conclude (as in 2001) that News Corporation's acquisition of WWOR-TV has not caused any significant increase in market concentration levels in the New York media market.

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<sup>4</sup> Markets in which the HHI is between 1,000 and 1,800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1,800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines 1.51*.

**Table 1: Media Properties Used in Calculation**

Parent	Owner	Media Type	Property	AM/FM/
ABC/Disney	ABC/Disney	Radio	WPLJ	FM
		Radio	WABC	AM
		Radio	WEPN	AM
		Radio	WQEW <sup>1</sup>	AM
		TV	WABC	TV
Access.1 Communications	Access.1 Commun,	Radio	WWRL	AM
Advance Publications	Advance Publications	Newspaper	Star-Ledger	
Alexander Broadcasting Co	Alexander Bestg	Radio	WRCR	AM
Bloomberg Comm. Inc	Bloomberg Comm. Inc	Radio	WBBR	AM
Buckley Bestg Corp	Buckley Bestg Corp	Radio	WOR	AM
Clear Channel Comm.	Clear Channel Comm.	Radio	WKTU	FM
		Radio	WLTW	FM
		Radio	WWPR-FM	FM
		Radio	WHTZ	FM
		Radio	WAXQ	FM
Emmis Communications	Emmis Communications	Radio	WQHT	FM
		Radio	WRKS	FM
		Radio	WQCD	FM
		Radio	WBLS	FM
		Radio	WLIB	AM
Inner City Bestg	Inner City Bestg	Radio	Daily News	
		Newspaper		
Mortimer Zuckerman Multicultural Bestg	Mortimer Zuckerman Multicultural Bestg	Radio	WZRC	AM
		Radio	WPAT	AM
		Radio	WNSW	AM
		Radio	WKDM	AM
		Radio	WWRU	AM
NBC/GE	NBC/GE	TV	WNJU	
		TV	WNBC	TV
		TV	WPXN <sup>2</sup>	TV
New York Times Co	New York Times Co	Newspaper	New York Times, The	
		Radio	WQXR-FM	FM
News Corp	Fox Television	TV	WNYW	
		TV	WWOR	TV
		Newspaper	New York Post	
Polnet Communications	Polnet Comm. Ltd	Radio	WRKL	AM
Salem Comm. Corp	Salem Comm. Corp	Radio	WMCA	AM
		Radio	WWDJ	AM
		TV	WSAH	
Scripps Howard Inc	Scripps Howard Inc	TV	WSAH	
Spanish Broadcasting System	Spanish Bestg System	Radio	WPAT-FM	FM
		Radio	WSKQ-FM	FM
Tribune Company	Tribune Company	Newspaper	Newsday	
		TV	WPIX	
		Radio	WVNJ	AM
Universal Broadcasting	Universal Bestg	Radio	WVNJ	AM
Univision Comm. Inc	Univision Comm. Inc	Radio	WCAA	FM
		Radio	WADO	AM
		TV	WXTV	
		TV	WFUT	
		Radio	WINS	AM
Viacom	Infinity Bestg	Radio	WNEW	FM
		Radio	WFAN	AM
		Radio	WCBS-FM	FM
		Radio	WCBS	AM
		Radio	WXRK	FM
		TV	WCBS	TV
		TV	WSNR	AM
Vulcan Ventures Inc	Rose City Radio Corp	Radio	WSNR	AM

<sup>1</sup> WQEW is owned by the New York Times Company but is operated by ABC/Disney. Revenues are allocated to the operator.

<sup>2</sup> WPXN-TV is owned by the Paxson but is operated by NBC/GE. Revenues are allocated to the operator.

Source: BIAfn's MEDIA Access Pro™

**Table 2: HHI Calculation New York Media Market**

Name	Media Type	Number of Properties	Est. '03 Revenue (\$000)	Share of Revenue
ABC/Disney	Radio	4	71,400	1.8%
	TV	1	286,300	7.1%
	<b>Total:</b>	<b>5</b>	<b>357,700</b>	<b>8.9%</b>
Access. 1 Communications	Radio	1	2,700	0.1%
Advance Publications Inc	Newspaper	1	209,144	5.2%
Alexander Broadcasting Co	Radio	1	200	0.0%
Bloomberg Communications Inc	Radio	1	5,100	0.1%
Buckley Broadcasting Corporation	Radio	1	19,600	0.5%
Clear Channel Communications	Radio	5	212,600	5.3%
Emmis Communications	Radio	3	93,600	2.3%
Inner City Broadcasting Corporation	Radio	2	29,200	0.7%
Mortimer Zuckerman	Newspaper	1	301,321	7.5%
Multicultural Radio Broadcasting Inc	Radio	5	17,900	0.4%
NBC/GE	TV	3	388,600	9.6%
New York Times Co	Newspaper	1	629,178	15.6%
	Radio	1	15,400	0.4%
	<b>Total:</b>	<b>2</b>	<b>644,578</b>	<b>16.0%</b>
News Corp	TV (WWOR-TV)	1	223,200	5.5%
	TV (WNYW)	1	130,000	3.2%
	Newspaper	1	102,526	2.5%
	<b>Total:</b>		<b>455,726</b>	<b>11.3%</b>
Polnet Communications Ltd	Radio	1	600	0.0%
Salem Communications Corporation	Radio	2	12,000	0.3%
Scripps Howard Inc	TV	1	2,100	0.1%
Spanish Broadcasting System	Radio	2	51,200	1.3%
Tribune Company	Newspaper	1	420,116	10.4%
	TV	1	250,200	6.2%
	<b>Total:</b>	<b>2</b>	<b>670,316</b>	<b>16.6%</b>
Universal Broadcasting	Radio	1	800	0.0%
Univision Communications Inc	Radio	2	11,700	0.3%
	TV	2	83,200	2.1%
	<b>Total:</b>	<b>4</b>	<b>94,900</b>	<b>2.3%</b>
Viacom International Inc	Radio	6	260,800	6.5%
	TV	1	205,000	5.1%
	<b>Total:</b>	<b>7</b>	<b>465,800</b>	<b>11.5%</b>
Vulcan Ventures Inc	Radio	1	3,400	0.1%
<b>TOTAL:</b>		<b>55</b>	<b>4,039,085</b>	<b>100%</b>
<b>Pre-Merger HHI</b>				<b>1,021</b>
<b>Post-Merger HHI</b>				<b>1,085</b>
<b>Change in HHI</b>				<b>64</b>

Source: BIAfn's MEDIA Access Pro™