

WTIC-TV, Hartford, CT
WTXX(TV), Hartford, CT
FCC Form 314
Exhibit 16

REQUEST FOR CROSS-OWNERSHIP WAIVER

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I. INTRODUCTION AND SUMMARY

The instant application seeks consent to the assignment of the license of WTIC-TV, Hartford, Connecticut from Tribune Television Company, Debtor-in-Possession (“TTC-DIP”) to Tribune Television Company (“Reorganized TTC”), and the assignment of the license of WTXX(TV), Hartford, Connecticut from WTXX, Inc., Debtor-in-Possession (“WI-DIP”) to WTXX, Inc. (“Reorganized WI”). This proposed assignment is part of the reorganization of Tribune Company, Debtor-in-Possession (“Tribune”),¹ the ultimate parent company of TTC-DIP and WI-DIP, and most of Tribune’s subsidiaries, in which, subject to the approval of the Bankruptcy Court, certain of Tribune’s current lenders will acquire equity interests and Reorganized Tribune will emerge from bankruptcy and thereafter become a publicly traded company. In connection with this application, Reorganized TTC and Reorganized WI (together, the “Reorganized Licensees”) request a permanent waiver of Section 73.3555(d), the newspaper-broadcast cross-ownership rule (the “NBCO Rule”), to permit the continued ownership of WTIC-TV and WTXX(TV) (together, the “Stations”), along with the *Hartford Courant* (the “*Courant*”), a daily newspaper published in Hartford, Connecticut by a Tribune subsidiary; the properties have been owned and operated in common for a decade. In the alternative, the Reorganized Licensees seek a temporary waiver of the NBCO Rule until 18 months after pending proceedings to revise the rule become final.

The FCC eliminated the prohibition on newspaper/broadcast cross-ownership in 2003, the United States Court of Appeals for the Third Circuit upheld the elimination of the ban in

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

2004, and the FCC reaffirmed its 2003 holding that the NBCO Rule in its 1975 form no longer serves the public interest in December 2007.² That decision was challenged in several Courts of Appeals, and the cases were ultimately transferred to the Third Circuit.³ In March 2010, that court lifted a stay that it had first put in place in September of 2003 and continued in its 2004 decision and a 2009 order, thus allowing revised standards for waiver of the NBCO Rule to take effect. Under these modified waiver standards, Reorganized Tribune’s Hartford combination should be granted a permanent NBCO waiver under the “failed station” criterion, and application of the four public interest factors set forth by the agency further supports continued cross-ownership of the Stations and the *Courant*.

Just a month before its December 2007 media ownership decision, the Commission determined that it was appropriate for Tribune to receive a temporary waiver of the NBCO Rule in Hartford.⁴ Since that decision, the country has experienced a dramatic economic downturn that has been particularly severe in its impact on the newspaper and broadcast industries – already devastated by changes in the advertising market and increasing competition from Internet and other sources of news, information, and entertainment. The effects of that downturn

² See *infra* Section II.A.3.

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

⁴ 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). The Commission also granted Tribune a *permanent* waiver of the local television ownership or “duopoly” rule – 47 C.F.R. § 73.3555(b) – to permit common ownership of WTIC-TV and WTXX(TV). See *Shareholders of Tribune Co.*, 22 FCC Rcd at 22,279-281 (¶¶ 37-45); *Counterpoint Commc’ns, Inc.*, 20 FCC Rcd 8582, 8583 (¶ 2) (2005).

ultimately resulted in the filing of petitions for bankruptcy by Tribune and nearly all of its subsidiaries, including the licensees of WTXX(TV) and WTIC-TV.⁵

Although the newspaper and broadcast stations exercise independent editorial discretion, access to the combined resources of the properties and the journalistic synergies produced by their common ownership enable each to increase the quantity and timeliness of news that it broadcasts, prints, or publishes on its websites and to deliver a superior news product to local residents. WTIC-TV currently airs 35.5 hours per week of locally-produced news and public affairs programming – more than any other station in the market. This figure represents a greater than tenfold increase in WTIC-TV’s local news and public affairs programming since Tribune acquired the station in 1997. WTXX(TV) – which was not broadcasting local news programming produced by the licensee when Tribune acquired it in 2001 – simulcasts WTIC-TV’s hour-long 10:00 pm local newscast and rebroadcasts public affairs programming produced by WTIC-TV in a different time period. Through joint efforts, the Stations and the *Courant* have been able to ensure that adequate resources are deployed to cover important local stories, develop local news and information features, and deliver enhanced political, election, and sports coverage – while maintaining editorial separation between the broadcast and newspaper properties.

In addition to working together to produce regularly scheduled newscasts and print stories, Tribune’s Hartford properties often collaborate on special projects regarding issues of particular importance to the local community, including recent series of investigative reports on the increase in domestic violence cases in the Hartford area and questionable liposuction

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

practices; joint coverage of the Travelers' Open, Connecticut's PGA Tour golf event; and market-leading reports that scooped all other local outlets in reporting the recent decision of Sen. Christopher Dodd to retire, the announcement by state Attorney General Richard Blumenthal that he would seek his party's nomination to fill Dodd's seat, and the possibility that negligent maintenance might have been to blame for a fatal school bus crash.

The many awards won by Tribune's Hartford properties are testament to the public interest benefits that flow from the common ownership. Combined efforts also have allowed the Stations and the *Courant* to participate in more community service events than ever before, deliver greater coverage of those events, and provide increased support to local community organizations – all at a time when financial difficulties are forcing many stations to cut back on such activities.

The Stations and the *Courant* operate in the highly diverse and competitive Hartford & New Haven, Connecticut Designated Market Area (“DMA”). The number of sources from which the public can obtain local news and information in the DMA has increased at an ever-accelerating rate since the Commission adopted the NBCO Rule in 1975 and has multiplied exponentially since Tribune acquired WTIC-TV in 1997 and WTXN(TV) and the *Courant* in 2000. Common ownership of the Stations and the *Courant* has served the public interest, and will continue to do so, without any diminution of diversity in the sources of news and information or harm to competition in the Hartford DMA. Thus, under the revised standards for waiver of the NBCO Rule now in effect or under any reasonable standard that takes into account the public interest benefits provided by the combination in question, Reorganized Tribune should be granted a permanent waiver of the NBCO Rule permitting its continued common ownership of the *Courant*, WTIC-TV, and WTXN(TV) and also permitting a subsequent sale of those

properties in tandem following the company's emergence from bankruptcy. Such relief is fully justified in this case given the Commission's prior findings, the exigencies of Tribune's bankruptcy status, and the need for the FCC to ensure comity with the bankruptcy process. At the very least, a temporary waiver until 18 months after the Commission completes its review of the NBCO Rule and that action becomes a final order no longer subject to judicial review is appropriate here.

II. PROCEEDINGS RELATED TO THE NBCO RULE, TRIBUNE'S HARTFORD PROPERTIES, AND THE IMPACT OF THE ECONOMIC DOWNTURN.

A. The NBCO Rule.

1. Adoption Of The NBCO Rule In 1975.

In 1975, the FCC adopted the NBCO Rule prohibiting ownership of a daily newspaper and a broadcast station serving the same community.⁶ In its decision adopting the NBCO Rule, the Commission acknowledged the potential detriments of the prohibition and the very shaky factual foundation upon which it was based.⁷ The agency also recognized the pioneering spirit of cross-owners and the fact that broadcast stations affiliated with newspapers tended to be superior licensees, particularly in terms of locally oriented service.⁸ Despite its recognition of the public interest benefits of cross-ownership, the agency nevertheless adopted the NBCO Rule in reliance on what the agency itself termed a "mere hoped for gain in diversity."⁹ Importantly, however,

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

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

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

⁹ *Id.* at 1078 (¶ 109).

the Commission concluded that where there was at least one other broadcast station licensed to a community, cross-ownership would be grandfathered because the harm from forced divestiture outweighed any theoretical benefit of separate ownership.¹⁰ The FCC also contemplated processing a “number of waiver requests.”¹¹ The Supreme Court upheld the FCC’s decision to grandfather most existing combinations and relied heavily on the availability of waivers in affirming the NBCO Rule in 1978.¹² As shown below, application of the waiver standards adopted in 1975 would permit Tribune’s continued common ownership of the Stations and the *Courant*.¹³

2. Proposed Relaxation In The 1990s.

More than a decade ago, clearly recognizing the significant changes that had occurred in the media landscape since 1975, the FCC began calling for changes to the NBCO Rule. In 1996, in explaining its grant of a temporary waiver of the NBCO Rule to Capital Cities, the

¹⁰ *Id.* at 1078-86 (¶¶ 108-22).

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

¹² *See NCCB*, 436 U.S. at 802 n.20.

¹³ *See infra* Section IV.

Commission stated that it would “proceed expeditiously with an open proceeding to consider revising [its] newspaper broadcast cross-ownership policies.”¹⁴ Chairman Hundt separately observed that the NBCO Rule “is right now impairing the future prospects of an important . . . source of education and information: the newspaper industry” and stated that the Commission should be able to complete the rulemaking within one year – before the expiration of the waiver granted to Capital Cities.¹⁵ That same year, the agency issued a Notice of Inquiry regarding potential relaxation of its policy for waiving the NBCO Rule as it applied specifically to newspaper/radio cross-ownership.¹⁶

The very next year (in 1997), Tribune proposed to acquire six stations owned by Renaissance Communications Corp., including WTIC-TV as well as one in the Miami-Ft. Lauderdale market where Tribune already owned a newspaper. After a challenge by Tribune in the D.C. Circuit, the FCC granted Tribune a temporary waiver of the NBCO Rule in Miami pending the outcome of the Commission’s anticipated review of the rule in its 1998 biennial review.¹⁷ Both the FCC and the Court recognized the need for modification of the NBCO Rule, but the FCC stated and the Court agreed that the promised rulemaking, rather than the

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

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

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

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

Tribune/Renaissance transaction, was the appropriate proceeding in which to effectuate such change.¹⁸

Also in 1997, the Newspaper Association of America (“NAA”) filed a formal Petition for Rulemaking seeking repeal or relaxation of the NBCO Rule.¹⁹ The FCC did not act on that petition. Instead, as required under Section 202(h) of the Telecommunications Act of 1996,²⁰ the Commission in 1998 undertook its first Biennial Review of its media ownership rules, which it completed two years later by issuing the *1998 Biennial Regulatory Review Report*.²¹ There, the agency again concluded that the NBCO Rule needed to be modified and promised to initiate a rulemaking proceeding to amend it.²² The Commission did not, however, open such a rulemaking. Rather, the agency launched its 2000 Biennial Review, releasing a report in 2001 in which it committed once more to “issue a notice of proposed rulemaking seeking comment on

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

¹⁹ Tribune is a member of NAA.

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

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

²² *Id.* at 11,102 (¶ 83) (“[W]e believe that there may be certain circumstances in which the rule may not be necessary to achieve the rule’s public interest benefits. We, therefore, will initiate a rulemaking proceeding to consider tailoring the rule accordingly.”). As part of the biennial review, the Commission recognized its prior grant to Tribune of a temporary waiver for its Miami television station pending completion of the rulemaking that it had promised to initiate at the time the waiver was granted, and extended that waiver pending the resolution of the rulemaking promised in the 1998 Biennial Review. *Id.* at 11,109-10 (¶ 96).

whether [the FCC] need[ed] to modify the daily newspaper/ broadcast cross-ownership rule in order to address contemporary market conditions.”²³

3. Further Efforts To Revise The NBCO Rule In 2001 And Ensuing Litigation.

More than eight years ago, in September 2001, the Commission finally issued a Notice of Proposed Rulemaking regarding the modification or elimination of the NBCO Rule.²⁴ After receiving voluminous comments and reply comments, the FCC appeared poised to fulfill its longstanding promise to modify the NBCO Rule. Instead, in 2002 the agency consolidated the *Newspaper/Broadcast NPRM* into an omnibus multiple ownership proceeding tied to the 2002 Biennial Review and its review of two cases related to television ownership rules that had been remanded to it from the D.C. Circuit.²⁵ The FCC then re-launched the inquiry (the “Omnibus Proceeding”).²⁶ The agency took further public comment, commissioned a dozen market studies, and held numerous field hearings. Tribune not only filed comments in the Omnibus Proceeding (consistent with its participation in the earlier rulemakings), but Tribune Vice President Shaun Sheehan also appeared as a panelist at one of the unofficial field hearings in April 2003.²⁷ After

²³ *2000 Biennial Regulatory Review*, Report, 16 FCC Rcd 1207, 1218 (¶ 32) (2001).

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

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

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

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

another year of study, the Commission in June 2003 adopted the *2003 Order* that revised many of the media ownership rules, including the NBCO Rule.²⁸

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

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

With regard to viewpoint diversity, the agency found that the record did not support the conclusion that “common ownership of broadcast stations and daily newspapers in the same

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

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

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

³¹ *Id.* at 13,802 (¶ 465).

³² *Id.* at 13,759-60 (¶ 354).

community poses a widespread threat to diversity of viewpoint or programming.”³³ To the contrary, the Commission determined that “the synergies and efficiencies that can be achieved by commonly located newspaper/broadcast combinations can and do lead to . . . diverse viewpoints.”³⁴ It also found that “relaxing the cross-ownership rule could lead to an increase in the number of newspapers in some markets and foster the development of important new sources of local news and information.”³⁵ Tribune’s newspaper/broadcast combination in Hartford exemplifies the Commission’s findings as to localism and diversity in particular, with its superior performance in providing diverse news and local information to local viewers and readers.

As to competition, the Commission concluded that newspaper/broadcast combinations “cannot adversely affect competition in any relevant product market,” and that the NBCO Rule was thus not necessary to protect competition.³⁶ Accordingly, the FCC repealed the newspaper/broadcast cross-ownership ban and, based on lingering concerns regarding diversity, replaced it with a new set of cross-media limits.³⁷ Those new limits would have permitted common ownership of the Stations and the *Courant*.³⁸

³³ *Id.* at 13,767 (¶ 368).

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

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

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

³⁷ As pertinent here, in “markets with nine or more TV stations (‘large markets’),” the Commission “impose[d] no cross-media restrictions,” reasoning in part that, “[t]o begin with,

A number of parties (including Tribune) challenged the *2003 Order*, and the United States Court of Appeals for the Third Circuit affirmed the Commission’s decision to repeal the blanket ban on newspaper/broadcast cross-ownership.³⁹ As the Third Circuit stated, “[t]he Commission’s decision not to retain a ban on newspaper/broadcast cross-ownership is justified under § 202(h) and is supported by record evidence.”⁴⁰ Further, the Court concluded that “reasoned analysis supports the Commission’s determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest.”⁴¹ The Third Circuit recognized that “[n]ewspaper/broadcast combinations can promote localism” and that a wholesale prohibition actually “undermined” this important goal.⁴² In addition, the Court agreed with the agency that “[a] blanket prohibition on newspaper/broadcast combinations is not necessary to protect diversity.”⁴³ In this regard, the Third Circuit found that “the Commission reasonably concluded that it did not have enough confidence in the proposition that commonly owned outlets have a uniform bias to warrant sustaining the cross-ownership ban.”⁴⁴ The Court thus upheld the Commission’s finding that retaining the ban was no longer in the public interest.

markets of this size today tend to have robust media cultures characterized by a large number of outlets and a wide variety of owners.” *2003 Order*, 18 FCC Rcd at 13,804 (¶ 473).

³⁸ *See infra* at 118.

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

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 398-99.

⁴³ *Id.* at 399.

⁴⁴ *Id.* at 399-400.

The Third Circuit, however, remanded the *2003 Order* to the FCC for further justification of the specific limits on cross-media ownership that had been adopted to replace the ban.⁴⁵

4. The 2006 Proceeding And Resultant Rule Change.

Approximately two years later, the Commission issued a Notice of Proposed Rulemaking in its 2006 Quadrennial Review (the “*2006 FNPRM*”).⁴⁶ That proceeding served the dual purposes of fulfilling the agency’s Section 202(h) periodic review mandate and responding to the issues raised in the Third Circuit’s remand decision. In the *2006 FNPRM*, the Commission asked, among other things, whether it should revise the 2003 cross-media limits, whether it could justify those limits based upon additional evidence or analysis, and whether continuing to restrict newspaper/broadcast cross-ownership was necessary in the public interest at all.⁴⁷ The proceeding generated yet another massive record on newspaper/broadcast cross-ownership, with the Commission receiving comments and reply comments, commissioning 10 peer-reviewed studies, and conducting six official field hearings. In addition to Tribune’s submission of comments in the proceeding, Tom Langmyer, Vice President and General Manager of WGN(AM), participated as a panelist at the September 2007 public hearing in Chicago; Bob Gremillion, President, CEO, and Publisher of the *Sun Sentinel*, participated as a panelist at the

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

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

⁴⁷ *Id.* at 8848 (¶ 32).

April 2007 public hearing in Tampa; Pamela S. Pearson, Vice President/General Manager of Tribune Television Northwest, Inc., participated as a panelist at the November 2007 public hearing in Seattle; and Vincent Malcolm, then-Vice President and General Manager, KTLA(TV), participated as a panelist at the October 2006 public hearing in Los Angeles.⁴⁸

In an order adopted in December 2007 (and released in February 2008), the Commission made new findings and added liberalized waiver standards to the NBCO Rule. Among other things, the Commission found that “[e]vidence in the record continues to support the Commission’s earlier decision that retention of a complete ban is not necessary in the public interest as a result of competition, diversity, or localism.”⁴⁹ In particular, the Commission found that (1) “ample evidence in the record” indicates that “marketplace conditions have indeed changed and thus justify a recalibration,” (2) “the largest markets contain a robust number of diverse media sources,” “diversity of viewpoints would not be jeopardized by certain newspaper/broadcast combinations,” and many combinations exercise “independent editorial control,” and (3) “newspaper/broadcast combinations can create synergies that result in more news coverage for consumers,” thus enhancing localism.⁵⁰ Under the changes in the *2008 Order*, the general restriction on cross-ownership was retained, with standards for consideration

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

⁴⁹ *2006 Quadrennial Regulatory Review – Review of the Comm’ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2021-22 (¶ 19) (2008) (“*2008 Order*”), *appeal pending sub nom. Prometheus Radio Project v. FCC*, Nos. 08-3078, et al. (3d Cir. filed July 15, 2008).

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

of waiver requests incorporated into the rule and certain presumptions established depending on the size of the market involved and various other factors.

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

In other cases, combinations are presumed not to be in the public interest, but waivers are available under a four-factor test which considers: (1) whether the cross-ownership will significantly increase the amount of local news disseminated through the media properties involved; (2) whether each property will exercise its own independent news judgment; (3) the level of concentration in the DMA; and (4) the financial condition of the newspaper or broadcast property, and if the newspaper or broadcast station is in financial distress, the proposed owner’s commitment to invest significantly in newsroom operations.⁵⁴ As will be shown below, the NBCO Rule as revised in the *2008 Order*, applied in the context of the Hartford market and

⁵¹ *Id.* at 2040 (¶ 53).

⁵² *Id.* at 2047-48 (¶ 65).

⁵³ *Id.* at 2049 (¶ 67).

⁵⁴ *Id.* at 2049 (¶ 68).

Tribune's history of operation of broadcast and newspaper properties there, permits continued common ownership of the Stations and the *Courant*.⁵⁵

5. Third Circuit Redux And Current Procedural Posture.

The *2008 Order* was challenged by many parties (including Tribune) in various courts of appeal. Preliminary proceedings related to venue resulted in transfer of all of the cases to the Third Circuit, after which advocacy groups Media Alliance, Prometheus Radio Project, Office of Communication of the United Church of Christ, Inc., and Free Press jointly filed a motion to hold the cases in abeyance pending Commission action on a petition for reconsideration that certain other advocacy groups had filed with the agency. The Third Circuit granted that motion in April 2009⁵⁶ and, as noted earlier, then ordered that a stay issued in connection with the Court's review of the *2003 Order* remain in effect.⁵⁷ The Third Circuit subsequently requested and received filings regarding whether the cases should continue to be held in abeyance and whether the stay should be lifted.⁵⁸ In March 2010, the Court issued an order lifting the stay of the *2008 Order*, including the liberalized NBCO waiver standards, and set a schedule for briefing on the merits.⁵⁹

⁵⁵ See *infra* Section IV.

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

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

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

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

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

B. Tribune's Existing Newspaper/Broadcast Holdings And Its Hartford NBCO Rule Waiver.

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

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

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

combinations, including the Hartford combination at issue here,⁶² as well as others in Chicago, Los Angeles, Miami-Ft. Lauderdale, and New York.

In the order approving transfer of control of Tribune to the ESOP, the Commission granted Tribune temporary waivers of the NBCO for its Hartford, Los Angeles, Miami-Ft. Lauderdale, and New York combinations, as well as a permanent waiver in Chicago. In granting a permanent waiver in Chicago, the Commission noted that the “record confirms ‘the myriad public interest benefits that have resulted’” from common ownership.⁶³ The Commission concluded that “forced separation of the [Chicago properties] would diminish the strength of important sources of quality news and public affairs programming in the Chicago market[,] . . . that any detriment to diversity caused by the common ownership is negligible given the nature of the market,” and that, accordingly, “the purposes of the rule would not be served by divestiture.”⁶⁴ As described in detail herein, an analysis of Tribune’s common ownership of WTIC-TV, WTXN(TV) and the *Courant* in the Hartford market today leads to the same conclusion.

The temporary waiver covering Hartford allowed Tribune to continue to hold attributable interests in the Stations and the *Courant* for certain periods of time depending on the occurrence of various events. Given the current pendency of Tribune’s appellate challenge to the order

⁶² As noted above, Tribune acquired WTIC-TV in 1997. In 2001, it acquired WTXN(TV) and obtained a permanent waiver of the television duopoly rule based on WTXN(TV)’s status as a failing station. That same year, Tribune acquired the *Courant* and at the time received a temporary waiver of the NBCO Rule, which the Commission subsequently extended. *See Counterpoint Commc’ns, Inc.*, 20 FCC Rcd 8582, 8582-84 (¶¶ 1-4) (2005).

⁶³ *Shareholders of Tribune Co.*, 22 FCC Rcd at 21,277-78 (¶ 34).

⁶⁴ *Id.*

approving the transaction,⁶⁵ for example, it now holds a waiver extending until six months after the conclusion of Tribune’s appellate litigation.⁶⁶ In granting a temporary waiver in Hartford, the Commission recognized the “unusual and uncertain status of the NBCO [R]ule as well as the harm that applicants would suffer were they forced to divest properties but then win their court challenge.”⁶⁷

The NBCO Rule today indisputably remains in an “unusual and uncertain status.”⁶⁸ Further, there can be no doubt that requiring divestiture of the Stations or the *Courant* while the status of the rule remains in flux – particularly in a diverse and competitive market like the Hartford DMA and given the benefits that Tribune’s common ownership has produced – would unnecessarily harm Reorganized Tribune as it emerges from bankruptcy and serve no public interest purpose whatsoever. Thus, while the Tribune combination should be granted a permanent NBCO waiver, there can be no question that, at the very least, the temporary waiver alternatively requested herein is warranted.

C. The Effect Of The Economic Downturn On The Media Marketplace And The Resulting Tribune Bankruptcy.

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

⁶⁵ See *Tribune Co. v. FCC*, No. 07-1488 (D.C. Cir. filed Dec. 3, 2007).

⁶⁶ See *Shareholders of Tribune Co.*, 22 FCC Rcd at 21,267 (¶ 3), 21,278 (n.71).

⁶⁷ *Id.* at 21,278 (¶ 36).

⁶⁸ *Id.*; see *supra* Section II.A; see also *infra* Section V.A.

experiencing in previous decades. The impact of these recent trends has been particularly damaging in the markets in which Tribune operates.

The Commission has taken these trends into account in its recent decisions affecting the industry. For example, when the FCC released its decision to add liberalized waiver standards to the NBCO Rule in early 2008, following approval of the transfer of control of Tribune to the ESOP, it recognized that newspapers were in a downward cycle and that regulatory relief therefore was particularly appropriate. As the agency concluded in its *2008 Order*, “[t]he emergence of new forms of electronic media in recent years has come at the expense of traditional media, and of newspapers in particular.”⁶⁹ The Commission observed that, although “the population of the country has increased more than 80 percent” during the past 50 years, “the number of daily newspapers being published and their readership have decreased significantly” over this same period.⁷⁰

The agency further noted in 2008 that the recent, substantial drop in newspaper circulation had produced “a cascade of negative impacts on the media industry.”⁷¹ Among these was a “sharp reduction in the number of professional journalists employed in the newspaper industry,” a trend that had “particular import for the public interest.”⁷² The FCC further observed that newspaper publishers had experienced a “flatten[ing]”⁷³ of the advertising

⁶⁹ *2008 Order*, 23 FCC Rcd at 2023 (¶ 21).

⁷⁰ *Id.* at 2026 (¶ 27).

⁷¹ *Id.* (¶ 28).

⁷² *Id.*

⁷³ *Id.* at 2029 (¶ 32).

revenues that “keep [them] alive” and that “stock prices for many of the major newspaper companies ha[d] fallen.”⁷⁴

Since the Commission made these observations more than two years ago, the state of the newspaper industry has taken a sharp turn for the worse. In 2009 alone, one major market daily newspaper ceased operations entirely,⁷⁵ at least two others came dangerously close to following suit,⁷⁶ and several folded their print operations and are surviving only as dramatically scaled

⁷⁴ *Id.* at 2028 (¶ 30), 2029 (¶ 33).

⁷⁵ After posting repeated losses and failing in its efforts to find a suitable buyer, E.W. Scripps in February 2009 shut down the *Rocky Mountain News*, which had been in existence since 1859, leaving *The Denver Post* as the city’s sole major daily. Howard Kurtz, *Final Edition: Rocky Mountain News to Shut Down Today*, WASH. POST, Feb. 27, 2009, at D03, available at <http://www.washingtonpost.com/wp-dyn/content/story/2009/02/27/ST2009022701217.html> (last visited Feb. 9, 2010). Less than one year later, the holding company of MediaNews Group, publisher of *The Denver Post* and 53 other daily newspapers, filed for Chapter 11 bankruptcy protection. Emily Chasan, *MediaNews Owner Files Prepackaged Bankruptcy*, REUTERS, Jan. 22, 2010, available at <http://www.reuters.com/article/idUSTRE60M01920100123> (last visited Feb. 9, 2010); Mike Spector & Shira Ovide, *MediaNews Bankruptcy Filing to Come as Soon as This Week*, WALL ST. J., Jan. 18, 2010, available at <http://online.wsj.com/article/SB10001424052748704541004575011630438688308.html> (last visited Feb. 9, 2010).

⁷⁶ Facing steep operating losses, the New York Times Company threatened to close *The Boston Globe* last year unless labor unions agreed to concessions on wages and benefits. Howard Kurtz, *N.Y. Times to File Notice It Will Close Boston Globe*, WASH. POST, May 4, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/03/AR2009050300269.html> (last visited Feb. 9, 2010); Richard Pérez-Peña, *Times Co. Said to Consider Closing Boston Globe*, N.Y. TIMES, Apr. 4, 2009, available at http://www.nytimes.com/2009/04/04/business/media/04globe.html?_r=1 (last visited Feb. 9, 2010). The shutdown of the paper was avoided when *Globe* employees accepted a package of pay and benefits cuts in July 2009. See Richard Pérez-Peña, *Boston Globe Workers Agree to Cuts*, N.Y. TIMES, July 21, 2009, available at <http://www.nytimes.com/2009/07/21/business/media/21globe.html> (last visited Feb. 9, 2010). The New York Times Company had intended to sell *The Boston Globe*, but after searching for a buyer for months, in October 2009 the company announced that it had decided not to sell the paper. It had been reported that bids for the paper and another in nearby Worcester, MA were about \$35 million, compared to the \$1.1 billion the company had paid for *The Boston Globe* in 1993. See Richard Pérez-Peña, *Times Co. Will Hold On to Boston Globe*, N.Y. TIMES, Oct. 15, 2009, available at www.nytimes.com/2009/10/15/business/media/15globe.html?_r=1&pagewanted=print (last visited Feb. 9, 2010). Hearst Corporation similarly considered selling or shutting down *The San Francisco Chronicle*, that city’s major daily and the nation’s 12th largest, if it could not substantially cut costs through newsroom layoffs. Shira Ovide & Russell Adams, *Hearst Plans*

down online services.⁷⁷ In 2008-2009, many newspapers in medium and smaller markets, such as Albuquerque and Tucson, shut down publication entirely or substantially downsized their operations.⁷⁸ In addition, nine major newspaper publishers, including Tribune, have declared bankruptcy since December 2008.⁷⁹ These newspaper publishers, several of which remain in

to Slash, Sell or Shut Paper in Bay Area, WALL ST. J., Feb. 25, 2009, available at <http://online.wsj.com/article/SB123551803197064061.html> (last visited Feb. 9, 2010).

⁷⁷ Hearst Corporation abandoned the print edition of the *Seattle Post-Intelligencer* in March 2009, replacing it with a much less extensive online-only operation. As a result of this major overhaul, the publisher retained just 20 of its 150-plus journalists, leaving nearly 90% of its former newsroom employees without jobs. Phillip Meyer, *Let's Not Stop the Presses*, USA TODAY, Apr. 29, 2009, at 9A, available at <http://blogs.usatoday.com/oped/2009/04/lets-not-stop-the-presses.html> (last visited Feb. 9, 2010). Similarly, Detroit daily newspapers *The Detroit Free Press* and *The Detroit News* developed a strategy to end home print delivery four days of the week, making home deliveries on only the most lucrative days – Thursdays, Fridays and Sundays – that account for more than 80 percent of advertising revenue, and directing readers to their websites for online “e-editions” on Mondays, Tuesdays, Wednesdays and Saturdays. Richard Pérez-Peña, *Detroit's Daily Papers Are Now Not So Daily*, N.Y. TIMES, Mar. 31, 2009, available at <http://www.nytimes.com/2009/03/31/business/media/31paper.html> (last visited Feb. 9, 2010).

⁷⁸ In February 2008, the *Albuquerque Tribune* published its final edition following unsuccessful efforts by its owner, E.W. Scripps Co., to find a buyer for the newspaper. See “86” for *Albuquerque Tribune – To Close on Saturday*, EDITOR & PUBLISHER (Associated Press), Feb. 20, 2008, available at http://www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=1003712778 (last visited Apr. 14, 2010). Gannett Co., Inc. announced last May that it had decided to cease print publication of the *Tucson Citizen*, but that it would continue to operate its website, citing “[d]ramatic changes in our industry combined with the difficult economy.” Press Release, Gannett Co., Inc., *Gannett to Cease Print Publication of the Tucson Citizen* (May 15, 2009), available at <http://gannett.com/news/pressrelease/2009/pr051509.htm> (last visited Feb. 9, 2010); see also Yinka Adegoke, *Gannett Shuttters Tucson Citizen's Print Edition*, REUTERS, May 15, 2009, available at <http://www.reuters.com/article/idUSN1535783620090515> (last visited Feb. 9, 2010). The *Ann Arbor News* and the *Coral Gables Gazette* also have transitioned to online-only operations. Katherine Yung, *Ann Arbor News Folds; Web Transition Begins*, DETROIT FREE PRESS, July 24, 2009, available at <http://m.freep.com/BETTER/news.jsp?key=496022> (last visited Feb. 9, 2010); Elaine De Valle, *Coral Gables Gazette Converts to Online Only*, THE MIAMI HERALD, Aug. 12, 2009, available at <http://www.miamiherald.com/news/southflorida/story/1181894.html> (last visited Feb. 9, 2010).

⁷⁹ In addition to Tribune, these publishers include (1) Sun-Times Media Inc.; (2) Star Tribune Company; (3) the Journal Register Company; (4) Philadelphia Newspapers, LLC; (5) Freedom Communications, Inc.; (6) Heartland Publications, LLC; (7) Morris Publishing Group; and (8) Affiliated Media Inc., holding company of MediaNews Group. Richard Pérez-Peña, *Sun-Times Files for Bankruptcy*, N.Y. TIMES, Mar. 31, 2009, available at <http://www.nytimes.com/2009/04/01/business/media/01paper.html> (last visited Feb. 9, 2010); David B. Wilkerson, *Minneapolis Star Tribune Files for Bankruptcy*, MARKETWATCH (online),

bankruptcy as of the date of this filing, collectively own more than 130 daily and more than 280 weekly publications.⁸⁰ A growing number of publishers have been forced to close domestic and

Jan. 16, 2009, available at <http://www.marketwatch.com/story/minneapolis-star-tribune-files-for-chapter-11-bankruptcy> (last visited Feb. 9, 2010); Robert MacMillan, *Chicago Sun-Times Parent Files for Bankruptcy*, REUTERS, Mar. 31, 2009, available at <http://www.reuters.com/article/topNews/idUSTRE52U3OZ20090331?feedType=RSS&feedName=topNews> (last visited Feb. 9, 2010); *Journal Register Seeks Bankruptcy Protection*, N.Y. TIMES (Associated Press), Feb. 22, 2009, available at <http://www.nytimes.com/2009/02/22/business/media/22journal.html> (last visited Feb. 9, 2010); Robert MacMillan, *Philadelphia Papers Owner Files for Bankruptcy Protection*, REUTERS, Feb. 23, 2009, available at <http://www.reuters.com/article/idUSTRE51M1M720090223> (last visited Feb. 9, 2010); Michael J. de las Merced, *Freedom Communications Files for Bankruptcy*, N.Y. TIMES, Sept. 1, 2009, available at <http://www.nytimes.com/2009/09/02/business/media/02freedom.html> (last visited Feb. 9, 2010); Jacqueline Palank, *Heartland Publications Files for Chapter 11 Bankruptcy*, WALL ST. J., Dec. 21, 2009, available at <http://online.wsj.com/article/SB10001424052748703344704574610261552846586.html> (last visited Feb. 10, 2010); *Newspaper Publisher Morris Seeks Ch. 11 Protection*, ABC News (Associated Press), Jan. 19, 2010, available at <http://abcnews.go.com/Business/wireStory?id=9599225> (last visited Feb. 9, 2010); *MediaNews Group Makes It Official: Files 'Prepackaged' Bankruptcy*, EDITOR & PUBLISHER (Associated Press), Jan. 26, 2010, available at http://www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=1004061331 (last visited Feb. 9, 2010).

⁸⁰ See Tribune, Tribune Company Business Units and Websites, <http://www.tribune.com/about/webguide/index.html> (last visited Feb. 9, 2010) (listing Tribune's publications); Press Release, Sun-Times Media Group, Inc., Sun-Times Media Group Reports Circulation Performance (Oct. 26, 2009), available at <http://ir.thesuntimesgroup.com/releasedetail.cfm?releaseid=417963> (last visited Feb. 9, 2010) (noting Sun-Times Media's publication of the *Chicago Sun-Times*, seven other daily newspapers, and 51 weekly newspapers); The Star Tribune Company, Our Company, <http://www.startribunecompany.com/100> (last visited Feb. 9, 2010) (noting publication of *Minneapolis Star-Tribune*); Journal Register Company, Our Publications, <http://www.journalregister.com/publications.html> (last visited Feb. 9, 2010) (listing publication of 19 daily newspapers and 30 weekly newspapers); Philadelphia Newspapers, Philadelphia Newspapers Reorganization Information, <http://www.philly.com/philly/about/pnl/> (last visited Feb. 9, 2010) (noting Philadelphia Newspaper LLC's publication of *Philadelphia Inquirer* and *Philadelphia Daily News*); Freedom Communications, Inc., Company Information, <http://www.freedom.com/company/> (last visited Feb. 9, 2010) (noting publication of 33 daily newspapers, including the *Orange County Register*, and 77 weekly newspapers); Morris Communications Company, LLC, Morris Publishing Group Daily Newspapers and Nondaily Newspapers, http://morriscomm.com/divisions/morris_publishing_group/index.shtml#show_map (last visited Feb. 9, 2010) (listing publication of 13 daily newspapers and 28 weekly newspapers); Press Release, Affiliated Media, Inc., Affiliated Media, Inc. Files Prepackaged Plan of Reorganization (Jan. 22, 2010), available at <http://www.medianewsgroup.com/Press/Releases/2010/Press%20Release%20-%20AMI%20Files%20Prepackaged%20Plan%20for%20Reorganization.doc> (last visited Feb. 9, 2010) (listing publication of 54 daily newspapers and more than 100 weekly newspapers).

foreign news bureaus⁸¹ and/or to trim the scope of their news coverage.⁸² Virtually all publishers – in both large and small markets across the country – have laid off valued newsroom employees

⁸¹ Pew Project for Excellence in Journalism, *The State of the News Media* (2010) (“*PEJ 2010 State of the News Media Report*”), Newspapers, News Investment at 29, http://www.stateofthemediamedia.org/2010/printable_newspaper_chapter.htm (last visited Apr. 17, 2010) (noting that the recession and “accelerating ad losses” forced “[s]tatehouse and Washington bureaus” to be “gutted or closed” at many newspapers in 2009 and early 2010). For example, Cox Newspapers shut down its Washington, D.C. news bureau (which was founded in 1974) along with five international bureaus in April 2009. *Cox Newspapers to Close Washington Bureau*, THE HUFFINGTON POST, Dec. 2, 2008, available at <http://www.huffingtonpost.com/huff-wires/20081202/cox-newspapers/> (last visited Feb. 9, 2010). In March 2009, Media General similarly closed the doors of its Washington, D.C. News Service Bureau, which for 30 years had provided news and feature stories to all of Media General’s newspapers, television stations, and websites. John Reid Blackwell, *Media General Closing Washington News Bureau*, RICHMOND TIMES-DISPATCH, Mar. 14, 2009, available at http://www2.timesdispatch.com/rtd/business/local/article/B-MEDI14_20090313-211607/231243/ (last visited Feb. 9, 2010); *Media General’s Washington News Bureau To Close March 27*, Media General News Release, Mar. 13, 2009, available at http://www.mediageneral.com/press/2009/mar13_09_WashingtonBureau.html (last visited Feb. 9, 2010). In October 2009, *The Wall Street Journal* revealed plans to close its Boston bureau, explaining in a memo to journalists affected by the closure that “[w]e remain in the midst of a profound downturn in advertising revenue and thus must think the unthinkable.” Shira Ovide, *Wall Street Journal Closes Boston Bureau*, WALL ST. J., Oct. 29, 2009, available at <http://online.wsj.com/article/SB10001424052748704317704574503480514474764.html> (last visited Feb. 2, 2010); Erik Sass, *Been Town: ‘WSJ’ Closes Boston Bureau*, MEDIA DAILY NEWS (MediaPost), Oct. 29, 2009, available at http://www.mediapost.com/publications/index.cfm?fa=Articles.showArticle&art_aid=116378 (last visited Feb. 9, 2010). And, under pressure to cut costs, *The Washington Post* likewise announced in November 2009 that it would close its three remaining domestic bureaus in New York, Los Angeles, and Chicago. Howard Kurtz, *Washington Post Shuttters Last U.S. Bureaus*, WASH. POST, Nov. 24, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/24/AR2009112403014.html> (last visited Feb. 9, 2010); Bill Carter, *Washington Post to Shut U.S. Bureaus*, N.Y. TIMES, Nov. 25, 2009, available at <http://www.nytimes.com/2009/11/25/business/media/25post.html> (last visited Feb. 9, 2010).

⁸² Even the nation’s largest and most respected dailies have been forced to recognize these harsh realities. *The Washington Post* eliminated its stand-alone Business Section, folding business news stories into the paper’s main section on all but one day of the week, and did away with the print version of “Book World,” shifting reviews to space within two existing sections of the paper. Robert MacMillan, *Washington Post to Cut Business Section*, REUTERS, Mar. 13, 2009, available at <http://www.reuters.com/article/newsOne/idUSTRE52C5NP20090314> (last visited Feb. 9, 2010); Motoko Rich, *Washington Post’s Book World Goes Out of Print as a Separate Section*, N.Y. TIMES, Jan. 28, 2009, available at http://www.nytimes.com/2009/01/29/books/29post.html?_r=1 (last visited Feb. 9, 2010). In similar fashion, *The New York Times* cut its separate Metro News and Sports sections. Russell Adams, *New York Times Sets Plan to Merge Sections*, WALL ST. J., Sept. 6, 2008, available at <http://online.wsj.com/article/SB122066387069906077.html> (last visited Feb. 9, 2010). The *Atlanta Journal-Constitution* also has cut its stand-alone Business Section, merging it with another section. *Atlanta Newspaper to Merge Sections to Cut Costs*, ABC News (Associated

and/or imposed pay reductions in order to stem severe losses.⁸³ According to one recent estimate, roughly 15,000 full-time reporting and editing jobs have disappeared during the past

Press), Feb. 23, 2009, available at <http://abcnews.go.com/Business/wireStory?id=6939345> (last visited Feb. 9, 2010). See also *PEJ 2010 State of the News Media Report*, Newspapers, News Investment at 29, http://www.stateofthemedial.org/2010/printable_newspaper_chapter.htm (last visited Mar. 18, 2010) (noting that “[s]eparate business and features sections disappear[ed]” in 2009 and early 2010).

In addition, in December 2009, the *Washington Times* announced that it would be implementing a new strategy to focus more narrowly on core coverage areas while slashing its coverage of local news, sports and features “to keep pace with the dynamically changing economics of the news business.” Jennifer Harper, *TWT Announces New Structure, Layoffs*, WASH. TIMES, Dec. 3, 2009, available at <http://www.washingtontimes.com/news/2009/dec/03/twt-announces-new-structure-layoffs/> (last visited Feb. 10, 2010); Howard Kurtz, *Washington Times Cuts in Staff, Coverage Cue New Era*, WASH. POST, Dec. 3, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/02/AR2009120203295.html> (last visited Feb. 10, 2010). The paper also announced a new circulation model, moving from subscription-based to a “controlled circulation model” with newspapers distributed free of charge in key Washington locations targeting audiences in the federal government and other institutions and with subscription home delivery offered at a premium price. See *id.*

⁸³ During one week alone in March 2009, *The New York Times*, *The Boston Globe*, the *Boston Herald*, the *Houston Chronicle*, the *Atlanta-Journal Constitution*, the *Milwaukee Journal Sentinel*, and *The Buffalo News* all announced substantial layoffs and pay cuts. Jennifer Harper, *Newspapers Seek Way Out of Hole*, WASH. TIMES, Mar. 29, 2009, at A03, available at <http://www.washingtontimes.com/news/2009/mar/29/newspapers-on-defense-nationwide/> (last visited Feb. 9, 2010). In October 2009, The New York Times Company announced further layoffs, stating that it would be eliminating 100 newsroom jobs by the end of the year; the following month, it revealed plans to lay off at least 25 editorial employees in February and May 2010. See Richard Pérez-Peña, *New York Times Moves to Trim 100 in Newsroom*, N.Y. TIMES, Oct. 20, 2009, available at http://www.nytimes.com/2009/10/20/business/media/20times.html?_r=1&pagewanted=print (last visited Feb. 9, 2010); Richard Pérez-Peña, *New York Times News Service to Cut Jobs and Relocate*, N.Y. TIMES, Nov. 13, 2009, available at <http://www.nytimes.com/2009/11/13/business/media/13times.html> (last visited Feb. 9, 2010). In December 2009, the *Washington Times* decided to cut approximately 40 percent of its total newsroom staff – about 65 of 170 positions. Erik Sass, *Washington Times’ Cuts Staff 40%*, MEDIA DAILY NEWS (MediaPost), Dec. 31, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=119930 (last visited Feb. 9, 2010). Gannett likewise announced in December 2009 that it would be cutting 26 newsroom positions at *USA Today* and that it would be requiring employees of its community publishing division to take a second unpaid furlough in the first quarter of 2010. Ken Sweet, *Gannett Institutes More Furloughs, Layoffs at USA Today*, FOX BUSINESS, Dec. 1, 2009, available at <http://www.foxbusiness.com/story/markets/industries/media/gannett-institutes-week-furloughs/> (last visited Feb. 9, 2010).

three years, falling from 55,000 to roughly 40,000 – a 27% decrease.⁸⁴

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

⁸⁴ *PEJ 2010 State of the News Media Report*, Newspapers, Summary Essay at 1, http://www.stateofthedia.org/2010/printable_newspaper_chapter.htm (last visited Mar. 18, 2010). All told, 16,000 total newspaper employees lost their jobs in 2008, nearly 14,800 were laid off in 2009, and nearly 1,800 have been laid off in 2010 as of mid-April. See Paper Cuts, <http://papercuts.graphicdesigner.net/> (last visited Apr. 17, 2010) (reporting 1,792 newspaper layoffs as of April 17, 2010); Paper Cuts, *2009 Newspaper Layoffs and Buyouts*, <http://newspaperlayoffs.com/maps/2009-layoffs/> (last visited Apr. 17, 2010) (reporting 14,783 newspaper layoffs in 2009); Paper Cuts, *2008 Newspaper Layoffs and Buyouts*, <http://newspaperlayoffs.com/maps/2008-layoffs/> (last visited Apr. 17, 2010) (reporting 15,992 newspaper layoffs in 2008).

⁸⁵ *PEJ 2010 State of the News Media Report*, Executive Summary at 1, 8-9, http://www.stateofthedia.org/2010/chapter%20pdfs/2010_execsummary.pdf (last visited Mar. 18, 2010) (“Advertising losses, averaging 26% in 2009 (on the heels of a cumulative 23% loss the previous two years) left newspapers downsizing everything – the physical dimensions of the paper, the space devoted to news and, most painfully, their roster of news professionals.”); see also Nat Worden, *Ad Revenue Eludes Papers*, WALL ST. J., Nov. 4, 2009, available at <http://online.wsj.com/article/SB10001424052748703740004574513522033216210.html> (last visited Feb. 3, 2010) (“The reality is that newspapers are suffering severe declines in ad revenue this year on top of the double-digit percentage declines they suffered last year.”); Erik Sass, *No Rest for the Dreary: Newspaper Revs Fall 28%*, MEDIA DAILY NEWS (MediaPost), Nov. 19, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=117749 (last visited Feb. 9, 2010) (noting that total newspaper industry advertising revenues tumbled 28% from third quarter 2008 to third quarter 2009, and that the newspaper industry's total print revenues experienced year-over-year declines for 14 straight quarters, while online revenues fell for 6 straight quarters).

⁸⁶ *PEJ 2010 State of the News Media Report*, Executive Summary at 8, http://www.stateofthedia.org/2010/chapter%20pdfs/2010_execsummary.pdf (last visited Mar. 18, 2010); see also *Annual Advertising Expenditures*, <http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx> (“*Annual Advertising Expenditures*”) (last visited Feb. 9, 2010).

10% of overall revenue.⁸⁷ The current economic recession has exacerbated this downward trend considerably, as advertisers have cut spending steeply in order to stem their own revenue losses. Among the most pronounced have been cutbacks in automobile advertising due to bankruptcies and financial turmoil in that industry, in real estate advertising due to the real estate bust and subprime mortgage crisis, and in retail due to decreases in consumer spending.⁸⁸ Classified advertising revenues, in particular, have trended downward, both because of the poor economy in

⁸⁷ See *PEJ 2010 State of the News Media Report*, Newspapers, Summary Essay at 2, Economics at 20-21, http://www.stateofthemedial.org/2010/printable_newspaper_chapter.htm (last visited Mar. 18, 2010); see also *Annual Advertising Expenditures*; Erik Sass, *Newspapers' Online Strategies Failed in 2009*, MEDIA NEWS POST, Dec. 29, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=119834 (last visited Feb. 9, 2010) (observing that “[s]ome of the worst defeats for newspapers in 2009 came in online advertising,” and citing Newspaper Association of America data showing that newspapers’ online revenues declined 15.5% in the first three quarters of 2009 compared to the same period in 2008); NAA, *Nielsen: Newspaper Sites Get 5.5% Rise in '09 Visitors*, MEDIA NEWS POST, Feb. 3, 2010, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=121745 (last visited Feb. 9, 2010) (noting that “[t]hrough the first three quarters of 2009, the NAA tallied total Internet revenues of about \$1.97 billion, representing just under 10% of total revenues of \$19.9 billion”).

⁸⁸ See Greg Bensinger and Bob Van Voris, *Chicago's Sun-Times Media Seeks Bankruptcy Protection (Update3)*, Bloomberg.com, Mar. 31, 2009, <http://www.bloomberg.com/apps/news?pid=20601087&sid=ajAExsdEoCRs> (last visited Feb. 9, 2010) (“Advertisers, particularly auto, retail and classified, have pulled back [in newspaper advertising] as the economy gets worse and worse.”); Richard Pérez-Peña, *Newspaper Ad Revenue Could Fall as Much as 30%*, N.Y. TIMES, Apr. 14, 2009, available at <http://www.nytimes.com/2009/04/15/business/media/15papers.html> (last visited Feb. 9, 2010) (reporting that, in 2008, “[s]ome of the biggest categories of advertising, like real estate and help wanted, all but evaporated” for newspapers); Erik Sass, *No Rest for the Dreary: Newspaper Revs Fall 28%*, MEDIA DAILY NEWS (MediaPost), Nov. 19, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=117749 (last visited Feb. 9, 2010) (noting that newspapers experienced a 43% decline in real estate and automotive advertising revenues in the third quarter of 2009); Wayne Friedman, *Nielsen: U.S. Ad Spend Falls 11.5%*, MEDIA DAILY NEWS (MediaPost), Dec. 10, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=118897 (last visited Feb. 3, 2010) (reporting that overall U.S. advertising spending declined 11.5% during the first nine months of 2009, compared to the same time period a year ago, and noting that many of the same declining advertising categories, including automotive, continue to hurt media sales results).

general and because of consumers' rapid adoption of online alternatives.⁸⁹ It is not surprising that these decreases have had a disproportionate impact on newspaper publishers, given the importance of advertising earnings to their business models.⁹⁰

On top of steep losses in advertising revenue, newspaper publishers are facing unprecedented circulation declines. In October 2009, the Audit Bureau of Circulations reported that newspaper sales had plummeted 10.6% on weekdays and 7.5% on Sundays compared with a

⁸⁹ See *infra* Section III.B.2; see also *Hands Off the Journalist*, Remarks of Commissioner Meredith Attwell Baker Before The Media Institute (Jan. 21, 2010) (observing that “the success of Craigslist and eBay has significantly reduced highly profitable classified ads”); *PEJ 2010 State of the News Media Report*, Newspapers, Economics at 18, http://www.stateofthemedial.org/2010/printable_newspaper_chapter.htm (last visited Mar. 18, 2010) (“By early 2007, the industry had already lost a significant share of the once-lucrative classified advertising franchise to competitors like Monster, Craigslist and Google search. The recession then made the decade-long swoon worse, with classified falling 40% [in 2009].”); Rick Poynter, *Classified Ad Revenue Down 70% in 10 Years, With One Bright Spot*, POYNTER ONLINE – THE BIZ BLOG, Feb. 1, 2010, <http://www.poynter.org/column.asp?id=123&aid=177005> (last visited Feb. 9, 2010) (finding that the overall decline in the newspaper industry’s classified ad earnings during the past decade “was a stunning 70 percent – from \$19.6 billion in 2000 to roughly \$6 billion in 2009”).

⁹⁰ TNS Media Intelligence, *TNS Media Intelligence Reports U.S. Advertising Expenditures Declined 14.7 Percent In First Nine Months of 2009*, Dec. 8, 2009, <http://www.tns-mi.com/news/2009-Ad-Spending-Q3.htm> (last visited Feb. 9, 2010) (reporting that total measured advertising expenditures in the first nine months of 2009 dropped by 14.7 percent as compared to the same period in 2008, that ad spending during the third quarter of 2009 was down 15.3 percent versus last year, and that newspapers and radio severely lagged the overall ad market during this period); see also Erik Sass, *Newspapers To Hit Bottom in 2010 . . . Maybe?*, MEDIA DAILY NEWS (MediaPost), Dec. 16, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=119282 (last visited Feb. 9, 2010) (citing a survey of newspaper publishers, who agree that advertising revenues will continue to decline in 2010 and that losses will be “spread across classifieds, national, and retail (or local) advertising – in other words, all the major newspaper advertising categories”); Joe Mandese, *Nielsen: U.S. Ad Spending Plummets \$3.8 Billion*, MEDIA DAILY NEWS (MediaPost), June 8, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=107497 (last visited Feb. 9, 2010) (reporting that ad spending in the first quarter of 2009 was down 37.7% in Sunday newspaper supplements, which “experienced the greatest erosion of any major U.S. ad medium,” with ad spending in national newspapers close behind at a 27.7% drop); Deborah Yao, *Global Ad Spend Still to Fall, Signs of Bottoming*, ABC News (Associated Press), July 6, 2009, available at <http://abcnews.go.com/print?id=8011994> (last visited Feb. 9, 2010) (reporting drop in advertising spending world-wide, with “U.S. ad spending for newspapers . . . expected to fall most steeply”).

year earlier – bringing overall circulation to its lowest point in nearly 70 years.⁹¹ This sharp drop followed declines of 7.1% from October 2008 through March 2009 and 4.1% from April through September 2008.⁹² Thus, while newspaper circulation has been declining for many years, the recent losses indicate an accelerating trend.⁹³ The twofold hit that newspaper publishers have taken as a result of the downturns in advertising and circulation revenues is further reflected in the fact that the stock of publicly traded newspaper companies plunged nearly 83% in 2008.⁹⁴ Although the stock prices of publicly traded newspaper companies increased in 2009 over their 2008 levels, they remain drastically lower than where they stood in 2005, shedding on average nearly three-quarters of their value in the past four years.⁹⁵

⁹¹ *PEJ 2010 State of the News Media Report*, Newspapers, Summary Essay at 2, Audience at 8, http://www.stateofthemediamedia.org/2010/printable_newspaper_chapter.htm (last visited Mar. 18, 2010) (citing data from the Audit Bureau of Circulations and noting that these numbers represent a decline in print audiences of 31.5% and 27% for daily and Sunday circulation, respectively, from peak totals in the last 25 years); Frank Ahrens, *The Accelerating Decline of Newspapers*, WASH. POST, Oct. 27, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/26/AR2009102603272.html> (last visited Feb. 9, 2010).

⁹² Barbara Ortutay, *Newspaper Circulation Falling Fast*, USA TODAY, Oct. 26, 2009, available at http://www.usatoday.com/money/media/2009-10-26-newspaper-circulation_N.htm (last visited Feb. 9, 2010); Shira Ovide, *U.S. Newspaper Circulation Falls*, WALL ST. J., Oct. 27, 2009, available at <http://online.wsj.com/article/SB10001424052748703697004574497293992459948.html> (last visited Feb. 9, 2010).

⁹³ See Richard Pérez-Peña, *U.S. Newspaper Circulation Falls 10%*, N.Y. TIMES, Oct. 27, 2009, available at http://www.nytimes.com/2009/10/27/business/media/27audit.html?_r=1 (last visited Feb. 9, 2010) (noting that “[t]he two-decade erosion in newspaper circulation is looking more like an avalanche” and that “after years of slipping,” circulation has “accelerated sharply downward”); Frank Ahrens, *The Accelerating Decline of Newspapers*, WASH. POST, Oct. 27, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/26/AR2009102603272.html> (last visited Feb. 9, 2010) (noting that “[a]verage daily circulation of all U.S. newspapers has been in decline since 1987”).

⁹⁴ Pew Project for Excellence in Journalism, *The State of the News Media* (2009) (“*PEJ 2009 State of the News Media Report*”), Executive Summary at 10, <http://www.stateofthemediamedia.org/2009/chapter%20pdfs/COMPLETE%20EXEC%20SUMMARY%20PDF.pdf> (last visited Feb. 17, 2010).

⁹⁵ See Alan Mutter, *News-Stock Surge: Boom or Dead-Cat Bounce?*, Reflections of a Newsosaur, Jan. 4, 2010, <http://newsosaur.blogspot.com/2010/01/news-stock-surge-boom-or->

This turmoil has been recognized at the highest levels of government; indeed, as discussed below, U.S. House of Representatives Speaker Nancy Pelosi sent a letter last year to Attorney General Eric Holder chronicling the dire financial state of the newspaper industry and suggesting a need to alter the traditional approach to considering transactions involving newspapers in light of the industry's troubled financial condition.⁹⁶ In launching its "Future of Media" initiative in 2010, the Commission similarly acknowledged that "[t]he layoffs of thousands of journalists have prompted concern from a wide variety of independent analysts and groups that we may end up with fewer 'informed communities'" and that "[t]hese trends could

dead-cat.html (last visited Feb. 18, 2010); *PEJ 2010 State of the News Media Report*, Newspapers, Summary Essay at 2, 5, Economics at 24, http://www.stateofthedia.org/2010/printable_newspaper_chapter.htm (last visited Mar. 18, 2010) (reporting that only one newspaper company stock was trading for more than \$5 a share and several were in "penny stock territory" in March 2009 and, though stocks had ticked up by the end of the year from "the rock bottom prices of spring 2009," the valuations were still just a small fraction of what they had been in 2005 and 2006).

⁹⁶ See Letter from Nancy Pelosi, Speaker of the House, to The Honorable Eric J. Holder, Attorney General of the United States (Mar. 16, 2009). On September 24, 2009, the House Joint Economic Committee, chaired by Representative Carolyn Maloney (D-NY), held hearings on the implications of the deterioration of the newspaper industry for the broader economy and explored options for federal government involvement to help strengthen the industry. See Ann Sanner, *Newspaper Rep Urges Tax Break To Help with Losses*, ABC News (Associated Press), Sept. 24, 2009, available at <http://abcnews.go.com/Politics/wireStory?id=8667155> (last visited Feb. 9, 2009). Further, in connection with a recent 2010 Quadrennial Review workshop focusing on the current financial and economic conditions and marketplace factors affecting the media industry, lenders appearing on a panel pointed to the "perfect storm" of a down economy that hammered overleveraged broadcasters and Internet competition that continues to drain advertising dollars away from the sector, resulting in a lack of interest in lending to broadcasters. See FCC, News Release, *Media Bureau Announces Panelists and Agenda for Media Ownership Workshop on Financial and Marketplace Issues*, MB Docket No. 09-182 (rel. Jan. 5, 2010); see also John Eggerton, *Lenders Make Pitch to FCC to Loosen Media Ownership Rules*, BROAD. & CABLE, Jan. 12, 2010, available at http://www.broadcastingcable.com/article/443725-Lenders_Make_Pitch_to_FCC_to_Loosen_Media_Ownership_Rules.php (last visited Feb. 9, 2010). Speakers on a second panel about smaller broadcasters were in agreement that additional broadcast bankruptcies are likely due to the financial conditions in the industry. See Jonathan Make, *Media Deregulation Seen Helping Cash-Strapped Industry*, COMM. DAILY, Jan. 13, 2010, at 4-6.

have dire consequences for our democracy and the health of communities, hindering citizens' ability to hold their leaders and institutions accountable."⁹⁷

The broadcast industry similarly is in the midst of a serious financial retrenchment. As the Project for Excellence in Journalism recently reported, earnings at local television stations were "in a free fall" in 2009; at the end of the year, "industry revenues had fallen to levels not seen since the mid-1990s."⁹⁸ In particular, television stations' advertising revenue is estimated to have dropped 22% in 2009, more than triple the decline of 7% in 2008.⁹⁹ Notably, this represents a decrease of 25% from the previous non-election year.¹⁰⁰ While stations did experience growth in the advertising revenue from their websites, these earnings amounted to

⁹⁷ *Future of Media Public Notice*, *supra* note 61, at 1-2.

⁹⁸ *PEJ 2010 State of the News Media Report*, Local TV, Summary Essay at 1, Economics at 9, http://www.stateofthemedial.org/2010/printable_local_tv_chapter.htm (last visited Mar. 18, 2010).

⁹⁹ *PEJ 2010 State of the News Media Report*, Executive Summary at 1, http://www.stateofthemedial.org/2010/chapter%20pdfs/2010_execsummary.pdf (last visited Mar. 18, 2010); *PEJ 2009 State of the News Media Report*, Executive Summary at 20, <http://www.stateofthemedial.org/2009/chapter%20pdfs/COMPLETE%20EXEC%20SUMMARY%20PDF.pdf> (last visited Feb. 17, 2010); *see also* Television Bureau of Advertising, *Broadcast Television Ad Revenues Were Down 22.6% in 3rd Quarter*, Dec. 18, 2009, http://www.tvb.org/rcentral/AdRevenueTrack/revenue/2009/ad_figures_1.asp (last visited Feb. 9, 2010); *PEJ 2010 State of the News Media Report*, Local TV, Economics at 10, http://www.stateofthemedial.org/2010/printable_local_tv_chapter.htm (last visited Mar. 18, 2010) (reporting that, in the first nine months of 2009, automobile advertising – the most important advertising category for local television stations – was down 52%, and that revenue from 24 of the top 25 categories of local television advertisers was down sharply during this time period).

¹⁰⁰ *PEJ 2010 State of the News Media Report*, Local TV, Summary Essay at 1, Economics at 9, http://www.stateofthemedial.org/2010/printable_local_tv_chapter.htm (last visited Mar. 18, 2010) ("Ad revenue is always lower in a year without federal elections or the Olympics, but the drop in 2009 was especially severe even with the unexpected bounty of political spending on health care legislation. . . . The last two non-election years, by contrast, recorded much smaller declines: 5% in 2005 and 6% in 2007.").

only 8% of their 2009 revenues.¹⁰¹ These results have crippled television station budgets and severely strained stations' ability to deliver local news.¹⁰² Due to the "structural challenge" currently facing the industry, "[s]tations, after years of declines in audience, may be nearing a point where they can no longer add new newscasts or pursue new revenue opportunities. . . ."¹⁰³ The newsgathering operations of struggling broadcasters are "getting smaller,"¹⁰⁴ and many have

¹⁰¹ *Id.*, Summary Essay at 1 (noting further that there is "little prospect of [online revenues] buoying [local television stations] anytime soon"); *see also id.*, Economics at 10 (noting that on-air advertising revenues represent "\$9 out of every \$10" of TV station revenues).

¹⁰² *See id.*, News Investment at 17 (citing the latest survey data from 2008 that shows "hefty budget reductions and deep cuts in the newsroom," and stating that news directors at local stations expected their budgets to be even smaller in 2009 than they were in 2008).

¹⁰³ *Id.*, Summary Essay at 1. Broadcasters' budgets, furthermore, were already strained by the mandated capital-intensive digital television conversion. As discussed below, Tribune has added to its already substantial news programming in Hartford despite the dismal economic conditions. *See infra* Section III.A.1.

¹⁰⁴ *PEJ 2010 State of the News Media Report*, Local TV, Summary Essay at 1, http://www.stateofthemediamedia.org/2010/printable_local_tv_chapter.htm (last visited Mar. 18, 2010).

been forced to lay off news staff or implement hiring freezes.¹⁰⁵ Radio stations have similarly been suffering, with 2009 revenues down 18% compared to 2008 revenues.¹⁰⁶

Like other media companies, Tribune has suffered continuing financial difficulties in recent years. Since 2007, the economic and advertising crises have been substantial, and Tribune, like many of its peers, has suffered a material decline in advertising business. In 2008, Tribune's publishing revenue decreased 12%, primarily due to an 18% decrease in advertising revenue and a 2% decrease in circulation. Tribune's broadcasting and entertainment revenue decreased 2% in 2008. At December 28, 2008, the consolidated financial statements of Tribune included approximately \$4.4 billion in total assets and approximately \$14.8 billion in total liabilities. At December 27, 2009, the consolidated financial statements of Tribune included approximately \$5.0 billion in total assets and approximately \$14.3 billion in total liabilities. In 2009, Tribune's publishing revenue decreased approximately 19%, with advertising revenue

¹⁰⁵ See *id.*, News Investment at 18-19; see also Sarah McBride, *Clear Channel's Parent Cuts 590 Jobs*, WALL ST. J., Apr. 29, 2009, available at <http://online.wsj.com/article/SB124095285316665235.html> (last visited Feb. 9, 2010) (reporting Clear Channel Communications Inc.'s decision to cut 590 jobs in its second round of mass layoffs in 2009 amid pressure from the recession and evaporating advertising budgets); Chris Ariens, *Layoffs at ABC News Radio*, TV Newser, Oct. 6, 2009, http://www.mediabistro.com/tvnewser/abc/layoffs_at_abc_news_radio_139400.asp (last visited Feb. 9, 2010) (reporting that about 20 staffers from the editorial, production, and technical staffs at ABC News Radio in New York and Washington, D.C. were let go in October 2009); Glen Dickson & Marisa Guthrie, *ABC Lays Off 31 in Broadcast Operations, Engineering*, BROAD. & CABLE, Jan. 27, 2010, available at http://www.broadcastingcable.com/article/446188-ABC_Lays_Off_31_in_Broadcast_Operations_Engineering.php (last visited Feb. 9, 2010) (reporting that ABC would be cutting 31 positions in its Broadcast Operations & Engineering group); Matea Gold, *CBS News Braces for More Layoffs Next Week*, L.A. TIMES, Jan. 31, 2010, available at <http://articles.latimes.com/2010/jan/30/business/la-fi-ct-cbs-news30-2010jan30> (last visited Feb. 9, 2010) (reporting that CBS News is preparing a significant round of layoffs expected to affect every CBS News program and as many as 100 positions, or 7% of CBS News' 1,400-person staff).

¹⁰⁶ PEJ 2010 *State of the News Media Report*, Audio, Summary Essay at 2, http://www.stateofthedia.org/2010/printable_audio_chapter.htm (last visited Mar. 18, 2010); *Second Quarter Revenues Drop 22% – But RAB Sees Bottom*, INSIDE RADIO, Aug. 24, 2009, available at <http://www.insideradio.com/article.asp?id=1468449> (last visited Feb. 18, 2010).

down 26% compared to 2008. Tribune's broadcasting and entertainment revenue decreased 19% in 2009 compared to 2008.¹⁰⁷

While Tribune's performance is comparable – and in some areas superior – to that of its peers in the newspaper and broadcasting businesses, its operations have been adversely affected by the general deterioration in the newspaper publishing and broadcasting industries and, in particular, the continuing severe decline in advertising revenues that has occurred during the current recession. On December 8, 2008, Tribune and most of its subsidiaries, including those that operate its newspapers and broadcast stations, commenced proceedings under Chapter 11 of the Bankruptcy Code.¹⁰⁸ On April 12, 2010, Tribune and its affected subsidiaries filed a Joint Plan of Reorganization (the "Plan") with the Bankruptcy Court. Under the Plan, which is subject to approval by the Bankruptcy Court, Reorganized Tribune expects to become a publicly traded company, and certain creditors of Tribune and its subsidiaries will receive common stock and/or warrants as provided for in the Plan.

Overwhelming evidence and compelling policy considerations support a permanent waiver of the NBCO Rule with regard to the Hartford newspaper/television combination. The Commission must evaluate the instant request within the context of the tortured history of the NBCO Rule, the fact that the Commission has determined that an absolute ban on cross-ownership does not serve the public interest (a finding affirmed by the Third Circuit), and the prevailing economic conditions of the newspaper and broadcasting industries in general and

¹⁰⁷ These figures demonstrate that Tribune continues to face serious financial challenges. Moreover, it is significant that since December 8, 2008, when the company and its subsidiaries commenced bankruptcy proceedings, they have been free of any debt service obligations as a result of the automatic stay that applies under the bankruptcy laws, yet Tribune's financial condition has continued to deteriorate; were it not for the current lack of any obligation to service debt, its financial results would surely be far worse.

¹⁰⁸ See *In re Tribune Company, et al.*, *supra* note 5.

Tribune in particular. Specifically, the Commission must take account of (1) its 14-year-old commitment to revise the NBCO Rule, (2) the almost nine years that have elapsed since the initiation of proceedings to do so for both radio and television stations, (3) the agency's almost seven-year-old action first repealing the absolute ban and adopting a rule that would have permitted the continued common ownership of the Stations and the *Courant*, (4) its two-year-old decision to add liberalized waiver standards to the NBCO Rule that likely would permit continued common ownership of these properties, and (5) the FCC's recognition over two years ago that the same combination at issue here should be permitted to remain intact pending further specified proceedings that are still unresolved. It also must take into account, in these difficult financial times, the inevitable harm to the public interest that would result from breaking up a combination that has served Hartford DMA residents for a decade. Further, the Commission must recognize that permitting Tribune to emerge from bankruptcy with its assets intact is the only way to provide the company with a much-needed fresh start and to promote the agency's policy of affording comity to the bankruptcy process.

III. TRIBUNE'S CONTINUED OWNERSHIP OF THE HARTFORD PROPERTIES WILL SERVE THE PUBLIC INTEREST.

A. Today, The Stations Deliver Extensive Public Interest Benefits Due To Their Common Ownership With The *Courant*.

1. The Common Ownership Of WTXX(TV), WTIC-TV, And The *Courant* Delivers Innumerable Public Interest Benefits.

During the past ten years of Tribune's common ownership of WTIC-TV and WTXX(TV) with the *Courant*, these properties have provided myriad public interest benefits to residents of the Hartford DMA. Joint efforts between these media properties have measurably improved each one's ability to deliver in-depth coverage of news events and to contribute to the community's awareness and understanding of important local, national, and international issues.

Through their common ownership with the *Courant*, the Stations provide programming and local public interest benefits that no other television station in the market could offer on its own.

These benefits flow directly to the public, and would have been exceedingly difficult to attain absent common ownership and Tribune's steadfast commitment to bringing local news and public affairs programming to the public.

Facilities, Operations, and Employees. The manner in which the facilities, operations, and employees of Tribune's properties are organized facilitates the provision of the benefits of common ownership to the public without compromising the ultimate editorial independence of each property. WTIC-TV, which is an affiliate of the Fox network, and WTXN(TV), which is a CW affiliate, are co-located and operated jointly from a new state-of-the-art facility in downtown Hartford that was completed in December 2009. The Stations are now located in the same building as the *Courant* allowing even greater collaboration on news "tips," breaking news stories, and investigative pieces.

WTIC-TV and WTXN(TV) operate as a single employment unit. As of the end of the first quarter 2010, they employ 154 full-time and part-time workers, 90 of whom work in the Stations' news department; the *Courant* employs 567 full-time and part-time employees, 136 of whom work on news and editorial content; and Tribune's interactive division for the Hartford DMA has 27 full-time and part-time employees, 10 of whom work on news. While each entity is operated independently, they share a chief operating officer. Richard Graziano, Vice President/General Manager of the Stations' operations, was named publisher of the *Courant* in March 2009 and has management responsibility for print, broadcast, and Internet operations.

The Stations and the *Courant* hold separate assignment meetings each day. The television meetings occur at 9:30 am and 3:00 pm, and the newspaper's occur at 10:00 am and

4:00 pm After the morning meetings, a group that includes the assignment manager of WTIC-TV/WTXX(TV) and his or her counterpart at the *Courant* meet at 10:15 am to exchange assignment lists and confer to ensure the deployment of adequate and non-duplicative resources to cover the most important local news stories unfolding that day.

In addition, Tribune has designated one *Courant* employee to review and monitor the flow of information among Tribune’s Hartford properties, including the Stations, the newspaper, and their respective websites. This individual also reviews the news coverage efforts of each property to help ensure that they are covering significant local news events. This employee attends the newspaper’s assignment meetings, and frequently attends similar meetings at the Stations, but does not override the independent editorial decisions of the various properties.

News Coverage. Since Tribune has owned WTIC-TV, WTXX(TV), and the *Courant*, it has significantly increased the amount of locally-originated news programming provided by the Stations. WTIC-TV currently broadcasts more than 35.5 hours of locally-produced news and public affairs programming each week – more than any other station in the market and more than 10 times the amount WTIC-TV broadcast when Tribune acquired it in 1997.¹⁰⁹ In August 2008, WTIC-TV expanded its weekday morning news program from a two-hour program to a four and one-half hour program airing from 4:30 am to 9:00 am. In September 2009, WTIC-TV introduced *Fox 61 Midday*, which airs weekdays from 11:00 am to 11:30 am, as shown in the following chart listing WTIC-TV’s current news schedule:

<i>Program</i>	<i>Time</i>	<i>Days</i>	<i>Hours/day</i>	<i>Hours/week</i>
<i>Fox 61 Morning News</i>	4:30 am – 9:00 am	Monday – Friday	4.5	22.5

¹⁰⁹ See Hours and Audience Shares of Local News – Hartford & New Haven DMA (Attachment 1 hereto). The Stations’ news totals are current as of April 2010.

<i>Program</i>	<i>Time</i>	<i>Days</i>	<i>Hours/day</i>	<i>Hours/week</i>
<i>Fox 61 Midday</i>	11 am – 11:30 am	Monday – Friday	0.5	2.5
<i>Fox 61 News at Ten</i> (also simulcast on WTXX(TV))	10:00 pm – 11:00 pm	Monday – Sunday	1	7
<i>Fox 61 News at 11</i>	11:00 pm – 11:35 pm	Sunday – Friday	:35	3.5
TOTALS:	Monday-Friday		6.6	35.5
	Saturday		1	
	Sunday		1.6	

Each night’s 10:00 pm newscast on WTIC-TV is simulcast on WTXX(TV), a station that was not broadcasting local news produced by its licensee when Tribune acquired it in 2001.¹¹⁰

Both WTIC-TV and WTXX(TV) also broadcast *The Real Story*, a weekly public affairs program addressing local and state political issues and other matters of concern to area residents. This program airs on Sunday mornings at 10:30 am on WTIC-TV and at 11:00 am on WTXX(TV). On June 21, 2009, WTIC-TV added a second public affairs program hosted by former long-time *Courant* columnist Stan Simpson, whose television program focuses on issues affecting the local African-American community. *The Stan Simpson Show* is a 30-minute news interview program broadcast on Sunday mornings at 10:00 am on WTIC-TV featuring local community events and profiles of community leaders.

Working together, WTIC-TV, WTXX(TV), and the *Courant* deliver a number of recurring series and features that add significant depth and breadth to the coverage of news and information in the market. For example, the WTIC-TV and WTXX(TV) meteorologists provide

¹¹⁰ *See id.* This simulcast ensures that local viewers have the option of watching the Stations’ hour-long 10 pm newscast even when WTIC-TV programming, such as live NFL football and Major League baseball games, delays the newscast on WTIC-TV. WTXX(TV) plans to implement schedule changes later this year that will result in a net increase in news on WTXX(TV).

daily local weather information for the *Courant*, which otherwise would need to rely exclusively on information from national weather services. The *Courant's* business editor, Dan Haar, appears weekly on WTIC-TV's *Fox 61 Morning News*. In his segment, titled *Hangin' with Haar*, he discusses important business issues affecting viewers in the area. Twice a week, *Courant* columnist Korcky Vann writes a *Savvy Shopper* column in which she reports on her searches for bargains throughout Connecticut and southern New England. Ms. Vann also appears on WTIC-TV's morning news on Wednesday mornings to discuss specials she has found.

Reporters from WTIC-TV/WTXX(TV) and the *Courant* frequently share tips on news stories and work together to make sure breaking news gets out to the community as quickly as possible, as the following examples show:

- On February 7, 2010, the Stations and the *Courant* teamed up to cover a major power plant explosion in Middletown, Connecticut, which killed five people. WTIC-TV cut into live programming with news updates throughout the afternoon and aired a special 90-minute broadcast on the local disaster from 5:00 pm to 6:30 pm. Reporters and photographers from the *Courant* contributed on-air reports and video shots.
- In the same week, WTIC-TV and the *Courant* collaborated on a special series entitled "Protecting Your Teens," focusing on helping teens avoid abusive relationships. The *Courant* printed several feature stories, and on-air segments ran in WTIC-TV's morning newscast and the Stations' late evening news. In conjunction with this special series, the *Courant* and WTIC-TV cosponsored a "Teen Dating Violence Forum" at the University of Hartford, which offered live discussion of the issue.

- Earlier this year, the Stations and the *Courant* were first in the Hartford market to break the news that Sen. Christopher Dodd would resign his seat and then first again with the news that state Attorney General Richard Blumenthal would seek the nomination in the Democratic primary. Station and *Courant* reporters collaborated on the story as WTIC-TV broke into live programming at 12:45 am on January 6, 2010, to report the resignation news. The story was then posted on the Stations' and newspaper's websites and rushed into print, appearing in two of the *Courant's* morning editions. WTIC-TV continued coverage of the story in its 4:30 am newscast and at 8:30 am aired the first interview with Blumenthal in which he confirmed that he would seek Sen. Dodd's seat. Later in the day, WTIC-TV was the only station to carry Blumenthal's announcement of his candidacy live, breaking into scheduled programming at 2:30 pm. WTIC-TV again broke into live programming at 4:30 pm to carry a second interview with him.¹¹¹
- Also in January 2010, the Stations and *Courant* together investigated and broke a story about potential negligence in a fatal school bus crash in the Hartford area. A *Courant* reporter received documents showing that the bus had previously failed inspection and that a bus company employee, who had signed off on a self-inspection, had recently been arrested for fraud in a similar case. WTIC-TV broke the story in its late evening newscast, and the *Courant* followed up the next morning with a detailed, in-depth account.
- In July 2009, a *Courant* reporter uncovered the filing of a critical motion while covering the trial of two men suspected of killing three members of a Cheshire, Connecticut family in 2007. The reporter informed WTIC-TV, which then used the information as the basis for a story in the station's next newscast.
- When a bank robbery in Bristol, Connecticut developed into a high-speed chase and hostage situation in summer 2009, assignment editors at the *Courant* and the Stations worked closely together to provide coverage of the story as it unfolded. WTIC-TV was first to learn that the missing suspect had been captured and informed the *Courant's* reporters. Both print and television reporters covered the story on-air and on-line throughout the day, and the *Courant* provided follow-up in-depth coverage in the next day's newspaper.
- In May 2009, when officials feared that a gunman who shot a Wesleyan University student was at large in the Middletown community, newspaper and television editors were in constant contact to ensure that critical information was investigated and reported on-air, on-line, and in print as quickly and thoroughly as possible.

¹¹¹ The timeline attached as Attachment 2-A shows how the Tribune properties reported the story as it developed.

- When public health officials in Waterbury held a press conference in early 2009 on a local death due to swine flu, television reporter Tom Lewis covered the event for both the television Stations and the newspaper.
- In July 2009, when a blind man was rescued from a burning house by his seeing eye dog, the *Courant* did not have a reporter available to cover the incident as it developed, but included frame “grabs” shot by a television cameraman in the story that the newspaper published the next day.

Collaboration with WTIC-TV and WTXN(TV) has also allowed the *Courant* to expand its geographic reach to include more news from Waterbury, New Haven, and the southern portion of the market – areas which have previously received less coverage from the Stations. Over just the past two months, the Stations have aired more than 20 stories related to Waterbury and the surrounding areas, including a report about a mother arrested for leaving her two-year old child in a hot car outside a shopping mall while she went to a nail salon, a nurse arrested for allegedly abusing a quadriplegic patient, and a murder-suicide involving three friends on a camping trip. Other stories reported by television station personnel and published in the *Courant* or on its website have included the Waterbury flu story noted above; a hit and run accident involving a toddler; the shooting of a nine-year old; the discovery of a human skull; and, in a separate incident, the discovery of a body that turned out to be a mannequin. Traffic reports in the morning news on WTIC-TV regularly include information on Waterbury and environs.

The properties this year have also collaborated on a number of investigative journalism pieces – efforts that they are expanding now that all operations are under one roof. Examples include the following:

- In response to an increasing number of domestic violence cases in the Hartford area over the last year, reporters from the Stations and the *Courant* have together investigated and reported on the causes of this recent spike, failures in judicial system protections designed to assist victims, and measures to help prevent such incidents in the future. Stories appeared on the Stations’ newscasts, in the *Courant*, and on the newspaper’s website. The Stations and the *Courant* were honored for this project with a 2010 Dove Award from the Center for Youth Leadership.

- *Courant* reporter Arielle Levin Becker, who was investigating a questionable liposuction doctor operating in the area, was joined in her work by television reporter Laurie Perez on “special assignment.” Their joint print and on-air reporting alerted more people to the dangers presented by this doctor than would have been the case if only one property had pursued and reported on the investigation. Shortly after the newspaper and the Stations delivered their respective reports, state regulators suspended the doctor’s license.
- In May 2009, the *Courant* and the Stations worked together to cover the arrest of a suspect in the 2008 hit and run killing of Hartford resident Angel Arce Torres, whose death drew national attention when surveillance video released by local police showed him being struck by a vehicle, then ignored by numerous other vehicles and pedestrians who passed his body as it lay in the street. When an arrest of the driver seemed imminent, but Hartford police refused to release details, reporters from the Stations and the *Courant* used their combined sources to piece together and break the story.
- Both Stations also broadcast stories based on two investigations about urban blight undertaken by *Courant* columnist Helen Urbinas. One story focused on a neglected baseball field and one on a housing official whose dilapidated house was affecting a neighborhood.

In addition, the properties have worked together on seasonal projects. On December 20, 2009, following severe winter weather, Station and *Courant* reporters both contributed to a two-hour special report on the impact of the storm, which ran on WTIC-TV from 6:00 am to 8:00 am. On a regular basis, the three properties also work closely together to deliver snow-closing information. The latest updates are broadcast on the Stations and published on the websites. The *Courant* helps with gathering and keeping the information accurate and up to the minute. In March 2009, WTIC-TV provided live broadcast coverage of Hartford’s St. Patrick’s Day parade for the first time. The Stations and the newspaper jointly covered and promoted the event, and attendance was double that of the 2008 parade. The same coverage and promotion were provided again in 2010.

To improve their coverage of local news and issues, the Stations and the *Courant* frequently seek input from viewers and readers to ascertain the issues that are important to the community. They jointly host an ongoing series called the Key Issues Forum, which brings

together business, political, educational, and community leaders at breakfasts and dinners to discuss critical issues facing the area. The *Courant* plans these meetings and works with the Stations to promote and cover them.

In 2009, when the *Courant* decided to redesign the newspaper's masthead, it sought input directly from the public, allowing readers to vote through the newspaper's website on which of two proposed designs they preferred. More than a thousand people responded with votes and comments, many of which were incorporated into the final design.

Political Coverage. WTIC-TV, WTXN(TV), and the *Courant* have also enhanced their political coverage by working closely together. On election nights, the properties use their combined resources to cover more local races and to gather more results than each could alone. In addition to combining their newsgathering efforts, political columnists and experts from the *Courant* provide reporting and analysis for the Stations' election night specials, which are simulcast on WTIC-TV and WTXN(TV). Through common ownership and operations, the Stations are able to add significant depth to their election night reporting, while the *Courant's* reporters are able to add immediacy to their coverage.

The Stations and newspaper have also worked together to host and broadcast political specials and debates. This year, the Stations and the newspaper are taking an active role in following the hotly contested Democratic and Republican races to select candidates to vie for the seat of retiring Sen. Christopher Dodd. WTIC-TV aired debates for these races on March 1 and 2 from 7:00 pm to 8:00 pm.

In the run-up to both the 2006 and 2008 fall elections, the host of *Beyond the Headlines*, the Stations' Sunday morning public affairs show (now known as *The Real Story*), interviewed all candidates for major offices who accepted the Stations' invitation to appear. In 2006, the

properties also provided extensive coverage of the Democratic Senatorial primary battle between incumbent Sen. Joe Lieberman and businessman Ned Lamont, a contest that received significant national attention. On August 7, 2006, on the eve of the primary, WTIC-TV broadcast a news special from 7:00 pm to 8:00 pm in which Sen. Lieberman and Mr. Lamont were each interviewed separately. After Mr. Lamont won the primary and Sen. Lieberman decided to run as an Independent, the properties continued their coverage. On November 5, 2006, which was the Sunday before the general election, WTIC-TV and WTXN-TV from 11:00 am to noon aired special coverage of a debate at Quinnipiac University between Mr. Lamont and the Republican Party nominee, Alan Schlesinger (a debate in which Sen. Lieberman chose not to participate). *Courant* reporter Chris Keating was among the panel of questioners at the debate.

The *Courant* and the Stations also analyze and critique many of the ads that candidates and interest groups air. During election seasons, the Stations have included a “Truth Test” segment in their evening newscasts in which reporters dissect political and issue ads to substantiate their claims. Further, *Courant* reporters frequently publish pieces analyzing political advertising.

Despite their close interactions, the Stations and the *Courant* continue to make their own separate editorial decisions regarding political and news content. The *Courant* maintains an independent editorial board. Although WTIC-TV and WTXN(TV) have no role in the decisions of this board, members of the board occasionally appear on-air on the Stations to debate members of the public on topics within their areas of expertise. (WTIC-TV and WTXN(TV) do not have a similar board or committee and do not routinely offer commentary.)

Sports. Some of the properties’ most successful efforts at convergence have come in their regular sports reporting and coverage of major sporting events of local interest. Each week,

Courant sports columnist Jeff Jacobs appears on *Sunday Night Sports Ticket*, a 15-minute segment hosted by television sports reporter Rich Coppola and broadcast at the end of WTIC-TV's and WTXN(TV)'s Sunday evening newscasts. This segment focuses exclusively on local sports teams and events, and in addition to Mr. Jacobs' regular appearances, frequently includes interviews with other *Courant* reporters who cover the sports being discussed in that week's show.

The newspaper and Stations also team up to deliver enhanced coverage of major sporting events that occur locally or feature local teams. Each year, *Courant* reporters cover the men's and women's NCAA basketball tournaments, which perennially include University of Connecticut teams. These reporters appear on-air to enhance WTIC-TV and WTXN(TV)'s coverage of the teams and tournaments. Access to the *Courant's* reporters was particularly important in 2009, when the Stations, for budgetary reasons, were not able to send their own reporters to cover the Final Four appearances of the University of Connecticut's men's and women's teams in Detroit and St. Louis, respectively. By taking advantage of the *Courant's* on-scene reporting, the Stations brought greater local depth to their coverage. After the University of Connecticut women's team won the national title in 2009, WTIC-TV and the newspaper partnered to provide live coverage of the championship parade in downtown Hartford. When the women's team repeated that feat again this year, WTXN(TV) aired a half-hour special from 8:00 to 8:30 pm on April 18, 2010, highlighting the team's accomplishment and the victory parade.

In June 2009, the properties worked together to deliver joint coverage of the Travelers Open, Connecticut's PGA Tour golf event. Each night during the five-day event, WTIC-TV and WTXN(TV) broadcast a 15-minute special report at the end of their 10:00 pm newscasts, featuring *Courant* sports reporters who had attended that day's events. WTIC-TV also broadcast

extensive live coverage of the Travelers Open during its morning newscasts. In July 2009, USA Gymnastics announced that the 2010 United States national gymnastics championships would be held in Hartford. Tribune covered the press conference at the XL Center in Hartford both on-air on WTIC-TV and in the *Courant*. Both properties also made information about the championships, including video related to the announcement, available on their websites. The Stations and the newspaper will continue to collaborate in covering and promoting this event as it draws near.

Community Service. WTXX(TV) broadcasts a daily Catholic mass produced in Waterbury. This half-hour broadcast expands to an hour on weekends. On February 6, 2010, WTXX(TV) also broadcast a 30-minute special about a celebrity basketball game being held and sponsored by Interval House, a Connecticut domestic violence center, to raise awareness about domestic violence concerns.

At a time when financial difficulties are forcing many television stations to cut back on community service, the *Courant*, WTIC-TV, and WTXX(TV) have used their combined resources to participate in more events and deliver greater coverage of them than ever before. The properties work together to cover and promote the Manchester Road Race, a Thanksgiving Day tradition now in its 74th year. In November 2009, WTIC-TV broadcast the event, proceeds from which benefited muscular dystrophy research, live on Thanksgiving morning. WTIC-TV expects to televise the race again in 2010 and in future years.

The properties have also collaboratively promoted and provided news reports on the Hartford Marathon, which occurs annually in the fall. In 2009, WTIC-TV produced and broadcast live coverage of the marathon for two and one-half hours and also produced and aired five marathon-related features in the morning and evening newscasts in the week leading up to

the race. In addition, the *Courant* produced a special section dedicated to the marathon on race day. Through their joint efforts, WTIC-TV, WTXN(TV), and the *Courant* have been able to increase awareness of, and attendance at, many local events, benefiting participants as well as the organizations that rely on the events for critical popular and financial support.

Working together, the *Courant*, WTIC-TV, and WTXN(TV) have also directly helped local community organizations more effectively than any single outlet could acting alone. Each year, the Stations and the newspaper team up to host “Camp Courant,” the nation’s largest free day camp. As a result of this program, nearly 1,200 economically disadvantaged children from the Hartford DMA are able to attend this camp every day for six weeks in the summer at no cost. Tribune employees (from both the Stations and the *Courant*) volunteer hundreds of hours and contribute thousands of dollars annually to make this camp a success. In addition to manpower and financial support, WTIC-TV, WTXN(TV), and the *Courant* all promote the camp and provide news coverage of the fundraising efforts and each year’s opening day.

Awards. WTIC-TV’s exceptional local news coverage has been recognized many times by regional and national organizations. In April 2009 and April 2010, WTIC-TV received 23 and 28 nominations, respectively, for local Emmy awards, more than any other news organization in Connecticut and more than those received by the ABC, CBS, and NBC affiliates in the Hartford DMA combined. WTIC-TV won six of the 23 local Emmys for which it was nominated in 2009, including awards for Best News Editor, Best News Photographer, and Best News Team Coverage. The station also was honored at the 2009 Connecticut Associated Press Awards, where it received honors for the Best Feature (Regular), Best Feature (Quick Hit), and

Best Videography. In addition, WTIC-TV received a 2009 Award of Excellence from Mothers Against Drunk Driving for its coverage of drunk driving issues.¹¹²

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

As the FCC recognized in 2003 in the course of deciding to repeal the absolute ban on newspaper/broadcast cross-ownership, “[t]he benefits of combined ownership are not likely to be achieved through joint ventures as opposed to combined ownership.”¹¹³ This is true of the benefits delivered by Tribune’s Hartford properties that are described above, benefits that would be jeopardized if common ownership could not be continued. Indeed, as a CW affiliate ranked sixth in the market based on share (9 am – midnight), it is highly unlikely that WTXN(TV) operating by itself would carry any news programming at all absent cross-ownership.¹¹⁴

The Commission’s conclusion that combined ownership is required to achieve such efficiencies was based on economic analysis, empirical studies, and facts contained in the record. Noting the results of one study, the FCC explained the basis for its finding: “[J]oint ventures confront three classes of issues that hinder their ability to achieve efficient joint production: (1) the costs of reaching the agreement; (2) incentives to withhold private information; and (3) incentives to take actions that are not in the best interests of the joint venture.”¹¹⁵ Another

¹¹² Attachment 2-B hereto includes a more extensive list of awards earned by WTIC-TV over the last two years.

¹¹³ *2003 Order*, 18 FCC Rcd at 13,755-56 (¶ 346) (citing Gannett Comments in MM Docket No. 01-235, Exhibit C (Dec. 3, 2001), Besen and O’Brien, *An Economic Analysis of the Efficiency Benefits from Newspaper/Broadcast Station Cross-Ownership* (“Besen/O’Brien Study”)).

¹¹⁴ *See Hartford DMA TV Stations and Audience Ratings and Shares* (Attachment 3 hereto); *see also 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, more than 60% of stations ranked fifth or below provide no local news at all. *Id.* at 2046 n.204 (¶ 62 n.204).

¹¹⁵ *2003 Order*, 18 FCC Rcd at 13,755-56 (¶ 346).

study in the record noted that full convergence, in which news and other informational content expands and improves, is “extraordinarily difficult to achieve without common ownership” due in part to the need for a comprehensive set of organizational talents and abilities and forceful leadership, elements that are not often present in a joint venture.¹¹⁶

On the other hand, the study that the FCC cited showed that “joint ownership mitigates these possible hindrances.”¹¹⁷ First, agreement on the parameters of production is reached without significant cost because common ownership reduces the possibility of disputes and any such disputes can be more easily resolved within a single company.¹¹⁸ Second, information withholding is reduced or eliminated because it is easier for key decision-makers to obtain the information that they need, senior management can freely monitor the activities of participating divisions, and a central authority figure can, if necessary, specify what information should be shared.¹¹⁹ Third, while the task of specifying in a joint venture agreement all of the actions that each party will take can be expensive and potentially impossible due to the degree of complexity and foresight involved, “shirking” does not arise in cross-ownerships because of the ease with which a central authority can monitor the actions performed by each element of the enterprise.¹²⁰

Accordingly, just as the extensive resources of Tribune and the *Courant* were valuable to the recent growth of the Stations’ local news operations and essential to enable WTXX(TV) to

¹¹⁶ See *Statement of Professor James K. Gentry, Ph.D.*, at 10-12, attached as Appendix 4 to Comments of Media General, Inc. in MM Docket No. 01-235 (Dec. 3, 2001) (pages are unnumbered; page 1 begins immediately after the “Summary”).

¹¹⁷ *2003 Order*, 18 FCC Rcd at 13,755-56 (¶ 346) (citing Besen/O’Brien Study).

¹¹⁸ Besen/O’Brien Study at 20.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 21.

carry any local news at all, continued common ownership with the *Courant* is critical to sustaining the high-quality news and public service programming that is provided by WTIC-TV and WTXX(TV), and a waiver is fully justified to achieve that goal.

B. The Hartford Market Is Remarkably Diverse And Competitive.

The Hartford and New Haven, CT DMA (the “Hartford DMA”) is ranked 30th in the country, with more than 1 million television homes.¹²¹ As shown in detail below, the Hartford media market is diverse and competitive, with 11 television stations owned by seven separate owners, 77 commercial and non-commercial radio stations owned by 45 separate owners, and 12 daily newspapers published by eight different publishers.¹²² Many of the country’s major media companies own media properties in the market. Tribune’s media properties are venerable institutions in Hartford – WTIC-TV, WTXX(TV), and the *Courant* are household names throughout the local community. WTIC-TV and WTXX(TV) (Fox and CW affiliates, respectively) are only ranked fourth and sixth, respectively, based on February 2010 share (9 am – midnight),¹²³ among their strong group of competitors; the *Courant* faces strong competition from the *New Haven Register*, the *Republican-American/Sunday Republican*, and other daily newspapers in the market.

¹²¹ TVB Research Central, Market Track, *US TV Households by Market*, http://www.tvb.org/rcentral/markettrack/us_hh_by_dma.asp (last visited Feb. 2, 2010) (based on Nielsen Media Research, Inc., Nielsen Station Index (NSI), estimates for the 2009-2010 television season effective September 21, 2009).

¹²² See generally Mark R. Fratrick, Ph. D., BIA Financial Network, *Report on the Hartford-New Haven, CT Media Market: Media Diversity, Revenue Share, and Concentration Analysis in Support of the Request for Cross-Ownership Waiver for Television Stations WTIC-TV and WTXX(TV)*, at 22-23 (Feb. 26, 2010) (“BIA Report”) (Attachment 4 hereto).

¹²³ See Attachment 3.

Moreover, these numerous traditional media outlets provide news, information and entertainment and seek advertisers in a market that has been revolutionized by widespread access to the Internet and other new media. Broadband, with its exponentially higher speeds, enables interactive uses of the Internet that have transformed the way that people obtain news and information and has made Internet news sources even more powerful forces in the contemporary media marketplace than they were just a few short years ago. In fact, a very recent study by Arbitron and Edison Research found that, for the first time, more people rated the Internet as the media platform that is “most essential” to their lives than any of the traditional media, with 42% choosing the Internet, 37% choosing television, 14% choosing radio, and just five percent choosing newspapers.¹²⁴ And now, Americans have access to text and video content while on-the-go through multiple mobile video platforms, with more on the horizon, including mobile digital television. More than ever before, consumers control their access to news, information and entertainment, and Tribune’s traditional media properties in Hartford are just three of thousands of local outlets competing for their attention. The combination of WTIC-TV, WTXN(TV), and the *Courant* has had and will have no significant adverse impact on the incredible diversity of media outlets available in the market, as these marketplace facts show. Economic analysis further reflects decreasing concentration levels, thus evidencing that the Hartford market has remained, and will remain, vibrantly competitive notwithstanding Reorganized Tribune’s continued common ownership of WTIC-TV, WTXN(TV), and the *Courant*.

¹²⁴ See Arbitron, Inc. and Edison Research, *The Infinite Dial 2010: Digital Platforms and the Future of Radio*, at 11 (Apr. 2010), available at http://www.arbitron.com/study/digital_radio_study.asp (last visited Apr. 17, 2010).

1. Many “Traditional” Media Sources Serve The Hartford Market.

a. Television Stations.

The abundance of television stations in the Hartford DMA strongly supports a waiver permitting continued common ownership of WTIC-TV, WTXX(TV), and the *Courant*. WTIC-TV, an affiliate of the FOX network, and WTXX(TV), an affiliate of the CW network, are two of 11 broadcast television stations in the Hartford DMA.¹²⁵ Those 11 stations are owned by seven separate owners.¹²⁶ One station is owned by NBC, and two other strong television groups operate in the Hartford DMA – Meredith Corporation owns the CBS affiliate, and LIN Television owns a duopoly of the ABC and My Network affiliates. In addition, viewers in the Hartford DMA have access to numerous television stations from adjacent markets. During the November 2009 sweeps period, out-of-market stations garnered 6% of all viewing of over-the-air television stations in the DMA.¹²⁷ Further, during that same period, three of the Big-four network television stations from New York that are carried on cable systems serving the Hartford DMA (WNBC(TV), WCBS-TV, and WNYW(TV)) ranked among the top 60 video channels viewed in the market, collectively earning a 1.2 share.¹²⁸ As in other markets, broadcast television ratings in Hartford are generally in decline, a trend that is hardly surprising in light of the emergence of multiple new media outlets since 1975, and even within the current decade. A chart showing these declines is appended hereto as Attachment 3.¹²⁹

¹²⁵ See BIA Report, at 22; *id.* at Appendix B-1; *see also* Attachment 3.

¹²⁶ See BIA Report, at 22; *id.* at Appendix B-1.

¹²⁷ Share data based on Nielsen ratings for November 2009 (Sunday through Saturday, 9 am-midnight).

¹²⁸ Share and ranking data based on Nielsen ratings for May 2009 (9 am-midnight).

¹²⁹ See Attachment 3.

The Hartford television market has grown increasingly diverse and competitive since 1975, notwithstanding Tribune's common ownership of WTIC-TV, WTXX(TV), and the *Courant*. A review of the declining audience shares for broadcast television stations in Hartford demonstrates that diversity and competition are robust, and have increased over time.¹³⁰

- In 1975, when WFSB earned a 34 share, WTNH earned a 23 share, and WVIT earned a 15 share, no other television station in the DMA earned greater than a 1 share. By November 2009, the greatest share earned by any station in the market was 12.1.
- In 1975, WTIC-TV was not yet on the air, and WTXX earned less than a 1 share. By November 2009, under Tribune's common ownership, the Stations increased their shares to a 7.0 and 2.0, respectively, but had not overtaken the two highest-rated stations in the market (WFSB and WVIT), which had shares of 12.1 and 9.9, respectively.
- In May 2001, the combined audience share for all television stations in the Hartford DMA was 51.7. In May 2009, the combined audience share had fallen to 40.5 – a decline of approximately 21.7%. By November 2009, the combined audience share was 42.1, only a slight change from May 2009 but a decline of nearly 19% as compared to May 2001.
- In May 2001, the combined audience share for the top four stations in the Hartford DMA (WFSB(TV), WTNH-TV, WVIT(TV), and WTIC-TV) was 43.6. In May 2009, the combined audience share was 34.8 – a decline of approximately 20.2%. In November 2009, the combined audience share was 35.6 – a modest increase from May 2009 but an overall decline of approximately 18.3% as compared to May 2001.

Audience share data also demonstrate that since 2001, the once-dominant stations in the market have experienced significant declines. By May 2009, only one station earned more than a 10 share, compared to three such stations in 2001, a situation which endured through the November 2009 ratings period.¹³¹ Conversely, in May 2001, four stations earned less than a 2

¹³⁰ *See id.*

¹³¹ *See id.*

share, compared to seven in May 2009 and six in November 2009.¹³² These data demonstrate that Tribune's common ownership of media properties has not hindered, and will not harm in the future, the growth of diversity and competition in Hartford, where a large number of alternative outlets are available.

While audience shares for the once-dominant stations have declined steadily over time, the amount of local news programming provided by Hartford's local broadcast television stations has increased. As reflected in the table appended hereto as Attachment 1, these stations together broadcast more than 140 hours of local news programming each week. Since acquiring WTIC-TV, Tribune has increased the amount of weekly news programming on the station – from 6.5 hours at the time Tribune acquired the *Courant* to 35.5 hours.¹³³ These increases have occurred despite the loss of audience share to other non-broadcast news providers. Tribune has been able to continue to invest in local news programming in part due to the synergies and efficiency of common ownership.¹³⁴ Competition for the Hartford news-viewing audience is robust, with six stations providing local news programming in the DMA and the highest-rated evening newscast in November 2009 earning a 13.9 share.¹³⁵ These facts and trends show that while audience ratings for broadcast television have declined, the delivery of news in the Hartford market remains plentiful, and competition remains as intense as ever.

¹³² *See id.*

¹³³ *See* Attachment 1.

¹³⁴ *See supra* Section III.A.

¹³⁵ *See* Attachment 1.

In addition to the full-power television stations serving the DMA, there are 13 multicast programming streams available in the market.¹³⁶ Broadcasters are embracing the opportunity to bring additional programming options to viewers using these digital multicast channels.¹³⁷ Now, in addition to the programming offered on its main channel, a broadcaster can divide its remaining spectrum into one or more subchannels and program these channels to serve the different needs of its viewing audience. Some stations are offering hyper-local news and information, 24/7 weather, or live traffic information.¹³⁸ Still other stations are providing programming options to serve the needs and interests of niche markets within their viewing audience, such as multi-lingual news, children's programming, religious programming, local sports programming, or classic movies and television shows.¹³⁹

¹³⁶ See BIA Report, at 22 n.30; *id.* at Appendix B-2.

¹³⁷ See RabbitEars.Info, http://www.rabbitears.info/search.php?request=network_list (last visited Feb. 8, 2010) (listing almost 200 programming options for digital subchannels).

¹³⁸ See 360north.org, www.360north.org (last visited Feb. 8, 2010) (providing Alaska news and information); The Ohio Channel, <http://www.ohiochannel.org/> (last visited Feb. 8, 2010) (providing coverage of state political events); Accuweather Partners, <http://www.accuweather.com/promo-ad.asp?partner=accuweather&traveler=0&dir=aw&page=lawc> (last visited on Feb. 8, 2010) (providing list of stations carrying local weather information on multicast channels); *see also* http://www.rabbitears.info/search.php?request=network_search&network=Traffic+Cameras (last visited Feb. 8, 2010) (list of stations with live traffic camera feed offered on a subchannel).

¹³⁹ For example, stations around the country offer LATV network programming on digital subchannels. The network offers bilingual programming targeted toward the younger Hispanic market. See www.LATV.com (last visited Feb. 8, 2010). The new Estrella TV network, which offers musical-variety, comedy, scripted drama, talk and game shows in Spanish and features top talent from the United States, Mexico and Latin America, is also broadcast on a number of digital multicast streams. See Liberman Broadcasting, Inc., *Estrella TV Makes Its Nationwide Debut*, Sept. 14, 2009, available at http://www.lbimedia.com/Media/PressReleases/20090914_EstrellaTvLaunch.pdf (last visited Feb. 9, 2010). Other stations are similarly using their digital multicast streams to broadcast a diverse range of programming. See, e.g., Arirang – Korea's Global TV, <http://www.arirang.co.kr/> (last visited Feb. 8, 2010) (offering news and information programming from Korea); The Church Channel, www.churchchannel.org (last visited Feb. 8, 2010) (offering religious programming); FamilyNet.com, <http://www.familynet.com/about/> (last visited Feb. 8, 2010) (dedicated to providing responsible, relevant, and entertaining viewing

There are also three independently owned Class A television stations in the Hartford DMA.¹⁴⁰ Each of these Class A stations is required to broadcast an average of at least three hours per week of locally produced programming every quarter.¹⁴¹ And, there are three independently owned non-Class A low power television stations.¹⁴² In total, the Hartford DMA has six independently owned Class A and LPTV stations.¹⁴³ Some of these outlets earn measurable ratings.¹⁴⁴ The Class A and LPTV stations provide additional potential sources of local news and information for viewers.

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

As of November 2009, cable penetration in the Hartford DMA was 83.4%, 13.6% of the households in the DMA subscribed to alternative MVPDs (including direct broadcast satellite (“DBS”)), and total MVPD penetration was nearly 97%, placing the Hartford DMA as tied for the second highest MVPD penetration in the country.¹⁴⁵ In November 2001, by contrast, total

choices for today’s diverse family); Qubo Network (ION), www.qubo.com (last visited Feb. 8, 2010) (providing programming with “positive messages that promote literacy, reinforce timeless values, and convey relatable life lessons”); The Wazoo Sports Network, <http://www.wazoosports.com/programming/channelguide.html> (last visited Feb. 8, 2010) (original Kentucky sports programming, including high school, NCAA, NAIA, and youth sports); This TV, www.thisstv.com (last visited Feb. 8, 2010) (offering movies and classic television shows).

¹⁴⁰ See BIA Report, at 22; *id.* at Appendix C.

¹⁴¹ 47 C.F.R. § 73.6001(b)(2).

¹⁴² See BIA Report, at 22; *id.* at Appendix C.

¹⁴³ See *id.*

¹⁴⁴ For example, Nielsen May 2009 data indicate that Class A stations WRDM-CA and WUTH-CA earned shares of 0.4 and 0.1, respectively.

¹⁴⁵ See TVB Research Central, Market Track, *Cable and ADS Penetration by DMA: Hartford and New Haven*, http://www.tvb.org/nav/build_frameset.asp?url=/rcentral/index.asp (last visited Feb. 10, 2010) (based on Nielsen Media Research, DMA Household Universe Estimates) (click on “Research Central” then “Market Track” then “Cable and ADS Penetration by DMA” and then “Hartford and New Haven”). Total MVPD penetration values may differ from the sum of

MVPD penetration was lower at 91.8%, with cable penetration of 89.7% and alternative MVPD penetration of only 3.2%.¹⁴⁶ As of 2005, cable systems and other MVPDs throughout the nation offered an average of more than 230 channels,¹⁴⁷ a number that has increased substantially since then and to which must be added hundreds and, on some systems, thousands, more programming choices available on-demand.¹⁴⁸ In comparison, as of 2000, only a minute proportion (0.15%) of cable systems offered consumers 125 or more channels, while the majority of systems (more than 62%) offered only 30-53 channels.¹⁴⁹ Consumers also now may choose from among multiple options for MVPD service including cable systems, two DBS operators and, in many areas, a telephone company providing video service.¹⁵⁰ These competing MVPD services

cable and alternative penetration values because Nielsen includes households subscribing to both in each category.

¹⁴⁶ *See id.*

¹⁴⁷ *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, 561-62 (¶ 44) & Table 4 (2009) (“*13th Annual Video Competition Report*”) (230.6 is the average of the number of cable channels offered by systems facing effective competition (234.9) and those not (226.3)). The 2005 data are the most recent that have been publicly reported by the FCC.

¹⁴⁸ *See, e.g.*, Comcast Corporation, Digital Cable Service With On Demand from Comcast, [http://www.comcast.com/Corporate/Learn/DigitalCable/digital cable.html](http://www.comcast.com/Corporate/Learn/DigitalCable/digital%20cable.html) (last visited Feb. 20, 2010) (indicating that its systems offer 17,000 on demand choices); Time Warner Cable, On Demand, <http://www.twondemand.com/> (last visited Feb. 10, 2010) (providing on-demand listings for Time Warner); Cablevision, Optimum, iO TV, On Demand, http://www.optimum.com/io/on_demand/index.jsp (last visited Feb. 10, 2010) (providing on-demand listings for Cablevision); Charter On Demand - Frequently Asked Questions, <http://www.charter.com/customers/support.aspx?SupportArticleID=14> (last visited Feb. 10, 2010) (stating that “Charter On Demand allows you to enjoy thousands of shows and movies whenever you want – many are FREE with hundreds available in High Definition”); Cox On Demand, <http://www.cox.com/digitalcable/ondemand/default.asp> (last visited Feb. 10, 2010) (providing on demand listings for Cox).

¹⁴⁹ *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Seventh Annual Report, 16 FCC Rcd 6005, 6103 (Table B-3) (2001).

¹⁵⁰ *See, e.g.*, Verizon, FiOS TV, About FiOS, <http://www22.verizon.com/Residential/FiOSTV/Details/Details.htm> (last visited Feb. 10, 2010); AT&T, U-verse, What is AT&T U-verse?, AT&T U-Verse TV, <http://www.att.com/u-verse/> (last visited Feb. 10, 2010) (click on “Television” under “Explore” on right-hand side).

provide varying channel line-ups. Furthermore, in addition to the expansive line-ups of non-broadcast programming by these MVPDs, both DirecTV and DISH Network offer local-into-local service to their subscribers in the Hartford DMA.¹⁵¹ Telephone companies' video services also offer access to local broadcast stations.¹⁵²

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

- New England Cable News – a 24-hour regional news channel covering New England;
- News 12 Connecticut – a 24-hour local news channel that covers southwestern Connecticut and offers a separate News12 Traffic and Weather channel;
- Connecticut Network (CT-N), which is produced by the Connecticut Public Affairs Network on behalf of the Connecticut General Assembly and provides Connecticut state government information and programming, including legislative sessions, public hearings, and committee meetings; and
- Three programming channels provided by Hartford Public Access Television that are dedicated to government, educational, and public access programming.

Numerous regional networks deliver sports programming to the Hartford market, including:

¹⁵¹ See DirecTV, The Guide, <http://www.directv.com/DTVAPP/epg/theGuide.jsp> (last visited Feb. 10, 2010) (click on “Missing Local Channels?” on top right of guide; enter local zip code to view local channels); DISH Network, Programming, <https://customersupport.dishnetwork.com/customernetqual/prepAddress.do> (last visited Feb. 10, 2010) (click on “Click here for a complete list of Available local markets” for a list of markets where local programming is available). Full listings of the channels offered by DirecTV and DISH Network in Hartford are appended hereto as Attachment 5.

¹⁵² See *supra* note 150.

- New England Sports Network, owned by the Boston Red Sox and Boston Bruins, which provides extensive local and regional sports coverage;
- YES Network, owned by the New York Yankees, which provides extensive local and regional sports coverage, including exclusive live telecasts of New York Yankees baseball and New Jersey Nets basketball games and minor league and college sports games;
- Comcast SportsNet New England, which provides extensive local and regional sports coverage, including Boston Celtics basketball games and men's and women's college sports; and
- SportsNet New York, established in 2006 by Sterling Entertainment Enterprises, Time Warner Cable, and Comcast, which provides extensive local and regional sports coverage, including exclusive live telecasts of New York Mets baseball games and other professional and collegiate sports.¹⁵³

In addition to presenting ever-expanding programming offerings, cable channels have increasingly taken audience share from broadcasters. For example, in Hartford:¹⁵⁴

- In May 2009, while eight over-the-air television stations in the market received at least a 1 share, 25 cable networks garnered at least a 1 share.
- Nine cable channels received ratings higher than WTXX, and six cable channels made the list of top 10 channels viewed in the market, earning a 2.5 share or better.
- In addition to the 10 cable networks in the top 15 channels viewed in the market, five other cable channels also make the top 20, earning a 1.4 share or better.
- Of the top 20 channels viewed in the Hartford DMA, five are cable channels that provide news or sports programming, much of it local in the market. These news and sports channels include the New England Sports Network, Fox News Channel, the YES Network, CNN, and ESPN.

The diversity of viewpoint and programming options available to consumers has been increased significantly by the extensive MVPD penetration in the market and the abundant viewing options

¹⁵³ Additional information regarding the local cable channels available in the Hartford DMA is reflected in Attachment 6 hereto.

¹⁵⁴ The discussion below is based on 9 am-midnight share values during the May 2009 sweeps period, as reported by Nielsen.

that MVPDs provide. At the same time, local audience share data demonstrate that MVPDs have significantly reduced the market shares of local broadcast voices, both individually and collectively.

c. Print Media.¹⁵⁵

The Hartford newspaper market also features strong competition, including 12 daily newspapers, with eight independent publishers.¹⁵⁶ As is the case in many other markets, and despite substantial population growth, the combined circulation of daily newspapers in the Hartford market has declined significantly in recent years. Tribune’s *Courant* faces competition from all of the daily newspapers in the Hartford DMA, and most notably from the *New Haven Register* and the (Waterbury, CT) *Republican-American/Sunday Republican*.

Top Daily Newspapers	2006	2009
<i>Hartford Courant</i>	184,254	155,540
<i>New Haven Register</i>	84,546	73,877
<i>Republican-American/Sunday Republican</i>	61,100	49,723
Combined circulation	329,900	279,140

¹⁵⁵ Circulation data included in this section were obtained from several sources. The 2009 daily circulation figures for the *Record-Journal* and *The Chronicle* were obtained from the BIA/Kelsey Media Access Pro™ Database, Hartford-New Haven, CT Market Newspaper Overview, and reflect BIAfn Estimated Current Circulation values for daily circulation reported therein as of February 3, 2010. The 2009 daily circulation data for all other daily newspapers discussed in this section are based on information from the Audit Bureau of Circulations for the six-month period ending March 29, 2009, and are current as of October 3, 2009. The 2009 daily circulation figures for the *Courant*, the *Journal-Inquirer*, the *New Haven Register*, *The Day*, the *Norwich Bulletin*, *The Register Citizen*, and the *Republican-American/Sunday Republican* represent Monday – Friday (5 Day) circulation averages. The 2009 daily circulation figures for *The Bristol Press/The Herald Press*, *The Middletown Press/The Herald Press*, and *The Herald/The Herald Press* represent Monday – Saturday (6 Day) circulation averages. Circulation data for the weekly newspapers discussed in this section were obtained from the BIA/Kelsey Media Access Pro™ Database, Hartford-New Haven, CT Market Newspaper Overview, and reflect BIAfn Estimated Current Circulation values for total circulation reported therein as of February 4, 2010.

¹⁵⁶ See BIA Report, at 23; *id.* at Appendix D.

From September 2001 to May 2006, the daily circulation of the *Courant* fell approximately 7.2% from 198,651 to 184,254. As the previous chart shows, between 2006 and 2009, the *Courant's* daily circulation further decreased to 155,540 – a decline of approximately 15.6% (and a decline of approximately 21.7% from September 2001). Between 2006 and 2009, daily circulation for the *New Haven Register* and the *Republican-American/Sunday Republican* declined approximately 12.6% and 18.6%, respectively, and the combined circulation of the top three newspapers declined approximately 15.4%. Notwithstanding these declines in circulation, competition among these newspapers remains strong. Moreover, in addition to these three dailies, nine other daily newspapers serve the Hartford DMA, with at least five additional publishers represented in the market.¹⁵⁷ These newspapers include:

- Four newspapers with daily circulations above 20,000, including the *Journal Inquirer* (35,252), *The Day* (30,895), the *Norwich Bulletin* (21,476), and the *Record-Journal* (21,200).
- One newspaper – *The Chronicle* – with circulation of 8,800.
- Four dailies published by the Journal Register Company, which also publishes the *New Haven Register*: *The Herald/The Herald Press* (9,646); *The Bristol Press/The Herald Press* (7,933); *The Register Citizen* (7,876); and *The Middletown Press/The Herald Press* (6,230).

In addition, a large array of weekly newspapers contributes to the diversity and competition in Hartford's newspaper market.¹⁵⁸ At least 53 general interest weekly newspapers published by at least 15 different owners are currently distributed in the DMA.¹⁵⁹ The Journal Register Company is a leader in the weekly newspaper arena, publishing at least 17 weekly

¹⁵⁷ *See id.*

¹⁵⁸ *See id.* This chart notes the several weekly newspapers that Tribune owns.

¹⁵⁹ *See id.*

newspapers in communities around Hartford and New Haven.¹⁶⁰ Many weekly newspapers in the Hartford market have substantial circulations, including, for example, *The Reminder* (230,000), *The Middletown Press* (35,000), and *Voices/Sunday – The Weekly Star* (30,000). In addition to these daily and weekly newspapers, there is a wide variety of other print media that deliver local information to residents of the Hartford DMA. These include 12 specialty newspapers serving diverse interests, 15 shopper publications, eight college newspapers, and 17 local magazines.¹⁶¹

d. *AM, FM, And Satellite Radio Service.*

The Hartford DMA includes 77 commercial and non-commercial AM and FM radio stations, owned by 45 separate entities.¹⁶² Of those, 14 radio stations, operated by seven different broadcasters, offer varied formats that focus on news, talk, sports, and information, while three offer formats that focus on education and religion.¹⁶³ Four independently owned stations offer Spanish-language or other ethnic formats.¹⁶⁴ In addition, 54 stations offer a variety of music formats, and one station offers a children’s format.¹⁶⁵ Moreover, the market’s radio broadcasters are offering programming on 11 HD multicast streams.¹⁶⁶ There are two additional independently owned low power FM stations, each of which by definition must be locally owned

¹⁶⁰ *See id.*

¹⁶¹ *See id.* Several of these publications are owned by Tribune.

¹⁶² *See id.* at 22; *id.* at Appendix E-1. In the more limited radio geographic market as defined by the local radio ownership rule as revised in the *2003 Order*, there are 35 radio stations owned by 23 different owners. *See id.* at 22.

¹⁶³ *See id.* at Appendix E-1.

¹⁶⁴ *See id.*

¹⁶⁵ *See id.*

¹⁶⁶ *See id.* at 22 n.31; *id.* at Appendix E-2.

by an entity that does not hold attributable interests in any other media.¹⁶⁷ Finally, in addition to terrestrial radio, XM Sirius offers satellite radio programming on a subscription basis to Hartford residents, with more than 200 channels, including numerous talk and information channels, multiple local traffic and weather channels, and many music channels.¹⁶⁸

2. Hartford Residents Enjoy Access To A Plethora Of New Media Sources.

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

In recent years, the availability of Internet access, and of high-speed Internet access in particular, have grown tremendously, allowing the Internet to overtake newspapers and achieve a position on par with television as Americans' primary source of news and information.¹⁶⁹ The Internet has become pervasive, with 74% of Americans having Internet access in their homes,¹⁷⁰

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

¹⁶⁸ See XM-Sirius Channel Lineup (Attachment 7 hereto).

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

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

up from 60% in 2001.¹⁷¹ As Internet access has become more widespread, the amount of time Americans spend using the Internet has continued to increase, rising from 14 hours per week in 2006 to more than 17 hours as of January 2009.¹⁷² These increases in Internet use extend across all racial and ethnic categories, as a recent study conducted by the Joint Center for Political and Economic Studies found.¹⁷³

More and more consumers now purchase *high-speed* Internet access in particular. According to the FCC's recent OBI Working Paper No. 1, a survey conducted in October and November 2009 revealed that 67% of U.S. households have broadband connectivity and that 65% of adults use broadband at home.¹⁷⁴ This represents a substantial increase from prior years; the Pew Internet & American Life Project previously had found that home broadband adoption stood at only 3% of Americans in June 2000¹⁷⁵ and had risen to 55% of Americans in May

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

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

¹⁷³ Joint Center for Political and Economic Studies, *National Minority Broadband Adoption: Comparative Trends in Adoption, Acceptance and Use*, at 1, 8-9 (Feb. 2010), available at http://www.jointcenter.org/publications_recent_publications/media_and_technology/national_minority_broadband_adoption (last visited Mar. 5, 2010) ("Minority Broadband Adoption").

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

¹⁷⁵ John B. Horrigan, *The Broadband Difference: How Online Americans' Behavior Changes With High-Speed Internet Connections at Home*, at 9 (June 23, 2002) ("The Broadband Difference 2002"),

2008.¹⁷⁶ The Minority Broadband Adoption report found that racial disparities in broadband adoption continue to narrow and that minorities are among the fastest-growing groups of home broadband subscribers.¹⁷⁷

To encourage further expansion of broadband access, Congress last year specifically directed the FCC to submit a report detailing a national broadband plan which “shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal.”¹⁷⁸ And, further expanding and improving broadband access has always been one of the Obama Administration’s, and thus the FCC’s, primary policy objectives. Indeed, Chairman Genachowski listed “[p]romoting universal broadband that’s robust, affordable and open” as *first* in a set of goals for the Commission under his leadership,¹⁷⁹ and recently explained that developing a broadband plan constitutes a task of “extraordinary

http://pewinternet.org/~media/Files/Reports/2002/PIP_Broadband_Report.pdf (last visited Feb. 5, 2010).

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

¹⁷⁷ *Minority Broadband Adoption*, at 1, 14-15.

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

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

importance.”¹⁸⁰ While there is still work left to be done, there is no evidence that the trend towards increasing broadband usage is slowing. “Broadband adoption appears to have been largely immune to the effects of the current economic recession,” in that “more than twice as many respondents [to a recent survey] said they had cut back or cancelled a cell phone plan or cable TV service than said the same about their Internet service.”¹⁸¹ Indeed, both household use of the Internet and adoption of broadband increased substantially between 2007 and 2009 in each of the extensive array of demographic groups tracked by NTIA in its Digital Nation report.¹⁸²

Trends in Hartford relating to Internet access and broadband usage mirror those in the nation as a whole. In response to a recent survey, nearly 69% of Hartford residents reported accessing the Internet at home, 34.3% reported doing so at work, and 9.7% reported doing so in other places (*e.g.*, public libraries).¹⁸³ Moreover, a large percentage indicated that they have broadband connections at home, with 35.7% reporting a DSL connection and 34.2% reporting a cable modem connection.¹⁸⁴

It is not just the Internet’s accessibility but also its interactivity that has contributed to the importance of the Internet as a source of news and information. The interactive nature of the Internet distinguishes online sources from traditional media by allowing users to filter and select

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

¹⁸¹ Home Broadband Adoption 2009, at 4-5.

¹⁸² Digital Nation, at 5-9, 11.

¹⁸³ Scarborough Research, *2009 Hartford Scarborough Release 1 Study*.

¹⁸⁴ *Id.*

content specific to their interests and to contribute their own information, commentary, and opinions to the mix. In fact, the Pew Internet & American Life Project's Participatory News Consumer study released in March 2010 found that today "37% of Internet users have contributed to the creation of news, commented on it, or disseminated it via postings on social media sites like Facebook or Twitter."¹⁸⁵ As more users are consuming Internet news and participating in its creation and distribution, the medium increasingly performs the same functions as traditional news outlets, and also, in many respects, goes beyond traditional one-way news delivery. For these reasons, as early as 2003 and in the context of revising its media ownership rules, the Commission readily acknowledged the "important role [of the Internet] in the available media mix" as "a commonly-used source for news, commentary, community affairs, and national/international information."¹⁸⁶ And in 2008 the agency further recognized that:

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

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

¹⁸⁶ *2003 Order*, 18 FCC Rcd at 13,765-66 (¶ 365).

news gatherers to demand, directly and indirectly, coverage of specific topics.¹⁸⁷

Although online news played a relatively small role just a few short years ago and thus was not even tracked in media consumption surveys, large percentages of Americans now obtain news online. Indeed, by early 2009 fully 70% of adult Internet users reported getting news online.¹⁸⁸ This represents a significant increase over prior years; in 2008, only 37% of Americans reported receiving news through the Internet regularly; in 2006, only 31% reported doing so; and in 2000 the percentage was only 23%.¹⁸⁹ In addition, during the short period between 2006 and 2008, the number of Americans responding that they read a newspaper online “yesterday” increased more than 50%, from 9% in 2006 to 14% in 2008,¹⁹⁰ a figure that has risen further since then. With respect to particular types of news, OBI Working Paper No. 1 found that, by late 2009, 75% of Internet users reported getting local or community news online and 73% reported accessing international or national news on the Internet.¹⁹¹

Pew’s Participatory News Consumer study confirms that the Internet’s popularity as a source of news has continued to grow, finding that on a “typical day” 61% of Internet users access news online, while 71% do so “at least occasionally.”¹⁹² This same study also found that

¹⁸⁷ *2008 Order*, 23 FCC Rcd at 2032 (¶ 38).

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

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

¹⁹⁰ *Id.* at 18.

¹⁹¹ OBI Working Paper No. 1, at 16.

¹⁹² Participatory News Consumer, at 10.

the Internet is now the third most popular news platform behind local television news and national television news, surpassing radio (54%), local newspapers (50%), and national newspapers (17%).¹⁹³ This study further demonstrates the central importance of the Internet as a news resource for an increasing segment of the population; Pew found that among news consumers that rely on only a single medium for news, 36% relied solely on the Internet, a higher figure than for any other medium.¹⁹⁴

With respect to particular types of news, a recent survey asking people to identify their main source or sources for national and international news revealed that the Internet now serves as a primary source of such news for more Americans than newspapers and, indeed, all other media sources except television, which it may well overtake soon.¹⁹⁵ Among younger Americans (those under 30), the same percentage that identified television as one of their main sources for national and international news – 59% – identified the Internet as one of their main news sources.¹⁹⁶ Americans also are increasingly relying on the Internet for local news. As

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

¹⁹⁴ *Participatory News Consumer*, at 11.

¹⁹⁵ *Internet Overtakes Newspapers*, at 1.

¹⁹⁶ *Id.*

noted above, OBI Working Paper No. 1 found that 75% of Internet users – or 58.5% of all respondents – access local or community news online.¹⁹⁷ Further, the Internet allows Americans to connect more easily with government; OBI Working Paper No. 1 found that 58.5% of all respondents reported using the Internet to visit local, state, or federal government websites, and half of Internet users, or 39% of all respondents, used the Internet to get advice from a government agency about a health or safety issue.¹⁹⁸ These findings hold true across racial categories. More than two-thirds (67%) of Black respondents and 61% of Hispanic respondents recently reported having visited local, state, or federal government websites.¹⁹⁹ And minorities are more likely to use the Internet to obtain information about or to apply for government benefits.²⁰⁰

The Internet is also becoming a principal destination for political news and advocacy in particular. Data from the last three Presidential election cycles show steady increases in the percentage of American adults who went online for news or information about politics or an election: the percentage of adults who did so rose from 18% in 2000 to 29% in 2004, and then significantly to 44% in 2008.²⁰¹ Moreover, the percentage of Americans citing the Internet as

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

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

¹⁹⁹ *Minority Broadband Adoption*, at 21.

²⁰⁰ *See id.*

²⁰¹ Aaron Smith, *The Internet’s Role in Campaign 2008*, at 48 (Apr. 15, 2009), http://www.pewinternet.org/~media/Files/Reports/2009/The_Internets_Role_in_Campaign_2008.pdf (last visited Feb. 4, 2010).

one of their *major* sources for election news more than doubled over the same period from just 11% in 2000 to 26% in 2008.²⁰²

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

One-third of Americans – half of Internet users – also already regularly watch news video online,²⁰⁵ something which has only been made possible by broadband. In fact, “[n]ews shows are the most popular online programs – watched by about 43% of online TV viewers.”²⁰⁶ Content providers recognize these trends, with YouTube creating a “News Near You” feature

²⁰² *Id.* at 51.

²⁰³ *Id.* at 7, 52.

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

²⁰⁵ Biennial News Consumption Survey 2008, at 21, 25.

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

that, after recognizing a user's location, provides a list of potentially relevant videos.²⁰⁷

YouTube also recently invited the more than 25,000 news sources listed on Google News, which include many local news sources, to supply video for its site.²⁰⁸ In addition to the draw of a diverse supply of news sources online, the increasing preference Americans have shown for news-on-demand – checking on the news from time to time when it is convenient for them to do so instead of getting it at regular times chosen by traditional media outlets²⁰⁹ – is also likely to bolster reliance on online news sources.

The popularity of online video sites offering entertainment content in competition with television broadcasters has also continued to rise, increasing by 34.9% from the third quarter of 2008 to the third quarter of 2009.²¹⁰ Online video viewing continues to soar with nearly 31 billion videos viewed in November 2009 by more than 170 million U.S. Internet users.²¹¹ Indeed, one of the most popular sites – Hulu.com – is now commanding higher ad prices for

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

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

²⁰⁹ Biennial News Consumption Survey 2008, at 33.

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

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

some prime time shows than over-the-air TV,²¹² and reportedly garnered more viewers in July 2009 than Time Warner Cable, one of the nation's largest cable operators.²¹³ As a result of the dramatic growth in online viewing, Nielsen plans to incorporate online viewership into the TV ratings used for buying and selling of advertising this year.²¹⁴ Thus, due to unique characteristics that distinguish the Internet from traditional media, it has become a significant source for Americans of local and other news and information, as well as entertainment, and is likely to become even more of a factor as Internet usage in general and broadband adoption in particular continue to grow.²¹⁵

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

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

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

²¹⁵ There has also been a proliferation of hyperlocal news sites on the Internet. For instance, in June 2009, AOL acquired Patch and has since created AOL Patch local news web sites for small towns throughout New York, New Jersey, and Connecticut, with a goal of expanding the service to many more locales. AOL, Press Release, *AOL Acquires Two Local Services, Patch and Going* (June 11, 2009), <http://corp.aol.com/press-releases/2009/06/aol-acquires-two-local-services-patch-and-going> (last visited Feb. 12, 2010); Patch, *About Us*, <http://www.patch.com/about> (last visited Feb. 12, 2010). Each town's site has a dedicated editor who provides a steady stream of articles, photographs, and web listings covering a myriad of topics from tax ordinances to government hearings, high school sports, and traffic frustrations. Everyblock (which was acquired by MSNBC last summer) allows users to customize its site to receive aggregated local information relevant to their towns, such as municipal data, location-tagged photographs from Flickr, and business reviews from Yelp; the user can then have that information delivered to him or her automatically via e-mail or RSS feed reader. Everyblock, *About Everyblock*, <http://www.everyblock.com/about/> (last visited Feb. 12, 2010). Yahoo! Local delivers hyperlocal content to users through an extension of its existing site infrastructure, and Yahoo! Neighbors provides residents of the same area the ability to post questions and comments to which other residents respond. Yahoo!, *Yahoo! Local*, <http://local.yahoo.com/> (last visited Feb. 12, 2010); Yahoo!, *About Neighbors | Yahoo! Neighbors*, http://local.yahoo.com/neighbors/bi_about.php (last visited Feb. 12, 2010). And Outside.in and

Further, the rise of Internet sites such as Craigslist, a free online classifieds site with separate sub-domains for 500 cities across 50 countries that is now one of the most popular destinations online, shows how the Internet is taking on many of the functions long-served by traditional news media.²¹⁶ Craigslist leverages filtering and search functionality in order to cater to an individual's particular interest, and that and other online classified advertising services have contributed to the steep decline in the traditional print classifieds business.²¹⁷ As Commissioner Baker recently explained, "the success of Craigslist and eBay has significantly reduced highly profitable classified ads."²¹⁸ Other websites that have eroded classified advertising revenues for newspapers, contributing to their deteriorating financial condition, include job search sites, automobile search sites, and real estate search sites covering residential and commercial sales and rentals. OBI Working Paper No. 1 shows that by October/November 2009, 57% of adults who use the Internet reported accessing online classifieds websites.²¹⁹ This

Placeblogger have launched services that make lists of local sites and aggregated content available to users. Outside.in, *About Outside.in | Hyperlocal news in 57,830 neighborhoods*, <http://outside.in/about> (last visited Feb. 12, 2010); Placeblogger, *FAQ*, <http://www.placeblogger.com/faq> (last visited Feb. 12, 2010). As hyperlocal sites increase in number and use, surveys will likely track their growing popularity.

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

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

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

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

is a significant increase over May 2009 when 49% reported doing so and an even more substantial increase over 2005 when 22% reported doing so.²²⁰ The increasing use of such websites by consumers shows that people are turning to the Internet now more than ever for information previously provided largely by print copies of newspapers.

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

Today's Internet users have a multitude of online news sources from which to receive diverse information and commentary, including not only local daily newspaper, television station, and radio news sites, but also local pages from national providers like CNN and MSNBC, portals and aggregators such as Google and Yahoo!, international news sites such as the BBC, local news blogs, alternative news sites such as Altnet or Newsmax, and news listservs.²²¹ Locally oriented sites provide a rich source of unique information about, and perspectives concerning, community-wide issues. Importantly, a growing number also cater to highly localized, or even neighborhood-oriented, issues that often are too narrow for coverage by the mainstream media.²²²

The Hartford market is served by a wide variety of local news and information sites. These include not only an exceedingly large number of text-based sites, but also sites providing video, on a broad range of topics including local news, weather, and media; business; social and community organizations; culture and the arts; recreational activities and sports; education; public safety and emergencies; government and civic services; food and culinary events;

²²⁰ Online Classifieds, at 3-4.

²²¹ Online News, at 10-12.

²²² See *supra* note 215.

hospitals, health, and medical education; political parties and candidates; religion; style and society; tourism; transportation and infrastructure; utilities; and miscellaneous other subjects. Multiple local sites also offer user-supplied content and classified advertising for automobiles, goods and services, employment, and real estate.

Moreover, usage of *independent* local news and information sites is extensive in the Hartford market. For example, between January and December of 2009, www.westportnow.com had 212,108 unique visitors and 915,618 total visits. During the same time period, www.newhavenindependent.org had 340,433 unique visitors and 692,773 total visits. These websites provide wide-ranging local news and information content. In addition to these sites, one independent site had more than 100,000 unique visitors and more than 150,000 total visits. Seven other Hartford-oriented sites had between 20,000 and 99,999 unique visitors, and seven more sites had between 10,000 and 19,999 unique visitors.²²³ The widespread availability and usage of these independent local websites contribute to the diversity of local news and information available in the Hartford market and reflect the limitless potential of the Internet to augment the already staggering number and variety of local news and information content sources in the Hartford media marketplace.

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

The mobile video market is one of the fastest growing segments of the video marketplace,²²⁴ providing yet another alternative to traditional broadcasting outlets or

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

²²⁴ See The Nielsen Company, *A2/M2 Three Screen Report: 3rd Quarter 2009*, at 2, 4 (updated Dec. 18, 2009), http://en-us.nielsen.com/etc/medialib/nielsen_dotcom/en_us/documents/pdf/white_papers_and_reports.Pa

newspapers as a source of information and entertainment for consumers, as well as a platform for advertisers to reach those consumers with their marketing messages. Mobile video can be accessed by a variety of methods including subscription wireless services on a mobile phone, downloads to a portable device, applications customized for the iPhone, iPad or BlackBerry, and soon over-the-air mobile DTV viewable on an array of portable devices.²²⁵ Wireless providers, broadcasters, and other content providers are responding to the increased consumer demand for mobile video.

A recent Nielsen survey found that the percentage of subscribers watching video on a mobile phone increased by 53% between the third quarter of 2008 and the third quarter of 2009.²²⁶ This trend appears likely to continue; indeed, a recent national survey conducted by Magid Media Labs found that nearly 9 out of 10 respondents were interested in watching live news and weather programming on mobile devices.²²⁷ At present, two wireless mobile video

r.30466.File.dat/3ScreenQ309_USrpt_12.07final.pdf (“Nielsen A2/M2 3rd Quarter 2009 Study”) (last visited Feb. 1, 2010).

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

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

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

providers – MobiTV and MediaFLO – offer video content to a growing number of subscribers. MobiTV provides live video and video on demand (“VOD”) to more than seven million subscribers²²⁸ and MediaFLO’s FLO TV service is available in the top 110 U.S. markets through a number of carriers.²²⁹ In addition to providing service via hand-held devices, both MobiTV and MediaFLO are aggressively targeting the nascent market for in-vehicle live TV and on-demand programming. MobiTV’s chief marketing officer has commented that “it’s a viable use case that people like to be connected with news, entertainment and information services in the car.”²³⁰ For CNN, broadcasting on FLO TV, a preinstalled video device in the car, is an opportunity to “notify the driver if there’s an accident on the highway up ahead and advise an alternate route or send breaking news alerts to the dashboard.”²³¹ Consumers increasingly are turning to mobile video for live information. MediaFLO noted that its “most dramatic viewership increases in 2008 occurred during live events,” such as live coverage of Hurricane Ike (increasing viewership by 31%) and the 2008 Presidential election.²³²

The end of analog broadcasting and the concomitant change to mandatory digital transmissions in June 2009 has presented broadcasters with the opportunity to reach viewers with information, entertainment, and public safety information by broadcasting a mobile video

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

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

²³⁰ *Id.*

²³¹ *Id.*

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

programming stream.²³³ With the adoption of a mobile standard for over-the-air television in late 2009, television broadcasters now are well-positioned to take advantage of the mobile trend.²³⁴ Indeed, by the end of 2009, approximately 30 stations were broadcasting a mobile DTV signal and more than 70 television stations announced plans to begin operating a mobile DTV stream by the end of 2010.²³⁵ Trials of the OMVC mobile TV standard have been run in Chicago and Washington, D.C., and other cities will soon see additional trials. Recently, 12 major television broadcast groups, including NBC Universal, Fox, and ION, announced a joint venture designed to accelerate nationwide optimization of broadcast mobile DTV; the participating companies will contribute spectrum and content for a mobile over-the-air service that is expected to reach 150 million viewers.²³⁶ In the second quarter of 2010, Sprint and Samsung will partner to launch a free trial of digital mobile video in the Washington, D.C. and

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

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

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

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

Baltimore markets, bringing live TV programming from local broadcast affiliates to Sprint subscribers with a Samsung mobile device.²³⁷ While over-the-air mobile DTV is still in its infancy and is likely to draw on existing sources of content initially, it is reasonable to anticipate that the launch of this new mobile service will drive the creation of content directed exclusively toward mobile viewers.²³⁸

Mobile video is available in many formats, including live programming, downloads, and VOD. Indeed, many broadcast stations and newspapers target mobile consumers by allowing the download of news and information segments to mobile devices from their websites. For example, the *Courant* and the Fort Lauderdale-based *Sun Sentinel*, also owned by Tribune, offer podcast downloads on their websites directed toward mobile users. Others, such as Tribune's *Chicago Tribune*, *Los Angeles Times*, and WGN(AM), as well as the *News-Times* (Danbury, Connecticut) and *Chicago Sun-Times*, now offer customized iPhone applications to allow users to access real-time information on local news, sports, traffic, and weather from the properties' websites.²³⁹ Additionally, certain new devices on the market have been specifically designed to

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

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

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

bring over-the-air broadcasts to iPhones, Blackberries, laptops and other devices equipped with Wi-Fi, thus converting existing equipment into a mobile-DTV accessible device.²⁴⁰

The popularity of the iPhone has driven the creation of iPhone web applications providing consumers with another source of news and information accessible when convenient for the viewer. In fact, a recent search of the iPhone website for “news” applications (*excluding* sports and weather applications) generated a list of more than 480 applications, such as, *Nashville 24/7*, a hyperlocal news site; *The New Yorker* magazine; and *NPR Headline News*.²⁴¹ The introduction of the larger-screen iPad promises to provide another mobile news opportunity for consumers.²⁴² Likewise, more traditional content sources have recognized the growth opportunities in the mobile market and are reaching out to the mobile consumer. For example, CBS has created a website targeted to the mobile viewer that provides access to news feeds, sports, weather, and entertainment programming in a mobile-friendly format.²⁴³ During significant news events, CBS has encouraged the submission of user-generated content.²⁴⁴

application during severe weather events). *Newsday*, in which Tribune has an approximate 3% indirect equity interest, has a similar application.

²⁴⁰ See Stephen Lawson, *Mobile DTV Goes Wi-Fi to Reach iPhones*, IDG News Service (Jan. 4, 2009), http://www.pcworld.com/article/185853/mobile_dtv_goes_wifi_to_reach_iphones.html (last visited Feb. 4, 2010).

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

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

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

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

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

3. Tribune’s Hartford Combination Has Had, And Will Have, No Adverse Impact On Competition.

The Commission and the courts have long recognized that the NBCO Rule itself is not necessary to protect competition. In 2003, the Commission determined that most advertisers simply “do not view newspapers, television stations, and radio stations as close substitutes,”²⁴⁶ and that “at least for purchasers of advertising time,” newspapers, television and radio “make up distinct product markets.”²⁴⁷ Further, to the extent that any advertisers tend to substitute between media, the Commission found that newspaper/broadcast combinations continue to face competition from a number of separately-owned media outlets in their local markets.²⁴⁸

Accordingly, the FCC found that elimination of the ban could not “adversely affect competition

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

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

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

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

in any product market.”²⁴⁹ No party directly challenged this aspect of the FCC’s 2003 Order,²⁵⁰ and the Third Circuit expressly agreed with the agency’s determination that “repealing the cross-ownership ban was necessary to promote competition.”²⁵¹ The Commission reaffirmed this conclusion in its 2008 Order, stating that newspaper/broadcast combinations do not “adversely affect competition in any product market.”²⁵²

Even to the extent that competition concerns might be considered relevant to evaluating the instant transaction, an analysis of the concentration levels and revenue shares for broadcasters and newspaper publishers demonstrates that common ownership of WTIC-TV, WTXN(TV), and the *Courant* has not adversely affected, and will not adversely affect, competition among media outlets in the Hartford DMA. The HHI for traditional broadcast and newspaper media in the Hartford DMA is 1,256, nearly 50 points lower than the average for markets ranked between 26 and 35 and more than 100 points lower than the national average of 1,359.²⁵³ (The HHI is the metric utilized by the Federal Trade Commission and the Department of Justice (and otherwise widely accepted) as an appropriate measure of concentration.) An HHI of 1,256 is indicative of a market that is at the low end of the “moderately concentrated” range as defined by the Department of Justice’s Merger Guidelines and much closer to the 1,000 level that represents an unconcentrated market than the 1,800 level that represents a “highly concentrated”

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

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

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

²⁵² 23 FCC Rcd at 2032 (¶ 39 n.131).

²⁵³ BIA Report, at 13.

market.²⁵⁴ Moreover, each segment of the traditional media in the Hartford DMA is highlighted by robust competition: the *Courant* competes with the *New Haven Register*, the *Republican-American/Sunday Republican*, and other daily newspapers in the market; WTIC-TV and WTXX(TV) compete with six other commercial television stations, one of which is owned by NBC and the rest of which are owned by large broadcast operators; and there are 52 full-power commercial radio stations competing throughout the market.

A number of factors demonstrate that Tribune's common ownership of WTIC-TV, WTXX(TV), and the *Courant* has not resulted in increased media concentration in the Hartford market. First, the level of concentration in the Hartford market has decreased since 2000, illustrated by a decline in the HHI from approximately 1,435 in 2000 to 1,256 in 2008.²⁵⁵ Second, over this same period, Tribune's share of advertising revenue among traditional media decreased from 32.0% in 2000 to 29.5% in 2008, demonstrating that Tribune does not have market power.²⁵⁶ This wide distribution of revenues indicates a strongly competitive market.

In addition, the actual concentration level in the Hartford media market is much lower than is reflected by this HHI calculation, because this analysis was based only on competition among the three traditional outlets – newspapers, television, and radio. It does not account for advertising revenue that flows to non-traditional media, including Yellow Pages, direct mail, out-of-home, local cable systems, online, Internet Yellow Pages, local magazines, mobile, and email marketing. Given the increasingly significant role played by non-traditional media, the Commission must take into account that the advent and ascendancy of these media have resulted

²⁵⁴ See *id.* at 11.

²⁵⁵ See *id.* at 13-14.

²⁵⁶ See *id.* at 9-10.

in much greater competition. When this wider media marketplace is considered, the analysis demonstrates conclusively that concentration in the Hartford advertising market is and is likely to remain low. Findings from a recent study indicate that, as of August 2009, the use of digital media (including the Internet) by small and medium-sized businesses for advertising surpassed their use of radio, newspaper, and television for the first time.²⁵⁷ The study shows that 77% of local businesses are using digital media for advertising, up from 73% a year ago, while the percentage using traditional media decreased from 74% last year to 69% this year.²⁵⁸ Further illustrating the prominent role played by non-traditional media generally, another study concluded that businesses of all sizes spent \$23.4 billion on Internet advertising in 2008 in the United States, more than was spent on radio, outdoor advertising, or Yellow Pages and about the same as was spent on consumer magazines.²⁵⁹ These trends in use away from traditional media (newspapers and radio and television stations) and toward new media are expected to continue. Indeed, estimates released earlier this year predict continued declines in spending on traditional media between 2009 and 2014 (compounded annual growth rate (“CAGR”) of -1.2%), while new spending on non-traditional media is expected to grow substantially (CAGR of 19.3%) over that same period.²⁶⁰

²⁵⁷ *Milestone: Local Online Tops Traditional*, INSIDE RADIO, available at <http://www.insideradio.com/Article.asp?id=1465446&spid=33231> (last visited Feb. 9, 2010).

²⁵⁸ *Id.*; see BIA/The Kelsey Group, *Penetration of Online Media Surpasses Traditional Media for First Time Among Small-Business Advertisers, According to BIA's The Kelsey Group* (Aug. 20, 2009), available at <http://www.kelseygroup.com/press/pr090820.asp> (last visited Feb. 9, 2010).

²⁵⁹ BIA Report, at 15-16 (citing Hamilton Consultants, *Economic Value of the Advertising – Supported Internet Ecosystem*, June 10, 2009, available at http://www.iab.net/insights_research/530422/economicvalue (last visited Feb. 9, 2010)).

²⁶⁰ *Id.* at 19.

In the Hartford DMA, media other than the traditional media garnered a 52.7% share, or more than half, of total advertising revenues in 2008, with new media in particular (including online, Internet Yellow Pages, Mobile, and email marketing) earning a sizeable 6.8% share.²⁶¹ The amount earned by just these four new media is very substantial when compared to the 10.4% spent on radio and represents more than half of the 11.9% spent on television stations.²⁶² When the wider market of traditional and new media is taken into consideration, Tribune's share of advertising revenue in the Hartford DMA was just 12.7% in 2008.²⁶³ Accordingly, it is clear that Tribune's common ownership of WTIC-TV, WTXN(TV), and the *Courant* has not had, and will not have, an adverse impact on advertising competition, even if such competition were deemed legally relevant to evaluating the instant transaction.

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

As shown above, permitting Tribune's Hartford combination to remain intact would serve the public interest in myriad ways without any diversity or competition-related concerns. By contrast, forced divestiture of either Station or the *Courant* would have the opposite effect. As demonstrated below and in the second attached report of BIA ("BIA Separation Analysis"), the assumption that an alternative purchaser would be willing and able to acquire properties subject to such a divestiture condition simply is untenable in today's highly challenging media marketplace.²⁶⁴ Even assuming that such a purchaser could be found, there is no guarantee that

²⁶¹ *Id.* at 19-20.

²⁶² *Id.* at 20.

²⁶³ *Id.* at 21.

²⁶⁴ See Mark R. Fratrick, Ph.D., BIA Advisory Services, *An Analysis of the Effect on Diversity of Separation of Local Media Combinations*, at 2-3 (Feb. 22, 2010) ("BIA Separation Analysis") (Attachment 9 hereto).

such a new owner would have the resources or resolve to maintain the amount and caliber of local news, information, and other community services that are offered by each of Tribune's Hartford properties today.

The existence of a financially sound alternative buyer is a key premise underlying any assumption that compelled divestiture would conceivably serve the public interest. The supposition that such a buyer might exist for any media properties, including Tribune's Hartford properties, is unlikely under current marketplace realities. The meltdown of financial markets in the last two years has caused financial institutions to tighten loan qualifications substantially and dramatically decrease lending to consumers and businesses. The credit crunch has been particularly pronounced with respect to media properties, as several financial institutions recently have reduced or even eliminated their broadcast lending divisions.²⁶⁵ Thus, financing for businesses with an interest in acquiring broadcast and newspaper properties is not readily available as a result of the global economic crisis.²⁶⁶

In addition, any company seeking to acquire a newspaper or broadcast property in the near term would face highly unfavorable industry conditions. As explained in greater detail in the BIA Separation Analysis, local television stations are increasingly competing with other sources of video programming, including cable systems, DBS operators, and Internet video streaming.²⁶⁷ The resulting migration of broadcast television audiences to other media sources has led to a sharp drop in advertising sales.²⁶⁸ This decline has been exacerbated by the

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.* at 7-8.

²⁶⁸ *Id.*

downturn in the economy, with both national and local advertisers significantly curtailing advertising expenditures.²⁶⁹ As a result, total television station revenues have been trending downward, with a staggering drop in their growth rate of 27.5% between 2007 and 2009 and a decrease in revenues of 22.4% in 2009 alone.²⁷⁰

The local daily newspaper industry has fared even worse in recent months. As discussed above and in the BIA Separation Analysis, daily newspapers are confronting intense and ever-increasing competition from new media sources, which has drained advertising revenues and depleted subscribership.²⁷¹ Total annual advertising revenues for the newspaper industry decreased by 16.6% in 2008, and projections for newspaper advertising revenues show a further decrease of 11.5% in the compounded annual growth rate over the next five years.²⁷² Indeed, in the first three quarters of 2009, these decreases accelerated. Total newspaper advertising for these three quarters fell to \$19.9 billion, a drop of 28.4% from the same period in 2008, and the print component of advertising dropped to \$17.9 billion (a 29.6% decline from the same period in 2008).²⁷³

Given these market conditions, it is not surprising that the rate of sales for media properties is depressed. Media companies have been forced to file for bankruptcy or to shut

²⁶⁹ *Id.* at 9.

²⁷⁰ *Id.* at 8-9. Dr. Fratrick uses two-year revenue growth rates to even out the impact of federal political advertising in even-numbered years. *Id.* at 8.

²⁷¹ *See id.* at 10-12; *see also supra* Sections II.C, III.B.1.b, III.B.2.

²⁷² BIA Separation Analysis, at 12-13 (observing also that the print component of annual newspaper advertising decreased by nearly 18% in 2008).

²⁷³ *Id.* at 12.

down altogether as a result of severe financial hardship and the lack of interested buyers.²⁷⁴ An examination of transaction activity for local media properties reveals a substantial decline in both the level of third-party interest in acquiring such properties and the value of properties sold.²⁷⁵ For example, in 2009, 76 full-power television stations were sold for a total value of \$715 million, which represents a 74.1% decrease in the number of stations sold and an 84.5% decrease in the value of those sales as compared to 2007.²⁷⁶ And, just 31 daily newspapers were sold in 2009 for a total of \$183.7 million, compared to an average of nearly 68 daily newspapers sold per year for an average of approximately \$6.977 billion per year in each of the previous five years.²⁷⁷ The 2009 figures represent decreases of 54.4% in the number of newspaper sales and 97.4% in the total value of transactions as compared to the averages for the previous five years.²⁷⁸

²⁷⁴ See *id.* at 10-11, 13 (noting that a number of broadcast stations and newspapers recently filed for bankruptcy protection to maintain continued service, and that several newspapers have shut down their print editions after years of service to their local communities, while others have curtailed their production as part of cost saving measures); see also *supra* Section II.C.

²⁷⁵ BIA Separation Analysis, at 4-7, 13-14.

²⁷⁶ See *id.* at 5-6. These figures, furthermore, overstate the actual volume of transactions, because a large number of the transactions included stations owned by companies that have been forced into bankruptcy or reorganizations. See, e.g., *id.* at 5 nn.5 & 6; *PEJ 2010 State of the News Media Report*, Local TV, Summary Essay at 2, Ownership at 24-26, http://www.stateofthedia.org/2010/printable_local_tv_chapter.htm (last visited Mar. 18, 2010) (noting that, although “[t]he market for local television stations was more active in 2009 than a year earlier[,] . . . most of this activity was due to bankruptcies and the availability of distressed properties at often below market value”).

²⁷⁷ BIA Separation Analysis, at 13-14 (citation omitted); see also *PEJ 2010 State of the News Media Report*, Newspapers, Ownership at 34-36, http://www.stateofthedia.org/2010/printable_newspaper_chapter.htm (last visited Mar. 18, 2010) (reporting that “[v]ery few papers of any size were sold in 2009, and for the few that did change hands there were typically some special circumstances,” often bankruptcy).

²⁷⁸ BIA Separation Analysis, at 14.

Even assuming the existence of an interested buyer able to procure adequate financing to purchase one of Tribune's Hartford properties, it is improbable that such a buyer would have the resources to provide high-quality local programming and almost certain that it would not be able to match the amount and caliber of local service currently offered by Tribune. The high-quality local news and information and investigative reporting that Tribune's Hartford properties currently provide is extremely costly. To make ends meet, a growing number of publishers and broadcasters have had to cut back on local news coverage.²⁷⁹ In this environment, the synergies and cost efficiencies that can make such local service feasible are more critical than ever. As shown herein, cross-ownership of media properties produces extensive synergies.²⁸⁰ Given the dismal outlook for the local broadcast and newspaper industries in these economic times, such synergies can make the difference between the provision of high-quality local news and information and its absence.

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

As shown above and expanded upon below, waiver of the NBCO Rule is fully justified in this case and necessary to satisfy long-established principles of reasoned decision-making. Indeed, in these circumstances, denial of the requested relief not only would run counter to the standards for a permanent waiver set forth in the *2008 Order*, but also would violate the Administrative Procedure Act ("APA") as well as both the First and Fifth Amendments to the Constitution.

²⁷⁹ See *supra* Section II.C.

²⁸⁰ See *supra* Section III.A.

First, the Commission has now twice expressly rejected an absolute ban; to apply it here would be arbitrary and capricious. As discussed above, based on abundant factual evidence regarding the benefits of common ownership and the tremendous diversity and competition among newspapers and other media properties (especially in the nation's larger markets), the Commission has found on two prior occasions that a blanket NBCO ban no longer serves the public interest.²⁸¹ This finding has been affirmed by the Third Circuit.²⁸² Having also twice adopted changes to the NBCO Rule that would allow continued common ownership of Tribune's Hartford combination, the Commission cannot now justify a contrary decision in this proceeding.²⁸³ The Supreme Court's recent decision in *Fox Television Stations, Inc. v. FCC*²⁸⁴ confirms this conclusion. There, the Court held that an agency that departs from prior decisions must "provide a more detailed justification . . . when . . . its new policy rests upon factual findings that contradict those which underlay its prior policy."²⁸⁵ The facts here are *more compelling* than those before the Commission when it made its prior changes to the NBCO Rule.

It also would be arbitrary and capricious to deny Reorganized Tribune a waiver to own WTXX(TV), WTIC-TV and the *Courant* when either television station could be owned in common with multiple radio stations or other media properties, such as cable systems, in the

²⁸¹ See *supra* Sections II.A.3-4.

²⁸² See *id.*

²⁸³ See, e.g., *Radio-Television News Directors Ass'n v. FCC*, 184 F.3d 872, 887 (D.C. Cir. 1999) ("RTNDA"); see also *Nat'l Broad. Co. v. United States*, 319 U.S. 190, 225 (1943) ("If time and changing circumstances reveal that the 'public interest' is not served by application of [a regulation], it must be assumed that the Commission will act in accordance with its statutory obligations.").

²⁸⁴ 129 S. Ct. 1800 (2009).

²⁸⁵ *Id.* at 1811; see also *Wyeth v. Levine*, 129 S. Ct. 1187, 1203-04 (2009) (concluding that an agency statement that "represent[ed] a dramatic change in position" "does not merit deference" and "is entitled to no weight").

market without the need for any waiver at all. At the time it adopted the original NBCO Rule, the Commission relied heavily on the fact that owners of television and radio stations also could not acquire a cross-ownership interest in another medium of mass communications in the same market,²⁸⁶ and the Supreme Court emphasized this “one-property-per-owner” regulatory regime in upholding the rule.²⁸⁷ But the Commission has since liberalized virtually all of its other broadcast ownership rules and their corresponding waiver policies in response to the same changes in the media marketplace that the FCC found warranted revision of the NBCO Rule.²⁸⁸ Nor can the agency rely on the Supreme Court’s decision, rendered more than thirty years ago, regarding the facial constitutionality of the NBCO Rule to justify its application here. “The mere fact that a rule is not unconstitutional does not therefore mean that its perpetuation is not arbitrary and capricious.”²⁸⁹ Simply put, a “thirty year old conclusion that . . . [a] challenged rule[] survive[s] First Amendment scrutiny” cannot justify its application “in the face of modern challenges to the rules’ consistency with the FCC’s regulatory mandate.”²⁹⁰

To say that there are “modern challenges to the” NBCO Rule’s contemporary validity is an understatement. The agency simply cannot, consistent with the APA, ignore the vast changes that have occurred in the media marketplace since 1975. These include not only the growth in

²⁸⁶ *1975 Order*, 50 F.C.C.2d at 1050 (¶ 14).

²⁸⁷ *NCCB*, 436 U.S. at 801 (noting that the NBCO Rule “treat[s] newspaper owners in essentially the same fashion as other owners of the major media of mass communications”).

²⁸⁸ *E.g.*, *Review of the Comm’ns Regulations Governing Television Broad.*, Report and Order, 14 FCC Rcd 12,903, 12,932 (¶ 64), 12,947 (¶¶ 100-01) (1999) (“*Television Ownership Order*”) (relaxing the television duopoly rule and the prohibition on common ownership of radio and television stations (the “one-to-a-market rule”). *Cf. Comcast Corp. v. FCC*, 579 F.3d 1 (D.C. Cir. 2009) (vacating 30% cap on horizontal cable ownership based on the FCC’s failure adequately to consider competition to cable from DBS).

²⁸⁹ *RTNDA*, 184 F.3d at 882.

²⁹⁰ *Id.*

the number of traditional media sources – newspapers and broadcast television and radio stations – but also the introduction and increase in popularity of cable and other MVPDs, mobile video, and perhaps most significantly, the Internet.²⁹¹ Indeed, Congress recently recognized the importance of the Internet in facilitating diversity and civic discourse by instructing the Commission to develop a National Broadband Plan that would, among other things, include “a plan for the use of broadband infrastructure and services in advancing . . . civic participation,” and the agency already has taken steps towards doing so.²⁹² On March 16, 2010, the FCC issued its report to Congress on the National Broadband Plan; several of its recommendations could significantly affect television broadcasting, including the proposed reallocation of portions of the present television broadcasting spectrum for non-broadcast mobile and wireless services, incentive spectrum auctions to encourage current spectrum holders to relinquish all or a portion of their current holdings, the imposition of user fees on spectrum holders, and rule changes to permit and encourage spectrum sharing and innovative uses of spectrum.²⁹³ On April 8, 2010, the FCC released its proposed “action agenda” for implementing key recommendations of the National Broadband Plan that involve rulemakings.²⁹⁴

FCC Commissioners and high-ranking staff also have acknowledged the fundamental changes that new technologies, particularly the Internet, have brought about. For instance, Commissioner Clyburn recently explained that “[t]oday, thanks to an open Internet, a small

²⁹¹ See *supra* Section III.B.

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

²⁹³ FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2009), available at <http://www.broadband.gov/plan/> (last visited Apr. 18, 2010).

²⁹⁴ FCC, Public Notice, *FCC Announces Broadband Action Agenda* (rel. Apr. 8, 2010).

community newspaper or a budding journalist essentially has the same distribution network as the *Washington Post* or the *Memphis Commercial Appeal*.²⁹⁵ Commissioner Copps has similarly recognized that “[i]ncreasingly our national conversation, our source for news and information, our knowledge of one another, will depend upon the Internet.”²⁹⁶ And Blair Levin, Executive Director of the FCC’s Omnibus Broadband Initiative, explained that “[m]uch like the printing press allowed the power of information to diffuse from the hands of the elite few to the many, the Internet has allowed for the democratization of content,” and that even if we cannot “precisely predict our digital future we know that it leads to **more** . . . opportunities to communicate, more viewpoints, [and] more ideas.”²⁹⁷ It would be arbitrary and capricious for the Commission to ignore the dramatic impact on the manner in which people obtain news and information that the Internet has had in evaluating the instant request for waiver of the NBCO

²⁹⁵ Remarks of Mignon L. Clyburn at the Workshop on Speech, Democracy and the Open Internet (Dec. 15, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295258A1.pdf (last visited Jan. 28, 2010).

²⁹⁶ Remarks of Commissioner Michael J. Copps at the Workshop on Speech, Democracy and the Open Internet (Dec. 15, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295241A1.pdf (last visited Jan. 28, 2010).

²⁹⁷ *Wired for Social Justice*, Speech by Blair Levin, Executive Director, Omnibus Broadband Initiative, at the Minority Media and Telecommunications Council’s Broadband and Social Justice Summit (Jan. 22, 2010) (emphasis in original), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295886A1.pdf (last visited Jan. 28, 2010). Another high-ranking government official with responsibility for the nation’s broadband policies has echoed these sentiments. *See The Internet: Evolving Responsibility for Preserving a First Amendment Miracle*, Remarks of Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information, before The Media Institute (Feb. 24, 2010), *available at* http://www.ntia.doc.gov/presentations/2010/MediaInstitute_02242010.pdf (last visited Mar. 4, 2010) (recognizing that “[f]rom the very first encounter between our Constitution and the Internet, courts have recognized the Internet as an unprecedented gift to the First Amendment” and stating that “[t]he Internet, and particularly broadband Internet, are the central nervous system of our information economy and society”).

Rule, particularly given the agency's and Congress' recognition of the significance of the Internet in other contexts.²⁹⁸

Strict application of an absolute ban on cross-ownership of newspapers and broadcast stations here, especially given the changes over the last thirty years, also would violate the Constitution. The Due Process Clause of the Fifth Amendment includes an equal protection component,²⁹⁹ under which governmental actions that discriminate against constitutionally protected activities are subject to heightened scrutiny.³⁰⁰ Under the applicable standard, even content-neutral regulations that single out a medium must be “narrowly tailored” and “no greater than is essential to further” a “substantial” government interest.³⁰¹ Application of the NBCO

²⁹⁸ At the heart of the APA's “reasoned decisionmaking” requirement is the need for an agency to “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs.’ Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1989); see also *HBO, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (“[A] regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.”); *Quincy Cable TV, Inc. v. FCC*, 768 F.2d 1434, 1463 (D.C. Cir. 1985) (“[T]he Commission has failed entirely to determine whether the evil the rules seek to correct is a real or merely a fanciful threat.”). Nor may the Commission take the Internet into account in its other proceedings, such as its broadband review, while ignoring it here. Cf. *Airline Pilots Ass’n v. FAA*, 3 F.3d 449, 453 (D.C. Cir. 1993) (striking down agency decision as “internally inconsistent and therefore unreasonable and impermissible under *Chevron*”); *General Chemical Corp. v. United States*, 817 F.2d 844, 855 (D.C. Cir. 1987) (finding agency decision arbitrary and capricious due to its “inconsistencies” and “failures of explanation”).

²⁹⁹ *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

³⁰⁰ *Community-Serv. Broad. of Mid-America v. FCC*, 593 F.2d 1102, 1122 (D.C. Cir. 1978) (*en banc*) (stating that intermediate scrutiny applies in the equal protection context whenever “noncontent-based distinctions. . . affecting First Amendment rights” are drawn); see also *Carey v. Brown*, 447 U.S. 455, 461-62 (1980) (“When government regulation discriminates among speech-related activities in a public forum, the Equal Protection Clause mandates that the legislation be finely tailored to serve substantial state interests, and the justifications offered for any distinctions it draws must be carefully scrutinized.”); *Police Dep’t of City of Chicago v. Mosley*, 408 U.S. 92, 98-99 (1972) (“[J]ustifications for selective exclusions from a public forum must . . . be tailored to serve a substantial governmental interest.”).

³⁰¹ *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 662 (1994); see also *Minneapolis Star and Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575, 585, 592-93 (1983) (finding such differential regulation “presumptively unconstitutional” and “plac[ing] a heavy burden on the [government] to justify its action”).

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

In addition, a refusal to waive the NBCO Rule to permit continued common ownership of the properties involved here would contravene the First Amendment. In light of current marketplace realities, the “scarcity rationale” which the Commission and the courts have used to justify applying a lesser degree of First Amendment scrutiny to broadcast speech regulations is extremely questionable at best.³⁰² But even assuming that a minimal standard of constitutional scrutiny were appropriate, rigid application of the NBCO Rule to the Hartford combination would not be “reasonable.”³⁰³ The Commission has already found, on the basis of an extensive record, that the NBCO Rule in its current form is no longer necessary, and that it actually results in *less* news and public affairs programming, determinations that the Third Circuit upheld. In the face of these conclusions, a contrary decision now would impermissibly interfere with Tribune’s First Amendment rights.

³⁰² See, e.g., *Tribune*, 133 F.3d at 68 (noting the presence – more than a decade ago – of “persuasive evidence that the scarcity rationale is no longer tenable”); *Comm’n Proceeding Regarding the Personal Attack and Political Editorial Rules*, Public Notice, Joint Statement of Commissioners Powell and Furchtgott-Roth, 13 FCC Rcd 21,901, 21,940 (1998) (noting that “the Commission has unequivocally repudiated spectrum scarcity as a factual matter”); *Syracuse Peace Council*, Memorandum Opinion and Order, 2 FCC Rcd 5043, 5053 (¶ 65) (1987) (concluding – more than two decades ago – that “the scarcity rationale . . . no longer justifies a different standard of First Amendment review for the electronic press”); see also John W. Berresford, *The Scarcity Rationale for Regulating Traditional Broadcasting: An Idea Whose Time Has Passed* (Mar. 2005) (FCC Media Bureau Staff Research Paper), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-257534A1.pdf (last visited Feb. 22, 2010).

³⁰³ *NCCB*, 436 U.S. at 796-97.

A refusal to grant the requested waiver of the NBCO Rule would violate Tribune’s First Amendment rights for three additional reasons as well. First, the NBCO Rule singles out particular speakers – newspaper publishers – restricting their speech alone, but such “differential treatment cannot be squared with the First Amendment.”³⁰⁴ Second, any decision to apply the NBCO Rule based on the idea that newspapers and/or broadcast stations remain particularly “important” sources of news and information would rely on a constitutionally impermissible evaluation of the particular speaker’s identity.³⁰⁵ Third, application of the NBCO Rule would run afoul of Supreme Court precedent establishing that “the concept that the government may restrict the speech of some elements in our society in order to enhance the relative voice of others is wholly foreign to the First Amendment”³⁰⁶

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

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

“[A]gencies should constantly be alert to determine whether their policies might conflict with other federal policies and whether such conflict can be minimized.”³⁰⁷ In keeping with this

³⁰⁴ *Citizens United v. Federal Election Comm’n*, 130 S. Ct. 876, 884 (2010); *see id.* at 898 (“Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. . . . Speech restrictions based on the identity of the speaker are all too often simply a means to control content.”).

³⁰⁵ *See id.* at 905 (rejecting proposition that speech could be “limited based on a speaker’s wealth” as a “necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker’s identity”); *see also id.* at 883 (“[T]he Government may commit a constitutional wrong when it identifies certain preferred speakers.”).

³⁰⁶ *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976) (citations omitted).

³⁰⁷ *LaRose v. FCC*, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974) (“*LaRose*”).

directive, the Commission has recognized that it “is obliged to reconcile its policies under the Communications Act with the policies of other federal laws and statutes, including the bankruptcy laws in particular.”³⁰⁸

The Commission has acknowledged this obligation in a variety of contexts. It has traditionally deferred to bankruptcy courts concerning a debtor’s financial status.³⁰⁹ Moreover, on numerous occasions, the agency has made exceptions to its usual policies in the interest of comity with the bankruptcy process. For example, although the FCC normally prohibits the sale of a station when there are outstanding “character issues” concerning the seller, an exception has long been made in bankruptcy cases in the interest of accommodating innocent creditors.³¹⁰

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

The FCC also has recognized that comity with the bankruptcy process is an important element in its consideration of requests for waivers of its ownership rules, and that it “maintains the flexibility to respond to situations in which application of the . . . rules would be contrary to other public interest concerns.”³¹¹ Ownership waivers “provide[] the requisite ‘safety valve’ under these ‘special circumstances’ of a Debtor emerging from Chapter 11.”³¹²

³⁰⁸ *Dale J. Parsons, Jr.*, Memorandum Opinion and Order, 10 FCC Rcd 2718, 2720 (¶ 11) (1995).

³⁰⁹ *E.g.*, *Sam Jones, Jr.*, Memorandum Opinion and Order, 10 FCC Rcd 5330, 5341-42 (¶ 22) (1995).

³¹⁰ *E.g.*, *Second Thursday Corp.*, Memorandum Opinion and Order, 22 F.C.C.2d 515, 515 (¶ 1) (1970).

³¹¹ *Sam Jones, Jr.*, 10 FCC Rcd at 5341 (¶ 19).

³¹² *Telemundo Group, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 1104, 1106 (¶ 12) (1994) (citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969)).

The Commission has taken comity into account in granting permanent waivers of its television duopoly and one-to-a-market rules, and in applying its television satellite policies.³¹³ For example, in *Fox Television Stations Inc.* (“*Fox/WNYW*”), the agency granted a request for a declaratory ruling that a permanent waiver of the NBCO rule was warranted.³¹⁴ This holding was based in significant part on comity considerations. In its ruling, the FCC recited the objectives of the bankruptcy law – “equality of distribution among creditors, a fresh start for debtors, and the efficient and economical administration of cases”³¹⁵ – as well as the FCC’s obligation to “minimize, to the extent possible, any conflict between Commission policy and that of federal bankruptcy law.”³¹⁶ Thus, the Commission concluded:

[A] permanent waiver is an appropriate accommodation between communications-related policies and bankruptcy-related policies. In this regard, our decision will facilitate the task of the debtor, the creditors and the bankruptcy court by removing any uncertainties arising from the existence of our cross-ownership rule.³¹⁷

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

³¹³ *E.g.*, *Telemundo, Inc. v. FCC*, 802 F.2d 513, 518 (D.C. Cir. 1986) (satellite); *HBK NV LLC*, Memorandum Opinion and Order, DA 10-416, 2010 FCC LEXIS 1581, at *9 n.11 (rel. Mar. 12, 2010) (satellite); *San Diego Television, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 14,689, 14,692 (¶ 11) (1996) (duopoly); *Dorothy J. Owens*, Memorandum Opinion and Order, 5 FCC Rcd 6615, 6615 (¶ 2) (1990) (one-to-a-market); *Channel 33, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 7674, 7679-80 (¶ 13) (1988) (duopoly).

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

³¹⁵ *Fox/WNYW*, 8 FCC Rcd at 5344 (¶ 15).

³¹⁶ *Id.* at 5349 (¶ 41) (citing *LaRose*).

³¹⁷ *Id.* (¶ 42).

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

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

The instant application does not propose creation of any new media combination, but rather requests only continuation of a combination that already exists. Given the current state of the television and newspaper industries, and the recent history of the Tribune combination at issue here, the company clearly needs the “fresh start” that the Commission has acknowledged is a bankruptcy law objective that the FCC should take into account.³¹⁸ Grant of the requested waiver will help ensure that as Tribune emerges from bankruptcy, it will be positioned to maximize its prospects for success in an extremely difficult economic environment. Given the state of the media industry, any other outcome would be unlikely to result in anywhere near the same level of public service as Tribune’s Hartford properties currently provide.

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

Under the NBCO Rule as modified by the *2008 Order*, a newspaper/broadcast combination is presumed to be in the public interest if, as principally relevant here, either the newspaper or broadcast station qualifies as “failed” or “failing.”³¹⁹ Because the properties involved qualify as “failed,” Tribune’s Hartford combination is entitled to a positive presumption

³¹⁸ *Id.* at 5353 (¶ 52).

³¹⁹ *2008 Order*, 23 FCC Rcd at 2048 (¶ 65).

under this test. As discussed below, the waiver also should permit a subsequent sale of the Stations and the *Courant* in tandem. This relief is plainly justified in this case given Tribune's bankruptcy status and the need to ensure comity with the bankruptcy process.

Under the relevant FCC standard, a property is "failed" if the licensee or newspaper owner is a debtor in an involuntary bankruptcy or insolvency proceeding at the time of the application, no out-of-market entity is reasonably available to operate the property, and a sale to another buyer would result in an artificially depressed price.³²⁰ When the FCC enacted this standard, it required the bankruptcy to be involuntary only because the agency was concerned that licensees might file for bankruptcy for the sole reason of qualifying for a waiver.³²¹ Here, there is no plausible argument that Tribune and most of its subsidiaries initiated bankruptcy proceedings as an end run around the FCC's ownership restrictions. Instead, the instant bankruptcy is a *bona fide* effort by a major media company in significant financial distress to restructure and thereby put itself in a position to emerge from bankruptcy as a viable entity, able to continue serving the public interest. Indeed, as a result of declining revenues and the resultant inability to service outstanding debt obligations, Tribune and all of its broadcasting and newspaper subsidiaries – including TTC-DIP, WI-DIP, and the publisher of the *Courant* – filed for bankruptcy in December 2008. Tribune's subsidiaries, including TTC-DIP and WI-DIP, are jointly and severally liable for approximately \$10.2 billion of Tribune's indebtedness as guarantors under various credit agreements. That liability, if presently allocated among the guarantors, would consume all of the value of the subsidiaries. In these circumstances, strict

³²⁰ See 47 C.F.R. § 73.3555, Note 7.

³²¹ See *Review of the Comm'n's Regulations Governing Television Broad.*, 14 FCC Rcd 12,903, 12,937-938 (¶ 76) (1999).

application of the FCC requirement that a bankruptcy be involuntary in order to justify a “failed” property waiver is not reasonable or justified. Accordingly, the FCC should find that Tribune’s Hartford properties substantially comply with the bankruptcy-related portion of the “failed” property standard. As set forth above, due largely to the economic conditions of the newspaper and broadcast industries, it is also unreasonable to assume that Tribune could locate a buyer for any of the properties involved at other than an artificially depressed price.³²² Further, at the very least, WTXX(TV) independently satisfies the “failing station” test.³²³

Even if the Commission were to find that, under the *2008 Order*, the Hartford combination is not entitled to a waiver under the “failed” property criterion, it is still entitled to a permanent waiver under the four factors that the agency set forth for evaluating non-presumptive waiver requests. Those factors concern provision of local news, editorial independence, market concentration, and financial condition.³²⁴ None standing alone is dispositive, and not all need necessarily be present in order to justify a waiver.³²⁵

Local news. In the *2008 Order*, the FCC recognized that existing co-owned media properties have achieved superior news operations that benefit local audiences and further localism. Accordingly, the FCC will evaluate whether a newspaper/broadcast combination has significantly increased or will significantly increase the amount of local news disseminated in the market (*i.e.*, by providing at least seven hours a week of additional news). The FCC will also

³²² See *supra* Sections II.C, III.C.

³²³ Specific information supporting the status of WTXX(TV) as a “failing station” is being submitted to the Commission in connection with a request for waiver of the television duopoly rule that is being requested concurrently. See WTXX(TV) Television Duopoly Waiver Request, Exhibit 16-A.

³²⁴ See *supra* Section II.A.4.

³²⁵ *2008 Order*, 23 FCC Rcd at 2049 (¶ 68).

examine the resources that are and will be devoted to the coverage of local news.³²⁶ In adopting this standard, the Commission indicated that it is “critical that our rules do not unduly stifle efficient combinations that are likely to preserve or increase the amount and quality of local news available to consumers via newspaper and broadcast outlets.”³²⁷

As shown above, there can be no dispute that common ownership of the Stations and the *Courant* has produced substantial public interest benefits derived from the steadfast commitment over time to the creation and dissemination of local news.³²⁸ Allowing continued common ownership is necessary to preserve the amount and quality of local news available to consumers in the market.³²⁹ Indeed, since Tribune acquired WTIC-TV in 1997, it has increased more than tenfold the hours of locally-produced news and public affairs programming broadcast on the station, with 35.5 hours now aired weekly. WTIC-TV’s existing news and public affairs offerings represent more news and public affairs programming than any other station in the market. In addition, WTXX(TV) simulcasts WTIC-TV’s 10:00 pm local newscast as well as other WTIC-TV public affairs programming. That WTXX(TV) was not providing its own local news programming when Tribune acquired it bears out the Commission’s observation that “television stations ranked fifth and below in their DMAs are less likely to carry local news, and therefore hold the potential, as a result of a merger with a newspaper, to provide additional news programming to the local community.”³³⁰ It is exceedingly unlikely that Tribune could continue

³²⁶ *Id.* at 2050 (¶ 70).

³²⁷ *Id.* at 2030 (¶ 35).

³²⁸ *See supra* Section III.A.1.

³²⁹ *See supra* Section III.A.2.

³³⁰ *2008 Order*, 23 FCC Rcd at 2046 (¶ 62), 2051 (¶ 70). As noted earlier, more than 60% of stations ranked fifth or below provide no local news at all. *Id.* at 2046 n.204 (¶ 62 n.204).

to offer the amount or quality of local news programming that it does absent continued common ownership of the Stations and the *Courant*. Similarly, it is highly unlikely that a new owner of WTIC-TV could continue its current level of news programming or, indeed, that a new owner of WTXS(TV) would be able to support a news operation at all.

In the *2008 Order*, the Commission found that an entity pledging to provide seven or more hours per week of news on a broadcast station not then airing any news would be entitled to a presumption in favor of allowing the proposed common ownership.³³¹ When longstanding cross-owned combinations have consistently made quantitative increases in local news programming, the FCC should conclude that such actions alone warrant a presumption in favor of common ownership or, at the very least, that a substantial increase in local news programming on the cross-owned stations – especially an increase that far exceeds seven hours – weighs very heavily in favor of permitting continued cross-ownership. Further, in a situation involving transfer of an *existing* combination, the most important consideration should be whether the party that assembled the combination provided significant additional local news programming thereafter.³³²

Editorial Independence. As explained above, while drawing on the synergies and efficiencies of common ownership in order to enhance the quality and quantity of local news programming that they offer, the Stations and the *Courant* each exercise independent news

³³¹ *Id.* at 2049 (¶ 67).

³³² *See, e.g., Revision of Radio Rules and Policies*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 6387, 6397 (¶ 48) (1992) (stating that radio combinations that were compliant with the FCC’s then-effective radio audience share limit when acquired should be transferable even if they later grew to a level exceeding the limit, *i.e.*, without a requirement that proposed owners demonstrate compliance, because its goal had been “to promote robust competition” and “penalizing enterprises that grow into stronger competitors [was] [in]consistent with this objective”).

judgment in making their own assignments and covering stories in the manner that they see fit, as each has throughout Tribune's history.³³³ Accordingly, it is clear that common ownership has not harmed viewpoint diversity in the market.

Lack of Concentration. The Hartford DMA is vibrantly diverse and offers consumers many alternative sources of news and information.³³⁴ For example, there are 11 television stations in the market. Six of the commercial television stations in the market together provide more than 140 hours of local news programming per week, more than a dozen radio stations offer a news or information format, and numerous daily and weekly newspapers are available to residents. As shown above, non-traditional media increasingly supplement these already abundant choices. While Tribune's properties are strong competitors, the ratings for WTIC-TV lag significantly behind those of the top three television station in the market, and WTXN(TV)'s ratings lag behind even further. The *Courant* faces substantial competition as well.³³⁵ Further, and as also shown above, an econometric analysis of the market based on the HHI demonstrates that the market is far from concentrated.³³⁶ Moreover, because this transaction involves the transfer of an *existing* combination, allowing continued cross-ownership will have no impact on outlet diversity or concentration levels in the market. Indeed, the Commission has allowed the intact transfer of numerous existing media combinations in recognition of this fact.³³⁷

³³³ See *supra* Section III.A.1.

³³⁴ See *supra* Section III.B.

³³⁵ See *id.*

³³⁶ See *supra* Section III.B.3.

³³⁷ See, e.g., *AMFM, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 16,062, 16,069 (¶ 15) (2000) (transfer of an existing combination “do[es] not increase the combined advertising revenue shares of ... existing groups or result in increased levels of ownership concentration”); *EWS News Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 20,243, 20,247 (¶ 15) (1997)

Financial Condition. Even if the Commission finds that the Hartford properties' bankruptcy and financial conditions by themselves do not justify a positive presumption, those financial hardship factors nevertheless support the grant of a waiver under the *2008 Order's* four-factor test, particularly since the facts demonstrate that Tribune continues to invest significantly in newsroom operations. The fact that the Tribune subsidiaries that operate the properties and their parent companies are in bankruptcy must be found to weigh heavily in favor of the grant of a waiver here. Such a decision is necessary to ensure consistency with longstanding FCC precedent affording comity to bankruptcy principles.³³⁸

The satisfaction of these four factors clearly compels a permanent waiver. When the market size and the presence of extensive competition and diversity in the Hartford market are taken into account, continuation of Tribune's Hartford media combination is justified under the liberalized waiver standards adopted in the *2008 Order*.

Furthermore, even if the Commission were to determine, based on developments in the Third Circuit proceedings, a subsequent decision by the agency, or for any other reason, that the

(awarding waiver and stating that "since grant of this application will preserve an existing combination, we do not believe that continued joint ownership of the stations will decrease the level of diversity and competition in the market"); *see also Solar Broad. Co.*, Memorandum Opinion and Order, 17 FCC Rcd 5467, 5475 (¶ 24) (2002); *Jacor Commc'ns, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 6867, 6905-06 (¶ 62) (1999); *Am. Radio Sys. Corp.*, Memorandum Opinion and Order, 13 FCC Rcd 12,430, 12,437-48 (¶ 11), 12,442-43 (¶¶ 25-26) (1998); *Houston H. Harte*, Memorandum Opinion and Order, 12 FCC Rcd 13,418, 13,422-23 (¶ 16) (1997); *Paso Del Norte Broad. Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 6876, 6882 (¶¶ 13-14) (1997); *River City License P'ship*, Memorandum Opinion and Order, 12 FCC Rcd 4993, 4997-98 (¶ 13) (1997); *Kelso Partners IV, L.P.*, Memorandum Opinion and Order, 11 FCC Rcd 8764, 8768-69 (¶ 11) (1996) (same). *Accord United States Department of Justice and Federal Trade Commission Horizontal Merger Guidelines*, 57 Fed. Reg. 41,552 (1992), *revised*, 4 Trade Reg. Rep. (CCH) ¶ 13104 (Apr. 8, 1997) (stating that transfers that do not increase ownership concentration are "unlikely to have adverse competitive consequences and ordinarily require no further analysis").

³³⁸ *See supra* Section III.E. The fact that WTXX(TV) independently qualifies as a "failing" station under the Commission's duopoly rule also contributes to the grounds for a waiver under this criterion. *See* WTXX(TV) Television Duopoly Waiver Request, Exhibit 16-A.

standards adopted by the Commission in 2008 are not applicable here, the Stations and the *Courant* would be entitled to permanent relief under prior waiver standards. The waiver test articulated when the Commission adopted the NBCO Rule in 1975 provides that a permanent waiver is appropriate when “*for whatever reason*, the purposes of the rule would be disserved by divestiture,” and those purposes “would be better served by continuation of the current ownership pattern.”³³⁹ Given today’s highly diverse and competitive marketplace and the extensive contributions that Tribune’s Hartford properties have continued to make, reasoned decision-making requires grant of a permanent waiver of the NBCO Rule that would permit continued common ownership of the Stations and the *Courant*.

The 1975 permanent waiver test is conclusively satisfied in this case. As demonstrated above, forcing Tribune to divest one or more of its Hartford properties would disserve the public interest.³⁴⁰ The case is made even more compelling by the state of the U.S. economy in general, and the increasingly poor financial condition of the newspaper and broadcast industries in particular, which have deteriorated significantly over the last few years, especially in 2009. The declines in both the newspaper and broadcast industries have been exacerbated by the greater usage of alternatives to traditional media and the resulting increase in competition for audiences and advertising revenues. As explained above, both the newspaper and broadcast industries experienced severe downturns in 2008, circumstances which ultimately led Tribune to declare bankruptcy in December 2008; in 2009, Tribune’s revenues from publishing, broadcasting, and

³³⁹ *1975 Order*, 50 F.C.C.2d at 1085 (¶ 119) (emphasis added); *see supra* note 11; *Fox/WNYW*, 8 FCC Rcd at 5348 (¶ 39) (describing the fourth “public interest” waiver criterion articulated in 1975 as “a catch-all provision” and as a “waiver category [that] countenances a myriad of arguments pertinent to the exigencies of a particular situation....”).

³⁴⁰ *See supra* Sections III.A, III.C.

entertainment were down substantially as compared to the company's 2008 performance.³⁴¹ Because these developments unequivocally strengthen the case for avoiding any unnecessary disruption to these properties and therefore for permitting the Hartford combination to remain in place, reasoned decision-making must lead the Commission to conclude that a permanent waiver is appropriate.

Moreover, as set forth above, the Hartford media marketplace remains abundantly diverse and competitive, notwithstanding the common ownership of WTIC-TV, WTXN(TV), and the *Courant*, and common ownership of Tribune's Hartford properties continues to foster the delivery of high-caliber local news, public affairs, and community service to the Hartford community.³⁴² Simply put, Tribune's Hartford combination has done much to serve the public interest, and nothing to harm it. The combination clearly qualifies for waiver under the 1975 standard.

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

³⁴¹ Despite these economic conditions, Tribune has continued to invest in local news. *See supra* Section III.A.

³⁴² *See supra* Sections III.A-B.

154th-ranked DMA at the time).³⁴³ The agency found that a permanent waiver in each of these situations was justified

in light of the synergies that have already been achieved from the newspaper/broadcast station combination, the new services provided to local communities by the combination, the harms . . . associated with required divestitures, the prolonged period of uncertainty surrounding the status of the newspaper/broadcast cross-ownership ban, and the length of time that the waiver request has been pending.³⁴⁴

As demonstrated in detail above, these factors are just as relevant and pressing with respect to Tribune's Hartford combination, and the public interest benefits the Tribune properties provide generally serve a much larger population. It has been shown at length herein that these properties have achieved, through cross-ownership, important synergies that have produced high-quality local news and community services that otherwise would not have been feasible. And, of course, the uncertainty surrounding the NBCO Rule has become even more "prolonged" since the agency issued its *2008 Order*.

A permanent waiver in Hartford also would be consistent with the Commission's earlier decisions to afford permanent relief from the NBCO Rule. For example, as noted above, in *Fox/WNYW*, the agency granted a permanent waiver to Fox in 1993 to allow the joint ownership of the *New York Post* and WNYW(TV) based on the struggling financial condition of the *Post* and "the wide array of voices in New York City."³⁴⁵ Like Tribune today, the *Post* was in Chapter 11 bankruptcy at the time, and the paper's insolvent status was a key consideration in

³⁴³ *2008 Order*, 23 FCC Rcd at 2055-56 nn. 252-56 (¶ 77).

³⁴⁴ *Id.* at 2055 (¶ 77) (internal citation omitted).

³⁴⁵ 8 FCC Rcd at 5349-51 (¶¶ 41-48).

the agency's decision.³⁴⁶ Indeed, the Commission highlighted in its decision the federal courts' recognition that "[f]rom the outset of the cross-ownership rules," the FCC "has made clear that, where [its] rules operated as an impediment to the survival of newspapers, that factor was an appropriate circumstance for waiver."³⁴⁷ Similarly, in *Field Communications Corporation*, the agency in 1977 granted a permanent waiver to permit the cross-ownership of distressed Chicago TV station WFLD-TV with two Chicago daily newspapers.³⁴⁸ Considering the introduction and growth of the Internet and other sources of news and information, the levels of media diversity and competition in the Hartford DMA are at least comparable to those of New York and Chicago at the time the FCC granted the waivers discussed above.

Moreover, the instant request for a permanent waiver must be viewed in conjunction with the current posture of the NBCO Rule. As noted above, the agency twice has ruled in the past seven years that a flat prohibition on newspaper/broadcast cross-ownership no longer serves – and in fact is inimical to – the public interest, a determination that has been affirmed by the Third

³⁴⁶ *Id.* at 5349-50 (¶¶ 42-43).

³⁴⁷ *Id.* at 5350 (¶ 44) (citing *Health & Med. Policy Research Group v. FCC*, 807 F.2d 1038, 1045 (D.C. Cir. 1987)).

³⁴⁸ *Field Commc 'ns Corp.*, 65 F.C.C.2d 959 (1977). In two other cases, *Kortes Communications Inc.*, 15 FCC Rcd 11,846 (2000), and *Columbia Montour Broadcasting Co., Inc.*, 13 FCC Rcd 13,007 (1998), the FCC granted permanent newspaper/radio waivers. In both cases, the FCC noted the financial difficulties facing at least one of the properties involved. In *Kortes Communications*, the FCC emphasized the licensee's "dire financial situation" and found that a permanent waiver would allow the buyer to be able to "infuse needed resources" into station operations. 15 FCC Rcd at 11,853-56 (¶¶ 20, 26). In *Columbia Montour*, the Commission considered the declining revenues, increasing operating losses, and "financially troubled" nature of the subject radio station. 13 FCC Rcd at 13,013-14 (¶¶ 20, 22). Moreover, both of these cases involved DMAs that were considerably smaller than Hartford. The properties involved in *Kortes Communications* were located in Greenville, Michigan, which is part of the Grand Rapids-Kalamazoo-Battle Creek, MI DMA, which is ranked 41st. In *Columbia Montour*, the newspaper and radio station were located in Bloomsburg, Pennsylvania, which is part of the 54th-ranked Wilkes Barre-Scranton, PA DMA.

Circuit.³⁴⁹ The consistent rejections of the flat ban by both the Commission and the courts plainly necessitate a more open and flexible approach to permanent waivers. In the Hartford DMA, there are thousands of media options available to local consumers, the marketplace has grown exponentially since the cross-ownership ban initially was put in place, and any conceivable threat to diversity and competition is *de minimis* at best. As the agency repeatedly has acknowledged, it is self-evident that newspaper/broadcast cross-ownership raises few, if any, public interest concerns in such markets.³⁵⁰

Furthermore, with both newspaper publishers and broadcasters facing extraordinary competitive and financial challenges and with many properties struggling – and in many cases even failing – to survive, it is critically important for the agency to take a reasonable approach to permanent waiver requests. In a March 2009 letter to Attorney General Eric Holder, U.S. House of Representatives Speaker Nancy Pelosi urged that the traditional regulatory approach to newspaper publishers must be adjusted in light of the troubling condition of the industry. In order to “ensure that our policies enable our news organizations to survive and to engage in the news gathering and analysis that the American people expect,” Speaker Pelosi advised that the Department of Justice, in assessing the competition newspapers face, must begin to take into appropriate account “not only the number of daily and weekly newspapers . . . , but also the other sources of news and advertising outlets available in the electronic and digital age, so that the

³⁴⁹ See *supra* Sections II.A.3-4.

³⁵⁰ See *2008 Order*, 23 FCC Rcd at 2021-22 (¶¶ 16-19), 2039 (¶ 49) (noting the *Prometheus* Court’s acknowledgement that a complete ban was unnecessary to preserve diversity, and finding “that the largest markets contain a robust number of diverse media sources and that the diversity of viewpoints would not be jeopardized by certain newspaper/broadcast combinations” in such markets); *2003 Order*, 18 FCC Rcd at 13,804-06 (¶¶ 473, 480) (defining “at-risk” markets as those where diversity concerns from cross-ownership are the highest, and distinguishing “larger markets” where there are “robust media cultures” and no diversity concerns from cross-media ownership).

conclusions reached reflect current market realities.”³⁵¹ As Commissioner Copps recently reminded, “[e]ven with all the promise of new media, we need to remember that without content, there is nothing to aggregate”³⁵²

A similar reassessment and more flexible approach is called for with respect to the FCC’s application of the NBCO Rule. The agency must recognize that these challenges have forced many newspaper publishers and broadcasters, including Tribune, into bankruptcy, and should apply the NBCO Rule in a manner that ensures comity with the bankruptcy process. In addition to considering the current state of the media marketplace, the Commission must weigh the fact that the cross-ownership ban now has been in limbo for more than a decade and acknowledge the acute need for the regulatory certainty necessary for newspaper and broadcast companies to move forward with long-term business plans.³⁵³ In this unique situation, denial of such relief would be pointless and punitive. Further, the permanent waiver Reorganized Tribune seeks would permit a subsequent sale of those properties in tandem following the company’s emergence from bankruptcy. With the financial challenges confronting newspaper companies and broadcasters, such a sale would serve the public interest in a number of ways. A Reorganized Tribune, struggling to emerge successfully from bankruptcy, may be faced with the need to sell assets in one of its cross-owned markets, in circumstances in which it is only

³⁵¹ See *supra* note 96.

³⁵² FCC, News Release, *Commissioner Michael J. Copps on the FCC Launch of Initiative to Examine the Future of Media and Information Needs of Communities in a Digital Age* (rel. Jan. 21, 2010).

³⁵³ Under long-established principles of administrative law, the Commission must give all waiver requests a “hard look” and thereby ensure the “existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.” *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). An approach that will permit waivers only in very limited circumstances and fails to closely examine the diversity, competition, and localism considerations specific to each waiver request does not fulfill this requirement.

possible to sell properties in tandem. A combination sale would preserve and maximize asset value in such a situation. This relief is fully justified in this case given the Commission's prior findings, the exigencies of Tribune's bankruptcy status, and the need for the FCC to ensure comity with the bankruptcy process.

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

In the event that the Commission finds, despite the overwhelming evidence provided above, that a permanent waiver is not warranted here, it should grant – at a minimum – a temporary waiver of the NBCO Rule until 18 months after the pending proceedings to revise the NBCO Rule become final. The *2008 Order* regarding the NBCO rule remains under review in the United States Court of Appeals for the Third Circuit, and the FCC has stated its intention to reevaluate the rule as part of the 2010 Quadrennial Review, which it has already commenced.³⁵⁴ Each of these proceedings is a continuation of the “protracted proceedings” that began with the Commission's promise to reexamine the rule over 14 years ago. Waiver is appropriate for a period of 18 months following completion of these proceedings. Such limited relief is more than justified here, in view of the difficult economic conditions facing the newspaper and broadcast industries in general and Tribune in particular, and the need to ensure comity with the bankruptcy process.

More than eleven years ago, the Commission in its first biennial review – while calling for initiation of a proceeding to re-examine the rule – recognized that it retained “both the right and obligation” to review any request for conditional waiver of the NBCO Rule pending a

³⁵⁴ FCC, Response to the Court's Order of November 4, 2009, *Prometheus Radio Project v. FCC*, *supra* note 58; *see also* 2010 Quadrennial Review Public Notice, *supra* note 60.

rulemaking “based on the specific facts in a particular case.”³⁵⁵ At that time, the Commission stated emphatically that “[w]hat is important is whether the public interest would be served by [the] grant of a waiver.”³⁵⁶ The agency recognized that it had granted temporary waivers pending proceedings examining some of the ownership rules at issue, including the television duopoly restriction.³⁵⁷ As the agency envisioned, waiver is most likely appropriate “where protracted rulemaking proceedings are involved and where a substantial record exists on which to base a preliminary inclination to relax or eliminate a rule.”³⁵⁸ The FCC indicated that its precedent supported granting such temporary waivers when the “Commission concludes that the application before it falls within the scope of the proposals in the proceeding, and a grant of an interim waiver would be consistent with the goals of competition and diversity.”³⁵⁹ This is just such a case.

As explained below, the instant application proposes in the alternative a temporary waiver that is grounded on the precise bases anticipated by the Commission at the end of the last century. Indeed, we are now in the second decade of “protracted . . . proceedings” in which there is a “substantial record . . . on which to base a preliminary inclination to relax or eliminate” the NBCO Rule. Moreover, in this case, the Commission *already has concluded* that the blanket ban

³⁵⁵ *1998 Biennial Regulatory Review*, Notice of Inquiry, 13 FCC Rcd 11,276, 11,294 (¶ 57) (1998) (“*1998 Biennial Review NOI*”); see *WAIT Radio*, 418 F.2d at 1157 (requiring the Commission to give waiver requests a “hard look”).

³⁵⁶ *1998 Biennial Review NOI*, 13 FCC Rcd at 11,294-95 (¶ 57).

³⁵⁷ *Id.* at 11,294 & n.87 (¶ 56) (citing *Review of the Comm’ns Regulations Governing Television Broad.*, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 21,655, 21,681 (¶¶ 56-58) (1996) (Commission states that granting waivers satisfying the proposed standard would not adversely affect its competition and diversity goals in the interim)).

³⁵⁸ *Id.* at 11,294 (¶ 56).

³⁵⁹ *Id.*

on cross-ownership cannot stand because newspaper-broadcast combinations (1) do not adversely affect competition in the market, (2) promote the public interest by delivering more and better local coverage of news and public affairs, and (3) do not pose a widespread threat to diversity of viewpoint or programming.³⁶⁰ Those findings have been affirmed by the Third Circuit, and the agency has confirmed them yet again on remand.³⁶¹

Continued common ownership of the Hartford combination falls within the scope of the proposals at issue in the pending proceedings reviewing and reevaluating the NBCO Rule, as well as the cross-media limits adopted in 2003. Moreover, in light of the competitiveness of the Hartford market and the abundant public interest benefits that the combination has delivered, and continues to deliver, to Hartford area residents, a temporary waiver would be fully consistent with the Commission’s diversity, localism, and competition goals. Finally, a temporary waiver pending the outcome of proceedings to revise the NBCO Rule is independently appropriate under the standard adopted with the NBCO Rule in 1975. Here, the “purposes of the rule would be disserved by divestiture” and in fact “would be better served by continuation of the current ownership pattern,”³⁶² for the temporary period requested herein, if not permanently.³⁶³

A. A Substantial Record Exists In Protracted Proceedings.

The “protracted” nature of proceedings regarding the NBCO Rule is incontrovertible, as is the fact that those proceedings have given rise to “a substantial record . . . on which to base a preliminary inclination to relax or eliminate” it. The FCC committed to revise the NBCO Rule

³⁶⁰ See *supra* Section II.A.3.

³⁶¹ See *supra* Section II.A.4.

³⁶² *1975 Order*, 50 F.C.C.2d at 1085 (¶ 119).

³⁶³ See *supra* Section IV.

over 14 years ago and has initiated numerous proceedings in which a voluminous record – consisting of an unprecedented amount of public comment and data – has been amassed. Indeed, almost seven years ago, the Commission in its *2003 Order* adopted findings that resulted in its elimination of the NBCO Rule. Those findings were based on two years of proceedings that included at least four rounds of comments and multiple studies and hearings, and were upheld by the Third Circuit.³⁶⁴ In the *2008 Order*, the agency found no reason to depart from its prior conclusions, noting specifically that the Third Circuit had upheld them³⁶⁵ and again finding that a blanket ban on newspaper/broadcast cross-ownership is not necessary to protect competition, localism or diversity and, to the contrary, affirmatively disserves the public interest.³⁶⁶

Thus, *on two separate occasions*, on the basis of exhaustive inquiry, review of hundreds of thousands of public comments, multiple public hearings, and numerous empirical studies, the FCC has found that significant competitive and technological changes in the media marketplace warrant elimination of the absolute ban on cross-ownership. It would be arbitrary and capricious for the Commission, in the context of the instant waiver request, to contradict the conclusions it reached in these rulemaking proceedings, especially those factual findings that were upheld by the Third Circuit.³⁶⁷ The Third Circuit’s review of the Commission’s *2008 Order* – itself the result of remand of the *2003 Order* – remains pending, and the 2010 Quadrennial Review is the latest in this tortured string of proceedings considering relaxation or elimination of the rule.

³⁶⁴ See *supra* Section II.A.3.

³⁶⁵ E.g., *2008 Order*, 23 FCC Rcd at 2020-21 (¶ 16), 2021 (¶ 18), 2038 (¶ 47).

³⁶⁶ See *supra* Section II.A.4.

³⁶⁷ See *supra* Section III.D.

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

- Almost a decade and a half ago, in several adjudications, the FCC committed to commence a rulemaking regarding the NBCO Rule, with all Commissioners recognizing the public interest in relaxation of the rule.
- Over 13 years ago, the Commission initiated a proceeding seeking comment on modifications to its newspaper/radio cross-ownership policy.
- More than nine years ago, the agency committed in its *1998 Biennial Regulatory Review* to initiate a proceeding to revise the NBCO Rule in its entirety.
- In releasing its *2000 Biennial Regulatory Review*, the Commission confirmed this conclusion and, in 2001, issued a Notice of Proposed Rulemaking to achieve this result.
- In 2003, the Commission, after extended proceedings, including multiple rounds of comments, studies and hearings, made detailed findings that supported its conclusion that the NBCO Rule was no longer justifiable, and repealed the rule, replacing it with specific cross-media limits that would permit continued common ownership of the Stations and the *Courant*.
- In 2004, the Third Circuit affirmed the portion of the FCC's *2003 Order* finding that the blanket ban should be repealed but remanded the proposed new rules for further support or amendment.
- In 2008, the Commission reaffirmed the conclusions reached in the *2003 Order*, again finding that the NBCO Rule in its current form does not serve the public interest, and adopted liberalized waiver standards that presumptively allow certain cross-ownerships in the nation's largest markets, permit others under particular circumstances, and entitle all other proposed combinations to evaluation under a four-part test.³⁶⁸
- The Commission has now begun holding workshops in connection with the 2010 Quadrennial Review and has indicated that it intends to address the pending petition for reconsideration of the *2008 Order* in the context of this upcoming proceeding.³⁶⁹

³⁶⁸ See *supra* Section II.A.4.

³⁶⁹ See *supra* Section II.A.5.

The present case therefore is the quintessential example of the “protracted rulemaking proceeding” that the agency envisioned as warranting temporary waiver relief for applicants.³⁷⁰

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

The instant request for waiver also falls within the scope of the rules that have been proposed and, indeed, adopted in these protracted proceedings and that remain under judicial review and agency review and reevaluation. As demonstrated above, the Hartford combination should be granted a permanent waiver under the standards set forth in the *2008 Order*.³⁷¹ In addition, the combination would have been legally permissible under the cross-media limits that were adopted in 2003. In the *2003 Order*, the FCC eliminated any newspaper/broadcast cross-ownership restrictions in large markets with at least nine broadcast television stations, concluding that a single entity should be able to own any combination of properties in these markets so long as the combinations comply with the local TV ownership rule and local radio ownership rule.³⁷² The Hartford DMA, with 11 full power television stations,³⁷³ fits squarely within this category, and common ownership of the Stations and the *Courant* would thus have been permitted under the *2003 Order*.

Because the continued common ownership of Tribune’s Hartford combination is permissible under both the *2008 Order* and the *2003 Order*, the instant request for waiver falls

³⁷⁰ *1998 Biennial Review NOI*, 13 FCC Rcd at 11,294 (¶ 56). By contrast, the situation presented here is nothing like the situation in which the Commission wished to avoid such interim relief based solely on the pendency (or impending commencement) of a quadrennial review.

³⁷¹ *See supra* Section IV.

³⁷² *2003 Order*, 18 FCC Rcd at 13,802 (¶¶ 463-64), 13,804-06 (¶¶ 472-80).

³⁷³ *See supra* Section III.B.1.a.

within the scope of the proposals in the pending proceedings – both judicial and administrative – to revise the NBCO Rule. Particularly, in view of the ongoing, protracted proceedings, it would be arbitrary and capricious, inequitable, inconsistent with the FCC’s recognition that it must afford comity to the bankruptcy process, and counterproductive to the public interest to disrupt the common ownership of WTIC-TV, WTXS(TV), and the *Courant*.

C. Grant Of An Interim Waiver Would Be Consistent With The Commission’s Goals Of Diversity And Competition.

As demonstrated above and in the appendices to this waiver request, Hartford DMA residents benefit from abundant media diversity, and Tribune’s cross-ownership of WTIC-TV, WTXS(TV), and the *Courant* has fostered the delivery of high-caliber local news, public affairs, and community service to the Hartford community.³⁷⁴ In addition, although the Commission has determined that the NBCO Rule cannot be justified based on competition concerns, it is clear that continued common ownership of the Stations and the *Courant* will not have any adverse effect on competition in the market.³⁷⁵

At an absolute minimum, a waiver pending the outcome of the pending proceedings to revise the NBCO Rule is appropriate here because continued common ownership falls within the scope of the standards that have been proposed and adopted by the Commission and are subject to further review and reevaluation; localism would continue to be enhanced; and no diminution in diversity or harm to competition is likely to occur.³⁷⁶ This is true whether the request is judged under the standard for an interim waiver pending a rulemaking, the waiver standards

³⁷⁴ See *supra* Sections III.A-B.

³⁷⁵ See *supra* Section III.B.3.

³⁷⁶ See *supra* Sections III.A, III.B, V.B.

adopted in the 2008 Order, or the fourth “public interest” criterion for a waiver of the NBCO Rule under the 1975 standard – where, “*for whatever reason*, the purposes of the rule would be disserved.”³⁷⁷ Grant of no less than a *temporary* waiver pending the conclusion of proceedings to revise the NBCO Rule is unquestionably fully justified here and would allow Reorganized Tribune to emerge from bankruptcy intact in an orderly fashion.

* * *

In sum, the NBCO Rule survives as a relic from the days when local media consisted only of television, radio, and daily newspapers, and the Commission’s local ownership rules restricted owners to a single radio or television property in any one market. Today, the rule is a regulatory anomaly; the FCC has twice decided that its original cross-ownership prohibition is no longer justified by current media conditions and that the rule should be modified in a manner that would permit the combination at issue here, and the Third Circuit has affirmed the elimination of a total ban on cross-ownership. In such a procedural posture, the Commission traditionally has granted temporary waivers pending the completion of rulemaking proceedings, and if for any reason it determines that a permanent waiver is not warranted, the agency promptly should issue a temporary waiver in this case.³⁷⁸ Any other result, after the adoption of

³⁷⁷ *Newspaper/Broadcast NPRM*, 16 FCC Rcd at 17,285 (¶ 3) (emphasis added).

³⁷⁸ *1998 Biennial Review NOI*, 13 FCC Rcd at 11,294 & n.87 (¶ 56). Such waivers have often been granted in the context of the newspaper/broadcast cross-ownership rule itself, *see, e.g., Letter from Roy J. Stewart, Chief, Mass Media Bureau to James Bayes, Wiley, Rein & Fielding*, Ref. 1800B-IB (Aug. 11, 1997); *Cross-Ownership of Broad. Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, Order and Notice of Proposed Rulemaking, 16 FCC Rcd 17,283, 17,286 n.16 (¶ 5 n.16) (2001); *NewCity Commc’ns, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 3929, 3952-53 (¶¶ 56-57) (1997); *Capital Cities Letter Decision*, as well as the radio/television cross-ownership (or “one-to-a-market”) rule, *see, e.g., Max Media Properties LLC*, Memorandum Opinion and Order, 13 FCC Rcd 12,489, 12,497-12,500 (¶¶ 25-32) (1998); *NewCity Commc’ns, Inc.*, 12 FCC Rcd at 3945, 3951 (¶¶ 35, 52); the local television ownership rule, *see, e.g., Woods Television Co. LLC*, Memorandum Opinion and Order, 14 FCC Rcd 8283, 8284-85 (¶¶ 3-8) (1999); *Broad. Licenses, LP*, Memorandum Opinion

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

VI. CONCLUSION

For these reasons, the FCC should grant Reorganized Tribune a permanent waiver of the NBCO Rule permitting the continued common ownership of the Stations and the *Courant* 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.

and Order, 13 FCC Rcd 16,303, 16,304-05 (¶¶ 7-12) (1998); *US Broad. Group Licensee LPI*, Memorandum Opinion and Order, 13 FCC Rcd 13,963, 13,970-71 (¶¶ 16-19) (1998); and the national television ownership cap, *see, e.g., UTV of San Francisco, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 14,975, 14,980-82 (¶¶ 20-25) (2001). The Commission has granted similar waivers in other circumstances as well. *See, e.g., Nat’l Exchange Carrier Ass’n Petition To Amend Section 69.104*, Order Granting Petition for Rulemaking, Notice of Proposed Rulemaking, and Order Granting Interim Partial Waiver, 19 FCC Rcd 13,591, 13,606 n.116 (¶ 45 n.116) (2004) (“Grant of a waiver pending the result of a rulemaking proceeding is consistent with Commission precedent.”); *Administration of the N. Am. Numbering Plan*, Order, 20 FCC Rcd 2957 (2005) (granting a waiver of a rule to permit numbering resources to be obtained directly from NANPA after considering hardship and equities to SBC); *2000 Biennial Regulatory Review of Part 68*, Notice of Proposed Rulemaking, 15 FCC Rcd 10,525 (¶ 9) (2000) (recognizing public interest in grant of interim waivers in anticipation of completing rulemakings that will effectuate a change in the rules to accommodate innovations on a permanent basis).

REQUEST FOR CROSS-OWNERSHIP WAIVER
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Hours and Audience Shares of Local News – Hartford & New Haven DMA
(Total hours of news and shares for late evening news (9:00 PM-11:35 PM))¹

Station	Affiliation	Total News Hours/Wk July 2009	Total News Hours/Wk Nov. 2009	Evening News TP	May 2009 Sh	July 2009 Sh	Nov. 2009 Sh
WFSB, Hartford	CBS	30.5	30.5	M-Sun 11-11:30pm	12.7	12.4	13.9
WTNH-TV, New Haven	ABC	28.5	28.5	M-Sun 11-11:30pm	9.9	7.9	10.3
WCTX, New Haven	MyNetworkTV	8.5	9	M-Su 10-10:30pm	2.9	2.8	2.3
WUVN, Hartford	Univision	0	0	NA	NA	NA	NA
WTIC-TV, Hartford	FOX	33.1	35.5	M-Sun 10-11pm M-F, Su 11-11:35pm	10.0 4.3	8.6 3.9	7.3 3.3
WTXX, Waterbury	CW	7	7	M-Sun 10-11pm	NA due to simulcast ²	NA due to simulcast	NA due to simulcast
WHPX, New London	ION	0	0	NA	NA	NA	NA
WVIT, New Britain	NBC	31	30.5	M-Sun 11-11:30pm	10.3	8.4	7.2
WEDN, Norwich	PBS	0	0	NA	NA	NA	NA
WEDH, Hartford	PBS	0	0	NA	NA	NA	NA
WEDY, New Haven	PBS	0	0	NA	NA	NA	NA
Total Hours		138.6	141				

¹ “NA” means “Not Applicable” because the station aired no local news during the relevant time period

² WTXX(TV) airs the Fox 61 News at Ten M-Sun from 10-11pm. It is a simulcast of the news broadcast on WTIC-TV at the same hour. Nielsen reports the combined rating for both stations as one number in the WTIC-TV column of its report.

a senator steps down, a candidate is revealed

And the story broke here first.

12:45 a.m.

FOX CT broke into regular programming to provide the FIRST LOCAL TV REPORT of Dodd's pending announcement



4:30 a.m.

FOX CT provides FIRST COVERAGE OF THE DAY on local TV

7:00 a.m.

The Courant's social media pages are updated with the latest news and mobile platforms send text alerts



Noon



FOX CT broadcasts DODD'S ANNOUNCEMENT in FULL HD



4:30 p.m.

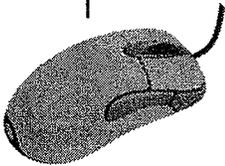
FOX CT broke into regular programming for an interview with Blumenthal – live from Connecticut's Newsroom

Wednesday, January 6, 2010

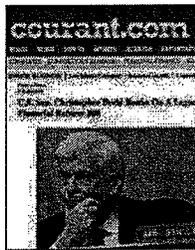
1:00 a.m.

Story runs in two editions of THE COURANT

Courant reporters BREAK THE STORY ONLINE at courant.com



6:00 a.m.



Courant reporters continue posting developments to the website

8:30 a.m.

FOX CT aired FIRST INTERVIEW WITH BLUMENTHAL and his confirmation that he would be running



2:30 p.m.



FOX CT is the only station to broadcast BLUMENTHAL'S ANNOUNCEMENT LIVE and in FULL HD

Working together to bring you more local news.

Hartford Courant
courant.com



WTIC-TV JOURNALISM AWARDS

<u>Date</u>	<u>Organization</u>	<u>Award</u>	<u>Category</u>	<u>Entrant</u>
2009	Connecticut Associated Press	First Place	Best Feature, Regular	Jim Altman, Mike Piskorski
2009	Connecticut Associated Press	First Place	Best Feature, Quick Hit	Jim Altman, Mike Piskorski
2009	Connecticut Associated Press	First Place	Best Videography	Nick Dethlefsen
2009	National Academy of Television Arts and Sciences	First Place, Boston/New England Emmy Awards	Team Coverage	Bob Rockstroh, News Director
2009	National Academy of Television Arts and Sciences	First Place (tie), Boston/New England Emmy Awards	Best On-Camera Talent, Feature/Human Interest	Jim Altman, John Charlton
2009	National Academy of Television Arts and Sciences	First Place, Boston/New England Emmy Awards	Best News Photographer, Within 24 Hours	Mike Piskorski
2009	National Academy of Television Arts and Sciences	First Place, Boston/New England Emmy Awards	Best News Editor, Within 24 Hours	Mike Piskorski
2009	National Academy of Television Arts and Sciences	First Place, Boston/New England Emmy Awards	Best Feature News Report/Light Feature	<i>Amphicar</i> (Sara Cody, Mike Piskorski)
2009	National Academy of Television Arts and Sciences	First Place, Boston/New England Emmy Awards	Best Photographer News, No Time Limit	Mike Piskorski
2009	MADD Media Award	First Place	Award of Excellence, Local Television	<i>Drunk Driving Issues</i> (Eric Zager)
2008	Connecticut Associated Press	First Place	Best Newscast	
2008	Connecticut Associated Press	First Place	Best Feature Story	<i>Ice Harvesting</i>
2008	Connecticut Associated Press	First Place	General News	<i>SWAT Challenge</i>
2008	Connecticut Associated Press	First Place	Breaking News Videography	<i>New Pigs On The Block</i> (Nick Dethlefsen)
2008	Connecticut Associated Press	First Place	Best Sports Photography	<i>Roller Girls</i>
2008	National Academy of Television Arts and Sciences	First Place, Boston/New England Emmy Awards	Best Writer, News	Jim Altman
2008	National Academy of Television Arts and Sciences	First Place, Boston/New England Emmy Awards	Photography News, Within 24 Hours	Mike Piskorski
2008	National Academy of Television Arts and Sciences	First Place, Boston/New England Emmy Awards	On Camera Talent Reporter-Features/Human Interest	John Charlton

Hartford DMA TV Stations and Audience Ratings and Shares (ranked by February 2010 Share)*

Station	Owner	Affiliation	Rating/ Share May 2001		Rating/ Share May 2006		Rating/ Share May 2009		Rating/ Share July 2009		Rating/ Share Nov. 2009		Rating/Share Feb. 2010	
WVIT, New Britain	NBC Universal	NBC	4.6	12.1	3.7	8.8	3.1	7.4	2.6	6.4	3.0	6.6	6.0	12.3
WFSB, Hartford	Meredith	CBS	5.4	14.4	5.7	13.5	5.0	11.9	3.9	9.6	5.6	12.1	5.6	11.6
WTNH-TV, New Haven	LIN Television Corporation	ABC	3.8	10.1	4.2	10.0	3.9	9.1	3.1	7.6	4.6	9.9	4.3	8.9
WTIC-TV, Hartford	Tribune	FOX	2.6	7.0	2.8	6.7	2.7	6.4	1.8	4.5	3.2	7.0	3.0	6.1
WEDH, Hartford	Connecticut Public B/casting	PBS	0.8	2.1	0.6	1.5	0.6	1.3	0.6	1.5	0.8	1.7	0.9	1.9
WTXX, Waterbury	Tribune	CW	0.8	2.1	0.9	2.1	0.8	1.8	0.6	1.4	0.9	2.0	0.8	1.7
WCTX, New Haven	LIN Television Corporation	MyNetworkTV	1.0	2.6	0.6	1.5	0.6	1.3	0.5	1.3	0.6	1.3	0.7	1.5
WUVN, Hartford	Entravision Communications	Univision	<<	0.1	0.5	1.2	0.4	1.0	0.3	0.7	0.4	0.9	0.4	0.8
WHPX, New London	Ion	ION	0.4	1.0	0.1	0.3	0.1	0.3	0.2	0.4	0.3	0.6	0.3	0.7
WEDN, Norwich	Connecticut Public B/casting	PBS	<<	0.1	0.1	0.1	<<	<<	<<	<<	<<	<<	<<	<<
WEDY, New Haven	Connecticut Public B/casting	PBS	0.1	0.1	<<	<<	<<	<<	<<	<<	<<	<<	<<	<<

* Ratings and shares are based on 9 am – midnight time period.

Report on the Hartford-New Haven, CT

Media Market

Media Diversity, Revenue Share, and Concentration Analysis

In Support of the Request for Cross-Ownership Waiver

for Television Stations WTIC-TV and WTXX(TV)

Mark R. Fratrick, Ph. D.

Vice President

BIA Advisory Services

February 26, 2010



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Introduction

On behalf of television stations WTIC-TV and WTXX(TV), Hartford-New Haven, we are providing an analysis of the traditional media (local newspapers, radio and television stations) in the Hartford-New Haven Designated Market Area (“DMA”) with respect to diversity, advertising revenue shares, and the level of concentration in the Hartford-New Haven media marketplace.¹ Specifically, we have examined the combination of WTIC-TV and WTXX(TV) and the *Hartford Courant*, a daily newspaper published in Hartford-New Haven (“*Hartford Courant*” and together with WTIC-TV and WTXX(TV), the “Tribune Properties”). In this study, we also assess the present level of concentration in the Hartford-New Haven DMA, and compare that level of concentration to the average of the DMAs ranked 26-35,² and the average concentration of all traditional media markets in the nation based on estimates made by BIA. With respect to each of these analyses, we look at the past nine-year history in the Hartford-New Haven DMA to assess the impact of concentration trends due to the combination of WTIC-TV and WTXX(TV) and the *Hartford Courant*. Finally, we have worked with Tribune and its counsel to confirm the “voice” counts of various media outlets in the Hartford-New Haven DMA.

¹ See “Declaration of Mark R. Fratrick,” May 1, 2007, attachment to FCC File No. BTCCT-20070501AEZ for a previous examination of the Hartford-New Haven, CT traditional media market. This report, like the earlier report, is submitted by Mark R. Fratrick, Ph. D., Vice President, BIA Advisory Services, LLC. BIA Advisory Services, LLC (BIA) is a financial and strategic consulting firm specializing in the media and communications industries. A copy of Dr. Fratrick’s vitae is attached at the end of this report, establishing his qualifications to collect and evaluate media advertising data, as well as the presence of media outlets in the Hartford-New Haven DMA.

² The Hartford-New Haven, CT market is ranked 30th. The television markets for 2008-2009 that are in the range 26-35 are: Baltimore, MD; Raleigh-Durham, NC; San Diego, CA; Nashville, TN; Hartford-New Haven, CT; Kansas City, KS-MO; Columbus, OH; Salt Lake City, UT; Cincinnati, OH; and Milwaukee, WI.

Analyzing competition among traditional media only in the Hartford-New Haven DMA actually understates the level of competition due to the proximity of other traditional media in adjacent areas. For example, the New York City, NY DMA is immediately south of the Hartford-New Haven, CT DMA, with many people commuting between the two areas and with the traditional media of each market available in many places in the adjoining market. Additionally, the Boston (Manchester, NH) DMA is immediately north of the Hartford-New Haven CT DMA, and the Providence, RI-New Bedford, MA DMA is immediately east. The signals of stations in both DMAs bleed into this market. Consequently, there are many more competitors vying for readers, listeners, and viewers as well as vying for local advertisers than just the properties in the Hartford-New Haven, CT DMA.

In addition to the update of the traditional media, we have also expanded the advertising marketplace analysis to account for the wider choices now available. Since the last time we analyzed these media markets in 2007, other advertising options have become more significant. Indeed, in addition to the traditional media (local newspapers and radio and television stations), the advertising options now available to local advertisers include Yellow Pages, direct mail, out-of-home, local cable systems, online, Internet Yellow Pages, local magazines, mobile, and email marketing. Incorporating local estimates for these other media provides a more comprehensive picture of local advertising competition and diversity. Even after taking into account the impact of these new advertising-supported media, the analysis necessarily understates the true level of diversity because there are even more sources of diverse local news and informational programming made available through non-advertiser supported media such as subscription based media and non-commercial broadcast outlets.

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

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

Moreover, after examining the Tribune Properties' share of revenues, one can only conclude that there is strong and vigorous competition in the Hartford-New Haven market. The Tribune Properties' revenue share in this market, even when considered in comparison to just the traditional media, has been decreasing in recent years. In 2008, the combined revenue share was 29.5% as compared to 32.0% in 2000. This decrease in share indicates that Tribune does not have market power. Likewise, the overall level of concentration in this market has also decreased over the past nine years, with other traditional media competing effectively against the Tribune Properties. Once available advertising options beyond the traditional media are included, the resulting share held by the Tribune Properties is even less significant. In fact, in the wider advertising market, the Tribune Properties' share in 2008 was only 12.7%. Further, the vast number of different media outlets serving this area as listed in the appendices provides an

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

Analysis of Traditional Media Shares

We first examined the revenue shares of the three traditional media outlets (newspaper and commercial broadcast television and radio) in all local advertising markets, and then calculated the revenue shares by owners in the relevant local markets. We also calculated averages of the three traditional media for the markets ranked 26-35, and for the nation as a whole, using figures for each of the nation's 210 DMAs. We thus can compare the Hartford-New Haven market to markets of similar size (*i.e.*, ranked between 26-35) and national averages to determine if shares are out of the ordinary, or in some other way reflect increased or decreased competition in the market. Finally, we can analyze Tribune's share of the traditional media market in Hartford-New Haven since it acquired the *Hartford Courant* in 2000 to determine whether there have been any noticeable changes that reflect the presence of market power or enhanced control over advertising dollars.

Methodology

In this analysis we have used local television markets (*i.e.*, Nielsen DMAs) as the relevant geographic markets to analyze the entire United States. Virtually all counties in the contiguous 48 states are included in one and only one television market.³ The same is true of all counties in Hawaii and the more populous counties in Alaska. In contrast, some Arbitron-defined radio metro areas cut across more than one television market; radio stations in those

markets were assigned to the television market in which the station's city of license is located. Daily and weekly newspapers were assigned to the television DMA in which they are located. For revenue estimates we rely on the estimates included in the BIA Advisory Service (BIA) Media Access Pro™ software product. BIA estimates revenues for all commercial television stations, daily and weekly newspapers located in local television markets, and all commercial radio stations located in Arbitron markets.⁴ Those estimates are derived from survey responses from those media outlets as well as modeling for non-responding outlets. Using our estimates of revenue for radio and television stations and newspapers, we can sum the total advertising revenue by media for the markets ranked 26-35 and for all 210 DMAs, and compare the Hartford-New Haven market to these averages.

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

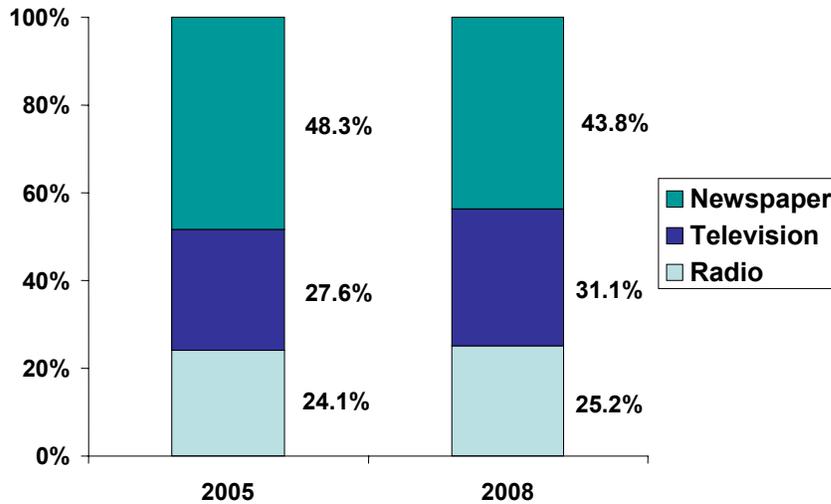
³ The six exceptions are Riverside, Kern, Solano, and El Dorado Counties, all in California, Lea County in New Mexico, and Oneida County in New York.

⁴ The revenue estimates used here are also included in the various annual BIA publications: *Investing in Television*, *Investing in Radio*, and *Investing in Newspapers*. The database that includes these revenue estimates is constantly updated from a variety of sources of information. The revenue share and HHI analyses contained herein extend only through December 31, 2008, because 2008 is the most recent year for which comprehensive revenue data were available as of the date of this report. Additional information regarding the methodology employed is included in Appendix A hereto.

Relative Market Shares for Traditional Media

With these totals, we first evaluate the various market shares of the three traditional media, both at the national level and within the television DMAs ranked 26-35. Figure 1 shows the estimated average revenue shares across all 210 markets for both 2005 (data for which were used in our previous analysis) and 2008:⁵

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



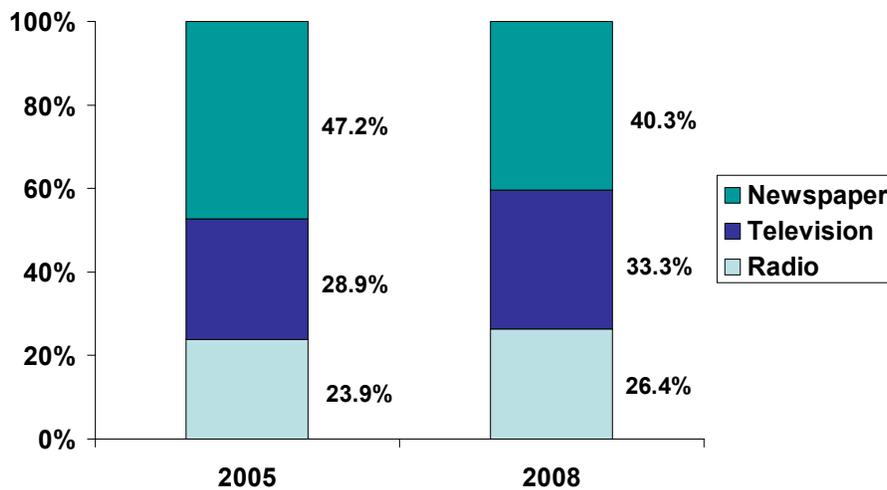
It is interesting to note that the relative shares have changed noticeably since 2005. At that time, local newspapers garnered nearly half of the total revenues with 48.3%, followed by local television stations with 27.6%, and local radio stations with 24.1%. By 2008, however, newspapers' share had declined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

⁵ Data for 2005 in this section of the report were drawn from the report cited in footnote 1.

category of traditional media, as newspapers have experienced greater declines in revenue than have the television and radio sectors.

Figure 2 shows the estimated average revenue shares across the markets ranked between 26 and 35 for both 2005 and 2008:

Figure 2 – Estimated Average Traditional Media Revenue Shares for Markets Ranked 26-35

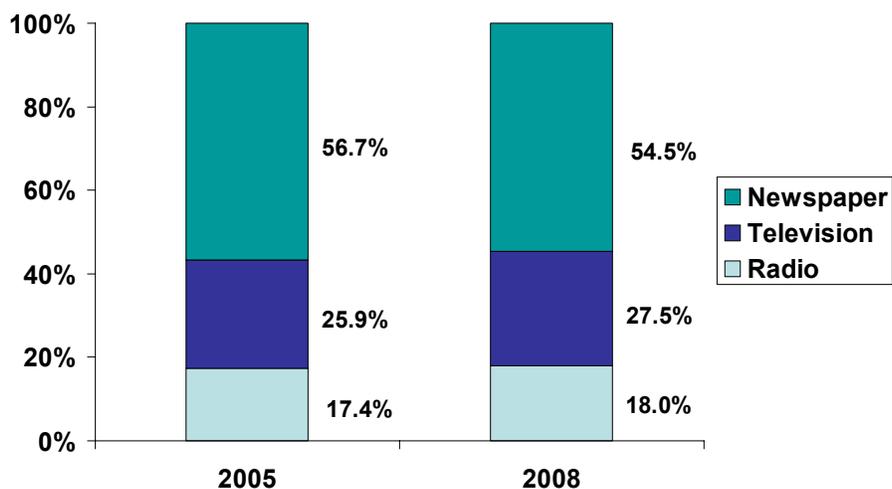


Much like the national averages of these traditional media, the averages for markets ranked between 26 and 35 have also shifted in just the past few years. The newspapers' share has decreased, while the television and radio stations' shares have increased, indicating increased competition in these markets.

In the Hartford-New Haven media marketplace, by comparison, the newspaper share in 2008 was 54.5%, higher than the national average and the average for market size range 26-35.⁶ Television stations claimed 27.5%, and radio stations claimed 18.0% of advertising dollars.

Figure 3 shows the distribution of estimated traditional media revenue shares for the Hartford-New Haven market for both 2005 and 2008:

Figure 3 –Estimated Traditional Media Revenue Shares for the Hartford-New Haven, CT Market



It is interesting to note the changes in these shares over time. Local newspapers' share in Hartford-New Haven decreased from 56.7% in 2005 to 54.5% in 2008, while the share of local television stations increased from 25.9% to 27.5% over that same time period. This movement

⁶ One major reason that the newspaper share is at this level is the presence of many strong daily newspapers. In addition to the *Hartford Courant*, there are at least six other strong daily newspapers in this market - *New Haven Register*, *Waterbury Republican-American*, *Journal Inquirer*, *The Day*, *The Norwich Bulletin/Sunday Bulletin*, and *The Record-Journal*. Collectively, they generate over 45% of the total revenues attributable to daily newspapers in this market. This value is noticeably higher than the average revenue share of 25% earned by newspapers ranked 2-6 in markets of similar size to Hartford-New Haven, CT (*i.e.*, ranked between 26 and 35).

in shares can be explained in part by the extremely strong and diverse television market in Hartford-New Haven, where there are eight full service commercial television stations owned by six separate and distinct owners. Not included in that count of stations are several stations located in adjacent markets that reach the Hartford-New Haven television audiences. In November 2009, out-of-market stations garnered 6.0% of the viewing of over-the-air television stations in the Hartford market.⁷

There are also 52 full power commercial radio stations in the Hartford-New Haven DMA, with 24 separate and distinct owners. In the smaller Hartford-New Britain-Middletown, CT radio Arbitron Metro market as utilized in the FCC's geographic market rules adopted in June 2003, there are 23 full power commercial radio stations with 11 separate and distinct owners.⁸

Recent History of Tribune-Owned Properties in Hartford-New Haven

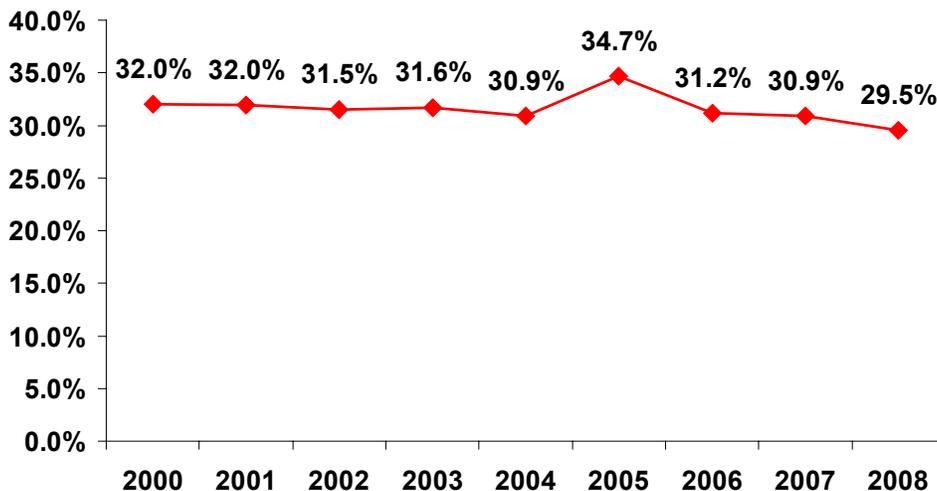
As we saw above, the distribution of revenues across the traditional media in the Hartford-New Haven DMA shows a competitive market. Within that traditional media market, Tribune's share of revenue does not indicate dominance or market power, even given the existing WTIC-TV/WTXX(TV)/*Hartford Courant* combination. The conclusion that the combination does not materially affect competition in the market is confirmed by the fact that the combined Tribune share has decreased over the past several years. During the past nine years, the Hartford-New Haven media marketplace has become more competitive as a result of the

⁷ *Hartford-New Haven Television Report*, Nielsen Media Research, November 2009.

⁸ In addition to the radio stations within the boundaries of the Hartford-New Haven, CT DMA, there are stations in adjacent DMAs that are available to listeners in these areas. In fact, there are six radio stations that meet minimum reporting requirements in the Hartford-New Britain-Middletown, CT radio market that are located outside the Hartford-New Haven, CT DMA. These stations are WAQY-FM, WFCR-FM, WMAS-FM, WFAN-AM, WCBS-AM, and WEEL-FM. Collectively, these stations attracted 6.1% of the listening in the Hartford-New Britain-Middletown, CT market during the Spring 2009 ratings period (April-June). Media Access Pro™, BIA Advisory Services.

competition among increasingly diverse traditional media, the continuing growth of non-broadcast program outlets (such as multi-channel video and audio program distributors), and the introduction of new media sources such as the Internet. Faced with this increased competition, Tribune has seen a decline in its market share since 2000. Figure 4 shows the estimated local market share of the Tribune properties for the last nine years. Whereas they once garnered over 32.0% of all of the revenues generated by the traditional media, these properties have lost 2.5 percentage points from that level and fallen to 29.5% as a result of competition:

Figure 4 - Estimated Historical Share of Revenue for Tribune Properties in Hartford-New Haven



The decline in the Tribune Properties’ market share has occurred because the Hartford-New Haven advertising market reflects, on average, extremely competitive results due to the presence of a large number of traditional media as well as numerous new media outlets that are becoming more competitive and gaining advertising revenue share. As the market concentration analysis below indicates, other traditional media have competed effectively against these

properties, and that competition can only be expected to increase, as a result of both the number of strong and well-funded traditional media sources and competition from cable and broadband video systems, direct broadcast satellite systems, the Internet, and new media.⁹

Concentration Analysis Based On Advertising Markets

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

⁹ In the present marketplace, owners of media properties spend a considerable amount of time comparing their properties with properties in the same media and other media in different services. As discussed below, these inter-media comparisons are not only made among traditional media, but also between traditional media and the new media opportunities that are constantly being developed as a result of the Internet and in other venues. Therefore, any analysis of traditional media market shares alone overstates the importance of those media’s positions in today’s marketplace, as will be shown later in this analysis.

¹⁰ The HHI is the total sum of the squared market revenue shares expressed as whole numbers for all market participants. In this case, that includes the revenue shares for all of the television and radio stations and newspapers in each of the 210 geographic markets. Larger numbers indicate greater concentration, and lower numbers tend to show less concentration and more competition in a market.

antitrust agencies permit further consolidation, weighing the potential benefits of each merger against any possible anticompetitive impacts.

The HHI calculation we have made here overstates the concentration of these local advertising markets because it only includes the revenues generated by the traditional media. Clearly, other media -- whether they are local cable systems, local Internet websites, magazines and other print media, outdoor advertising, and other media -- compete with the traditional media for advertising revenues. And even if those media could be taken into account in a concentration analysis, that would still understate the level of diversity in the marketplace because many non-advertiser-supported media (such as subscription-based media and non-commercial broadcast outlets) offer alternative sources of information.

We begin by examining the HHIs for the average national market, and values across the markets ranked 26-35, to compare to the Hartford-New Haven market. We will also analyze the HHI for the Hartford-New Haven market over the past eight years, the period of Tribune's common ownership of WTIC-TV/WTXX(TV)/*Hartford Courant*.

Calculation of HHIs

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

There is a noticeable difference in average HHIs across different size markets. As one moves from larger to smaller markets with fewer media outlets, the HHIs generally increase.

There are fewer traditional media outlets competing for advertising sales, and therefore, the media outlets in those markets tend to realize larger revenue shares resulting in higher HHIs. For the markets ranked between 26 and 35, the average HHI is 1,305, more than 50 points below the national average.

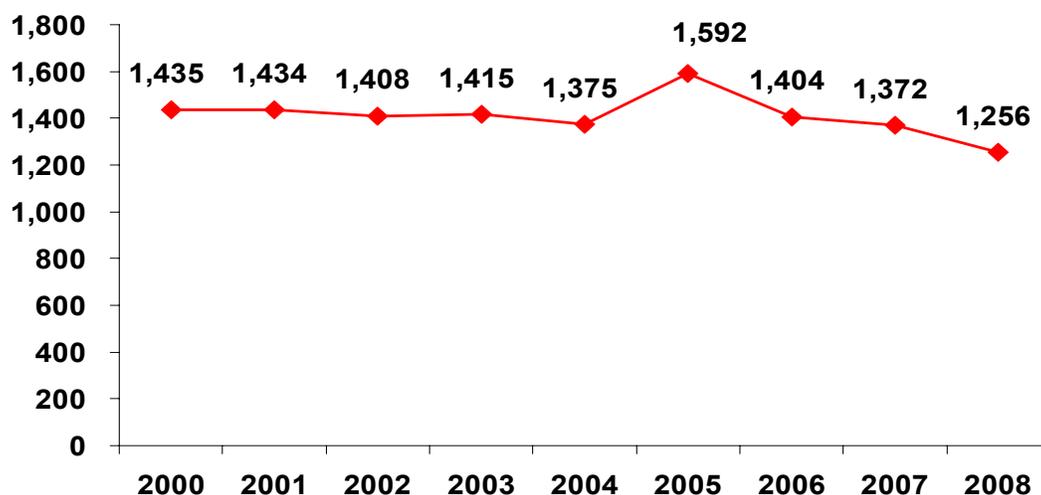
The HHI for Hartford-New Haven is 1,256, nearly 50 points lower than the average for markets ranked between 26 and 35, and over 100 points lower than the national average of 1,359. Clearly, many different media owners with significant shares exist in this market, providing substantial competitive influence. For example, two of the big-four major broadcast television networks own their local affiliates in this market (CBS and NBC), and the Univision affiliate in this market is a very strong competitor ranked fourth in terms of revenue share.¹¹ Second, a number of major radio groups have multiple outlets in this market. The market therefore is characterized by the presence of a large number of strong competitors. Most importantly, because this waiver involves an existing combination as opposed to the creation of a new one, the transaction itself will have no direct impact on concentration levels. Moreover, the historical downward trend in revenues indicates that continued common ownership of WTIC-TV, WTXN(TV), and the *Hartford Courant* would leave the HHI in Hartford-New Haven at the lower end of the moderately concentrated range.

Recent History of Concentration

Concentration of traditional media revenues has been decreasing for several years in the Hartford-New Haven media marketplace, as measured by the HHI. The significant number of outlets owned by many different media groups in the Hartford-New Haven market clearly indicates that there is a strong level of competition in attracting viewers, listeners, and readers.

This competition is evidenced by the downward trend in the level of concentration in Hartford-New Haven over the past nine years. Figure 5 shows the HHI for the Hartford-New Haven DMA market over the last nine years since Tribune acquired *The Hartford Courant* based on revenue estimates:

Figure 5 - Historical HHI of Traditional Media for Hartford-New Haven Market



During this time, the measurement of concentration considering only the traditional media — newspapers, television and radio — has decreased to the point where the market is in the low end of the moderately concentrated range. The level of concentration in the Hartford-New Haven market, as measured by the HHI, has declined by nearly 180 points since 2000, placing it in the low end of the moderately concentrated range.

To summarize, the Hartford-New Haven market is comparatively less concentrated than the national average and the average for markets of similar size and has become less

¹¹ Media Access Pro™, BIA.

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

The Wider Media Marketplace

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

Americans go online for a variety of reasons, including to be informed or entertained.¹² Much of the content on the Internet is ad-supported and free to the user. The “advertising supported Internet” has become such a pervasive part of the advertising ecosystem that the Interactive Advertising Bureau commissioned a study to understand its size, scope and benefits.¹³ Among other findings, the study concludes that with \$23.4 billion spent on Internet advertising in 2008, that medium is already bigger than radio, outdoor advertising, or Yellow Pages and about the same as consumer magazines. ComScore, a leading provider of Internet usage data has

¹² http://www.emarketer.com/Article.aspx?Ne=1050&N=1064&No=2&R=1007184&xsrc=article_head_sitesearchx.

shown that, in the U.S. (including home, work, and university locations) in June 2009 alone, 193 million individuals visited an Internet site at least once.¹⁴ This included not only search sites (e.g., Google and Yahoo) but also media sites (e.g., Fox, Viacom, Turner, CBS, New York Times, Disney, NBC, ESPN, Gannett and Time Warner).

In addition to the wired Internet, there are wireless Internet and other mobile media. New research from the Pew Internet & American Life Project shows that over half (56%) of Americans access the wireless Internet using a variety of devices including laptops, cell phones, MP3 players and game consoles.¹⁵ African Americans are the most active users of the mobile Internet, according to Pew, making this medium particularly important to this demographic group. In fact, Pew concludes that any “digital divide between African Americans and white Americans diminishes when mobile use is taken into account.”¹⁶

Mobile media choices are becoming richer and more prevalent. For example, the Open Mobile Video Coalition and others currently are demonstrating the benefits of the new digital broadcast mobile service in Washington, DC and other markets.¹⁷ Since the cutover to all digital television, spectrum was freed up allowing MediaFLO USA to expedite roll-out of its mobile video service, FLO TV, which is now available in more than 110 major markets (including Hartford)¹⁸ and reaches a population of over 200 million consumers.¹⁹ There are other mobile

¹³ Hamilton Consultants, “Economic Value of the Advertising-Supported Internet Ecosystem,” published by the Interactive Advertising Bureau, New York, NY, June 10, 2009. For a copy of the study, see http://www.iab.net/insights_research/530422/economicvalue.

¹⁴ http://www.comscore.com/Press_Events/Press_Releases/2009/7/comScore_Media_Metrix_Ranks_Top_50_U.S._Web_Properties_for_June_2009.

¹⁵ Horrigan, John, “Wireless Internet Use,” Pew Internet, July 2009. See <http://pewinternet.org/Reports/2009/12-Wireless-Internet-Use.aspx>.

¹⁶ Horrigan, p. 4.

¹⁷ www.omvc.org.

¹⁸ See Todd Spangler, “TV Behind the Wheel, Will In-Car TV Shift Into the Fast Lane – Or Is It a Non-Starter?,” Multichannel News, Jan. 23, 2010, available at http://www.multichannel.com/article/445558-TV_Behind_the_Wheel.php?nid=2226&source=link&rid=5977151 (last visited Feb. 4, 2010); FLOTV, “Coverage

media choices such as those offered by News Over Wireless, Inergize, Verve and other mobile media companies offering local news, sports, information and entertainment. Mobile media themselves are becoming a fast growing category for ad spending, which allows free content to be provided to users.

The trend in consumer technologies typically has been that consumers adopt new technologies first, then media companies start to follow them into these new media, followed in turn by advertisers. Increasingly, advertisers see the benefits of “integrated marketing mixes” in which media campaigns are conducted across traditional and new media platforms. Research from the Direct Marketing Association showed that 82% of companies surveyed coordinated use of multiple media in campaigns (*i.e.*, “integrated marketing”) including particularly email (75.8%), online video (61.1%) and search engines (62.9%).²⁰

Recognizing these changes in the marketplace and utilizing the expertise of its subsidiary The Kelsey Group,²¹ BIA unveiled in February 2009 its first comprehensive local media forecast.²² The BIA/Kelsey forecast defines local advertising as spending by small and medium-sized businesses, national advertisers and regional advertisers making local buys. That forecast draws from proprietary data; company, industry and county information in the public domain; and informational interviews with firms in these media about the competitive position and strength of these media, as well as where these media may be heading as they develop.²³

Map,” <http://www.flotv.com/whats-on-flo-tv/map> (last visited Feb. 4, 2010) (type “Hartford, CT” into “Address” box and hit “SEARCH” button).

¹⁹ http://www.flotv.com/sm/assets/pdfs/FLO_TV_Fact_Sheet.pdf.

²⁰ Direct Marketing Association, “Integrated Marketing Media Mix: More Digital with Mainstay Traditional,” see <http://www.marketingcharts.com/television/integrated-marketing-media-mix-study-more-digital-with-mainstay-traditional-5287/>.

²¹ The Kelsey Group is a research firm that has over twenty years of experience in the Yellow Pages, and over ten years of experience in the Internet and online search areas.

²² <http://www.bia.com/pr090226-forecast.asp>.

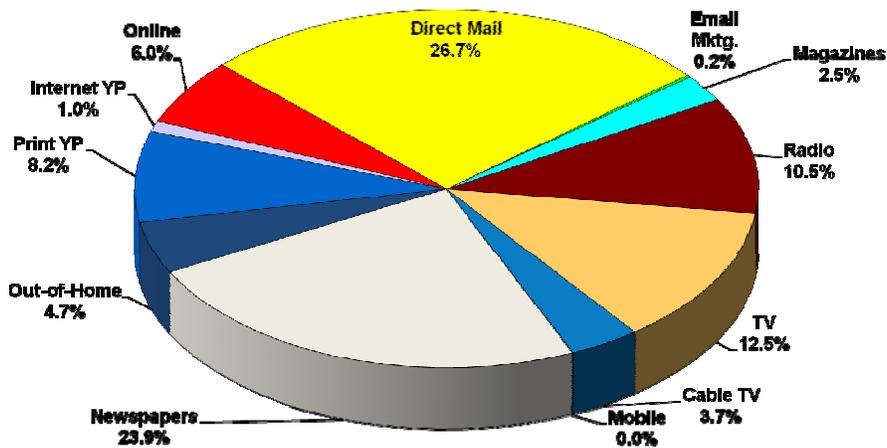
²³ Additional information regarding the methodology employed is included in Appendix A hereto.

Building off the national forecast research, BIA/Kelsey also offers “Media Ad Views,” market-specific custom reports that provide a comprehensive picture of the state of local media advertising for the different advertising options that are now available. In this section, we will compare the national distribution of advertising revenue to the situation in the Hartford-New Haven, CT media marketplace, and evaluate the Tribune Properties’ share in this wider media marketplace.

The National View

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

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



As an advertising vehicle, Direct Mail garnered the largest share, with local newspapers second. In our 2009 projections for these local media, BIA/Kelsey Group anticipated that the

shares going to traditional media (including Direct Mail and newspapers) would decrease significantly over the next few years.²⁴ In contrast, many of the interactive/digital media – mobile, online, Internet Yellow Pages, and email marketing – were expected to see substantial growth in the next few years. In fact, revenues from this interactive/digital advertising segment were projected to grow at an 18% compounded annual growth rate (“CAGR”) between 2008 and 2013.²⁵

BIA/Kelsey’s recently released data for 2009 confirm that the trend away from traditional media advertising has continued and is not likely to abate in the future.²⁶ While the overall U.S. local advertising market is projected to grow at a modest CAGR of only 2.2% from 2009 to 2014, spending on traditional media advertising is projected to decline from \$115 billion in 2009 to \$108.2 billion in 2014 (CAGR of -1.2%).²⁷ That continued decline contrasts strongly with the projected growth in spending on media in the interactive/digital segment (CAGR of 19.3%) in the same period and shows that traditional media are expected to continue to lose ground to new competitors over the long-term.²⁸

The Hartford-New Haven, CT View

As shown earlier, the relative strength and number of local radio and television stations and newspapers in the Hartford-New Haven, CT media market have led to a high level of competition among traditional media. Given that strength of competition and the large number of these outlets in the Hartford-New Haven market, it is not surprising to see their relatively

²⁴ “[T]he traditional segment (encompassing newspapers, direct mail, television, radio, print Yellow Pages, out of home (non-digital), cable television and magazines) will decrease from \$141.3 billion in 2008 to \$112.4 billion in 2013 (CAGR of -4.5%).” <http://www.bia.com/pr090226-forecast.asp>.

²⁵ *Id.*

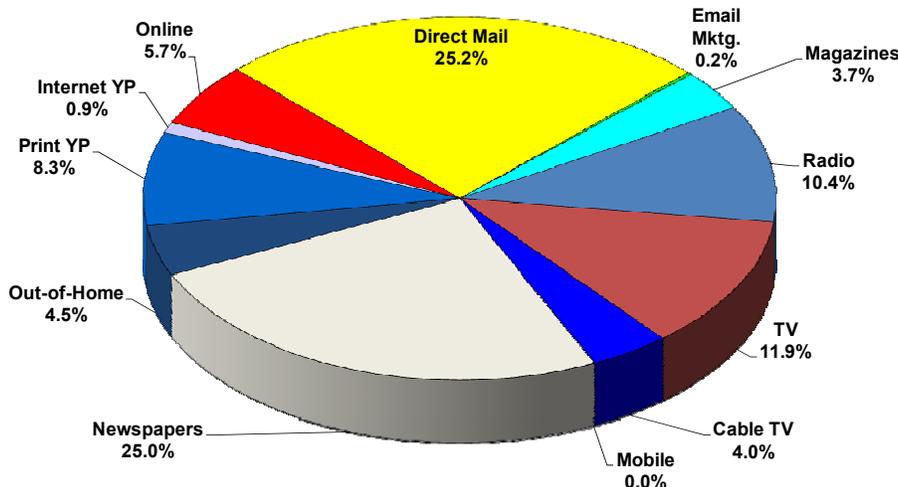
²⁶ <http://www.bia.com/pr220210.asp>.

²⁷ *Id.*

²⁸ *See id.*

larger percentage of total local media advertising. Figure 7 below shows the distribution of estimated local advertising spending within the Hartford-New Haven, CT media marketplace.

Figure 7 – Distribution of Estimated Local Advertising Spending by Media in Hartford-New Haven, CT - 2008



On average, newspapers nationally garnered nearly a quarter (23.9%) of all local media advertising revenues. In the Hartford-New Haven market, newspapers accounted for a slightly higher percentage, 25.0%, of those revenues. Television stations, in contrast, have a slightly lower share of those revenues (11.9% in Hartford-New Haven versus 12.5% nationally), and that share is distributed among the television outlets in the marketplace. Together, the Hartford-New Haven traditional media – newspapers, television and radio stations – account for 47.3% of the total advertising revenues across the twelve media, less than one-half of 1% higher than the 46.9% of the average market nationwide. In contrast, alternative media account for 52.7%, as compared to 53.1% nationwide, and new media in particular (online, Internet Yellow Pages,

mobile, and email marketing) account for 6.8% in the Hartford-New Haven market as compared to 7.2% for the average market nationwide.

Tribune Properties' Share of the Hartford-New Haven, CT Media Marketplace

As shown earlier, the revenue share garnered by the Tribune Properties has been declining in recent years, falling to 29.5% of traditional media revenues. When the larger advertising market is examined, including all of the various media that actually compete with these Tribune Properties, that share is even less. For 2008, the Tribune Properties' estimated share of expanded media advertising market revenues in the Hartford-New Haven DMA is 12.7%. Many different companies are included among the other media competing with these Tribune Properties, further supporting the conclusion that Tribune does not have any market power.²⁹

²⁹ It is not possible to calculate an HHI index for this wider advertising market, as we do not know the owners of all the various media outside of the traditional media that were analyzed earlier. Given that the traditional media examination of the HHI showed it in the low end of the moderately concentrated range and that the presence of these additional media outlets would decrease concentration levels, the wider market value would likely indicate an unconcentrated market, with correspondingly lower HHI values than the traditional media advertising market.

Today’s Media Marketplace

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

To summarize those listings, there are 11 full power television stations (8 commercial and 3 non-commercial) owned by 7 companies (6 commercial and 1 non-commercial) in the Hartford-New Haven market.³⁰ There are 6 low power and Class A television stations owned by 6 companies. In the DMA, there are 77 full power radio stations (52 commercial and 25 non-commercial) owned by 45 companies (24 commercial and 22 non-commercial).³¹ There are 2 low power radio stations owned by 2 different entities. In the smaller Hartford-New Britain-Middletown, CT Arbitron Metro market as utilized in the FCC’s geographic market rules adopted in June 2003, there are 35 full power radio stations (23 commercial and 12 non-commercial) owned by 23 companies (11 commercial and 12 non-commercial). With respect to

³⁰ There are 13 multicast programming streams in addition to the primary programming being provided by these local television stations.

³¹ One radio station licensee, Tri State Public Communications Inc., operates both commercial and noncommercial radio stations in the DMA. Accordingly, the total number of radio station owners is less than the sum of commercial and noncommercial owners. There are also 11 multicast HD radio signals being provided by the market’s radio stations.

newspapers, there are 12 daily newspapers owned by 8 companies along with 53 weekly newspapers owned by 15 companies. At least 12 specialty and 8 collegiate publications, as well as 17 local magazines also provide additional diversity of information and entertainment to people living in the DMA. Finally, there are a host of other outlets, including the new media analyzed above, that are available in the Hartford-New Haven, CT DMA.

Conclusion

This update to and expansion upon the 2007 study of traditional media revenues clearly show that competition continues to increase in the Hartford-New Haven market. In fact, the measure of concentration is low in the moderately concentrated range using the revenues of the three traditional media outlets alone. Moreover, when the numerous other local outlets providing news and informational content are considered, the number of competing outlets is overwhelming.

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

The Tribune Properties' share of advertising revenues continues to decrease in the Hartford-New Haven market. For just the traditional media marketplace, that share has decreased by over two percentage points over the last nine years. In the wider advertising marketplace, the Tribune Properties' share is only 12.7%.

After examining the statistical and outlet information for the Hartford-New Haven, CT media market, one can only conclude that it is a vibrant, actively competitive, and expanding advertising market offering many sources of diverse content to the area's residents. Advertisers and consumers are being provided more choices every day. The relative position of the combined Tribune Properties should not be of any regulatory concern in this expanding market.

Appendix A: Methodology Statement for the BIA/Kelsey Group National and Local Media Marketplace Estimates



Methodology Statement for the BIA/Kelsey National and Local Media Marketplace Estimates

February 26, 2010

BIA/Kelsey estimated total advertising revenues across twelve media that compete in local advertising markets. Local advertising is defined as spending by local businesses of all sizes as well as by national and regional advertisers making local advertising purchases on a variety of local media. The twelve media included in the BIA/Kelsey estimates are: daily and weekly newspapers, local commercial radio stations, local commercial television stations, Yellow Pages, direct mail, out-of-home, local cable systems, online, Internet Yellow Pages, local magazines, mobile, and email marketing. These estimates of spending by local and non-local sources are generated through various methods, briefly described below for each of the twelve media.

1. Newspapers

- A comprehensive annual survey instrument was sent in the first quarter of 2009 to all daily and weekly newspapers asking for their historical revenues for both traditional and online advertising and their circulation revenues.
- Revenues for non-responding newspapers were estimated through a proprietary model utilizing circulation and other relevant data, such as retail sales and population growth, to determine the revenue changes from previous years.
- Estimates were checked for accuracy with publicly available sources, such as annual reports and other security filings for public companies.

2. Local Commercial Radio Stations

- A comprehensive annual survey instrument was sent in the first quarter of 2009 to all commercial radio stations, as well as to the groups owning these stations asking for their historical revenues for both over-the-air and online advertising revenues.
- Revenues for non-responding stations were estimated by BIA/Kelsey through proprietary models utilizing audience estimates and other relevant data, such as population and retail sales growth, to determine each station's share of the local market.
- Estimates were checked for accuracy with other publicly available sources, such as annual reports and other security filings for public companies, as well as aggregate information from industry sources.

3. Local Commercial Television Stations

- A comprehensive annual survey instrument was sent in the first quarter of 2009 to all commercial television stations, as well as to the groups owning these stations, asking for historical revenues for both over-the-air and online advertising revenues.
- Revenues for non-responding television stations were estimated by BIA/Kelsey through proprietary models utilizing historical revenue and other relevant data, such as population and retail sales growth.
- Estimates were checked for accuracy with publicly available sources, such as annual reports and other security filings for public companies, as well as aggregate information from industry sources.

4. Yellow Pages

- Revenues for individual directories in major markets and for the U.S. overall were obtained from key industry data vendors and sources, such as Localeze and the Yellow Pages Association (YPA). Data on total national revenues were provided by YPA. Data on individual directories provided include number of paid items, number of advertisers, rate card, and total directory revenues.
- Revenues for smaller markets were modeled, using a proprietary BIA/Kelsey model that incorporates population, population growth, various demographic variables (*e.g.* age, household income) and various economic activity variables (such as new business formation).

5. Direct Mail

- Revenues for the Direct Mail sector in the U.S. overall were estimated based on the results of a BIA/Kelsey survey, Local Commerce Monitor (“LCM”). The LCM is an annual survey of small businesses seeking information about their use of the media for advertising, historical spending on media, spending intentions, use of various online advertising formats, use of various channels for purchasing advertising media, satisfaction with media, channel performance, and other relevant factors. Twelve annual surveys were completed as of 2008, and the thirteenth will be completed by September 2009. Also used was published data on total Direct Mail spending from various sources, such as leading sources that make media forecasts, including Universal McCann Worldwide, Zenith Optimedia, Omnicom International, WPP Group, Advertising Age magazine, and two leading investment banks, Bank of Montreal and Merrill Lynch.
- Revenues for individual markets were determined on the basis of key variables correlated to direct mail activity such as the number of businesses, number of employees, rate of new business formation, and number of businesses in selected business categories (generally Standard Industry Classifications as defined by the U.S. Census Bureau) related to direct mail activities, as well as further BIA/Kelsey analyses. The BIA/Kelsey analyses are informed adjustments based on our extensive work in media over the years, accumulated knowledge about the

individual characteristics, and idiosyncrasies of many individual markets.

6. Out-Of-Home

- Information on the history of traditional billboards including their recent revenues was obtained from industry trade associations and other publicly available media forecasts, such as Universal McCann Worldwide, Zenith Optimedia, Omnicom International, WPP Group, Advertising Age magazine, and two leading investment banks, Bank of Montreal and Merrill Lynch. Based on this information and information on national economic trends, a proprietary model was used to project the total revenues generated by this subsection of this media category.
- For the digital sector of this media, which includes digital billboards and taxicab and elevator screens, a proprietary model was used incorporating information regarding the growth of the number of such screens, screen traffic, sell-out rates, and cost per thousands to calculate the revenues generated obtained from key industry players that are representative of the industry.
- Similarly, for the digital cinema sector of this category (i.e., commercial airing prior to movies), a proprietary model employing growth rates of the number of screens, sell-out rates, and cost per thousands, obtained from industry sources that are representative of the industry was used to calculate the revenues generated.

7. Local Cable Systems

- Using historical information on the growth of local cable advertising from industry trade association (National Cable and Telecommunications Association) and other national estimates (Universal McCann), as well as the BIA estimates of the recent history of over-the-air television advertising, the relationship between national cable and over-the-air advertising revenues was modeled. From that proprietary model, present and future national cable advertising estimates were generated.
- Local cable advertising estimates were derived using a series of factors including local cable penetration data and the strength of the local over-the-air television market using BIA individual television market revenue estimates.

8. Online/Interactive

- Revenues for the U.S. overall were derived from proprietary models of revenues for several types of online advertising, including search ads, display ads, rich media ads, classifieds, and other online advertising types. As noted above, the surveys for certain traditional media asked for their online advertising revenues. For 2008, those revenues for newspapers, local commercial radio, and local commercial television stations were included in the online/interactive sector. For 2009, those revenues for newspapers, local commercial radio and television stations were included in the revenues for each of the traditional media.

- The detailed BIA/Kelsey proprietary models used to generate estimates for each type of online ad involve a complex calculation based on numerous variables. These variables include the “ad coverage” (the percentage of search results that have ads associated with them), the number of searches, the percentage of searches and search results that are local in nature, clickthrough rates (number of ads that are clicked on by the user), and other relevant factors. These estimated values were benchmarked against actual, proprietary data provided to us by key industry players, who are representative of the industry.
- Revenues for individual markets were determined on the basis of key variables correlated to online consumer and commercial activity, such as population and retail sales growth, as well as further BIA/Kelsey analyses. The BIA/Kelsey analyses are informed adjustments based on our extensive work in media over the years, accumulated knowledge about the individual characteristics, and idiosyncrasies of many individual markets.

9. Internet Yellow Pages

- Revenues for the U.S. overall were estimated based on the LCM (see the discussion of LCM in the Direct Mail section), published data on media spending from various sources, such as the Interactive Advertising Bureau, and proprietary performance data from the leading Internet Yellow Pages companies that are representative of the industry.
- Revenues for individual markets were determined on the basis of key variables correlated to Yellow Pages revenues, estimated print-online cross-sales levels, and other key variables correlated to online activity, as well as further BIA/Kelsey analyses. The BIA/Kelsey analyses are informed adjustments based on our extensive work in media over the years, accumulated knowledge about the individual characteristics, and idiosyncrasies of many individual markets.

10. Local Magazines

- Revenues for the U.S. overall were estimated based on the LCM (see the discussion of LCM in the Direct Mail section), published data on media spending from trade associations and other sources such as estimates from Universal McCann Worldwide, Zenith Optimedia, Omnicom International, WPP Group, Advertising Age Magazine, and several leading investment banks, including Bank of Montreal and Merrill Lynch.
- Revenues for individual markets were estimated based on performance data on the leading city magazine publishers obtained from BIA/Kelsey’s original web-based research on local magazines in the top markets.

11. Mobile

- Revenues for the U.S. overall were derived from proprietary models of revenues for several types of mobile advertising, including search ads, display ads, directory-related ads, and other mobile advertising types.

- The detailed proprietary models used to estimate the revenue generated by each type of mobile ad involve a calculation based on numerous variables. These variables include the number of mobile searches, the “ad coverage” (the percentage of search results that have ads associated with them), the percentage of searches and search results that are local in nature, clickthrough rates (number of ads that are clicked on by the user), and other relevant factors. These estimates were benchmarked against actual, proprietary data provided to us by key industry players that are representative of the industry. We also benchmarked these estimates against mobile advertising performance in other countries that have a more developed mobile advertising market.
- Revenues for individual markets were determined on the basis of key variables correlated to mobile usage and commercial activity, such as population and retail sales growth, as well as further BIA/Kelsey analyses. The BIA/Kelsey analyses are informed adjustments based on our extensive work in media over the years, accumulated knowledge about the individual characteristics, and idiosyncrasies of many individual markets.

12. Email Marketing (ERPM)

- Revenues for the U.S. overall were derived from the LCM (see the discussion of LCM in the Direct Mail section), published data on leading email marketing providers, including financial reports by public companies (such as Constant Contact, and Alliance Data Systems, parent company of Epsilon); reports from several leading investment banks (such as Oppenheimer, Thomas Weisel Partners, and Think Equity); and promotional materials published by service providers themselves (such as Lyris, Emma, and Vertical Response).
- Revenues for individual markets were determined on the basis of key variables correlated to email activity, such as relative population and population growth, as well as further BIA/Kelsey analyses. The BIA/Kelsey analyses are informed adjustments based on our extensive work in media over the years, accumulated knowledge about the individual characteristics, and idiosyncrasies of many individual markets.

Curriculum Vitae

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Education

Ph.D., 1981, Economics, Texas A&M University, College Station, TX
M.S., 1978, Economics, Texas A&M University, College Station, TX
B.A., 1976, Mathematics and Economics (honors), State University of New York at
Binghamton

Professional experience

2001 – Present

BIA Financial Network

Vice President

- Consulting in litigation and tax-related cases
- Developing of new broadcasting and related industry research offerings
- Speaking at industry forums

Fall 2002 – Present

The Johns Hopkins University

Adjunct Professor, *The Political Economy of Mass Communications*

1985 – 2000

National Association of Broadcasters

Vice President/Economist 1991 – 2000

- Supervised the Research and Planning Department.
- Conducted primary research about the broadcasting and related industries, used for testimony before the Congress and in filings at the FCC and other governmental agencies.
- Conducted research and studies included in publications and reports distributed by NAB.
- Presented results of primary research and other analyses at industry forums.

Director of Financial and Economic Research 1985 -- 1991

- Supervised the collection and dissemination of the annual industries financial reports

Curriculum Vitae - Mark R. Fratrick

1980 – 1985

Federal Trade Commission
Bureau of Economics
Staff Economist

- Conducted analysis of proposed mergers and other arrangements.
- Conducted analyses of industry practices to evaluate economic impact.
- Participated in litigation support in several antitrust cases.

Professional activities

Broadcast & Cable Financial Management Association – Board Member 2001-2004
American Economic Association – member
Southern Economic Association – member
Journal of Media Economics – reviewer
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Hartford DMA Full Power Television Stations

CALLS	Affiliation	City/St. of License	Owner	C/NCE
WCTX	My	New Haven, CT	LIN Television Corporation	C
WEDH	PBS	Hartford, CT	Connecticut Public Broadcasting Inc	NCE
WEDN	PBS	Norwich, CT	Connecticut Public Broadcasting Inc	NCE
WEDY	PBS	New Haven, CT	Connecticut Public Broadcasting Inc	NCE
WFSB	CBS	Hartford, CT	Meredith Corp	C
WHPX-TV	i	New London, CT	ION Media Networks, Inc.	C
WTIC-TV	FOX	Hartford, CT	Tribune Company	C
WTNH	ABC	New Haven, CT	LIN Television Corporation	C
WTXX	CW	Waterbury, CT	Tribune Company	C
WUVN	UNI	Hartford, CT	Entravision Communications Corp	C
WVIT	NBC	New Britain, CT	NBC/GE	C

Hartford DMA Multicast Television Streams

CALLS	Affiliation	City/St. of License	Owner	C/NCE
WCTX-D2	Wx	New Haven, CT	LIN Television Corporation	C
WEDH-D2	CRT	Hartford, CT	Connecticut Public Broadcasting Inc	NCE
WEDN-D2	PBS	Norwich, CT	Connecticut Public Broadcasting Inc	NCE
WEDY-D2	CRT	New Haven, CT	Connecticut Public Broadcasting Inc	NCE
WFSB-D2	CBS	Hartford, CT	Meredith Corp	C
WHPX-D2	qbo	New London, CT	CIG Media LLC	C
WHPX-D3	ILF	New London, CT	CIG Media LLC	C
WHPX-D4	WSP	New London, CT	CIG Media LLC	C
WTXX-D2	Ths	Waterbury, CT	Tribune Company	C
WUVN-D2	TLF	Hartford, CT	Entravision Communications Corp	C
WUVN-D3	LAT	Hartford, CT	Entravision Communications Corp	C
WVIT-D2	Wx	New Britain, CT	NBC/GE	C
WVIT-D3	SPT	New Britain, CT	NBC/GE	C

WTXX(TV), Waterbury, CT

WTIC-TV, Hartford, CT

FCC Form 314

Exhibit 16

Attachment 4

Appendix C

Page 1

Hartford DMA Class A and LPTV Stations

CALLS	Affiliation	City/St. of License	Owner	Type Service
W28AJ	IND	Allingtown, CT	Paging Associates Inc	CL-A
WHCT	AZT	Hartford, CT	Venture Technologies Group LLC	LPTV
WNHX-LP	IND	New Haven, CT	IT Communications Inc	LPTV
WRDM-CA	TEL	Hartford, CT	ZGS Communications	CL-A
WRNT-LP	RTV	Hartford, CT	R and S Broadcasting LLC	LPTV
WUTH-CA	TLF	Hartford, CT	Entravision Communications Corp	CL-A

**Daily Newspapers Published in or Circulated in the
 Hartford & New Haven, CT DMA (2009)¹**

	Title	Published	Owner
1.	* <i>Republican-American/Sunday Republican</i>	Waterbury, CT	American-Republican, Inc.
2.	* <i>Journal Inquirer</i>	Manchester, CT	Elizabeth S. Ellis
3.	* <i>Norwich Bulletin</i>	Norwich, CT	GateHouse Media, Inc.
4.	* <i>The Bristol Press/The Herald Press</i>	Bristol, CT	Journal Register Company
5.	* <i>The Middletown Press/The Herald Press</i>	Middletown, CT	Journal Register Company
6.	* <i>The Herald/The Herald Press</i>	New Britain, CT	Journal Register Company
7.	* <i>New Haven Register</i>	New Haven, CT	Journal Register Company
8.	* <i>The Register Citizen</i>	Torrington, CT	Journal Register Company
9.	* <i>The Chronicle</i>	Williamtic, CT	The Chronicle Printing Company ²
10.	* <i>The Day</i>	New London, CT	The Day Publishing Company ³
11.	* <i>Record-Journal</i>	Meriden, CT	The Record-Journal Publishing Company
12.	* <i>The Hartford Courant</i>	Hartford, CT	Tribune Company

* *Newspapers published within the DMA.*

Sources: SRDS Circulation 2009; Editor & Publisher International Yearbook (2008); BIA Investing in Newspapers, Hartford-New Haven, CT Market Newspaper Overview (2009).

¹Counties (All CT): Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham. "Circulated in" indicates circulation of five percent or greater within the DMA.

²Owner identified through newspaper's website. See [thechronicle.com](http://www.thechronicle.com) – Eastern Connecticut's News and Events Source, <http://www.thechronicle.com> (last visited June 26, 2009).

³Owner identified through newspaper's website. See [The Day, New London, CT – theday.com](http://www.theday.com), <http://www.theday.com> (last visited June 26, 2009).

**General Interest Newspapers of Varying Frequency Published in the
 Hartford & New Haven, CT DMA¹ (2009)**

	Title	Published	Owner
1.	<i>Glastonbury Citizen</i>	Glastonbury/Marlborough, CT	Glastonbury Citizen, Inc.
2.	<i>River East News Bulletin</i>	Portland/South Glastonbury, CT	Glastonbury Citizen, Inc.
3.	<i>Herald-Independent</i>	Clinton, CT	Heartland Publications
4.	<i>The Valley Gazette</i>	Beacon Falls/Derby/Asonia, CT	Hersam Acorn, LLC
5.	<i>Hamden Journal</i>	Hamden, CT	Hersam Acorn, LLC
6.	<i>Milford Mirror</i>	Milford, CT	Hersam Acorn, LLC
7.	<i>New Canaan Advertiser</i>	New Canaan, CT	Hersam Acorn, LLC
8.	<i>Amity Observer</i>	Orange, CT	Hersam Acorn, LLC
9.	<i>Bloomfield Journal</i>	Bloomfield, CT	Journal Register Co. (Imprint Newspapers)
10.	<i>Branford Review</i>	Branford/North Branford, CT	Journal Register Co. (Shore Line Newspapers)
11.	<i>Canton News</i>	Canton, CT	Journal Register Co. (Imprint Newspapers)
12.	[^] <i>Clinton Recorder</i>	Clinton/Killingworth, CT	Journal Register Co. (Shore Line Newspapers)

¹Counties (All CT): Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham.

“Varying frequency” means weekly unless otherwise specified.

Papers marked with the symbol “^” are published twice weekly.
 Papers marked with the symbol “#” are published thrice weekly.

Sources: Gale Directory of Publications and Broadcast Media 2009; Editor & Publisher International Yearbook (2008); BIA/Kelsey Media Access Pro™ Database, Hartford-New Haven, CT Market Newspaper Overview (as of July 23, 2009).

Information for papers marked with the symbol “†” was verified by BIA Advisory Services, LLC as of August 17, 2009 through telephone research.

	Title	Published	Owner
13.	<i>Regional Standard</i>	Colchester/Salem, CT	Journal Register Co. (Shore Line Newspapers)
14.	<i>^ Shore Line Times</i>	Guilford, CT	Journal Register Co. (Shore Line Newspapers)
15.	<i>The Litchfield County Times</i>	Litchfield, CT	Journal Register Co.
16.	<i>Brookfield Journal</i>	New Milford, CT	Journal Register Co. (Housatonic Publications)
17.	<i>New Milford Times</i>	New Milford, CT	Journal Register Co. (Housatonic Publications)
18.	<i>Putnam County Courier</i>	New Milford, CT	Journal Register Co. (Housatonic Publications)
19.	<i>Westport Minuteman</i>	New Milford, CT	Journal Register Co. (Housatonic Publications)
20.	<i>Newington Town Crier</i>	Newington, CT	Journal Register Co. (Imprint Newspapers)
21.	<i>Rocky Hill Post</i>	Rocky Hill, CT	Journal Register Co. (Imprint Newspapers)
22.	<i>Thomaston Express</i>	Thomaston/Plymouth, CT	Journal Register Co.
23.	<i>West Hartford News</i>	West Hartford, CT	Journal Register Co. (Imprint Newspapers)
24.	<i>Wethersfield Post</i>	Wethersfield, CT	Journal Register Co. (Imprint Newspapers)
25.	<i>The Middletown Press</i>	Middlesex Co., CT	Journal Register Co.†
26.	<i>The Lakeville Journal</i>	Lakeville/Salisbury/Norfolk, CT	Lakeville Journal Co., LLC
27.	<i>The Winsted Journal</i>	Winsted/New Hartford/Norfolk, CT	Lakeville Journal Co., LLC
28.	<i>The Observer</i>	Southington, CT	Maitland Publishing, LLC
29.	<i>New Milford Spectrum</i>	Milford, CT	MediaNews Group, Inc.
30.	<i>Citizens News</i>	Naugatuck, CT	Pape, William†
31.	<i># Voices/Sunday – The Weekly Star</i>	Southbury, CT	Prime Publishers, Inc.
32.	<i>Town Times</i>	Watertown, CT	Prime Publishers, Inc.

	Title	Published	Owner
33.	<i>^ The Reminder</i>	Hartford, CT	Reminder Community Newspapers
34.	<i>East Haven Courier</i>	Madison, CT	Shore Publishing, LLC
35.	<i>Guilford Courier</i>	Madison, CT	Shore Publishing, LLC
36.	<i>The Harbor News</i>	Madison, CT	Shore Publishing, LLC
37.	<i>North Haven Courier</i>	Madison, CT	Shore Publishing, LLC
38.	<i>The Sound</i>	Madison, CT	Shore Publishing, LLC
39.	<i>The Source</i>	Madison, CT	Shore Publishing, LLC
40.	<i>Valley Courier</i>	Madison, CT	Shore Publishing, LLC
41.	<i>The Groton Times</i>	New London, CT	Shore Publishing, LLC
42.	<i>The Lyme Times</i>	New London, CT	Shore Publishing, LLC
43.	<i>The Mystic Times</i>	New London, CT	Shore Publishing, LLC
44.	<i>The Stonington Times</i>	New London, CT	Shore Publishing, LLC
45.	<i>The Waterford Times</i>	New London, CT	Shore Publishing, LLC
46.	<i>The Hartford News</i>	Hartford, CT	Southside Media
47.	<i>The Berlin Citizen</i>	Berlin, CT	The Record-Journal Publishing Co.
48.	<i>Town Times</i>	Middlefield, CT	The Record-Journal Publishing Co.
49.	<i>Plainville Citizen</i>	Plainville, CT	The Record-Journal Publishing Co.
50.	<i>The Southington Citizen</i>	Southington, CT	The Record-Journal Publishing Co.
51.	<i>The Cheshire Herald</i>	Cheshire, CT	The True Publishing Co.
52.	<i>Hartford Advocate</i>	Hartford, CT	Tribune Company (New Mass Media, Inc.)

	Title	Published	Owner
53.	<i>New Haven Advocate</i>	New Haven, CT	Tribune Company (New Mass Media, Inc.)

Hartford & New Haven, CT DMA¹ (2009)

Specialty Newspapers ^

1. **Name:** Hartford Inquirer *

Frequency: Weekly
Published: Hartford, CT
Circulation: 35,000
Advertising: Accepted
Description: Black community newspaper

2. **Name:** Tiempo +

Frequency: Weekly
Published: Meriden, CT
Circulation: 17,400
Subscription Rate: Free
Advertising: Accepted
Description: Hispanic community newspaper

3. **Name:** Registro +

Frequency: Weekly
Published: New Britain, CT; New Haven, CT; Torrington, CT
Circulated: New Britain, CT; New Haven, CT; Torrington, CT
Circulation: 21,000
Subscription Rate: Free
Advertising: Accepted
Description: Spanish language newspaper

4. **Name:** The Inner City Newspaper *+

Frequency: Weekly
Published: New Haven, CT
Circulation: 35,000
Subscription Rate: Free

¹Counties (All CT): Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham.

^ Targeted to special ethnic, religious, demographic, or other groups.

**Gale Directory of the Publications and Broadcast Media 2009.*

+*Editor & Publisher International Yearbook (2008)*

- Advertising:** Accepted
Description: Ethnic weekly newspaper
5. **Name:** *Jewish Leader* *+
- Frequency:** Biweekly
Published: New London, CT
Circulation: Non-Paid 2,700
Subscription Rate: \$15 per annum
Advertising: Accepted
Description: Jewish community newspaper
6. **Name:** *Connecticut Jewish Ledger* *+
- Frequency:** Weekly
Published: West Hartford, CT
Circulation: 30,000
Subscription Rate: \$36 per annum
Advertising: Accepted
Description: Jewish community newspaper
7. **Name:** *Jewish Ledger* *
- Frequency:** Weekly
Published: West Hartford, CT
Circulation: Paid 7,000; Free 1,000
Subscription Rate: \$36 per annum
Advertising: Accepted
Description: Jewish community newspaper
8. **Name:** *The Catholic Transcript* *+
- Frequency:** Monthly
Published: Bloomfield, CT
Circulation: 85,000
Advertising: Accepted
Description: Catholic community newspaper
9. **Name:** *Heartland* *
- Frequency:** Bimonthly

**Gale Directory of the Publications and Broadcast Media 2009.*
+*Editor & Publisher International Yearbook (2008)*

- Published:** Clinton, CT
Circulation: 25,000
Advertising: Accepted
Description: Local travel newspaper
10. **Name:** *Nordstjernen (Swedish News)* *
- Frequency:** Weekly
Published: New Britain, CT
Circulation: Paid 5,000; Free 100
Subscription Rate: \$41 per annum
Advertising: Accepted
Description: Swedish community newspaper
11. **Name:** *The Dolphin* *
- Frequency:** Weekly
Published: Groton, CT
Circulation: Not reported
Advertising: Accepted
Description: Military newspaper
12. **Name:** *Inquiring News*²
- Frequency:** Weekly
Published: Bridgeport, CT
Description: Black community newspaper

² Information verified by BIA Advisory Services, LLC as of August 17, 2009 through telephone research.

**Gale Directory of the Publications and Broadcast Media 2009.*

+*Editor & Publisher International Yearbook (2008)*

Hartford & New Haven, CT DMA¹ (2009)
Shopper Publications

1. **Name:** *Regional Express* +

Frequency: Weekly
Published: Colchester, CT
Circulation: 17,290
Advertising: Accepted
Description: Shopper

2. **Name:** *Step Saver* +

Frequency: Weekly
Published: Colchester, CT
Circulated: Bristol, Cheshire, Plainville/Farmington, Southington
Circulation: 87,000
Subscription Rate: Free
Advertising: Accepted
Description: Shopper

3. **Name:** *Coupon Express* +

Frequency: Weekly
Published: New Britain, CT
Circulation: 24,000
Advertising: Accepted
Description: Shopper

4. **Name:** *Herald Extra* +

Frequency: Weekly
Published: New Britain, CT
Circulation: 31,000
Advertising: Accepted
Description: Shopper

5. **Name:** *Advisor* +

¹Counties (All CT): Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham.

**Gale Directory of the Publications and Broadcast Media 2009.*

+*Editor & Publisher International Yearbook (2008)*

- Frequency:** Weekly
Published: North Haven, CT
Circulation: 87,000
Advertising: Accepted
Description: Shopper
6. **Name:** *Pennysaver* +
- Frequency:** Weekly
Published: Saybrook, CT
Circulation: 33,000
Advertising: Accepted
Description: Shopper
7. **Name:** *Tradewinds* +
- Frequency:** Weekly
Published: West Hartford, CT
Circulated: Bloomfield, Hartford, West Hartford, CT
Circulation: 47,200
Advertising: Accepted
Description: Shopper
8. **Name:** *Hebron Columbia* +
- Frequency:** Weekly
Published: Willimantic, CT
Circulation: 26,577
Advertising: Accepted
Description: Shopper
9. **Name:** *Chronicle Shopper* +
- Frequency:** Weekly
Published: Willimantic, CT
Circulation: 29,486
Advertising: Accepted
Description: Shopper
10. **Name:** *Consumer Connection* *
- Frequency:** Monthly

**Gale Directory of the Publications and Broadcast Media 2009.*
+*Editor & Publisher International Yearbook (2008)*

Published: Madison, CT
Circulation: 15,000
Subscription Rate: Free
Advertising: Accepted
Description: Shopper

11. *Courant Valumail Weekly* (owned by Tribune Company)

Frequency: Weekly
Published: Hartford, CT
Circulation: 384,881
Subscription Rate: Free
Advertising: Accepted
Description: Shopper

12. *Courant Valumail* (owned by Tribune Company)

Frequency: Monthly
Published: Hartford, CT
Circulation: 1,200,000
Subscription Rate: Free
Advertising: Accepted
Description: Shopper

13. **Name:** *Foothills Trader* *

Frequency: Weekly
Published: Torrington, CT
Circulation: Not reported
Subscription Rate: Free
Advertising: Accepted
Description: Shopper

14. **Name:** *For Sale by Owner Connection* +

Published: Canton, CT
Circulation: 60,000
Description: Real estate shopper

**Gale Directory of the Publications and Broadcast Media 2009.*
+*Editor & Publisher International Yearbook (2008)*

15. **Name:** *Yankee Pennysaver* +

Published: New Milford, CT

Circulation: 95,000

Subscription Rate: Free

Description: Shopper

**Gale Directory of the Publications and Broadcast Media 2009.*
+Editor & Publisher International Yearbook (2008)

**Hartford & New Haven, CT DMA¹ (2009)
College and University Newspapers**

1. **Name:** *The Trinity Tripod* *

Frequency: Weekly
Published: Hartford, CT
College: Trinity College
Circulation: Paid 500; Free 3000
Subscription Rate: Free
Advertising: Accepted
Description: College newspaper

2. **Name:** *The Wesleyan Argus* *

Frequency: Semi-Weekly (during academic year)
Published: Middletown, CT
College: Wesleyan University
Circulation: 3,300
Subscription Rate: \$60 per semester; \$80 per school year
Advertising: Accepted
Description: College newspaper

3. **Name:** *Yale Daily News* *

Frequency: Daily (M-F)
Published: New Haven, CT
College: Yale University
Circulated: Internationally
Circulation: Not reported
Subscription Rate: \$250 per annum
Advertising: Accepted
Description: College newspaper

4. **Name:** *The Yale Herald* *

Frequency: Weekly
Published: New Haven, CT
College: Yale University
Circulation: Paid 250; Non-Paid 5,000

¹Counties (All CT): Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham.
*Gale Directory of the Publications and Broadcast Media 2009.

- Subscription Rate:** \$45 per annum
Advertising: Accepted
Description: College newspaper
5. **Name:** *The College Voice* *
- Frequency:** Weekly
Published: New London, CT
College: Connecticut College
Circulation: Paid 2,500
Subscription Rate: \$50 per annum
Advertising: Accepted
Description: College newspaper
6. **Name:** *The Connecticut College Journal* *
- Frequency:** Quarterly
Published: New London, CT
College: Connecticut College
Circulation: Not reported
Subscription Rate: Free to parents, alumni, and friends
Advertising: Accepted
Description: College newspaper
7. **Name:** *The Daily Campus* *
- Frequency:** Daily (during academic year)
Published: Storrs/Mansfield, CT
College: University of Connecticut
Circulation: Combined 20,000
Subscription Rate: \$6-10 per annum
Advertising: Accepted
Description: College newspaper
8. **Name:** *Campus Lantern* *
- Frequency:** Weekly
Published: Willimantic, CT
College: Eastern Connecticut State University
Circulation: Controlled 2,900
Subscription Rate: Free
Advertising: Accepted
Description: College newspaper

*Gale Directory of the Publications and Broadcast Media 2009.

Hartford & New Haven, CT DMA¹ (2009)
Local Magazines

1. **Name:** *Connecticut Parent Magazine* *+

Frequency: Monthly
Published: Branford, CT
Circulated: Connecticut
Circulation: Not reported
Subscription Rate: Free
Advertising: Accepted
Description: Parenting magazine

2. **Name:** *Connecticut Traveler**

Frequency: Monthly
Published: Hamden, CT
Circulated: Connecticut
Circulation: 258,000
Subscription Rate: \$2.40 per annum
Advertising: Accepted
Description: Travel magazine

3. **Name:** *New England Theatre Journal* *

Frequency: Annual
Published: Hamden, CT
Circulation: Not reported
Subscription Rate: Free to members
Advertising: Accepted
Description: Theater journal

4. **Name:** *CBIA News (Connecticut Business & Industry Association)* *

Frequency: 11 per year
Published: Hartford, CT
Circulated: Connecticut
Circulation: 11,000
Subscription Rate: \$9 (Members) per annum

¹Counties (All CT): Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham.

**Gale Directory of the Publications and Broadcast Media 2009.*

+*Editor & Publisher International Yearbook (2008).*

- Advertising:** Not accepted
Description: Trade magazine
5. **Name:** *Connecticut Housing Production and Permit Authorized Construction* *
- Frequency:** Annual
Published: Hartford, CT
Circulated: Connecticut
Subscription Rate: Free
Description: Trade report
6. **Name:** *Trincoll Journal* *
- Frequency:** Weekly (during academic year)
Published: Hartford, CT
Circulation: Not reported
Subscription Rate: Free
Advertising: Accepted
Description: College magazine
7. **Name:** *The Gardener* *
- Frequency:** Bimonthly
Published: Litchfield, CT
Circulation: Not reported
Advertising: Not accepted
Description: Hobby magazine
8. **Name:** *Middlesex Magazine and Business Review* *
- Frequency:** Monthly
Published: Middletown, CT
Description: Trade magazine
9. **Name:** *Wesleyan* *
- Frequency:** Quarterly
Published: Middletown, CT
Circulated: Quarterly
Circulation: Controlled 30,000
Advertising: Not accepted
Description: Alumni magazine

**Gale Directory of the Publications and Broadcast Media 2009.*
+*Editor & Publisher International Yearbook (2008).*

10. **Name:** *Log of Mystic Seaport* *

Frequency: Quarterly

Published: Mystic, CT

Circulation: Paid 22,000; Controlled 300

Subscription Rate: \$35 (Members) per annum

Advertising: Not accepted

Description: Scholarly journal

11. **Name:** *Business Times**

Frequency: Monthly

Published: New Haven, CT

Circulated: Internationally

Circulation: Not reported

Subscription Rate: \$36 per annum

Advertising: Accepted

Description: Business magazine

12. **Name:** *Connecticut Medicine* *

Frequency: 10 per year

Published: New Haven, CT

Circulation: 7,200

Advertising: Accepted

Description: Medical journal

13. **Name:** *St. Raphael's Better Health* *

Frequency: Monthly

Published: New Haven, CT

Circulated: Nationally

Circulation: 148,000

Subscription Rate: Free to CT residents: \$15 out-of-state per annum

Advertising: Accepted

Description: Health magazine

14. **Name:** *Connecticut Pharmacist* *

Frequency: Quarterly

Published: Rocky Hill, CT

**Gale Directory of the Publications and Broadcast Media 2009.*

+*Editor & Publisher International Yearbook (2008).*

- Circulation:** Controlled 1,500
Advertising: Accepted
Description: Trade magazine
15. **Name:** *CT Jewish History* *
- Frequency:** Periodic
Published: West Hartford, CT
Subscription Rate: \$8 (Members single issue), \$10 (Non-members single issue)
Advertising: Not accepted
Description: Jewish history journal
16. **Name:** *Journeys* *
- Frequency:** Bimonthly
Published: West Hartford, CT
Circulation: 245,000
Advertising: Accepted
Description: Travel magazine
17. **Name:** *The Parent Planner* +
- Frequency:** Monthly
Published: Stafford Springs, CT
Circulation: 40,000
Description: Parenting magazine

**Gale Directory of the Publications and Broadcast Media 2009.*
+*Editor & Publisher International Yearbook (2008).*

Hartford DMA Full Power Radio Stations

CALLS	AM/FM	Format	City/St. of License	Owner	C/NCE
WADS	AM	Span/CCtmp	Ansonia, CT	Radio Amor Inc	C
WAPJ	FM	Info/Educa	Torrington, CT	The I.B. and Zena H. Temkin Foundation Inc	NCE
WATR	AM	Oldies	Waterbury, CT	WATR Inc	C
WAVZ	AM	Sports	New Haven, CT	CC Media Holdings Inc	C
WBMW	FM	Soft Rock	Ledyard, CT	Fuller, John	C
WBVC	FM	Variety	Pomfret, CT	Pomfret School	NCE
WCCC	AM	Classical	West Hartford, CT	Marlin Broadcasting LLC	C
WCCC	FM	Rock	Hartford, CT	Marlin Broadcasting LLC	C
WCNI	FM	Variety	New London, CT	Connecticut College Community Radio Inc	NCE
WCTF	AM	Religion	Vernon, CT	Family Stations Inc	NCE
WCTY	FM	Country	Norwich, CT	Hall Communications Inc	C
WDJW	FM	Variety	Somers, CT	WDJW Somers High School	NCE
WDRC	FM	Clsc Hits	Hartford, CT	Buckley Broadcasting Corporation	C
WDRC	AM	News/Talk	Hartford, CT	Buckley Broadcasting Corporation	C
WDZK	AM	Family Hits	Bloomfield, CT	ABC/Disney	C
WECS	FM	Variety	Willimantic, CT	Eastern Connecticut State College	NCE
WELI	AM	News/Talk	New Haven, CT	CC Media Holdings Inc	C
WERB	FM	DARK	Berlin, CT	Berlin Board of Education	NCE
WESU	FM	Var/HHp/Rck	Middletown, CT	Wesleyan University	NCE
WFCS	FM	Variety	New Britain, CT	Central Connecticut State University	NCE
WFIF	AM	Christian	Milford, CT	Blount Communications Group	C
WFNW	AM	Tropical	Naugatuck, CT	Carrelo, Candido D.	C
WGRS	FM	Classical	Guilford, CT	Town of Monroe, Connecticut	NCE
WGSK	FM	Classical	South Kent, CT	Town of Monroe, Connecticut	NCE

CALLS	AM/FM	Format	City/St. of License	Owner	C/NCE
WHCN	FM	ClHts/RckAC	Hartford, CT	CC Media Holdings Inc	C
WHDD	AM	NPR	Sharon, CT	Tri State Public Communications Inc	C
WHDD	FM	NPR	Sharon, CT	Tri State Public Communications Inc	NCE
WHUS	FM	Variety	Storrs, CT	University of Connecticut	NCE
WICH	AM	Adlt Stndrd	Norwich, CT	Hall Communications Inc	C
WIHS	FM	Christian	Middletown, CT	CT Radio Fellowship	NCE
WILI	FM	CHR	Willimantic, CT	Hall Communications Inc	C
WILI	AM	FuSvc/AC	Willimantic, CT	Hall Communications Inc	C
WINY	AM	AC	Putnam, CT	Osbre Broadcasting Company	C
WJMJ	FM	Variety	Hartford, CT	Hartford Roman Catholic Diocesan Corporation	NCE
WKCI	FM	CHR/Top40	Hamden, CT	CC Media Holdings Inc	C
WKND	AM	Urban AC	Windsor, CT	Gois Broadcasting LLC	C
WKNL	FM	Oldies	New London, CT	Hall Communications Inc	C
WKSS	FM	Top 40	Hartford-Meriden, CT	CC Media Holdings Inc	C
WKZE	FM	AAA	Salisbury, CT	WillPower Radio LLC	C
WLAT	AM	Tropical	New Britain, CT	Gois Broadcasting LLC	C
WLIS	AM	FSv/Tlk/Nws	Old Saybrook, CT	Crossroads Communications LLC	C
WMMW	AM	News/Talk	Meriden, CT	Buckley Broadcasting Corporation	C
WMOS	FM	Clsc Rock	Stonington, CT	Citadel Communications	C
WMRD	AM	FSv/Tlk/Nws	Middletown, CT	Crossroads Communications LLC	C
WMRQ	FM	Alternative	Waterbury, CT	Fuller, John	C
WNEZ	AM	Rmn/Spn/Nws	Manchester, CT	Gois Broadcasting LLC	C
WNHU	FM	Altve/Ecltc	West Haven, CT	University of New Haven	NCE
WNLC	FM	Clsc Hits	East Lyme, CT	Hall Communications Inc	C
WNPR	FM	News/Talk	Norwich, CT	Connecticut Public Broadcasting Inc	NCE
WPKT	FM	Variety	Meriden, CT	Connecticut Public Broadcasting Inc	NCE

CALLS	AM/FM	Format	City/St. of License	Owner	C/NCE
WPKX	FM	Country	Enfield, CT	CC Media Holdings Inc	C
WPLR	FM	AOR	New Haven, CT	Cox Media Group	C
WPOP	AM	Sports	Hartford, CT	CC Media Holdings Inc	C
WPRX	AM	Tropical	Bristol, CT	Nieves Quez Productions Inc	C
WQAQ	FM	Alternative	Hamden, CT	Quinnipiac University	NCE
WQGN	FM	CHR	Groton, CT	Citadel Communications	C
WQQQ	FM	FuSvc/AC	Sharon, CT	Jackson Radio Group	C
WQTQ	FM	Urban CHR	Hartford, CT	Hartford Board of Education	NCE
WQUN	AM	AdStd/News	Hamden, CT	Quinnipiac University	NCE
WRCH	FM	Soft AC	New Britain, CT	CBS Corporation	C
WRTC	FM	Variety	Hartford, CT	Trinity College	NCE
WRYM	AM	Tropical	New Britain, CT	Eight Forty Broadcasting Corp	C
WSGG	FM	Span/CCTmp	Norfolk, CT	Sam Girona Ministries Inc	NCE
WSNG	AM	News/Talk	Torrington, CT	Buckley Broadcasting Corporation	C
WSUB	AM	Spanish AC	Groton, CT	Citadel Communications	C
WTIC	FM	Modern AC	Hartford, CT	CBS Corporation	C
WTIC	AM	News/Talk	Hartford, CT	CBS Corporation	C
WWCO	AM	News/Talk	Waterbury, CT	Buckley Broadcasting Corporation	C
WWEB	FM	CHR	Wallingford, CT	Choate Rosemary Hall Foundation	NCE
WWRX	FM	Rhymc/Top40	Pawcatuck, CT	Fuller, John	C
WWUH	FM	Variety	West Hartford, CT	University of Hartford	NCE
WWYZ	FM	Country	Waterbury, CT	CC Media Holdings Inc	C
WXCT	AM	Span/Relgn	Southington, CT	Golden Door Broadcasting LLC	C
WYBC	FM	Urban AC	New Haven, CT	Cox Media Group	C
WYBC	AM	Variety	New Haven, CT	Yale Broadcasting Company	C
WZBG	FM	AC	Litchfield, CT	Local Girls & Boys	C

WTXX(TV), Waterbury, CT

WTIC-TV, Hartford, CT

FCC Form 314

Exhibit 16

Attachment 4

CALLS	AM/FM	Format	City/St. of License	Owner	C/NCE
WZMX	FM	Hip Hop	Hartford, CT	CBS Corporation	C

Appendix E-1

Page 4

Hartford DMA Multicast Radio Streams

CALLS	AM/FM	Format	City/St. of License	Owner	C/NCE
WWYZ-HD2	F2	Country	Waterbury, CT	CC Media Holdings Inc	C
WZMX-HD2	F2	Reggaeton	Hartford, CT	CBS Corporation	C
WKSS-HD2	F2	Pride	Hartford-Meriden, CT	CC Media Holdings Inc	C
WTIC-HD2	F2	Nws/Tlk/Spt	Hartford, CT	CBS Corporation	C
WPKX-HD2	F2	Americana	Enfield, CT	CC Media Holdings Inc	C
WRCH-HD2	F3	Smooth Jazz	New Britain, CT	CBS Corporation	C
WKCI-HD2	F2	CHR/Top40	Hamden, CT	CC Media Holdings Inc	C
WDRC-HD2	F2	Oldies	Hartford, CT	Buckley Broadcasting Corporation	C
WMRQ-HD2	F2	Hip Hop	Waterbury, CT	Fuller, John	C
WHCN-HD2	F2	Rock	Hartford, CT	CC Media Holdings Inc	C
WCCC-HD2	F2	Rock	Hartford, CT	Marlin Broadcasting LLC	C

Hartford FCC Geographic Market Radio Stations

CALLS	AM/FM	Format	City/St. of License	Owner	C/NCE
WCCC	AM	Classical	West Hartford, CT	Marlin Broadcasting LLC	C
WCCC	FM	Rock	Hartford, CT	Marlin Broadcasting LLC	C
WCTF	AM	Religion	Vernon, CT	Family Stations Inc	NCE
WDJW	FM	Variety	Somers, CT	WDJW Somers High School	NCE
WDRC	AM	News/Talk	Hartford, CT	Buckley Broadcasting Corporation	C
WDRC	FM	Clsc Hits	Hartford, CT	Buckley Broadcasting Corporation	C
WDZK	AM	Family Hits	Bloomfield, CT	ABC/Disney	C
WERB	FM	DARK	Berlin, CT	Berlin Board of Education	NCE
WESU	FM	Var/HHp/Rck	Middletown, CT	Wesleyan University	NCE
WFCS	FM	Variety	New Britain, CT	Central Connecticut State University	NCE
WHCN	FM	ClHts/RckAC	Hartford, CT	CC Media Holdings Inc	C
WHUS	FM	Variety	Storrs, CT	University of Connecticut	NCE
WIHS	FM	Christian	Middletown, CT	CT Radio Fellowship	NCE
WJMJ	FM	Variety	Hartford, CT	Hartford Roman Catholic Diocesan Corporation	NCE
WKND	AM	Urban AC	Windsor, CT	Gois Broadcasting LLC	C
WKSS	FM	Top 40	Hartford-Meriden, CT	CC Media Holdings Inc	C
WLAT	AM	Tropical	New Britain, CT	Gois Broadcasting LLC	C
WMMW	AM	News/Talk	Meriden, CT	Buckley Broadcasting Corporation	C
WMRD	AM	FSv/Tlk/Nws	Middletown, CT	Crossroads Communications LLC	C
WMRQ	FM	Alternative	Waterbury, CT	Fuller, John	C
WNEZ	AM	Rmn/Spn/Nws	Manchester, CT	Gois Broadcasting LLC	C
WPKT	FM	Variety	Meriden, CT	Connecticut Public Broadcasting Inc	NCE
WPKX	FM	Country	Enfield, CT	CC Media Holdings Inc	C
WPOP	AM	Sports	Hartford, CT	CC Media Holdings Inc	C

CALLS	AM/FM	Format	City/St. of License	Owner	C/NCE
WPRX	AM	Tropical	Bristol, CT	Nieves Quez Productions Inc	C
WQTQ	FM	Urban CHR	Hartford, CT	Hartford Board of Education	NCE
WRCH	FM	Soft AC	New Britain, CT	CBS Corporation	C
WRTC	FM	Variety	Hartford, CT	Trinity College	NCE
WRYM	AM	Tropical	New Britain, CT	Eight Forty Broadcasting Corp	C
WTIC	AM	News/Talk	Hartford, CT	CBS Corporation	C
WTIC	FM	Modern AC	Hartford, CT	CBS Corporation	C
WWUH	FM	Variety	West Hartford, CT	University of Hartford	NCE
WWYZ	FM	Country	Waterbury, CT	CC Media Holdings Inc	C
WXCT	AM	Span/Relgn	Southington, CT	Golden Door Broadcasting LLC	C
WZMX	FM	Hip Hop	Hartford, CT	CBS Corporation	C

Hartford DMA LPFM Stations

CALLS	Format	City/St. of License	Owner
WWBW-LP	Variety	Higganum, CT	Connecticut River Educational Radio, Inc
WCSE-LP	Relig Music	Ledyard, CT	Calv Ch Silver City



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NATIONALS

A&E	HD 265	ESPN	HD 206	ION Television	305	Science Channel	HD 284
ABC Family	HD 311	ESPN U	614	ION Television West	347	ShopNBC	316
American Movie Classics (AMC)	254	ESPN2	HD 209	Independent Film Channel (IFC)	550	Sleuth	308
Animal Planet	HD 282	ESPNEWS	HD 207	Investigation Discovery (ID)	285	Speed Channel	HD 607
BBC America	264	EWTN	370	Jewelry Television	313	Spike	HD 241
BYU TV	374	Enlace Christian Television	448	Jewish Life Television	366	Style	235
Big Ten Network	HD 610	FX	HD 248	Lifetime	252	Syfy Channel	HD 244
Biography Channel	HD 266	Fine Living	232	Lifetime Movie Network	253	TBS	HD 247
Black Entertainment Television (BET)	HD 329	Fit TV	261	LinkTV	375	TCT Network	377
Bloomberg Television	353	Food Network	HD 231	Logo	272	TNT	HD 245
Boomerang	298	Fox Business Network	HD 359	MHz WORLDVIEW	2183	TV Guide Network	237
Bravo	HD 273	Fox Movie Channel	258	MLB Network	HD 213	TV Land	304
CMT	HD 327	Fox News Channel	HD 360	MSNBC	356	TV One	328
CNBC	HD 355	Fox Reality	250	MTV	HD 331	TeenNick	303
CNBC World	357	Fuel	HD 618	MTV2	333	Tennis Channel	HD 217
CNN	HD 202	Fuse	339	Military Channel	287	The 101 Network HD	HD 101
CSPAN 1	350	G4	310	NASA TV	283	The Learning Channel	HD 280
CSPAN 2	351	GEM NET (Global Expansion Media Network)	2068	NBA TV	HD 216	The Sportsman Channel	605
Cartoon Network (East)	HD 296	GOD TV	365	NFL Network	HD 212	The Word Network	373
Cartoon Network (West)	297	GSN, the network for games	309	NHL Network	HD 215	Travel Channel	277
Centric	330	Galavision	404	NRB	378	Trinity Broadcasting Network (TBN)	372
Chiller	257	GemsTV	233	National Geographic Channel	HD 276	TruTV	246
Christian Television Network (CTN)	376	Golf Channel	218	Nick Jr.	301	Turner Classic Movies (TCM)	256
Church Channel	371	Gospel Music Channel	338	Nickelodeon (East)	HD 299	USA Network	HD 242
Comedy Central	HD 249	Great American Country	326	Nickelodeon (West)	300	Univision	402
Current TV	358	HD Theater	HD 281	Nicktoons Network	302	V-me	440
DIY Network	230	HDNet	HD 306	ONCE México	447	VH1	HD 335
Daystar	369	HITN	438	Ovation TV	274	VH1 Classic	337
Discovery Channel	HD 278	Hallmark Channel	312	Oxygen	251	Versus	HD 603
Discovery Health	279	Headline News	204	PBS	0	WE: Women's Entertainment	260
Discovery Kids	294	History Channel	HD 269	PBS Kids Sprout	295	WGN America	307
Disney Channel (East)	HD 290	History International	271	Planet Green	HD 286	Weather Channel	HD 362
Disney Channel (West)	291	Home & Garden Television (HGTV)	HD 229	QVC	275	World Harvest Television	367
Disney XD	HD 292	Home Shopping Network	240	RFD TV	345		
Documentary Channel	263	Hope	368	ReelzChannel	238		
E! Entertainment	236	INSP	364	SOAPnet	262		

PREMIUMS

CBS College Sports	HD 613	Encore Westerns	538	HBO Latino	511	Starz Comedy HD	HD 526
Cinemax East	HD 512	Flix	557	HBO Signature	503	Starz Edge	HD 529
Cinemax West	HD 514	Fox Soccer Channel	619	MoreMAX	513	Starz InBlack	530
ESPN Classic Sports	208	Fox Sports en Espanol	624	Outdoor Channel	606	Starz Kids & Family HD	HD 525
Encore (East)	535	Go!TV	620	SHOWTIME	HD 545	Sundance Channel	558
Encore (West)	536	HBO (East)	HD 501	SHOWTIME (West)	HD 546	TVG - The Interactive Horseracing Network	602
Encore Action	541	HBO (West)	HD 504	SHOWTIME 2	HD 547	The Movie Channel (West)	555
Encore Drama	540	HBO 2 (East)	502	SHOWTIME Extreme	HD 549	The Movies Channel (East)	HD 554
Encore Love	537	HBO 2 (West)	505	SHOWTIME Showcase	HD 548		
Encore Mystery	539	HBO Family (East)	507	Starz (East)	HD 527		
Encore Wam	542	HBO Family (West)	508	Starz (West)	HD 528		

REGIONAL SPORT NETWORKS

CSN New England 630	HD 630	NESN 628	HD 628	SportsNet New York 639	HD 639	Yankee Ent. & Sports (YES) 631	HD 631
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SONICTAP: 70's Hits	804	SONICTAP: Dance	859	SONICTAP: Italian Contemporary	882	SONICTAP: Retro Disco	845
SONICTAP: 8-Tracks	840	SONICTAP: Familiar Favorites	880	SONICTAP: Jazz	852	SONICTAP: Rock en Espanol	878
SONICTAP: 80's Hits	805	SONICTAP: Fiesta Tropical	870	SONICTAP: Latin Hits	871	SONICTAP: Salsa	874
SONICTAP: 90's Hits	806	SONICTAP: Flashback/New Wave	839	SONICTAP: Latin Jazz	879	SONICTAP: Showtunes	823
SONICTAP: Adult Alternative	832	SONICTAP: Folk Rock	813	SONICTAP: Light Classical	866	SONICTAP: Silky Soul	843
SONICTAP: Adult Contemporary	821	SONICTAP: Full Metal Jacket	830	SONICTAP: Love Songs	819	SONICTAP: Silver Screen	822
SONICTAP: Alternative	834	SONICTAP: Gospel Glory	827	SONICTAP: Malt Shop Oldies	802	SONICTAP: Singer-Songwriters	836
SONICTAP: Bailamos!	869	SONICTAP: Great Standards	855	SONICTAP: Mariachi	876	SONICTAP: Smooth Jazz	851
SONICTAP: Be-Tween	867	SONICTAP: Groove Lounge	824	SONICTAP: Metro Blend	853	SONICTAP: Soft Hits	849
SONICTAP: Beautiful Instrumentals	820	SONICTAP: Hair Guitar	829	SONICTAP: Modern Country	814	SONICTAP: Spike	841
SONICTAP: Big Band/Swing	801	SONICTAP: Hallelujah	828	SONICTAP: Modern Workout	860	SONICTAP: SubTerranean	858
SONICTAP: Bluegrass	812	SONICTAP: Hit Country	809	SONICTAP: Musica De Las Americas	872	SONICTAP: Symphonic	864
SONICTAP: Blues	854	SONICTAP: Holidays & Happenings	815	SONICTAP: New Age	856	SONICTAP: The Boombox	846
SONICTAP: Carnaval Brasileiro	877	SONICTAP: Honky Tonk Tavern	811	SONICTAP: Old School Funk	844	SONICTAP: The Playground	868
SONICTAP: Classic Hits Blend	837	SONICTAP: Hot Jamz	825	SONICTAP: PUMP!	861	SONICTAP: The Spirit	826
SONICTAP: Classic Jazz Vocal Blend	850	SONICTAP: Hottest Hits	818	SONICTAP: Piano	865	SONICTAP: Today's Hits	816
SONICTAP: Classic R&B	842	SONICTAP: Hurbano	875	SONICTAP: Rat Pack	807	SONICTAP: Traditional Country	808
SONICTAP: Classic Rock	833	SONICTAP: Hype	847	SONICTAP: Reality Bites	838	SONICTAP: Tranquility	884
SONICTAP: Classic Rock Workout	862	SONICTAP: Ink'd	835	SONICTAP: Red, Rock and Blues	810	SONICTAP: Y2k Hits	817
SONICTAP: Coffeehouse Rock	848	SONICTAP: Irish	883	SONICTAP: Reggae	863	SONICTAP: Zen	857
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WEDH (PBS)	 24	WTIC (FOX)	 61	WTXX (CW)	 20	WWIT (NBC)	 30



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<input type="radio"/> News/Informational	<input type="radio"/> Sports	<input type="radio"/> Public Interest	<input type="radio"/> Audio
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THE OUTDOOR CHANNEL	153	THE TENNIS CHANNEL	400
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Hartford/New Haven, CT 06114

Sun Apr 25 2010 10:51:36 Mountain Daylight Time

LOCAL NETWORK PACKAGE

Congratulations! This address is eligible for the:
 Hartford/New Haven, CT Local Network Package

Please note: Channels denoted by "HD" are in high definition. Those without this notation are only available in standard definition.

If you do not see HD local channels currently available in your area, you may still be able to receive them via a high definition off-air antenna.

Local channels currently available in this package:

Locals Package – \$5.99 per month*

Station	Local Channel Number	Dish Channel Number
HARTFORD CW-WTXX	20	5184
HARTFORD UNVSN-WUVN	18	7387
HARTFORD FOX-WTIC	61	7383
HARTFORD PBS-WEDH	24	7386
HARTFORD FOX – WTIC IN HD	61	5183
HARTFORD CBS-WFSB	3	7381
HARTFORD CBS – WFSB IN HD	3	5181
HARTFORD NBC-WVIT	30	5182
HARTFORD ABC – WTNH IN HD	8	5180
HARTFORD MNT-WCTX	59	7385

		
HARTFORD NBC – WVIT IN HD	30	5182
HARTFORD AZA–WHCT	38	7388
HARTFORD ABC–WTNH	8	5180
HARTFORD CW – WTXX HD	20	5184

SUPERSTATIONS

Congratulations! This address is eligible for all Superstations.

Superstations – \$5.99 per month**

Station	Affiliate	Dish Channel Number
NEW YORK UPN–WWOR	UPN	238
NEW YORK WB–WPIX	WB	234
LOS ANGELES WB– KTLA	WB	232
BOSTON UPN–WSBK	UPN	236
DENVER WB–KWGN	WB	235

Regional and Collegiate Sports Networks are available with America's Top 120 Plus or higher.

Station
Comcast Sports Net New England
Sportsnet New York
NESN

*Locals for non-qualifying packages are \$5.99 per month. Call 1-888-884-2741 for additional details.

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Local Cable Programming in Hartford Market¹

- New England Cable News (NECN) – 24-hour regional news channel covering New England²
 - Distributed on Comcast systems throughout Hartford market³
 - In addition to live news, programming includes “NECN Tonight,” an in-depth news analysis program, and “NECN Business Day,” a regional business program.⁴
 - Also produces locally and regionally-focused original documentaries and specials⁵
- News12 Connecticut – 24-hour local news channel covering Southwestern Connecticut⁶
 - Distributed on Cablevision systems in Southwestern Connecticut including the New Haven county communities of Milford, Orange, and Woodbridge, which are in the Hartford DMA
 - Also offers separate News12 Traffic and Weather channel
- Connecticut Network (CT-N) – Connecticut state government information and programming⁷
 - Available on cable systems throughout Connecticut⁸
 - Produced by the Connecticut Public Affairs Network on behalf of the Connecticut General Assembly⁹
 - Provides daily coverage of state government, including Legislative sessions, public hearings, and committee meetings¹⁰
- New England Sports Network (NESN) – regional sports programming network owned by the Boston Red Sox and Boston Bruins¹¹
 - Available on cable systems throughout the Hartford market¹²

¹ This listing of local cable programming is not comprehensive, and additional programming may be available in each market. All websites listed were visited in February 2010.

² <http://www.necn.com/pages/about>.

³ <http://www.tvlistings.zaptoit.com/tvlistings/zcgrid.do?method=decideFwdForLineup&Zipcode=06111&SetMyPreference=false&lineupID=CT62508:x>.

⁴ <http://www.necn.com/pages/programming>.

⁵ http://www.necn.com/pages/necn_documentaries/.

⁶ http://www.news12.com/news/aboutus_CT?news_type>About%20Us.

⁷ <http://www.ctn.state.ct.us/>.

⁸ http://www.ctn.state.ct.us/ctn_tv.asp.

⁹ <http://www.ctn.state.ct.us/about.asp>.

¹⁰ <http://pages.cthome.net/cpan/ctn.htm>.

¹¹ <http://www.nesn.com/about-nesn.html>.

- Provides extensive local and regional sports coverage, including major league baseball and hockey games and college sports¹³
- Also produces and airs numerous original shows, including “SportsDesk,” a sports news program broadcast multiple times each day, “Pocket Money,” a local sports trivia program, and “NESN’s Comedy All Stars,” a weekly comedy show.¹⁴
- YES Network – regional sports programming network owned by the New York Yankees¹⁵
 - Available on cable systems throughout the Hartford market¹⁶
 - Provides extensive local and regional sports coverage, including exclusive live telecasts of New York Yankees baseball and New Jersey Nets basketball games and minor league and college sports games¹⁷
 - Also produces and airs numerous original shows, including “This Week in Football,” a weekly program focused on the New York Jets and Giants NFL teams and “Forbes SportsMoney,” a monthly program covering the business of sports¹⁸
- Comcast SportsNet New England – regional sports programming network¹⁹
 - Available on cable systems throughout the Hartford market²⁰
 - Provides extensive local and regional sports coverage, including Boston Celtics basketball games and men’s and women’s college sports²¹
- SportsNet New York – regional sports programming network established in 2006 by the Sterling Entertainment Enterprises, Time Warner Cable, and Comcast²²
 - Available on cable systems throughout the Hartford market²³
 - Provides extensive local and regional sports coverage, including exclusive live telecasts of New York Mets baseball games and other professional and collegiate sports²⁴

¹² <http://www.nesn.com/frequently-asked-questions.html>.

¹³ <http://www.nesn.com/about-nesn.html>.

¹⁴ <http://www.nesn.com/nesn-shows.html>.

¹⁵ <http://web.yesnetwork.com/about/index.jsp>.

¹⁶ *See id.*

¹⁷ *See id.*

¹⁸ <http://web.yesnetwork.com/schedule/programs/index.jsp>.

¹⁹ <http://www.csnne.com/>.

²⁰ http://www.csnne.com/pages/channel_finder.

²¹ http://www.csnne.com/pages/esn_info.

²² <http://www.sny.tv/about/>.

²³ <http://web.sny.tv/about/subscribe.jsp?state=ct>.

- Also produces and airs original sports-themed programs, including numerous programs focused on the New York Jets NFL team, “Daily News Live,” a daily live sports news program and “SNY Spotlight,” featuring in-depth interviews with sports and entertainment personalities²⁵
- Hartford Public Access Television²⁶
 - Available on Comcast system in Hartford area
 - Provides three programming channels dedicated to Government programming, educational programming, and public access programming²⁷

²⁴ <http://www.sny.tv/about/>.

²⁵ <http://web.sny.tv/schedule/programming.jsp>

²⁶ <http://www.hartfordpublicaccess.org/>

²⁷ <http://www.hartfordpublicaccess.org/schedule.html>

XM-Sirius Channel Lineup

Programming	Genre	Sirius/XM/Both
MUSIC		
Top 40 Hits	Pop	Sirius (<i>available on XM Internet Radio</i>)
Lite Pop Hits	Pop	Both
Love Songs	Pop	Both
'40s Pop Hits/Big Band	Pop	Both
'50s Pop Hits	Pop	Both
'60s Pop Hits with Cousin Brucie	Pop	Both
'70s Pop Hits	Pop	Both
'80s Pop Hits	Pop	Both
'90s Pop Hits	Pop	Both
UK Pop Hits	Pop	Both
2000s Pop Hits	Pop	XM (<i>available on Sirius Internet Radio</i>)
Elvis Presley 24/7	Pop	Both
Beautiful Music	Pop	Both
Top 20 Hits	Pop	XM (<i>available on Sirius Internet Radio</i>)
Mellow Rock	Pop/Rock	Both
2000s Pop Hits	Pop	XM (<i>available on Sirius Internet Radio</i>)
Variety/Adults Hits	Pop w/ Commercials	XM
All Hit Music	Pop w/ Commercials	XM
Bruce Springsteen 24/7	Rock	Both
'60s & '70s Classic Rock	Rock	Both
'70s & '80s Classic Rock	Rock	Both
Deep Classic Rock	Rock	Both
Jam Bands	Rock	Both
Adult Album Rock	Rock	Both
Classic Hard Rock	Rock	Both
New Hard Rock	Rock	Both
New Alternative	Rock	Both
Classic Alternative	Rock	Both
'80s Hair Bands	Rock	Both
'90s Alternative/Grunge	Rock	Both
Little Steven's Garage Rock	Rock	Both
Indie/College/Unsigned Rock	Rock	Both
Heavy Metal	Rock	Both
Action Sports/Punk/Ska	Rock	Both
Comfortably Electric	Rock	Both

Programming	Genre	Sirius/XM/Both
Acoustic Singer-Songwriters	Rock	Both
Escape to Margaritaville	Rock	Both
Grateful Dead 24/7	Rock	Both
Canadian Adult Alternative Music	Rock	Sirius
Canadian Indie	Rock	Sirius
Pure Classic Rock Variety	Rock w/Commercials	XM
Smooth Electronic	Dance & Electronic	Both
Dance Hits	Dance & Electronic	Both
Trance/Progressive	Dance & Electronic	Both
Disco/Classic Dance	Dance & Electronic	Both
Old Skool Rap	Hip-Hop/R&B	Both
Old Skool R&B	Hip-Hop/R&B	XM (<i>available on Sirius Internet Radio</i>)
Hip-Hop Hits	Hip-Hop/R&B	Both
Eminem's Uncut Hip-Hop Channel	Hip-Hop/R&B	Both
R&B Hits	Hip-Hop/R&B	Both
Adult R&B Hits	Hip-Hop/R&B	Both
Classic Soul/Motown	Hip-Hop/R&B	Both
Hot Hits & Jamz	Hip-Hop/R&B w/ Commercials	XM
New Country	Country	Both
'80s & '90s Country	Country	Both
'60s and '70s Country/The Grand Ole Opry	Country	Both
Rockin' Country/Americana	Country	Both
Willie Nelson's Traditional Country	Country	Both
Bluegrass	Country	Both
Folk	Country	XM (<i>available on Sirius Internet Radio</i>)
Great Country Variety	Country w/Commercials	XM
Christian Pop & Rock	Christian	Both
Southern Gospel	Christian	Both
Gospel	Christian	Both
Smooth/Contemporary Jazz	Jazz, Blues & Standards	Both
Traditional Jazz	Jazz, Blues & Standards	Both
New Age	Jazz, Blues & Standards	Both
B.B. King's Blues	Jazz, Blues & Standards	Both
Sinatra/American Standards	Jazz, Blues & Standards	Both

Programming	Genre	Sirius/XM/Both
Show Tunes	Jazz, Blues & Standards	Both
Movie Soundtracks	Jazz, Blues & Standards	XM (<i>available on Sirius Internet Radio</i>)
Opera/Classical Vocals	Classical	Both
Classical Pops	Classical	Both
Traditional Classical	Classical	Both
Tropical Latin Music	Latin & World	Both
Reggae	Latin & World	Both
Canadian Pop Hits (<i>Energie 2</i>)	Latin & World	Sirius
Canadian Soft Rock (<i>French</i>)	Latin & World	Sirius
Canadian Pop & Rock (<i>Bande a Part</i>)	Latin & World	Sirius
Emerging Artists	Latin & World	XM
Canadian Pop Hits (<i>Air Musique</i>)	Latin & World	XM
New & Emerging Artists (<i>French</i>)	Latin & World	XM
India's Hottest Hit Mix	Latin & World w/Commercials	XM
SPORTS		
<i>ESPN's Sports Talk Channel</i>		Both
SportsCenter, College Gameday & More (<i>ESPN All Access</i>)		Sirius
College Sports Talk/Dan Patrick		Both
Mad Dog Radio with Chris Russo		Both
24/7 NFL Talk		Sirius (<i>available on XM with "Best of Sirius"</i>)
European Soccer & More Including Formula 1 (<i>Play-by-Play 1</i>)*		Sirius (<i>Play by Play programming available on XM with "Best of Sirius" – 15 channels</i>)
European Soccer, Formula 1 & More (<i>Play-by-Play 2</i>)*		Sirius (<i>Play by Play programming available on XM with "Best of Sirius" – 15 channels</i>)
Sporting News Radio		Sirius
24/7 NASCAR Talk		Sirius (<i>available on XM with "Best of Sirius"</i>)
Spanish Sports Talk & Play-by-Play (<i>ESPN Deportes</i>)		Sirius (<i>available on XM Internet Radio</i>)

* Possible occasional programming overlap between "Play-by-Play 1" and "Play-by-Play 2" on Sirius and "Sports Play-by-Play" channels on XM

Programming	Genre	Sirius/XM/Both
Sports Radio French Language		Sirius
Sports Express from Canada		Sirius
Sports Talk with a Canadian Edge		Sirius
ESPN Xtra		XM
24 Hour Live Sports Talk (<i>Fox</i>)		XM
IndyCar Series Racing		XM (<i>available on Sirius with "Best of XM"</i>)
The PGA TOUR Network/Live Coverage & Golf Talk		XM (<i>available on Sirius with "Best of XM"</i>)
Sports en Espanol/Mexican League Soccer		XM
Play-by-Play en Espanol (<i>MLB</i>)		XM
MLB Home Plate 24/7 MLB News & Talk		XM (<i>available on Sirius with "Best of XM"</i>)
14 Major League Baseball Play-by-Play Channels (<i>14 channels</i>)		XM
ACC Football/Basketball (<i>3 channels</i>)		XM
Pac-10 Football/Basketball (<i>3 Channels</i>)		XM
Big Ten Football/Basketball (<i>3 Channels</i>)		XM
SEC Football/Basketball (<i>3 Channels</i>)		XM
Big East Football/Basketball		XM
Big 12 Football/Basketball		XM
Sports Play-by-Play* (<i>7 Channels</i>)		XM (<i>Play by Play programming available on Sirius with "Best of XM" – 10 channels</i>)
24/7 Hockey Talk & Play-by-Play		XM (<i>available on Sirius with "Best of XM"</i>)
NHL Hockey Play-by-Play (<i>5 Channels</i>)		XM
NBA Play-by-Play (<i>5 Channels</i>)		XM
Sports, Schedules, Scores & Updates		XM
Sports Schedules (<i>French</i>)		XM
Talk, News & NPR		
Fair and Balanced News (<i>Fox News</i>)		Both
Politics of the United States		Both
First in Business Worldwide (<i>CNBC</i>)		Both
The World Leader in Business News (<i>Bloomberg News</i>)		Both
The Worldwide Leader in News (<i>CNN</i>)		Both
News & Views (<i>CNN HLN</i>)		Both
NPR News & Conversation (<i>NPR Now</i>)		Both
NPR News & Talk (<i>NPR Talk</i>)		Sirius

Programming	Genre	Sirius/XM/Both
National/International News		Sirius
News from Around the World		Both
BBC World Service News		Both
Talk Radio from FOX News		Both
Liberal Talk [†]		Sirius (<i>available on XM Internet Radio</i>)
Conservative Talk [*]		Sirius (<i>available on XM Internet Radio</i>)
All-News Spanish Language (<i>CNN</i>)		Both
Current Affairs French Language		Sirius
International Talk French Language		Sirius
C-SPAN Radio		XM (<i>available on Sirius Internet Radio</i>)
The Bob Edwards Show, A Prairie Home Companion		XM (<i>available on Sirius with "Best of XM"</i>)
Public Radio Exchange		XM (<i>available on Sirius Internet Radio</i>)
Extreme Talk		XM
Live Talk Programming		XM
America's Talk		XM
Asian Radio		XM
XM Public Radio		XM
24/7 News & Talk for Physicians		XM
The Place for Politics (<i>MSNBC</i>)		XM (<i>available on Sirius Internet Radio</i>)
Progressive Talk [†]		XM (<i>available on Sirius Internet Radio</i>)
Conservative Talk [*]		XM (<i>available on Sirius Internet Radio</i>)
African-American Talk		XM (<i>available on Sirius Internet Radio</i>)
Talk Radio for Men (<i>French</i>)		XM
News & Information (<i>English</i>)		XM
News & Information (<i>French</i>)		XM
Entertainment		
Howard 100 (<i>Howard Stern</i>)		Sirius (<i>available on XM with "Best of Sirius"</i>)

[†] Substantial programming overlap between "Liberal Talk" on Sirius and "Progressive Talk" on XM

^{*} Substantial programming overlap between "Conservative Talk" on Sirius and "Conservative Talk" on XM

Programming	Genre	Sirius/XM/Both
Howard 101 (<i>Howard Stern</i>)		Sirius (<i>available on XM with "Best of Sirius"</i>)
Barbara Walters, Deepak Chopra and More		Both
Jay Thomas and More		Both
Gay & Lesbian Radio		Both
Funs, Fearless, Female (<i>Cosmo</i>)		Both
How-To For Living (<i>Martha Stewart</i>)		Sirius (<i>available on XM with "Best of Sirius"</i>)
Listen to Books		Both
Old-Time Radio		Both
Just for Truckers		Both
Smart & Sexy Adult Radio (<i>Playboy</i>)		Sirius (<i>available on XM with "Best of Sirius"</i>)
Live Your Best Life (<i>Oprah</i>)		XM (<i>available on Sirius with "Best of XM"</i>)
Family & Health		
Powered by NYU Langone Medical Center		Both
The Music Destination for Kids & Families (<i>Disney</i>)		Both
Songs & Fun for Younger Kids		Both
Comedy		
Blue Collar Comedy		Both
Comedy Uncensored		Both
Comedy From Canada		XM
Family Comedy		Both
Presented by Jamie Foxx		Both
The Opie & Anthony Show/The Ron & Fez Show		XM (<i>available on Sirius with "Best of XM"</i>)
Religion		
Now What You'd Expect		Both
EWTN Global Catholic Radio Network		Sirius (<i>available on XM Internet Radio</i>)
FamilyNet Christian Talk		Sirius (<i>available on XM Internet Radio</i>)
Christian Talk		XM (<i>available on Sirius Internet Radio</i>)
Traffic & Weather		
Canada Weather		Sirius

Programming	Genre	Sirius/XM/Both
Weather Emergency (<i>Weather Channel Radio Network</i>)		Both
Local		
Boston & Philadelphia		Both
New York		Both
Atlanta & Miami		Both
Dallas & Houston		Both
Washington DC & Baltimore		Both
Pittsburgh & Minneapolis		XM
Detroit & Las Vegas		Both
Chicago & St. Louis		Both
Tampa & Orlando		Both
Phoenix & San Diego		Both
San Francisco & Seattle		Both
Los Angeles		Both
Internet Radio		
NPR	Talk/News/NPR	Both Internet Radio
F1, Notre Dame PXP, Sports Talk	Sports	Both Internet Radio
Breuer, Jamie Foxx & More	Comedy	Both Internet Radio
Exclusives from Dylan, Petty & More	Music	Both Internet Radio
Latin Pop Hits	Music	Both Internet Radio
Live Music from the Sirius XM Studios	Music	Both Internet Radio
Artist Only/Seasonal Programming	Music	Both Internet Radio
Rosie Radio 24/7	Talk/News/NPR	Both Internet Radio

Usage of Local Independent Internet News Sites – Hartford

<i>Website</i>	<i>Unique Visitors</i> <i>(January 2009-December 2009)</i>	<i>Total Visits</i> <i>(January 2009-December 2009)</i>
www.westportnow.com	212,108	915,618
www.newhavenindependent.org	340,433	692,773
www.cbia.com	113,289	150,937
www.ctlocalpolitics.net	46,986	139,126
www.ctnewsjunkie.com	92,221	128,635
www.myleftnutmeg.com	90,403	122,335
www.ctwatchdog.com	45,606	59,082
www.capitalworkforce.org	46,093	49,761
www.hartfordchamber.org	31,573	34,231
www.ctenvironmentalheadlines.com	22,248	25,529
www.urbancompass.net	19,292	23,717
www.localonlinenews.tv	16,674	23,514
www.enjoyhartford.com	20,815	23,345
www.woodstockctcafe.com	11,477	22,835
www.metrohartford.com	18,858	22,017
www.whchamber.com	13,783	16,394
www.centerandsquare.com	12,008	12,801
www.hellohartford.com	12,218	12,218
www.accesstv.org	4,429	4,429
www.hartfordimc.org	4,001	4,294

Source: Usage estimates based on free site profiles from Compete.com (available at <http://siteanalytics.compete.com>.)

Note: “Unique Visitors” reported above represents the sum of the number of unique visitors each month over a year-long period. Within each month, Compete.com’s count of “unique visitors” includes a person only one time regardless of how many times he or she visits a site in that month. “Total Visits” represents the total number of visits to a site. A “visit” is initiated when a user first enters a site during an internet session and is considered “live” until that user’s interaction with the entire internet session has ceased for 30 minutes. See Compete.com Metric Descriptions at <http://www.compete.com/help/s2>.

**AN ANALYSIS OF THE EFFECT ON DIVERSITY
OF
SEPARATION OF
LOCAL MEDIA COMBINATIONS**

Mark R. Fratrik, Ph. D.

Vice President

February 22, 2010



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**AN ANALYSIS OF THE EFFECT ON DIVERSITY
OF SEPARATION OF LOCAL MEDIA COMBINATIONS**

Executive Summary

A transaction requiring or causing the separation of any of the currently existing local media combinations owned by Tribune Company would not serve, and in fact would be directly adverse to, the public interest objectives of the Federal Communications Commission. Some opponents may argue that the level of diverse and local programming and information would be increased if some or all of these commonly-owned local television and newspaper properties were separated. One key assumption underlying this line of argument is that a viable purchaser would be willing and able to purchase any such property. In light of the unprecedented challenges that both the television and the newspaper industry currently are facing and will continue to face in the near future, however, this assumption is not valid. In fact, given the extensive revenue losses that both the broadcasting and the newspaper industries have experienced and the limited availability of acquisition financing, there are few, if any, prospective buyers of these properties. As shown herein, the present anemic levels of transactions involving local television stations and daily newspapers are astounding given the levels seen in past years.

Furthermore, the synergies inherent in the cross-ownership of Tribune's properties have enabled these combinations to maintain an especially high level of local programming and other local services, even while many other stations and newspapers are cutting back on such offerings. Recent studies have shown, in particular, that the amount of news programming is greater on local television stations that are cross-owned with a local newspaper. Thus, even assuming that a viable purchaser could be found for any particular property, it is unlikely that any such new owner would have the resources to maintain the current level of local and diverse programming and information offered by these outlets. Therefore, it seems clear that the level and quality of local and diverse programming and information is maximized by maintaining the common ownership of these properties.

**AN ANALYSIS OF THE EFFECT ON DIVERSITY
OF SEPARATION OF LOCAL MEDIA COMBINATIONS**

Introduction

This paper considers the question of whether the separation of any of Tribune's existing newspaper/broadcast combinations likely would lead to greater levels of diverse local programming. First, I will provide an analysis of the present state of the local television and newspaper industries and the level of transaction activity in these industries to evaluate the level of interest in acquiring these types of properties in the current marketplace. Reasons for the current and future lack of interest on the part of buyers and investors are then discussed. Next, this paper discusses the significant synergies and cost savings that allow these cross-owned properties to continue to provide local and diverse programming in the face of incredibly challenging economic and industry conditions.

An argument often made by opponents of local newspaper/broadcast cross-ownership is that the quality and diversity of local programming and information offered by such properties would be improved by separate ownership. By having separate owners of these local media properties, it is argued, local communities would benefit as there would be more companies providing more varied programming and information.

Particularly in light of the present and near-future economic and industry conditions facing the broadcast and newspaper sectors, the argument for requiring separate ownership does not hold water. There are very few serious buyers of either local television stations and/or daily newspapers in today's marketplace, and even fewer who could maintain the present levels of diverse local programming and information made possible by the current cross-ownership. Moreover, continued

common ownership of these local media properties will help maintain the synergies and cost benefits that sustain the financial viability of these operations, which in turn, will lead to even higher quality local programming and information over time.

Financial Market Breakdown and Its Impact

Occurring at the same time as the severe drop off in revenue growth for both broadcasters and newspapers has been the complete “drying up” of available financing for companies thinking about acquiring these “traditional” media properties. The marketplace took a significant hit during the third quarter of 2008 with the bankruptcies of some major financial institutions, and the acquisition and resulting financial aid by the federal government of others. These financial institutions, criticized for their speculative loan activity, reacted strongly by reducing the number of loans they issued and tightening loan qualifications for borrowers.

These financial institutions remain very hesitant to loosen their credit qualifications and make loans to businesses. An analysis by the *Wall St. Journal* showed that the total amount of loans by the fifteen largest banks in the U.S. decreased by 2.8% in the second quarter of 2009 alone.¹ These authors concluded that “financial institutions are clamping down on lending to conserve capital as a cushion against mounting loan losses.”²

The lack of available financing is particularly pronounced for broadcast and other media properties. Several financial institutions that have been prominent lenders to acquirers of these types of properties have either cut back or completely left the business of providing new loans to parties

¹ David Enrich and Dan Fitzpatrick, “Loans Shrink as Fear Lingers”, *Wall St. Journal*, July 27, 2009. <http://online.wsj.com/article/SB124865259057482435.html>.

² Id.

interested in purchasing broadcast stations. For example, CIT and Wells Fargo, both historically strong financial supporters of companies acquiring stations, eliminated their entire broadcast lending divisions in 2009.

The lack of adequate financing for acquisitions would make it impossible for most prospective purchasers to acquire television or newspaper properties that might become available for sale because of regulatory fiat. Even if they could secure the necessary financing to make the initial purchase, moreover, most companies would be so financially strapped as a result of the current credit crunch that they almost certainly would find it difficult to maintain the station's or newspaper's current high level of diverse local service.

The Local Television Station Industry

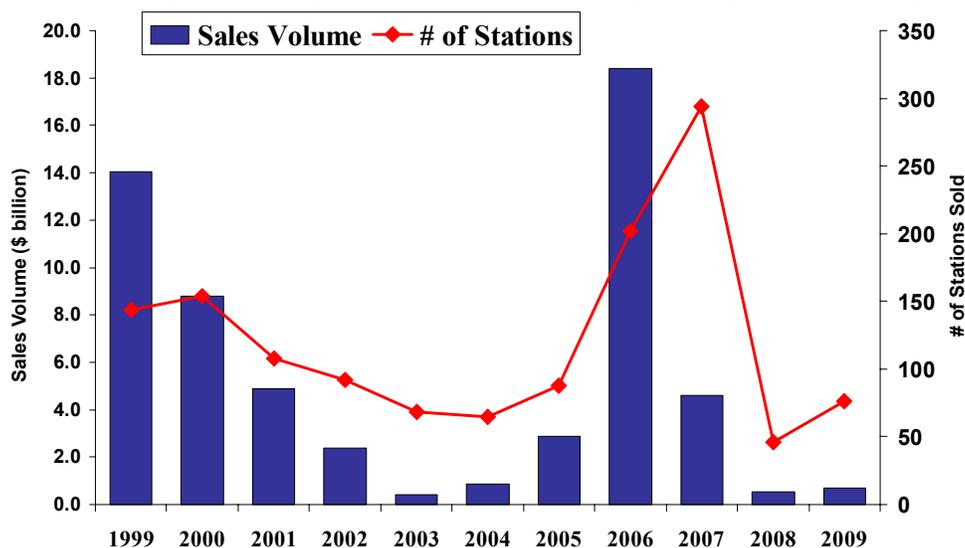
The reasoning behind the argument that diversity will increase as a result of separation of commonly owned local media properties requires, first, that there would be “sufficiently financed buyers” of such properties.³ The recent history of local television station transactions strongly suggests that the existence of such buyers is unlikely, as the television station sales marketplace is completely moribund. This lack of station transaction activity is not surprising given the unfavorable economic and industry conditions facing companies that might otherwise be interested in acquiring these types of properties.

³ What we mean by “sufficiently financed buyers” is buyers that have both enough equity and debt financing to acquire stations. With banks apprehensive about loaning large amounts of money, equity investors need to invest more funds, something they, too, are apprehensive to do.

Total Number of Television Station Transactions

The lack of any significant television station transactions is clearly seen in the recent history of the annual number and total value of television stations sold. Figure 1 shows the number of local television stations sold in the ten most recent calendar years and the total value of those sales. This information is from BIA’s Media Access Pro™ database, which tracks all transactions of commercial and non-commercial radio and television stations.

Figure 1
Television Station Transaction Volume 1999 – 2009



The number of television stations sold in the past few years has been remarkably low.⁴ Except for the big spike in the volume of sales proceeds in 2006 occasioned almost entirely by the Univision network and television stations sale, the total number and total value of television stations sold have been at very low levels.⁵ Even with the preceding low levels, the drop-off in activity in 2008 was dramatic. That year, only 46 local television stations were sold for a total value of around \$531 million, as opposed to 294 stations sold for a total value of \$4.6 billion in 2007, representing an 88.5% decrease in the value of stations sales from the previous year. Notably, even the depressed level of station transactions reported in 2008 is somewhat overstated because the level of activity is driven not by a normal buyer-seller market, but to a large extent, by several large groups that have been forced into bankruptcy proceedings or reorganizations.⁶ In 2009 there were 76 full-power

⁴ Note that in 2003 and 2004 the number of television station transactions were also low. At around that time, the FCC was considering revising all of the local television station ownership regulations. As a result, many potential buyers were “waiting on the sidelines” to see what final rules would emerge and whether they would pass judicial review.

⁵ Figure 1 shows what appears to be a large number of station “sales” in 2007; however, this total includes a substantial number of television stations that were part of restructuring deals that technically were counted as “sales”. These restructuring transactions included Granite Broadcasting, ION Media Networks, and Communications Corporation of America. In total, these three restructuring deals accounted for 91 of the total 294 stations that were “sold” in 2007, according to data compiled in the BIA/Kelsey Group Media Access Pro™ database.

⁶ Included in that total are the four Ohio stations of Public Media Corporation that were being transferred as a part of its reorganization and the nine stations that New World Group, a subsidiary of Pappas Television, is acquiring but temporarily assigning to TTBG LLC per a bankruptcy court-ordered sale. The experience of another company that has recently gone through bankruptcy, Equity Media Holdings, is further evidence of the lack of activity in television station transactions. As part of that bankruptcy proceeding, all of the television stations owned by that company were put up for auction, and while a few of these stations were sold, many more of these Equity Media stations went unsold.

television stations sold for a total value of \$715 million.⁷ Compared to 2007, that is a decrease of 74.1% in the number of stations and 84.5% in the value of those sales. As discussed herein, potential buyers of these properties (whether existing broadcasters or new entrants) generally have been dissuaded from buying by industry conditions and the absence of available financing necessary to acquire stations.

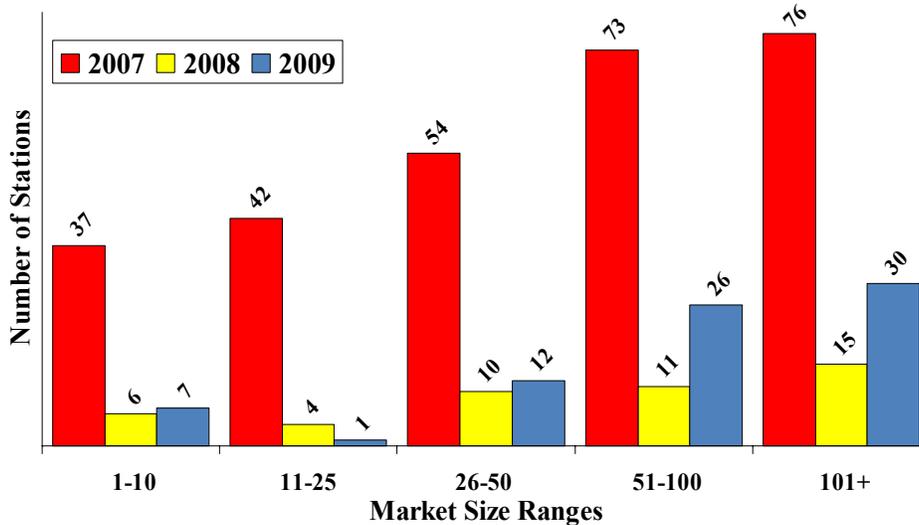
Television Station Transactions By Market Size

The decrease in transaction activity has been even more dramatic when the market sizes of the stations that have been sold are examined. Figure 2 shows the number of full-power television stations that have been sold in the past three years across various market size ranges, also based on data available through Media Access ProTM.⁸

⁷ http://www.bia.com/resources_trends_sold.asp (last visited Feb. 2, 2010) (on file with author); http://www.bia.com/resources_trends_trans.asp (last visited Feb. 2, 2010) (on file with author).

⁸ Figure 2 does not include sales of full-power television stations located outside of areas designated by Nielsen Media Research as television markets, such as Puerto Rico. These station sales are, however, included in the textual discussion above.

Figure 2
Television Station Deals by Rated Market Sizes: 2007 - 2009



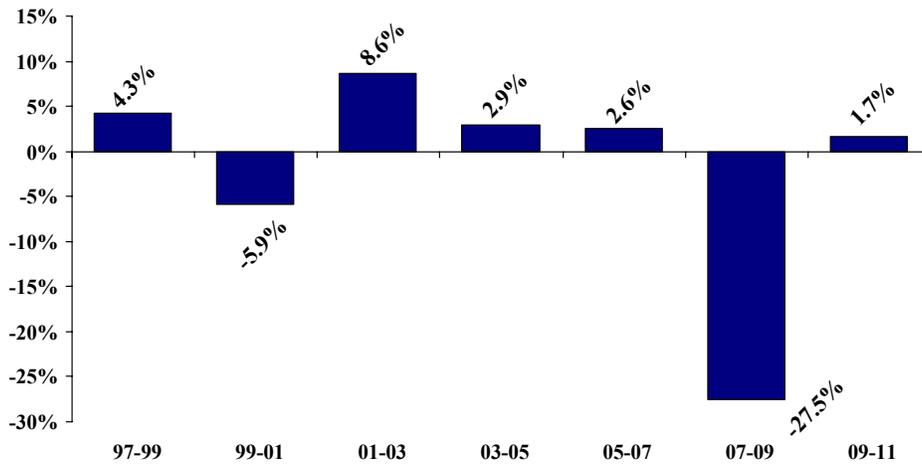
While the drop off in television station activity is widespread, the percentage decreases are most pronounced in the largest two market ranges, markets 1-10 and 11-25. In these ranges, there is an incredible amount of competition both from within the local television market as well as from other media, which makes profitability difficult to achieve, especially in today's very challenging advertising marketplace. Added to that is the difficulty in securing the necessary financing to acquire a station in these market ranges, where stations typically are far more expensive, as will be discussed below.

Outlook for Local Television Station Industry

One significant reason for the lack of television station trading activity is the challenging competitive position in which many local television stations find themselves. Increasing competition from other video sources of programming for audiences (*e.g.*, local cable systems, Internet streaming) coupled with the increasing competition from other local media outlets for

advertising sales has severely crippled the revenues of local television stations. Moreover, the revenue outlook for local television stations is significantly lower than in previous years. To demonstrate this point, Figure 3 shows the two-year growth rates for local television station revenues for the past ten years and the outlook for the next several years. These historical and projected television industry revenues are from BIA’s Media Access Pro™ database. Using the two-year revenue growth rates evens out the impact of political advertising in every even-numbered year and the subsequent lack of that source of revenue in the following odd-numbered year.

Figure 3
Television Station Revenue Two Year
Growth Rates 1997 – 2011



Even before the recent economic downturn, the increases in total television station revenues had been trending downward. The increases from the even-numbered years were less pronounced and the decreases in the odd-numbered years were more significant. Indeed, BIA/Kelsey estimates

that television station revenues were down 22.4% in 2009.⁹ This is largely because, even under favorable economic conditions, local television stations are competing with more and stronger alternative sources of advertising.

That competition was particularly fierce in the most recent years, as the long term movement of advertisers to other media was exacerbated by the impact of lower expenditures by advertisers. National and local advertisers react and react quickly to any potential downturn in the economy. When advertisers project that customers will not be spending at previous levels, due to unemployment increases or an overall decrease in consumer confidence, they pull back their spending significantly. According to the Television Bureau of Advertising, automotive manufacturer spending at local television stations decreased nearly 50% in the third quarter of 2009 from the previous year's level, and car and truck dealers' advertising expenditures decreased 33%.¹⁰ The decrease in these major advertiser categories, in addition to the declines in many other categories of advertising, was so substantial that it far exceeded the significant increase in political advertising in 2008, resulting in a net decline.¹¹ Furthermore, advertising levels, especially in the automotive sector, most likely will not return to previous levels, even when the overall economy recovers, because there are fewer brands of cars being sold and fewer car dealerships in the U.S. than there were in the past.

Potential purchasers of local television stations recognize these industry changes and are very hesitant to invest in station acquisitions. Any local media properties subject to government-dictated

⁹ <http://www.bia.com/pr091222-IITV4.asp>.

¹⁰ http://www.tvb.org/nav/build_frameset.aspx. These categories of advertisers have historically been the largest for local television stations.

¹¹ The campaigns of political candidates spent over \$700 million in 2008. Id.

sales would, therefore, find little if any interest, especially by well funded and experienced operators.

Bankruptcies in the Television Station Industry

Due to the poor industry conditions facing local television stations and the lack of available financing for potential acquirers, several prominent broadcast companies have had to resort to bankruptcy protection to maintain their operations.¹² Prior to the last several years, very few broadcast companies ever had to resort to that option. Historically, under-performing stations were sold to new owners who had new business plans, and sufficient debt and equity funding, to turn those stations around. In today's marketplace, however, many stations are not being sold in time for their owners (sellers) to meet restrictive debt covenants, and owners therefore have sought protection under the bankruptcy laws.

The Local Daily Newspaper Industry

Regulatory action requiring the sale of a commonly owned local daily newspaper would also be counterproductive given the present and near term conditions facing the newspaper industry. Even more than the local television industry, local daily newspapers have been dramatically affected by the onslaught of new media competition. Furthermore, the current conditions and marketplace evidence strongly suggest that these trends will continue into the foreseeable future. As a result of the challenges facing newspapers and the lack of available financing, sales of newspaper operations have slowed down considerably, if not halted completely. In fact, recently several prominent daily

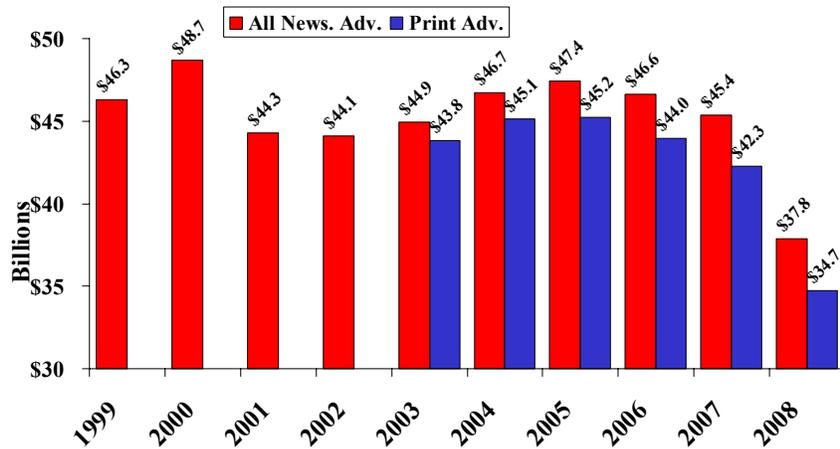
¹² These companies include Young Broadcasting, Pappas Telecasting, Communications Corporation of America, and ION Media Networks, as well as Tribune Company.

newspapers have actually ceased operating due to the lack of any interest from potential buyers, and at least five large newspaper companies, in addition to Tribune, have sought bankruptcy protection.

Newspaper Industry Overview

To get a sense of the dramatic impact new media have had on the local newspaper industry and why there is little or no interest in acquiring newspaper properties, one only has to look at the recent history of daily newspaper advertising revenues. Figure 4 shows the annual advertising revenues for the newspaper industry as reported by the Newspaper Association of America. For the past ten years, both the total amount of advertising expenditures and print only¹³ advertising expenditures are shown.

Figure 4
Annual Newspaper Advertising Expenditures: 1999-2008



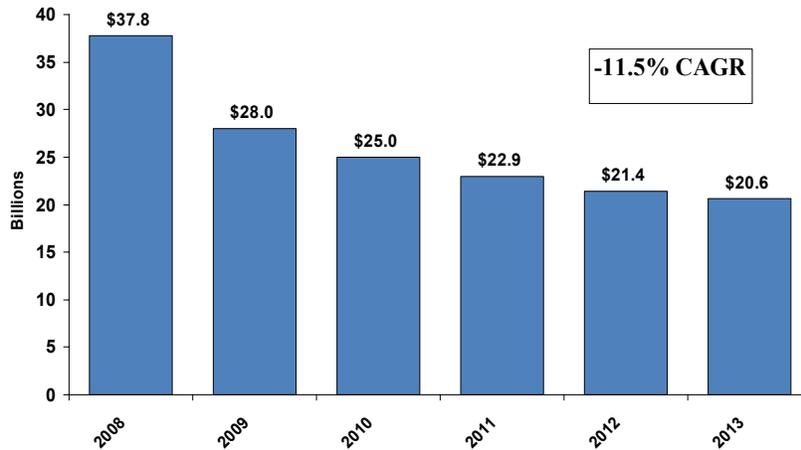
Source: Newspaper Association of America, 2009

¹³ The online advertising expenditures were subtracted from the total amount to arrive at the print only figures. The online expenditures estimates were separately reported starting in 2003.

Before the economic downturn in 2008, the newspaper industry already was experiencing decreases in total revenues, even after taking into account the positive impact of online operations. That decrease was even more severe in 2008, with total newspaper advertising decreasing by 16.6% and the print component of advertising decreasing by 17.8%. In the first three quarters of 2009, these decreases accelerated. Total newspaper advertising for these three quarters fell to \$19.9 billion, a drop of 28.4% from the same period in 2008. The print component of advertising dropped to \$17.9 billion, a decline of 29.6% compared to the first two quarters of 2008.

With the competitive forces facing newspapers, the negative trend in total advertising revenues almost certainly will continue. As part of its first comprehensive local media advertising revenues forecast, BIA/Kelsey projected the near term outlook for twelve local media, including the newspaper industry. As shown by Figure 5 below, the projection for newspaper advertising revenues shows a negative 11.5% compounded annual growth rate over the next five years. One reason for this significant and continued negative outlook is that some of the most important categories of newspaper advertising – real estate, automotive, retail and help-wanted – continue to lag, with advertisers in several of these categories moving to new media options. Competition from local Internet sites, out-of-home advertising opportunities, as well as several other new media will continue to cut into the competitive position of local newspapers, leading to a substantial decrease in revenues. Potential acquirers recognize the dismal outlook for newspapers and are dissuaded from seriously considering acquisitions.

Figure 5
2008-2013 Newspaper Advertising Revenues



Source: BIA/Kelsey Media Ad View projections, 2009.

Newspapers Closing Down or Cutting Back

In light of this recent history and the prospects of continued negative revenue growth, several newspapers, most noticeably the *Seattle Post-Intelligencer*, have shut down their print editions after long histories of serving their communities, and *The Rocky Mountain News* went out of business entirely. Although both papers were available for purchase, no viable prospective buyer viewed the acquisition of these newspapers as a worthwhile investment. Other newspapers, such as the *Detroit Free Press*, have curtailed their production to fewer days per week as a cost saving measure.

Level of Newspaper Transactions

The lack of viable newspaper buyers is further evidenced by the small number of papers that have been sold recently. According to Dirks, Van Essen & Murray, a leading broker of newspapers,

just 31 daily newspapers were sold in 2009 for only \$183.7 million.¹⁴ This compares to an average of nearly 68 daily newspapers sold per year for a total of \$6.977 billion over the previous five years.¹⁵ The 2009 figures represent decreases of 54.4% in the number of newspaper sales and 97.4% in the total value of transactions as compared to the averages for the previous five years. As shown by this data, prospective buyers are not optimistic about the future of local newspapers, nor are they able to secure the necessary financing to acquire these properties.

Benefits of Continued Joint Operations

While the outlook is dismal for a well-funded company acquiring either a local television station or local daily newspaper, there are clear benefits in allowing such properties to remain commonly owned at the local level. The poor financial outlook for the newspaper and local television industries requires that these properties maximize synergies and cost efficiencies in order to remain competitive and provide diverse local programming and information. These opportunities for synergies and cost efficiencies are pronounced in cross-owned local television station and daily newspaper operations. Administrative offices can be combined, cross promotion of the different properties can be effectively managed, and news staffs can collaborate to ensure that all of the market's news is covered.

Recent studies sponsored by the Federal Communications Commission provide strong support for the view that more and better news will be provided by local television stations that also own a local daily newspaper in the same market. One such study measured the amount of news

¹⁴ See Declaration of Phillip W. Murray (Appendix A hereto).

¹⁵ See *id.*

provided by all full power television stations in the years 2002-2005.¹⁶ After controlling for many station and market specific factors, the study concluded that, “TV-newspaper cross-ownership is associated with a large increase in the production of news of 18 minutes per day (11% increase), which was statistically significant.”¹⁷

Another study examining the effects of cross-ownership on the political slant of television news also found that cross-owned television stations provide quantitatively more news coverage.¹⁸ This study analyzed the time devoted to news in general, local news, and state and local political news. The author concludes,

The within-market comparison reveals that cross-owned newspaper/television combinations devote more time to news, as well as several categories of local news. In particular, cross-owned stations contain on average 1-2 minutes more news coverage overall, or 4%-8% more than the average for non-cross-owned stations (regardless of whether sports and weather segments are included in this comparison). Further, on average, cross-owned stations also broadcast 24%-27% more coverage of state and local politics and provide about 25% more candidate coverage, candidate speaking time and poll coverage (although the latter effects are not precisely estimated).¹⁹

Conclusion

Increased diverse local news and informational programming is a goal long sought by the Federal Communications Commission. The argument that having more owners of local media

¹⁶ Daniel Shiman, “The Impact of Ownership Structure on Television Stations’ News and Public Affairs Programming,” July 24, 2007, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A5.pdf.

¹⁷ Id., p. I-22.

¹⁸ Jeffrey Milyo, “The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News,” September 2007, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A7.pdf.

¹⁹ Id., p. 29.

properties would lead to such an increase has often been advanced, with some contending that dismantling existing cross-ownerships would also lead to this result. Whatever merit such conclusions might have had in “boom” times for traditional media, the present state of the local newspaper and television industries is so grim that there are few, if any, prospective buyers for these properties. An added challenge to prospective buyers is the very limited financing available for acquisitions, especially for acquisitions in the media industries. Recent auctions of television stations that were unsuccessful in soliciting buyers provide further evidence of the lack of buyers.

In contrast to the negative prospects even for strong companies purchasing these properties is the simple fact that commonly owned media outlets benefit from a number of synergies and cost savings, leading to more diverse local programming and information. Recent studies have clearly shown that these commonly owned television stations provide more local news than similarly situated non-cross-owned stations. Therefore, the level and quality of diverse local programming and information is maximized not by regulatory intervention to separate outlets, but by allowing continued common ownership of local broadcast and newspaper properties.

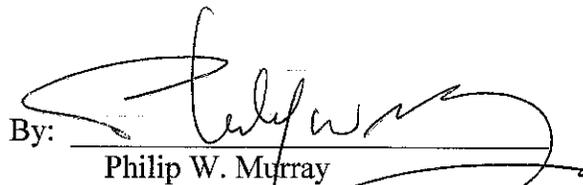
DECLARATION OF PHILIP W. MURRAY

I, Philip W. Murray, do hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. I am Executive Vice President of Dirks, Van Essen & Murray, the leading brokerage firm in the U.S. newspaper industry, which specializes in assisting companies in the sale and acquisition of daily newspapers and has established itself as the newspaper industry's top authority on transactions and valuations. I have been with Dirks, Van Essen & Murray since 1996. Prior to that, I had eleven years of experience as a reporter and editor for daily newspapers in Virginia and Pennsylvania. I earned a master's degree in business administration from the University of Virginia's Darden School and a B.A. in journalism from Washington and Lee University.

2. According to our newspaper market data, there were 31 daily newspaper acquisitions in 2009. The 31 dailies acquired in 2009 were part of 16 transactions totaling \$183.7 million. By comparison, there was an average of nearly 68 daily newspapers sold per year for a total of \$6.977 billion in each of the previous five years, as calculated from the following data:

2008: 16 dailies totaling \$ 0.883 billion;
2007: 91 dailies totaling \$ 20.042 billion;
2006: 76 dailies totaling \$ 9.9606 billion;
2005: 111 dailies totaling \$ 3.091 billion;
2004: 44 dailies totaling \$ 0.9081 billion.

By: 
Philip W. Murray
Executive Vice President
Dirks, Van Essen & Murray

Executed on this 18th day of February, 2010 at Santa Fe, New Mexico