

**AMENDMENT TO EXHIBIT 16**

## I. INTRODUCTION AND SUMMARY

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

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

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

<sup>3</sup> *2010 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Promoting Diversification of Ownership in the Broadcasting Services*, Notice of Proposed Rulemaking, FCC 11-186, MB Docket Nos. 09-182, 07-294 (rel. Dec. 22, 2011) (“*2011 NPRM*”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>16</sup> *2011 NPRM*, ¶ 1; see also, e.g., *id.* ¶ 15 (“As a result of the growing availability of the Internet and the proliferation of wireless technology, consumers are accessing news and public affairs programming through their computers and electronic devices.”); *id.* at ¶ 133 (citing *2010 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Inquiry, 25 FCC Rcd 6086, 6088 ¶ 6 (2010) (citing Kristen Purcell, *et al.*, Pew Research Center’s Project for Excellence in Journalism, *Understanding the Participatory News Consumer: How Internet and Cell Phone Users Have Turned News Into a Social Experience* (2010), available at [http://www.journalism.org/sites/journalism.org/files/Participatory\\_News\\_Consumer.pdf](http://www.journalism.org/sites/journalism.org/files/Participatory_News_Consumer.pdf) (last visited Mar. 15, 2012))).

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

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

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

Newspapers across the country have experienced severe cutbacks during the past decade, which has undermined their ability to perform their role as the nation’s watchdog. Ad revenue dropped nearly 48 percent between 2005 and 2010, and with it the industry’s annual spending on reporting and editing capacity dropped by \$1.6 billion, from 2006 to 2009, a reduction of more than 25 percent. . . . The number of full-time journalists at daily newspapers fell from a peak of about 56,900 in 1989 to 41,600 in 2010, a level not seen since before the Watergate era.<sup>21</sup>

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

<sup>19</sup> *Id.* at ¶ 3.

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

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

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

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

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

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

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

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

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

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

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

<sup>26</sup> *2011 NPRM*, ¶ 3.

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

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

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

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

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

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<sup>30</sup> 2011 NPRM, ¶ 2.

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

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

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

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

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

As highlighted above and in the Initial Waiver Request,<sup>37</sup> the Internet is vying with traditional media sources for consumers and advertising. As the number of Americans with Internet access (and high-speed Internet access in particular) rises, the importance of the Internet as a source of news and information is also growing. A recent study by the Pew Research Center and the Knight Foundation found that: “The [I]nternet has already surpassed newspapers as a source Americans turn to for national and international news. The findings from this survey now show its emerging role as a source for local news and information as well.”<sup>38</sup> The fact that more people are turning to the Internet for local topics “poses a major challenge to more traditional news providers, especially newspapers, which have often aspired to be a relatively

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

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

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

<sup>38</sup> Pew Project for Excellence in Journalism, Pew Internet & American Life Project & Knight Foundation, *How People Learn About Their Local Community* (Sept. 2011) at 22, available at [http://www.knightfoundation.org/media/uploads/publication\\_pdfs/Pew\\_Knight\\_Local\\_News\\_Report\\_FINAL.pdf](http://www.knightfoundation.org/media/uploads/publication_pdfs/Pew_Knight_Local_News_Report_FINAL.pdf) (last visited Mar. 15, 2012) (“*Pew Community Information Study*”); see also *id.* at 22 (noting that the Internet is either the most popular source or tied with newspapers as the most popular source among all adults for five of the 16 local topics covered by the survey, and that the Internet is an even more significant source for local news and information among the 79 percent of Americans who are online).

comprehensive source of information on all of these topics.”<sup>39</sup> Although the survey found that newspapers are one of the most relied upon sources for a wide range of local topics, it found that 69% of Americans believe that the death of their local newspaper would have *no impact or a minor impact* on their ability to get local information.<sup>40</sup> Similarly, another study—this one conducted by Arbitron and Edison Research—found that a mere 5% of respondents believe that newspapers are the “most essential” media, as compared to 42% who stated that the Internet is “most essential” to their lives.<sup>41</sup> And nearly half of the respondents in the Pew/Knight Foundation survey indicated that they expect newspapers to *disappear* in the future due to the Internet.<sup>42</sup>

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

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 14 (also noting that 75% of younger adults (age 18-29) and 74% of home broadband users say their ability to get local information would not be affected in a major way by the absence of their local paper).

<sup>41</sup> Arbitron Inc. & Edison Research, *The Infinite Dial 2010: Digital Platforms and the Future of Radio* 11, 14 (2010), available for download at [http://www.arbitron.com/study/digital\\_radio\\_study.asp](http://www.arbitron.com/study/digital_radio_study.asp) (last visited Mar. 15, 2012). This study also found that the Internet is now just as important as television across all respondents, and that for younger consumers the Internet is more important than television. *Id.* at 12-13.

<sup>42</sup> *Pew Community Information Study* at 14.

not use broadband Internet at home) and who, thus, currently rely on traditional media sources.<sup>43</sup> Indeed, the Commission itself has found that “[m]any Americans now turn to the Internet to obtain news,” and that “the Internet has become a *major source* of news and information, which forms the basis for informed civic discourse.”<sup>44</sup> At the same time, these developments should not be viewed as a sign that newspapers should simply be permitted to die a slow death. To the contrary, newspapers are an important part of the “rich[] and . . . nuanced ecosystem of community news and information”<sup>45</sup> on which people rely and traditional media, including newspapers, remain most often the sources of breaking news stories,<sup>46</sup> which renders the requested waiver all the more appropriate.

**III. TRIBUNE’S CONTINUED OWNERSHIP OF WPIX(TV) AND ITS APPROXIMATE THREE PERCENT INDIRECT EQUITY INTEREST IN NEWSDAY WILL SERVE THE PUBLIC INTEREST.**

As discussed in the Initial Waiver Request, Tribune today retains only an approximate three percent indirect equity interest in Newsday Holdings, the parent company of the publisher

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<sup>43</sup> *Future of Media Report* at 269 (citing Gordon Crovitz, former publisher of *The Wall Street Journal*, who says his research over the years “has shown an ‘inverse correlation between broadband penetration and newspaper profitability’”).

<sup>44</sup> *Preserving the Open Internet; Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17,905, 17,912 (¶ 15) (2010) (emphasis added).

<sup>45</sup> *Pew Community Information Study* at 1; *see id.* at 16 (noting important “implications about what could happen if a newspaper in town were to disappear” because people turn to newspapers for information that they are not able to get from other sources).

<sup>46</sup> *See, e.g.,* Pew Project for Excellence in Journalism, *How News Happens: A Study of the News Ecosystem of One American City* (Jan. 2010) at 2, available at [http://www.journalism.org/analysis\\_report/how\\_news\\_happens](http://www.journalism.org/analysis_report/how_news_happens) (last visited Mar. 15, 2012) (finding that “of the stories” available from a variety of news sources in Baltimore, Maryland during a sample week, 95 percent of those that contained “new” information “came from traditional media—most of them newspapers”).

of *Newsday*, and Cablevision maintains operational control of the newspaper. However, during the near-decade of Tribune's common ownership of WPIX(TV) and *Newsday*, these properties provided significant public interest benefits to residents of the New York DMA. Joint efforts between these properties measurably improved each one's ability to deliver in-depth coverage of news events and to contribute to the community's awareness and understanding of important local, national, and international issues. As demonstrated in the Initial Waiver Request and expanded upon below, building on this tradition, WPIX(TV) continues providing these benefits notwithstanding the *Newsday* Transaction and Tribune's reduced interest in *Newsday*.<sup>47</sup>

*Facilities and Operations.* WPIX(TV) and *Newsday* are separately located and operate independently. WPIX(TV), which is affiliated with the CW network, operates from studios and offices located at 220 East 42nd Street in midtown Manhattan. *Newsday*'s headquarters are located in Melville, New York, approximately 30 miles east on Long Island.

*News Coverage.* As of the filing of the Initial Waiver Request, WPIX(TV) broadcast 33 hours of local news each week.<sup>48</sup> Following the 2007 FCC decision approving an earlier transfer of control of Tribune,<sup>49</sup> the station had added an additional thirty minutes, from 4:30 am to 5:00 am, to its weekday morning newscasts. In September 2009, the station introduced a new daily 30-minute newscast at 6:30 pm, thereby increasing the station's weekly total of local news

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<sup>47</sup> See Initial Waiver Request Section III.A.1.

<sup>48</sup> See Hours and Audience Ratings and Shares of Local News – New York DMA (Attachment 1 to initial Waiver Request).

<sup>49</sup> See Shareholders of Tribune Co., *Memorandum Opinion and Order*, 22 FCC Rcd 21,266 (2007), *appeal pending sub nom. Tribune Co. v. FCC*, Nos. 07-1488, 07-1489 (D.C. Cir. filed Dec. 3, 2007).

another three and one-half hours to 33 hours. As of the filing of the Initial Waiver Request, the station's local news schedule was as follows:

| <b><i>Program</i></b>     | <b><i>Time</i></b>            | <b><i>Days</i></b> | <b><i>Hours/day</i></b> | <b><i>Hours/week</i></b> |
|---------------------------|-------------------------------|--------------------|-------------------------|--------------------------|
| <i>PIX11 Morning News</i> | 4:30 am – 9:00 am             | Monday – Friday    | 4.5                     | 22.5                     |
| <i>WPIX News at 6:30</i>  | 6:30 pm – 7:00 pm             | Monday – Sunday    | .5                      | 3.5                      |
| <i>WPIX News at Ten</i>   | 10:00 pm – 11:00 pm           | Monday – Sunday    | 1                       | 7                        |
| <b><i>TOTALS:</i></b>     | <b><i>Monday-Friday</i></b>   |                    | <b>6</b>                | <b>33</b>                |
|                           | <b><i>Saturday-Sunday</i></b> |                    | <b>1.5</b>              |                          |

Since submitting the Initial Waiver Request, WPIX(TV) has made several news programming changes that have resulted in a net increase of five hours a week (for a current total of 38 hours per week) in the station's weekly news schedule. In June 2010, the station cancelled *WPIX News at 6:30* after failing to gain sufficient audience share in the competitive New York City market to support the program. Three months later, in September 2010, the station increased its news programming in two ways: by expanding its weekday morning newscast by 30 minutes (beginning at 4:00 a.m. instead of 4:30 a.m.), and by initiating a weekend (Saturday-Sunday) evening newscast (from 6:00-6:30 p.m.). On September 12, 2011, WPIX(TV) reinstated its early evening weekday newscast, launching a new hour-long "WPIX(TV) News at 5 pm." These changes have yielded a net increase of five hours of locally-produced news programming since the filing of the Initial Waiver Request. The station's current local news schedule is as follows:

| <b>Program</b>                      | <b>Time</b>         | <b>Days</b>            | <b>Hours/day</b> | <b>Hours/week</b> |
|-------------------------------------|---------------------|------------------------|------------------|-------------------|
| <i>PIX11 Morning News</i>           | 4:00 am – 9:00 am   | Monday – Friday        | 5                | 25                |
| <i>WPIX News at 6 pm (Weekends)</i> | 6:00 pm – 6:30 pm   | Saturday – Sunday      | .5               | 1                 |
| <i>WPIX(TV) News at 5 pm</i>        | 5:00 pm – 6:00 pm   | Monday – Friday        | 1                | 5                 |
| <i>WPIX News at Ten</i>             | 10:00 pm – 11:00 pm | Monday – Sunday        | 1                | 7                 |
| <b>TOTALS:</b>                      |                     | <b>Monday-Friday</b>   | <b>7</b>         | <b>35</b>         |
|                                     |                     | <b>Saturday-Sunday</b> | <b>3</b>         | <b>38</b>         |

WPIX(TV)’s 38 hours a week of local news far exceeds the amount of news provided by many other stations in the market and distinguishes WPIX(TV) both from other CW affiliates, the majority of which do not originate their own local newscasts, as well as from other stations that, like WPIX(TV), are ranked fifth or below in terms of all-day share, which are far less likely to carry local news than higher-ranked stations.<sup>50</sup> The 38-hour total does not include the significant amount of airtime that WPIX(TV) devotes to breaking news, such as the 30 hours of live special report coverage WPIX(TV) provided New York residents as Hurricane Irene approached the New York metropolitan area in September 2011. It is noteworthy that, during a time that many

<sup>50</sup> WPIX(TV) is ranked sixth in the New York DMA in terms of all day (9 am to midnight) share as of the February 2012 Nielsen sweeps period, as it was when Tribune filed the Initial Waiver Request. See New York DMA TV Stations and Audience Ratings and Shares (Attachment 2A to the initial Waiver Request). As the FCC has recognized, stations ranked fifth and below are far less likely to carry local news than higher-ranked stations. See 2011 NPRM, ¶41 (“there is generally a drop off between the fourth- and fifth-rated station in the market in the amount of local news broadcast”); 2008 Order, 23 FCC Rcd at 2045-46 (¶ 62), 2050-51 (¶ 70) (“[T]elevision stations ranked fifth and below in their DMAs are less likely to carry local news, and therefore hold the potential, as a result of a merger with a newspaper, to provide additional news programming to the local community.”). Indeed, the Commission previously found that more than 60% of stations ranked fifth or below provide no local news at all. 2008 Order, 23 FCC Rcd at 2046 n.204 (¶ 62 n.204).

television stations across the country are cutting their local news programming budgets, WPIX(TV) has increased the amount of local news that it produces and airs.

In addition to the station's regularly scheduled news programming, WPIX(TV) broadcasts a weekly public affairs program, *PIX News Closeup*, which airs at 6:00 am on Sunday mornings. Now in its eighteenth year, *PIX News Closeup* generally focuses on political discussion and analysis and frequently features interviews with New York's political and community leaders. Program guests have included New York City Mayor Michael Bloomberg; United States Senators Chuck Schumer and Bob Menendez, and United States Representatives Charles Rangel and Peter King, as well as former New York Governors George Pataki, Eliot Spitzer, and David Paterson; former New Jersey Governors Jim McGreevey and Jon Corzine; former New York City Mayor Rudy Giuliani; and numerous other local, national, and international political figures. The program has received many awards, including three Emmys. In 2004, 2006, and 2008, the longtime host of *PIX News Closeup*, Marvin Scott, traveled to Iraq to produce episodes focused on local soldiers stationed there during the holiday season. These broadcasts received special recognition from the New York State Associated Press Broadcasters and two Emmy nominations.

WPIX(TV) frequently broadcasts topical news specials and public affairs programming. On each anniversary of the September 11, 2001, terrorist attacks, WPIX(TV) has broadcast the "Reading of the Names," a memorial service that takes place at Ground Zero, in which each of the names of the people killed in the terrorist attacks on the world Trade Center are read. The station's coverage generally begins at 8:00 am and continues, commercial free, until 1:00 pm. In

2011, the coverage extended until 2:00 pm, as the names of the people killed in the attacks on Washington, D.C. were read for the first time as part of the commemoration.

In 2008, the station produced two specials on the life and work of Martin Luther King. In 2009, it produced a third special on Dr. King's life. Reporters from WPIX(TV) traveled to Memphis to conduct first-hand reporting for these specials. The station's 2008 special, "The Legacy of Martin Luther King: Forty Years After Memphis," won a local Emmy award for outstanding news special. In 2009, WPIX(TV) also produced and aired a 30-minute special report on the life, music, and death of Michael Jackson. Other public affairs specials on WPIX(TV) in the last three years have covered topics such as the causes of homelessness and infant mortality, the 75-year history of New York City's public housing authority, the importance of making New York environmentally sustainable, tips for parents on protecting their children online, and the DTV transition. In addition, for the past several years WPIX(TV) has broadcast Christmas Eve Midnight Mass from St. Patrick's Cathedral.<sup>51</sup>

WPIX(TV) also broadcasts special programming devoted to coverage of the city's professional sports teams. In February 2012, the station provided three hours of live coverage of the ticker tape parade honoring the New York Giants NFL Super Bowl victory. WPIX(TV) also has aired an annual special previewing the upcoming New York Mets baseball season. The special is produced at the Mets spring training facilities in Florida and features interviews with players and coaches, as well as in-depth analysis provided by the WPIX(TV) sports team.

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<sup>51</sup> Attachment 3-A to the Initial Waiver Request includes a more extensive listing of special reports broadcast on the station during 2007, 2008, and 2009.

WPIX(TV)'s news team conducts in-depth investigations on important issues. Investigative journalist Howard Thompson produces investigative news segments under the title "Help Me Howard," and the station features several other investigative reporters in its news programming. Most newscasts include two or three reports which have involved investigations that resulted in improvements for area residents. Examples include getting the city to shovel snow from side streets in the boroughs, uncovering waste in the Metropolitan Transit Authority, and reporting on unsecured hazardous waste in a New York town that may be linked to health problems among area women and girls. In addition, the Fair Media Council of Long Island recognized a recent WPIX(TV) investigative report on broken parking meters costing Nassau County millions of dollars with a 2011 Folio Award.

The station's "PIX Investigates" segments (formerly called "Fact Finders") previously presented investigative reports and included stories on human trafficking, the dilapidated condition of many New York City subway stations, sales of illegal prescription drugs at Manhattan bodegas, and the presence of toxic chemicals in Staten Island backyards. In December 2009, "PIX Investigates" presented a pair of investigative series, each comprised of two parts. The first series included an exclusive jailhouse interview with a New York police officer serving time for a drunk driving crash that killed four people, followed the next night by an in-depth look at how the laws affecting "DWI Cops" have changed. In the second two-part series, the team highlighted the ease with which purchasers could buy guns and bring them into New York City by tracking down the Virginia gun dealer who sold guns used in a Times Square shooting. In 2009, one of the "Fact Finders" reporters received a local Emmy award for

Journalistic Enterprise for his work on the features. In 2006, the “Fact Finders” team received a local Emmy award for Outstanding Political Programming for a report titled “Eminent Domain: Long Branch,” which investigated an oceanfront community where a deal between the city government and private developers to build expensive condos forced homeowners out of their houses.

WPIX(TV)’s newscasts continue to feature in-depth segments and series on issues of current interest to viewers. For example, in March 2011, *PIX 11 Morning News* partnered with the Food Allergy Initiative and the Food Allergy Anaphylaxis Network to produce a number of news segments focusing on food allergies during Food Allergy Awareness week. Then, in April 2011, *PIX 11 Morning News* aired a week-long initiative for Autism Awareness Week, featuring more than a dozen news segments designed to raise awareness of the challenges faced by individuals with autism and their families. Other recent examples of in-depth reports include a comprehensive series on parenting entitled “The Parent’s Handbook,” which aired from February 7-10, 2012, and a series on personal finance airing the week of February 20, 2012.

*Political Coverage.* Prior to the November 2010 elections, which included races for the U.S. Senate and House of Representatives and Governor of New York, WPIX(TV) provided daily reporting on the political campaigns. On Election Night, WPIX(TV) provided a live news update when the polls closed, including early returns and aired commercial-free election coverage from 10-11:30 pm, extending its regularly scheduled 10 pm newscast by a half-hour to ensure viewers received all of the up-to-the-minute election results. WPIX(TV) then covered the inauguration of Gov. Andrew Cuomo live on January 1, 2011.

Prior to the November 2009 elections, which included races for New York City Mayor and Controller, Manhattan District Attorney, and Governor of New Jersey, WPIX(TV) broadcast four consecutive weekly half-hour special election programs called “PIX News Special: The Election Closeup.” Each program, which aired from 10:00 am to 10:30 am, featured a roundtable of political experts covering weekly campaign developments involving the races and discussing topics such as polls, endorsements, debates, and voter trends. The roundtable guests on the show included the Director of Survey Research at Baruch College, the Director of the Quinnipiac University Polling Institute, and a prominent political strategist.

In the lead up to the election, *PIX News Closeup* focused on mayoral candidates Bill Thompson and Tony Avella; incumbent Mayor Bloomberg did not respond to the station’s invitation to appear. In news features entitled *11 News Closeups*, station reporters interviewed all three candidates for Manhattan District Attorney.

On the night of the Presidential election in November 2008, WPIX(TV) expanded its evening newscast to provide coverage from 8:00 pm until 12:30 am. WPIX(TV)’s coverage was greatly enhanced by interviews and on-the-ground reporting by *Chicago Tribune* and WGN-TV reporters in Chicago, who appeared on-air on WPIX(TV). The station also provided extended coverage of President Obama’s Inauguration in January 2009. After WPIX(TV)’s regularly scheduled morning newscast ended at 9:00 am, the station continued to provide live Inauguration coverage until 1:00 pm, then resumed at 2:30 pm and continued until 7:00 pm. In addition to reports from WPIX(TV) reporter Chris Glorioso, who traveled to Washington, D.C. to cover the

Inauguration, the station's special coverage also included interviews and information from reporters working at Tribune's Washington, D.C. bureau.

On most election nights, WPIX(TV) provides multiple news updates beginning at 4:00 pm, before the start of the station's regularly scheduled evening newscasts. These updates provide viewers with the latest results and news about the day's races. In the run-up to major elections, WPIX(TV) also invites candidates to appear on-air for interviews either in the station's regularly scheduled newscasts or on *PIX News Closeup*. Most candidates accept these invitations and appear on the station's news and public affairs programs. As described above, even outside of election season, *PIX News Closeup* features in-depth interviews with local, state, national, and international political leaders on a regular basis. In 2012, WPIX(TV) is dedicating resources to coverage of upcoming local, state, and national elections, including coverage leading up to New York's Republican Party Presidential primary on April 24, 2012.

One example of how WPIX(TV)'s news resources have made a difference in civic debates was the station's extensive coverage of the New York City Metropolitan Transit Authority's proposed elimination of free rides on city subway and trains for elementary and secondary school students traveling to and from school. Whereas most local news outlets simply reported on this story, WPIX(TV) took an advocacy journalism perspective to give voice to local students and their families, who stood to lose the annual \$890 per student benefit. Under the umbrella name "Project SOS" ("Support Our Students"), *WPIX News* devoted significant airtime and exposure throughout December 2009 to create greater public awareness of the issue. Project SOS explained local government processes to students and demonstrated how participation could

make a difference. The station aired interviews with local and state politicians, asking them to join the fight to restore funding to public transportation for students. In 2010, the station's efforts paid off and funding for the free rides was restored. Advocacy journalism is now a staple of WPIX(TV)'s early and late evening newscasts with at least three reporters devoting themselves to such efforts and segments airing in the second section of *News at 5* and *News at 10*.

*Local Lifestyle and Entertainment Programming.* In addition to its news and public affairs programs, WPIX(TV) broadcasts substantial amounts of locally-produced programming. On Sundays from 6:30 pm to 7 pm, the station produces and broadcasts *Dr. Steve*, a health, wellness, and lifestyle program hosted by Dr. Steven Salvatore, a board certified emergency medicine physician who also serves as the health expert on WPIX(TV)'s morning newscast. The station launched the program in March 2011, and the program is currently airing not only in New York, but in 16 other markets across the country. In the fall of 2011, on Sundays from 11:00 am to 11:30 am, WPIX(TV) broadcast *City Gridiron*, a locally-produced documentary-style reality program that focused on Brooklyn's Canarsie Chiefs varsity high school football team, coaches, players and community. The program offered an inside look at high school football in Brooklyn, and the challenges confronted by these student-athletes both on and off the field.<sup>52</sup>

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<sup>52</sup> At the time of the filing of the Initial Waiver Request, WPIX(TV) broadcast two locally produced non-news programs each week. On Saturdays from 6:00 pm to 6:30 pm, the station broadcast *Toni on New York*, a lifestyle program hosted by Toni Senecal which focused on the attractions and events occurring in New York City's various neighborhoods; the program was rebroadcast on Sunday mornings from 11:30 am to 12 noon. On Sunday mornings from 6:30 am to 7:00 am, WPIX(TV) broadcast *Metro Residential*, a local real estate and design series, which looked at housing in local neighborhoods, information for home buyers, and interior design topics; the program was rebroadcast Sunday mornings from 11:00 am to 11:30 am. Both programs were cancelled in August 2010.

*Community Service.* WPIX(TV) has been deeply involved in the New York community, not only through its news coverage but also through on-air campaigns and involvement of station personnel in community events. In June 2009, for example, the station sent a camera team to cover the New York City Tour de Cure, an annual event benefiting the American Diabetes Association. WPIX(TV) personalities also served later in the year as emcees for the event, and the station aired a series of public service announcements promoting the cause.<sup>53</sup>

In the lead-up to the DTV transition, WPIX(TV) Director of Local Production and Community Affairs Carlos Austin participated in at least 13 separate community events designed to ensure that viewers in New York were prepared for the cut-over from analog service. Mr. Austin appeared at events ranging from sessions hosted by senior centers to a town hall meeting hosted by United States Representative Ed Towns. WPIX(TV) provided on-air information about the transition well in excess of that required by the FCC and was one of two stations in New York to host a DTV call center in the days surrounding the transition.

Other WPIX(TV) personalities have been equally involved in community events. For example, in August 2008, station meteorologist Irv Gikofsky (known as “Mr. G” on-air) served as spokesperson for the inaugural Project Back-to-School supply drive to benefit the Coalition for the Homeless, and in 2009, 2010, and 2011, WPIX(TV) again supported this cause.<sup>54</sup> Mr. Gikofsky has also helped provide publicity and support for National Mentoring Month, which

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<sup>53</sup> A letter of appreciation that the station received from the American Diabetes Association was appended to the Initial Waiver Request as Attachment 3-B. Attachment 3-C included a list of additional locally- produced public service announcement campaigns broadcast by WPIX(TV) in 2007, 2008, and 2009.

<sup>54</sup> A letter of appreciation that the station received from the Coalition for the Homeless was appended to the Initial Waiver Request as Attachment 3-D.

holds an annual event at Chelsea Piers in January and has spoken at innumerable public events hosted or sponsored by other organizations. In 2007, *News at Ten* anchor Jim Watkins lectured at the New York Autism Center of Excellence's 10th annual conference, "New Insights in the Diagnosis, Neurobiology, Genetics, and Treatment of Autism."<sup>55</sup>

For the past several years, WPIX(TV) has worked to support the Feal Good Foundation, a non-profit dedicated to spreading awareness and educating the public about the health effects of the September 11, 2001 tragedy on first responders. In addition to favorable on-air mentions and donations from the Tribune New York Foundation, a WPIX(TV) commentator has worked to attain passage of legislation favorable to the first responders. In September 2011, the station provided extensive coverage of the opening of a memorial park sponsored by the foundation. In 2011, WPIX(TV) also provided coverage of various Hispanic community events, including the New York City Hispanic Day Parade and parades focused on communities from Mexico and the Dominican Republic. In July 2011, WPIX(TV) sponsored a day-long health and wellness expo at Jacob Javits Convention Center in Manhattan. The expo featured free classes, demonstrations, and seminars focused on a myriad of health-related topics, including allergies breast cancer awareness, diabetes prevention and treatment, childhood obesity prevention, naturopathic medicine, and many others.<sup>56</sup>

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<sup>55</sup> Attachment 3-E to the Initial Waiver Request was a more extensive list of some of the community projects with which WPIX(TV) personalities were involved from 2007-2009.

<sup>56</sup> From 2004-2010, WPIX(TV) newscasters paid annual visits to local soldiers and sailors at Christmas time as part of the "PIX11 Christmas with Hometown Heroes" program. In 2010, these visits were broadcast live on the *PIX Morning News* from the USS Harry S. Truman, which was returning from a deployment in the Persian Gulf.

*Awards.* WPIX(TV)'s exceptional news and public affairs programming has been recognized by a number of organizations, as shown in the long list of awards received by the station. For example, the station's coverage of the explosion of a steam pipe under a Manhattan street near Grand Central Station in July 2007 received five awards or commendations, including a local Emmy award for spot news coverage, an Edward R. Murrow Award for best newscast from the Radio and Television News Directors Association, an Outstanding Spot News Award from the New York State Broadcasters Association, a Spot News Award from the New York Press Club, and a Special Mention Award for Spot News Coverage from the New York State Associated Press Broadcasters Association. WPIX(TV) received three local Emmy awards in 2008, six in 2009, three in 2010, and 10 in 2011. In 2009, *WPIX News at Ten* was recognized with a First Place award from the New York State Associated Press Broadcasters Association for Best Regularly Scheduled Local News Program. In 2009, the station also received New York State Associated Press Broadcasters Association awards for best spot news coverage and best continuing news coverage.<sup>57</sup>

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

In its Initial Waiver Request, the Reorganized Licensee demonstrated that it is entitled to a permanent waiver of the NBCO Rule that would allow continued common ownership of the properties by the Reorganized Licensee, as well as subsequent sale of the properties in tandem.<sup>58</sup>

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<sup>57</sup> Attachment 3-F1 hereto is a list of awards received by WPIX(TV) in 2007, 2008, 2009, 2010, and 2011. It supersedes Attachment 3-F filed with the Initial Waiver Request.

<sup>58</sup> See Initial Waiver Request Section IV.

Although the Initial Waiver Request addressed the modified NBCO Rule waiver standards which the FCC adopted in 2008 and which the Third Circuit vacated in *Prometheus II*, the Reorganized Licensee also explained that even if those modified standards were found not to be applicable to the Waiver Request for some reason (including potential developments in the Third Circuit litigation), a permanent waiver would be appropriate under prior waiver standards.<sup>59</sup>

When the Commission first adopted the absolute ban on newspaper/broadcast cross-ownership in 1975, it acknowledged that waivers of the rule should be available when “*for whatever reason*, the purposes of the rule would be disserved by divestiture” and those purposes “would be better served by continuation of the current ownership pattern.”<sup>60</sup> The Initial Waiver Request demonstrated that grant of a waiver under this standard was warranted because the evidentiary record here not only satisfies the waiver test on its face, but also contains a factual showing that is at least as compelling as prior situations in which the agency has granted such relief.<sup>61</sup> The Reorganized Licensee’s initial showing of entitlement to a waiver under the 1975 standard is even more compelling now, particularly given the ever-expanding competition and media diversity and growing economic pressures that newspaper and broadcast stations currently face as well as the co-owned properties’ continuing record of outstanding local service—a record

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<sup>59</sup> *See id.*

<sup>60</sup> *Multiple Ownership of Standard, FM & Television Broad. Stations*, Second Report and Order, 50 F.C.C.2d 1046, 1085 (¶ 119) (1975), *aff’d FCC v. Nat’l Citizens Comm. for Broad.*, 436 U.S. 775 (1978).

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

that would be unlikely to be maintained if the FCC were to compel separation of the properties at issue.<sup>62</sup>

Furthermore, it is notable that the *Future of Media Report* correctly concluded that allowing combinations of newspaper and broadcast properties can produce synergies that result in increases in the quantity and improvement in the quality of news and other information available to consumers in the local marketplace. Indeed, the *Report* correctly observes that a greater number of independent media outlets in a market “*is not necessarily better,*” thus undermining the central premise behind the NBCO Rule itself: “The nature of the ‘diversity’ calculus may have changed. In an earlier day, it was reasonable to assume that a diversity of ‘voices’ indicated general media health. Now, a media market can simultaneously have a diversity of voices and opinions and yet a scarcity of journalism.”<sup>63</sup> In addition, the *2011 NPRM* acknowledges that “[c]ompulsory divestiture is disruptive to the industry and to individual owners,” an acknowledgment with particular relevance here given that all of the combinations at issue have been under common ownership for a number of years.<sup>64</sup>

Finally, it bears reiteration that the requested waiver would not create a new media combination and thus necessarily would not result in any diminution in diversity or competition, a factor which the FCC has relied on in numerous prior cases in which it has granted permanent

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<sup>62</sup> See *supra* Sections II-III.

<sup>63</sup> *Future of Media Report* at 312; see also *id* at 26.

<sup>64</sup> *2011 NPRM*, ¶¶ 100, 114.

waivers of the media ownership rules.<sup>65</sup> As a result—and particularly in view of the duration of Tribune’s bankruptcy proceedings and the need for the Commission to afford comity to the bankruptcy process—a permanent waiver of the NBCO Rule is appropriate.

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

In its Initial Waiver Request, the Reorganized Licensee established that, if the Commission were for some reason to conclude that a permanent waiver of the NBCO Rule is not appropriate, the agency should at a minimum grant a temporary waiver of the rule until 18 months after the pending proceedings to revise it become final.<sup>66</sup> As explained therein, the FCC has previously granted such waivers when the public interest would be served, and particularly in the face of “protracted rulemaking proceedings” in which there is “a substantial record on which

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<sup>65</sup> See, e.g., *AMFM, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 16,062, 16,069 (¶ 15) (2000) (allowing transfer of an existing combination and recognizing that such a transfer “do[es] not increase the combined advertising revenue shares of ... existing groups or result in increased levels of ownership concentration”); *EWS News Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 20,243, 20,247 (¶ 15) (1997) (awarding permanent waiver and stating that “since grant of this application will preserve an existing combination, we do not believe that continued joint ownership of the stations will decrease the level of diversity and competition in the market”); see also *Solar Broad. Co.*, Memorandum Opinion and Order, 17 FCC Rcd 5467, 5475 (¶ 24) (2002); *Am. Radio Sys. Corp.*, Memorandum Opinion and Order, 13 FCC Rcd 12,430, 12,437-48 (¶ 11) (1998); *Houston H. Harte*, Memorandum Opinion and Order, 12 FCC Rcd 13,418, 13,422-23 (¶ 16) (1997); *Paso Del Norte Broad. Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 6876, 6882 (¶¶ 13-14) (1997); *River City License P’ship*, Memorandum Opinion and Order, 12 FCC Rcd 4993, 4997-98 (¶ 13) (1997); *Kelso Partners IV, L.P.*, Memorandum Opinion and Order, 11 FCC Rcd 8764, 8768-69 (¶ 11) (1996). *Accord United States Department of Justice and Federal Trade Commission Horizontal Merger Guidelines* (Aug. 19, 2010) at 19, available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html> (last visited Mar. 15, 2012) (stating that transfers that do not increase ownership concentration are “unlikely to have adverse competitive consequences and ordinarily require no further analysis”).

<sup>66</sup> See Initial Waiver Request Section V.

to base a preliminary inclination to relax or eliminate a rule.”<sup>67</sup> The Initial Waiver Request demonstrated that Commission precedent supports grant of a waiver involving such proceedings where an application also “falls within the scope of the proposals in the proceeding, and a grant of an interim waiver would be consistent with the goals of competition and diversity.”<sup>68</sup> As the FCC has emphatically stated, “[w]hat is important is whether the public interest would be served by a grant of a waiver”; here, there can simply be no dispute that it would.<sup>69</sup>

Since the filing of the Initial Waiver Request in 2010, the proceedings to revise the NBCO Rule have only become more “protracted” and the record supporting its relaxation or elimination even more “substantial” (particularly when considering the findings of the *Future of Media Report*); it has only become more clear that an interim waiver would comport with the FCC’s goals of promoting diversity, localism, and competition; and, all the while, the requested waiver has remained within the scope of the proposals in the proceedings to revise the rule.

Indeed, the Commission is now well into the second decade of proceedings to revise the rule.<sup>70</sup> The FCC recently released its *2011 NPRM*, having received comments on a Notice of Inquiry in the summer of 2010 and completed and publicly released eleven research studies in the summer of 2011. This 2010 Quadrennial Review proceeding is the *fifth* successive periodic review to be conducted pursuant to § 202(h) of the Telecommunications Act of 1996 and the

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<sup>67</sup> *1998 Biennial Regulatory Review*, Notice of Inquiry, 13 FCC Rcd 11,276, 11,294 (¶ 56) (1998) (“*1998 Biennial Review NOF*”).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 11,294-95.

<sup>70</sup> See Initial Waiver Request Section V.

seventh proceeding to consider reform of the NBCO Rule when a 1996 *Notice of Inquiry* and 2001 *Notice of Proposed Rulemaking* focused solely on the NBCO Rule are taken into account.<sup>71</sup> As an initial matter, there can be little doubt that the record assembled in response to the 2011 *NPRM* will further support repeal, or at least substantial relaxation, of the rule, particularly in light of the continued marketplace changes that are documented above.<sup>72</sup> In addition, the FCC itself has now found, on *three separate occasions*, that maintenance of the absolute ban cannot be justified.<sup>73</sup> Most recently, in the 2011 *NPRM* the FCC states that it “continues to believe . . . that a blanket prohibition on newspaper/broadcast combinations is overly broad and does not allow for certain cross-ownership that may carry public interest benefits.”<sup>74</sup> The Third Circuit expressly *upheld* the FCC’s previous determination on this issue in *Prometheus I*.<sup>75</sup> And, the remand in *Prometheus II* was based not on any substantive disagreement with the Commission’s bottom-line conclusion that the rule was ripe for at least some relaxation, but on the ground that the agency had failed to comply with the APA’s notice and comment requirements as to the specific standards adopted in 2008.<sup>76</sup> Given these rulemaking determinations that an absolute

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<sup>71</sup> *Newspaper/Radio Cross-Ownership Waiver Policy*, Notice of Inquiry, 11 FCC Rcd 13,003 (1996); *Cross-Ownership of Broad. Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy*, Order and Notice of Proposed Rulemaking, 16 FCC Rcd 17,283 (2001).

<sup>72</sup> See *supra* Section II.

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

<sup>74</sup> 2011 *NPRM*, ¶ 89.

<sup>75</sup> *Prometheus Radio Project v. FCC*, 373 F.3d 372, 398-400 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005) (“*Prometheus I*”).

<sup>76</sup> *Prometheus II*, 652 F.3d at 449-54.

ban on newspaper/broadcast cross-ownership should not be enforced, a failure to grant the requested waiver would be arbitrary and capricious. And, there is certainly no arguable basis on which to conclude that the proceedings concerning the NBCO Rule are not “protracted” or that there is not a “substantial record . . . on which to base a *preliminary* inclination to relax or eliminate” the NBCO Rule.<sup>77</sup>

The requested waiver is also clearly within the scope of the proposals for revision that have been set forth in these protracted proceedings. The Initial Waiver Request documented compliance with the 2008 waiver standards, which the Commission largely proposes to reinstate in the *2011 NPRM*.<sup>78</sup> The Initial Waiver Request demonstrated, moreover that the Reorganized Licensee would have been entitled to a waiver under the 2003 version of the NBCO Rule, a demonstration which similarly remains relevant to the instant showing.<sup>79</sup>

Finally, the grant—at a minimum—of a temporary waiver remains consistent with the Commission’s diversity, localism, and competition goals. The combination’s outstanding record of public service has, as shown above, continued since the filing of the Initial Waiver Request, while the market has become even more diverse and competitive.<sup>80</sup> Here again, because this transaction involves only the transfer of *existing* ownership interests, allowing continued cross-

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<sup>77</sup> *1998 Biennial Review NOI*, 13 FCC Rcd at 11,294 (¶ 56) (emphasis added).

<sup>78</sup> See Initial Waiver Request Sections IV, V.

<sup>79</sup> See *id.* Section V.

<sup>80</sup> See *supra* Sections II, III.

ownership by definition cannot have any adverse impact on existing diversity or competition levels.<sup>81</sup>

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

## **VI. CONCLUSION**

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

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<sup>81</sup> See *supra* note 65.

**WPIX AWARDS (2007-2011)**

**THE ACADEMY OF TELEVISION ARTS AND SCIENCES (EMMY AWARDS)**

- 2011 CONTINUING COVERAGE The Hunt for a Master Scammer. November 18, 2009. Howard Thompson, Reporter; John F. Frasse, Photographer; Monique Singh-Roy, Producer.
- 2011 TEEN NEWS Heroin High. October 6, 2009. Mary Murphy, Reporter; Kenton Young, Photographer.
- 2011 ON-CAMERA TALENT: Commentator/Editorialist Larry Mendte. March 12, 2010 (WPIX-TV). Composite
- 2011 WRITER: Commentary/Editorial Larry Mendte. March 9, 2010 (WPIX-TV). "Larry Mendte's Commentaries"
- 2011 TECHNICAL ACHIEVEMENT David Kimmel. December 20, 2009. (WPIX-TV). "A PIX Christmas in Iraq"
- 2011 PROMOTION: News Promo Weather Related Campaign. February 17, 2010 (WPIX-TV) Erica Horn-Yern, Writer/Producer/Editor, John Zeigler, VP/Creative Director
- 2011 PROMOTION: PROGRAM PROMO (Single Spot) The Revolution Will Be Curbed: Promotion for "Curb Your Enthusiasm." August 28, 2010 (WPIX-TV) Daniel Petersen, Producer; Jimmy Yeo, Motion Designer/Animator, John Zeigler, VP/Creative Director
- 2011 PROMOTION: PROGRAM PROMO (Campaign) The Revolution Will Be Curbed: Promotion for "Curb Your Enthusiasm." August 28, 2010 (WPIX-TV) Daniel Petersen, Producer; Jimmy Yeo, Motion Designer/Animator, John Zeigler VP/Creative Director
- 2011 PROMOTION: Program Image Do You See 11's? July 15, 2010 (WPIX) Erica Horn-Yern, Writer/Producer/Editor, John Zeigler, VP/Creative Director; Young Bum Kim, Motion Graphics Designer, Kenton Young Videographer
- 2011 COMMUNITY/PSA CAMPAIGN This Day in Black History. February 1, 2010 (WPIX-TV) Jeremy Copas, Producer
- 2010 POLITICS/GOVERNMENT: News You Can Fight City Hall, November 5, 2008 (WPIX-TV) Peter Thorne, Reporter
- 2010 PROMOTION: Program Promo- Campaign Tarantula Storybook, October 1, 2008. (WPIX-TV). Vas Mountzourous, Writer/Producer/Editor; John Zeigler, Creative Services Director, Steve Mitas, Graphic Design
- 2010 TECHNICAL ACHIEVEMENT David Kimmel and Anthony Mazza. May 3, 2009. (WPIX-TV). "PIX Morning News LIVE Remote Television Production."
- 2009 HARD NEWS SINGLE STORY Chris Glorioso, Reporter; Kenton Young, Photographer. Predator Loophole, November 9th 2007
- 2009 NEWS SPECIAL The Legacy of Martin Luther King: Forty Years after Memphis. April 4, 2008. Tiffany McElroy, Host; Jeremy Copas, Producer; Carlos Austin, Executive Producer.
- 2009 JOURNALISTIC ENTERPRISE Peter Thorne. October 2, 2007. WPIX-TV Fact Finders.
- 2009 POLITICS/GOVERNMENT: News Long Branch Re-Visited. August 20, 2008. Mary Murphy, Reporter/Writer/Producer; Noreen Lark, Producer; Kenton Young, Photographer.
- 2009 SPORTS COVERAGE: Single Story One of a Kind Drive. May 18, 2008. Lolita Lopez, Reporter; Caroline Kovach, Producer; Richard Marino, AVID Editor; William Muller, Photographer/Producer.
- 2009 PROMOTION: Program Promo Family Guy: Classic. June 10, 2008. Ari Pitchenik, Writer/Producer/Editor; Yip Wong, Designer; John Zeigler, Creative Director.
- 2008 SPOT NEWS STORY Steam Explosion. July 18, 2007 Arthur Chi'en, Cathy Hobbs, Chris Glorioso, Reporters, Tom Cassidy, Eric Talesnick, Kenton Young, Dan Prado, Photographers, Doug Kahn, Assignment Editor, Jeremy Copas, Field Producer, John Houseman, Assistant News

Director, Tim Armstrong, Executive Producer, Robert Cucchiaro, Producer, Bob Pronovost,  
Director

- 2008 DIRECTOR: NEWS, LIVE OR LIVE TO TAPE David Kimmel. May 16, 2007 Composite
- 2008 TECHNICAL ACHIEVEMENT David Kimmel. December 3, 2006 WPIX(TV) Morning News Composite, David Kimmel, Technical Producer/Director, Anthony Mazza, Lead Photographer
- 2007- Evening Newscast: Over 35 Minutes: WB11 News At Ten: Flooded Out. October 12, 2005. (WPIX-TV). Karen Scott, News Director; John Houseman, Asst. News Director; Tim Armstrong, Exec. Producer; Robert Cucchiaro, Producer; Wil Ocasio, Managing Editor; Doug Kahn, Assignment Editor; Bob Pronovost, Director; Jim Watkins & Kaity Tong, Anchors; Joe Cioffi, Weather Anchor; Sal Marchiano, Sports Anchor
- 2007- On-Camera Talent: Program Host/Moderator: Sukanya Krishnan Composite. December 8, 2005 & January 18, March 6, 2006. (WPIX-TV). Sukanya Krishnan, Host
- 2007- Breaking News Story: Flooded Out. October 12, 2006. (WPIX-TV). Arthur Chi'en, Reporter; Kenton Young & Tom Cassidy, Photographers; Doug Kahn, Assignment Editor
- 2007- Spot News Story: East Side Explosion. July 10, 2006. (WPIX-TV). Chris Glorioso, Reporter; Allison Kaden, Arthur Chi'en & Cathy Hobbs, Reporters; Wil Ocasio, Managing Editor; Chris St. Peter & Laura Mineo, Assignment Editors; Angel Navarro, Field Producer; Ace Zaken, Photographer
- 2007- Education: Program/Special: Toni On! Costa Rica. October 23, 29, 2005. (WPIX-TV). Toni Senecal, Tracy M. Shea, Executive Producers
- 2007- Teen: One Tragic Hit. February 10, 2006. (WPIX-TV). Vanessa Tyler, Reporter
- 2006- Outstanding Live Sports Coverage: "New York Mets" Leon Schweir, Joe Whelan, Mike Santini, Kevin Meininger, Bill Webb, John Gallagher, Bob Lalwani, Jim Gallagher, Fran O'Connell, Charlie Cucchiara, Steve Oelbaum, Dave O' Brien, Tom Seaver and Lolita Lopez
- 2006- Outstanding Editor (Short Form): "Smoke Editor" Bill Mastorakis
- 2006- Outstanding Director (News): "WB11 Morning News" David Kalmowitz
- 2006- Outstanding On-Camera Achievement (News) Anchor / Host: "WB11 Morning News" Sukanya Krishnan
- 2006- Outstanding Live Sports Coverage (Series) Professional: "New York Mets" Leon Schweir
- 2006- Outstanding Political Programming: "Eminent Domain: Long Branch" Mary Murphy, Noreen Lark, Michael Barbagallo and David Scanlon
- 2006- Outstanding Business / Consumer Programming (Single Program or Special / Series): "The Best of Help Me Howard" Howard Thompson, Seth Andrews, Jeremy Fink, John Frasse and David Scanlon
- 2006- Outstanding Entertainment Programming (Single Program or Special) "11 News Close-up: Jerry Lewis" Marvin Scott and Ellyn Marks
- 2006- Outstanding Coverage of a Continuing Story: "Black Sunday Firefighters" Mary Murphy, Noreen Lark, David Scanlon and Michael Barbagallo
- 2006- Outstanding Coverage of an Anticipated News Story: "Home for Father's Day" Thalia Patillo

#### **NEW YORK STATE ASSOCIATED PRESS BROADCASTERS ASSOCIATION**

- 2009 Best regularly scheduled local news program (First Place) WPIX, New York, WPIX(TV) News at Ten-12/10/08, Team coverage
- 2009 Best spot news coverage (First Place) WPIX, New York, East Side Crane Collapse, Chris Glorioso, Allison Haunss, Katy Tur

- 2009 Best continuing news coverage (First Place) WPIX, New York, Pit Bull Eviction, Howard Thompson
- 2009 Best regularly scheduled local news program (Special Mention) WPIX, New York, WPIX(TV) Morning News-11/13/08, Team coverage
- 2009 Best news special/documentary (Special Mention) WPIX, New York, The Papal Visit, Team coverage
- 2009 Best interview (Special Mention) WPIX, New York, 11 News Close up: Ted Sorenson, Marvin Scott
- 2009 Best interview (Special Mention) WPIX, New York, Orthodox Jewish sex abuse, Mary Murphy
- 2009 General excellence of individual reporting (Special Mention) WPIX, New York, Mary Murphy composite, Mary Murphy
- 2008-Grand Prize, WPIX-TV
- 2008-Best regularly scheduled news program First Place: WPIX-TV, New York, 5/23/07, CW 11 News at Ten: Braunstein Verdict - Staff
- 2008-Best news series First Place: WPIX-TV, New York, Who's Next Door? - Cathy Hobbs  
Special Mention: WPIX-TV, New York, Healing Our Heroes - Chris Glorioso
- 2008-Best interview First Place: WPIX-TV, New York, Deutsche Bank Fire Family - Mary Murphy
- 2008-Best spot news coverage Special Mention: WPIX-TV, New York, Steam Pipe Explosion - Arthur Chi'en, Cathy Hobbs, Chris Glorioso
- 2008-Best continuing news coverage First Place: WPIX-TV, New York, Predator Loophole - Chris Glorioso
- 2008-Best enterprise reporting First Place: WPIX-TV, New York, Ambulances of the Sky - Peter Thorne
- 2008-Best feature Special Mention: WPIX-TV, New York, Truly Julie in Korea - Julie Chang
- 2007- First Place: Best regularly scheduled local news program"- WPIX(TV) morning news 8-9am hour news team
- 2007-First place- "Best continuing news coverage"- "The Death of Nixmary Brown" Arthur Chi'en, Ellyn Marks, Chris Glorioso
- 2007-First place-"Best sports coverage" "steroids"- Lolita Lopez, Caroline Kovach
- 2007-First place-"best interview"- "Rudy Giuliani"- Marvin Scott
- 2007-Special mention-"best news series"- "a New York Christmas in Iraq"- Marvin Scott, David Kimmel
- 2007-Special mention-"best series" -"best feature" - "25 years of the blue note"-Ellyn Marks

#### **EDWARD R. MURROW AWARD- RTNDA**

- 2008 BEST NEWSCAST Steam Explosion. July 18, 2007 Arthur Chi'en, Cathy Hobbs, Chris Glorioso, Reporters, Tom Cassidy, Eric Talesnick, Kenton Young, Dan Prado, Photographers, Doug Kahn, Assignment Editor, Jeremy Copas, Field Producer, Karen Scott, News Director, John Houseman, Assistant News Director, Tim Armstrong, Executive Producer, Robert Cucchiaro, Producer, Bob Pronovost, Director

#### **NEW YORK STATE BROADCASTERS ASSOCIATION**

- 2008 Outstanding Hard News, Charity Car Donations
- 2008 Outstanding Spot News Steam Pipe Explosion
- 2008 Outstanding Public Service Announcement/Campaign Jackie Robinson - 60<sup>th</sup> Year of Diversity in Baseball

- 2008 Outstanding Single Public Affairs Program Infant Mortality
- OUTSTANDING DOCUMENTARY PROGRAM A NEW YORK CHRISTMAS IN IRAQ-12/30/06
- 2006- Outstanding Locally Produced Television Show: “The Team...The Time...The Mets”

#### **NEW YORK PRESS CLUB AWARDS**

- 2008- Best Regularly Scheduled Local Newscast: WPIX(TV) News at Ten, July 18, 2007 “Steam Explosion” Karen Scott, News Director, John Houseman, Assistant News Director, Tim Armstrong, Executive Producer, Robert Cucchiaro, Producer
- 2008-Anticipated News: 9/11 Ceremonies & Firehouse Hit Hard Mary Murphy, Reporter
- 2008-Political Coverage: 11 News Closeup: The Internet and Politics Marvin Scott, Host Ellyn Marks, Producer
- 2008-Spot News: Steam Explosion, July 18, 2007 Arthur Chi’en, Chris Glorioso, Cathy Hobbs, Reporters
- 2008-Rev. Mychal Judge Heart of New York Award: Fact Finders: Epilepsy and Driving Mary Murphy, Reporter
- 2007- Best Anticipated News Story “CW 11 News At Ten” Marvin Scott, Chris Glorioso, Rob Hoell “TWA 800:Ten Years Later”
- 2007-Best Spot News: “CW 11 News At Ten” Arthur Chi’en “Brooklyn Disturbance”
- 2007-Reverend Mychal Judge Heart of New York Award: “CW 11 News At Ten” Mary Murphy “Louis Pepe’s New Eye”
- 2007-Best News Special: CW 11 News “Spirit of New York”

#### **FOLIO AWARDS**

- 2011 Economic, Business or Consumer Issues News “Broken Meters” Rob Hoell 5/12/10
- 2009 Dr. Sean A. Fanelli Award in Educational Reporting “Henry Viscardi School” 5/06/08 Reporter: Rob Hoell, Producer: Mike Graham, Editor: Keith Lopez
- 2009 Spot News Story “Drunk Cops Ridealong” 6/03/08 & 6/17/08 Reporter: Peter Thorne, Producer: Noreen Lark, Editor: Rich Marino
- 2009 Enterprise Reporting “Door To Door Scam” 10/01/08 Reporter: Mary Murphy, Editor: David Scanlon
- 2006 BREAKING NEWS STORY IN A REGULARLY SCHEDULED NEWSCAST: “Wade River Standoff” WPIX(TV), Reporter: Rob Hoell
- 2006 SPOT NEWS STORY: “Deer Park Brush Fire” WPIX(TV), Reporter: Rob Hoell
- 2006 SCIENCE, HEALTH OR ENVIRONMENT NEWS: “Is Long Island Ready for Bird Flu” WPIX(TV), Reporter: Mary Murphy

#### **ELLIS ISLAND MEDAL OF HONOR**

- 2007- Dave Kimmel

#### **FORDHAM UNIVERSITY**

- 2006- Best of the Bronx: Marvin Scott

#### **MANHATTAN CHAMBER OF COMMERCE**

- 2006- Spirit of New York Award: Mr. G