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Sinclair Broadcast Group Acquisition of Tribune Media: Competitive and Regulatory Issues

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Summary

On May 8, 2017, Sinclair Broadcast Group Inc. announced that it agreed to acquire the Tribune Media Company for $6.6 billion, including $3.9 billion for Tribune's stock, and the assumption of $2.7 billion of Tribune's debt. The transaction, if approved by shareholders and the U.S. government, would make Sinclair the nation's largest television broadcast company, giving it access to a far larger share of U.S. households than any other television broadcaster.

Both the U.S. Department of Justice (DOJ) and the Federal Communications Commission (FCC) must approve Sinclair's transactions before they can close. The DOJ is to review the transaction to ensure that it will not substantially reduce competition. The FCC is to review whether the transaction would (1) violate FCC broadcast media ownership rules and (2) serve the public interest.

The Sinclair-Tribune transaction potentially runs afoul of two FCC rules regarding broadcast ownership:

- local television ownership rules (sometimes referred to as the "duopoly" rules), which limit common ownership of television stations serving the same geographic region; and
- the FCC's national television ownership rules, which cap the reach of a single company's television stations to 39% of U.S. television households.

Recent rule and policy changes determining how the FCC defines ownership and television household reach, however, may allow Sinclair to own and/or operate more Tribune stations than it might otherwise.

- In February 2017, the FCC's Media Bureau rescinded previous guidance that it would closely scrutinize any proposed transactions that included certain types of operational and financial agreements between two separately owned stations.
- In April 2017, the FCC reversed a previous decision to eliminate the "UHF discount," which discounts by half the total number of television viewers reached by UHF stations for the purpose of enforcing its national ownership rule.

Sinclair is the largest producer of local news in the country. If government agencies approve Sinclair's acquisition of Tribune without modifications, the 233 stations that would be owned or operated by Sinclair could reach 72% of the 114.7 million households receiving television over-the-air or via cable or satellite. The two companies own or operate stations in 14 common markets. Current FCC ownership rules address the overlaps in 12 of those 14 markets.

Nevertheless, current FCC rules do not preclude Sinclair from entering into operational and financial agreements with third-party stations in two of those 12 markets: Wilkes-Barre, PA, and Norfolk-Portsmouth-Newport News, VA. The DOJ might preclude such arrangements on antitrust grounds.

The ability of broadcast television stations to produce and distribute local news sets them apart from other electronic media, such as online video distributors, national television networks, and cable and satellite operators. Thus, in addition to the traditional competition analysis that both the DOJ and FCC are to undertake when reviewing the Sinclair-Tribune transaction, the potential scale and scope of Sinclair's news operations will require a public interest review by the FCC.

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Introduction

On May 8, 2017, Sinclair Broadcast Group Inc. announced that it agreed to acquire the Tribune Media Company for $6.6 billion. The transaction, if approved by shareholders and the U.S. government, would make Sinclair the nation's largest television broadcast company, giving it access to a far larger share of U.S. households than any other television broadcaster.[1]

The extent of the combined company's reach is a matter of dispute because, in addition to owning television stations, Sinclair is a party to numerous agreements to share services with other station owners in markets where Sinclair owns stations, as well as in two markets where it does not own stations. In evaluating the proposed transaction, federal authorities are likely to consider whether these shared services agreements might give Sinclair undue power over the rates charged television advertisers, the flow of information to television viewers, and the fees paid by cable and direct broadcast satellite companies to retransmit programming to their subscribers.

This report provides background on the market structure and economic situation of the U.S. television industry. It then discusses the specific matters the Federal Communications Commission (FCC) and the Antitrust Division of the U.S. Department of Justice (DOJ) must examine in reviewing Sinclair's proposal to purchase Tribune. This report includes maps showing the television markets affected by the proposed transaction, detailed information about joint agreements to which Sinclair and Tribune are parties, and a chronology of key FCC actions related to broadcast station ownership that set the stage for Sinclair's acquisition offer.

Background of the Transaction

Sinclair Broadcast Group is currently one of the largest broadcast television groups in the United States. Sinclair reported more than $2.7 billion in total revenues in 2016.[2] As of June 2017, Sinclair owned and/or operated 173 television stations in 81 local television markets.[3] In addition, Sinclair owns four radio stations, two broadcast networks (TBD and Comet), and the Tennis Channel cable network. Sinclair is also the largest producer of local news in the country. For example, Sinclair's *Connect to Congress* initiative provides Sinclair's local television news anchors the ability to interview Members of Congress remotely via Sinclair's news bureau in Washington, DC.[4]

On June 30, 2017, the FCC's Media Bureau, acting under delegated authority from Chairman Ajit Pai, approved Sinclair's acquisition of 14 stations in eight television markets from Bonten Media Group.[5] As part of the transaction, Sinclair agreed to take over five agreements under which Bonten shares services with four stations it does not own. As of the publication date of this report,

[1] Sinclair Broadcast Group Inc., "Sinclair Broadcast Group to Acquire Tribune Media Company for Approximately $3.9 Billion," press release, May 8, 2017.

[2] Sinclair Broadcast Group Inc., *2016 Annual Report*, p. 8, http://sbgi.net/wp-content/uploads/investor-relations/Annual-Reports//sbgi-2016.pdf.

[3] Sinclair Broadcast Group Inc., "About," http://sbgi.net/#About.

[4] Sinclair Broadcast Group Inc., FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, Attachment 15, p. 3, https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101759797&formid=315&fac_num=22201 (Sinclair-Tribune FCC Application).

[5] Federal Communications Commission, "Application for Consent to Transfer Control of License and Request for Continued Satellite Authority, DA 17-638," June 30, 2017, http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0630/DA-17-638A1.pdf.

the Bonten transaction was awaiting approval of federal antitrust authorities.[6] If it is completed without divestitures, Sinclair would own 187 television broadcast stations in 89 local markets, and would be a party to 60 shared services agreements with stations it does not own.

Tribune Media owns or operates 42 broadcast television stations, the cable network WGN America, the radio station WGN (AM) in Chicago, and Los Angeles-based Tribune Studios, which produces original programming for Tribune's stations and cable network.[7] In August 2014, Tribune Media spun off its publishing business, including several daily newspapers, into a separate company.[8]

Broadcast television stations such as those owned by Sinclair and Tribune have two primary sources of revenue. They sell advertising, charging rates based on the number and type of viewers who watch their programs. They also may charge cable and satellite operators—together referred to in statute as *multichannel video program distributors* (MVPDs)—for the right to retransmit the stations' signals to the operators' subscribers.[9] The research firm Kagan estimates that in 2016, U.S. broadcast stations collectively earned about $30.6 billion in revenues, with 67% coming from advertising and 26% from retransmission consent.[10]

Television broadcasters are part of a complex television industry ecosystem (see **Figure 1**) in which the various participants may simultaneously be competitors, suppliers, customers, and business partners. Many television broadcasters have sought greater scale through mergers, acquisitions, and joint agreements, as greater scale may provide leverage in dealing with other industry participants. For example

- Stations sell air time to both local and national advertisers. In the local market, control of multiple stations may enable a broadcaster to command higher advertising rates than competitors. In the national market, a firm owning stations in many local markets may be better positioned to bargain with large advertisers such as automobile manufacturers and retail chains.
- Stations may purchase rights to programming from television and movie studios and sports leagues. A firm owning many stations may have greater bargaining power with respect to program owners than a firm with few stations.
- Consolidation among MVPDs has left a relatively small number of cable and satellite operators serving customers nationwide. This has encouraged consolidation among broadcasters, who fear that the MVPDs' greater size will allow them to bargain for lower retransmission consent fees. For example, during retransmission consent negotiations with DISH, a satellite operator, in August

[6] Federal Trade Commission, "Early Termination Notices," https://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notices?combine=Bonten&field_date_value%5Bvalue%5D%5Bdate%5D=&date_filter%5Bmin%5D%5Bdate%5D=&date_filter%5Bmax%5D%5Bdate%5D=&=Apply.

[7] Tribune Media, "About Tribune Media," http://www.tribunemedia.com/about-tribune-media/.

[8] Tribune Media Company, "Tribune Media Company Completes Spin-Off of Its Publishing Business," press release, August 4, 2014, http://investors.tribunemedia.com/2014-08-04-Tribune-Media-Company-Completes-Spin-Off-of-Its-Publishing-Business.

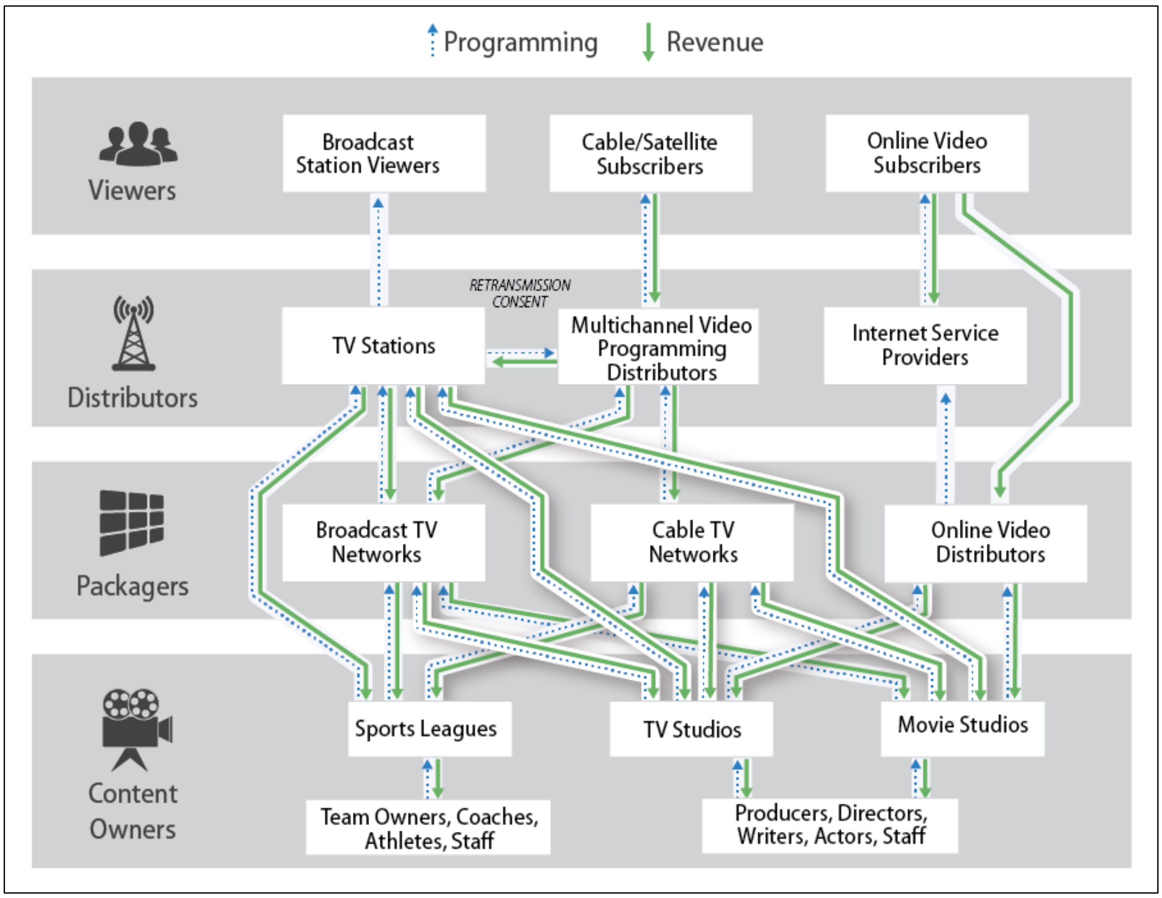
[9] Federal Communications Commission, "Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report," 32 *FCC Record* 615-616, January 17, 2017 (FCC 18th Video Competition Report). For additional background information about policy and regulatory framework of retransmission consent negotiations, see CRS Report R44473, *What's on Television? The Intersection of Communications and Copyright Policies*, by (name redacted) .

[10] Justin Nielson, "The Complete Picture of US Station Industry Revenues, 2006-2023," *Kagan*, June 23, 2017. The remaining 7% of revenue comes from selling advertising on stations' websites.

> 2015 Sinclair briefly withheld permission for DISH to retransmit its broadcast signals in 79 different markets in 36 states and Washington, DC. For DISH, losing access to Sinclair's stations risked putting it at a disadvantage against competing cable and satellite operators that were able to retransmit Sinclair's programming during the blackout.[11]

At the same time, television broadcasters are facing an erosion of their markets as increasing numbers of viewers watch video programming through online video subscription services such as Netflix, Hulu, or Amazon Prime, rather than subscribing to MVPDs or receiving stations' broadcasts over the air. This potential loss of viewership affects broadcast television stations' advertising revenue, which is based on the number of and demographics of people viewing the stations' programming, and retransmission consent revenue, which is partly based on the number of each MVPD's subscribers.

Figure 1. TV Industry Snapshot



Source: CRS.

Note: Many companies fall into multiple categories or have multiple operations within a category.

[11] Todd Spangler, "Dish Loses 129 Sinclair Stations in Biggest TV Blackout Ever," *Variety*, August 25, 2015, http://variety.com/2015/biz/news/dish-sinclair-tv-blackout-1201578634/.

Recent FCC Actions Enabling Merger

In the three months prior to Sinclair's announcement of its agreement to purchase Tribune, the FCC ended or reversed several previous policies that might otherwise have prevented the merger from taking place. One, related to the broadcast incentive auction, was procedural. The other two, related to how the FCC attributes broadcast television station ownership, were reversals of policies established under former FCC Chairman Tom Wheeler.

End of Incentive Auction "Quiet Period"

In 2016, the FCC began to administer an auction in which broadcast television station licensees could submit voluntary bids to relinquish or modify their spectrum usage rights in exchange for a portion of the auction proceeds.[12] Starting January 12, 2016, after stations indicated to the FCC whether or not they would participate in the auction, they were subject to a "quiet period" during which they could not communicate their bidding strategies with each other.[13] This barred station owners from negotiating transactions or submitting them to the FCC.[14] After the auction ended on March 31, 2017, the FCC lifted the quiet period, and broadcast stations were again free to negotiate mergers and acquisitions.[15]

Rescission of Media Bureau's Sidecar Policy Statement

Broadcast stations that outsource management to other stations are known as "sidecars."[16] In March 2014, the FCC's Media Bureau issued a public notice stating that it will closely scrutinize any proposed transaction that includes "sidecar" agreements in which two (or more) broadcast stations in the same market enter into an arrangement to share facilities, employees, and/or services, or to jointly acquire programming or sell advertising *and* enter into an option, right of first refusal, put/call arrangement, or other similar contingent interest, or a loan guarantee.17 In February 2017, the FCC's Media Bureau rescinded this guidance.[18]

The cancellation of this guidance reduced the level of scrutiny the FCC will apply to transactions such as Sinclair's purchases of Bonten and Tribune Media. As described in **Table A-1**, Sinclair, Bonten, and Tribune Media all have agreements with third parties to manage those parties' broadcast television stations.

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[12] Congress provided the FCC with the authority to conduct the incentive auction in the Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, §§6401-05.

[13] Monty Tayloe, "'Quiet Period' of Uncertainty Ahead for Broadcasters Following Short-Form Deadline," *Communications Daily*, January 8, 2016; 47 C.F.R. §1.2205(b)(1).

[14] Federal Communications Commission, "Public Notice, DA 17-134," 32 *FCC Record* 1109, February 6, 2017.

[15] Howard Buskirk and Monty Tayloe, "Republican Administration, End of Auction Quiet Period, Seen Conducive to Getting Deals Done," *Communications Daily*, April 3, 2017.

[16] Keach Hagey, "Market Share: 'Sidecar' Deals Test Law on TV Station Consolidation," *Wall Street Journal*, October 21, 2013.

[17] Federal Communications Commission, "Broadcast TV Applications Proposed Sharing Arrangements," 29 *FCC Record* 2647, 2648, March 12, 2014.

[18] Federal Communications Commission, "Public Notice, DA 17-130," 32 *FCC Record* 1105, February 3, 2017.

Reinstatement of UHF Discount

The Consolidated Appropriations Act, 2004, P.L. 108-199, directed the FCC to adopt rules that would cap the reach of a single company's television stations at 39% of U.S. television households.[19] In addition, Congress exempted this national ownership cap from the FCC's required review of its media ownership rules every four years.

At the time Congress enacted this law, an FCC rule, originally adopted in 1985, discounted the number of television households reached by stations operating in the Ultra High Frequency (UHF) band by half in measuring a station owner's reach. This adjustment reflected the physical limitations of UHF signals at the time the rule was adopted.[20] However, on June 12, 2009, broadcast television stations completed a transition from analog to digital service pursuant to a statutory mandate.[21] As a result of this switch, UHF stations had a technological advantage relative to VHF stations, and more broadcast television licenses began to operate on these frequencies. By December 2009, 73% of the 1,392 commercial stations operated in the UHF band.[22]

In September 2013, under then-Acting FCC Chairwoman Mignon Clyburn, the FCC proposed eliminating the UHF discount, citing the completed transition to digital broadcasting.[23]

In September 2016, the FCC, under then-Chairman Thomas Wheeler, eliminated the UHF discount effective November 2016.[24] In a dissenting statement, then-Commissioner Ajit Pai contended that the FCC lacked the authority to review the UHF discount without simultaneously reviewing the national audience cap.[25] In April 2017, after Commissioner Pai became chairman, the FCC reinstated the UHF discount.[26] Without this action, Sinclair's proposed purchase of Tribune Media would violate the ownership cap established in 2004.

For more information about the historical developments of these rules, see **Table A-2**.

[19] The FCC relies on estimates of the number of television households by the Nielsen Company.

[20] Federal Communications Commission, "Amendment of Section 73.3555 [formerly Sections 73.35, 73.240 and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Memorandum Opinion and Order," 100 *FCC Reports, 2nd Series*, 74, 92-94, February 1, 1985 (1985 TV Ownership Reconsideration).

[21] 47 U.S.C. §309(j)(14)(A). Full-power analog television service therefore has terminated.

[22] Federal Communications Commission, "Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Fourteenth Report, FCC 12-81," 27 *FCC Record* 8610, July 20, 2012.

[23] Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's National Television Multiple Ownership Rule," 28 *FCC Record* 14324, September 26, 2013.

[24] Federal Communications Commission, "National Television Multiple Ownership Rule, Final Rule, FCC 16-116," 81 *Federal Register* 73035, October 23, 2016.

[25] Federal Communications Commission, "National Television Multiple Ownership Rule, Report and Order, FCC 16-116," 31 *FCC Record* 10213,10247-10248, September 7, 2016 (2016 UHF Discount Order).

[26] Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Order on Reconsideration, FCC 17-40," 32 *FCC Record* 3390, April 21, 2017.

Regulatory Review

Both an antitrust agency (either DOJ or the Federal Trade Commission) and the FCC must approve Sinclair's purchase of Tribune Media before it can close. Although neither antitrust agency has publicly announced its role, reports indicate that DOJ is reviewing the transaction.[27]

Antitrust Concerns

The principal law governing mergers, acquisitions, and joint ventures is Section 7 of the Clayton Antitrust Act of 1914 (15 U.S.C. §18). Under that law, the purpose of DOJ's review is to ensure that Sinclair's acquisition of Tribune Media will not substantially reduce competition. The burden of proof to demonstrate that the proposed transactions might be anticompetitive would rest with DOJ. The agency's options include allowing the deal to go forward, negotiating a consent agreement with Sinclair that includes provisions to maintain competition, or seeking to stop the transaction by requesting a preliminary injunction in federal court.

While the DOJ may disclose information gathered in its review to any duly authorized committee or subcommittee of Congress, it may not disclose the information to the public. Information the DOJ gathers in the course of merger investigations is exempt from Freedom of Information Act disclosure requirements.[28]

Communications Law Concerns

Section 310(d) of the Communications Act of 1934 (47 U.S.C. §310(d)) prohibits the transfer, assignment, or disposition of any license of a broadcast station unless the FCC determines that the public interest, convenience, and necessity will be served.[29] Transactions that present complex legal, economic, or other public interest issues likely to elicit a significant amount of public comment are subject to review by the FCC's commissioners.[30] FCC staff has delegated authority to act on routine transactions, but must refer matters involving novel questions of fact, law, or policy to the full commission for review.[31] The FCC's rules do not stipulate who makes the determination of whether the transactions are routine or present novel questions of law or policy.[32]

Two recent multibillion-dollar transactions involving the transfer of broadcast television station licenses, Gannett Company Inc.'s acquisition of Belo Corporation for $2.2 billion[33] and Nexstar

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[27] Sidney Ember and Michael J. de la Merced, "Sinclair Unveils Tribune Deal, Raising Fears That It Will Be Too Powerful," *New York Times*, May 7, 2017, https://www.nytimes.com/2017/05/08/business/media/sinclair-tribune-media-sale.html.

[28] 15 U.S.C. §18a(h).

[29] Section 310(2) requires that the FCC consider the applications as if the proposed transferee were applying for the licenses directly. 47 U.S.C. §310(d).

[30] Federal Communications Commission, "Overview of the FCC's Review of Significant Transactions," published August 15, 2014, http://www.fcc.gov/guides/review-of-significant-transactions.

[31] 47 C.F.R. §§0.261, 0.283, 0.291, and 0.331.

[32] 47 C.F.R. §§0.283.

[33] Gannett Company Inc., "Gannett Completes Acquisition of Belo," press release, December 13, 2013, http://www.tegna.com/gannett-completes-acquisition-of-belo/print/. In 2015 Gannett, which owned both newspaper and broadcast television stations, spun off its television station operations into a separate company and named the company TEGNA Inc. TEGNA Inc., "Separation of Gannett Into Two Public Companies Completed," press release, June 29, 2015, http://www.tegna.com/separation-of-gannett-into-two-public-companies-completed/print/.

Media Group Inc.'s acquisition of Media General Inc. for $4.1 billion, were both reviewed by the FCC's Media Bureau staff rather than the full commission.[34] Three FCC commissioners subsequently made statements about their desire to have had more input into decisions that were made by agency staff under delegated authority at the time.[35] It is possible that the Media Bureau, rather than FCC commissioners, will review Sinclair's proposed acquisition of Tribune Media.

In reviewing broadcast license transfers, the FCC conducts a three-part test:[36]

1. Would the proposed transactions comply with specific provisions of the Communications Act of 1934, other applicable statutes, and the FCC's rules?
2. If the transactions would not violate statutes or rules, would they result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes?
3. Are there potential public interest benefits from the proposed transaction that would outweigh any potential public interest harms, or vice versa?

The FCC counts as benefits several broad aims of the communications laws, including accelerating private-sector deployment of advanced services, ensuring a diversity of information sources and services to the public, managing spectrum in the public interest, and assessing whether the transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.[37] Benefits must be merger-specific and verifiable. In addition, the benefits must flow to consumers.

The FCC's review differs from that of DOJ in several respects. In contrast to DOJ, the FCC is to consider whether a transaction will enhance, rather than merely preserve, existing competition, and often takes a more expansive view of potential and future competition in analyzing that issue. Furthermore, in the FCC's review, the applicants, rather than the FCC, bear the burden of proving that the proposed transaction serves the public interest.[38]

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[34] Federal Communications Commission, "Application for Consent to Transfer of Control from Shareholders of Belo Corp. to Gannett Co. Inc., Application for Consent to Transfer of Control from Subsidiaries of Belo Corp. to Subsidiaries of Sander Media, LLC and Tucker Operating Co., LLC., DA 13-2423," 28 *FCC Record* 16867, December 20, 2013. Federal Communications Commission, "Application for Consent to Transfer of Control from Subsidiaries of Media General Inc. to Nexstar Media Group, Inc., et. al., DA 17-23," 32 *FCC Record* 183, January 11, 2017 (FCC Nexstar Order).

[35] Federal Communications Commission, "Joint Statement of Commissioners Ajit Pai and Michael O'Rielly on the Abandonment of Consensus-Based Decision-Making at the FCC," press release, December 18, 2014, https://apps.fcc.gov/edocs_public/attachmatch/DOC-331140A1.pdf. In a post on Twitter, FCC Commissioner Clyburn stated that her office was not informed in advance of the Media Bureau's consent to transfer control of Bonten's broadcast television station licenses to Sinclair. Twitter, "Mignon Clyburn," https://twitter.com/mclyburnfcc/status/881895529361408001, posted July 3, 2017.

[36] FCC Nexstar Order, p. 191.

[37] Federal Communications Commission, "Applications of Comcast Corporation, General Electric Company, and NBC Universal Inc. for Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order, FCC 11-4," 26 *FCC Record* 4238, 4248, January 19, 2011.

[38] For more details about the FCC's merger review process and how Members of Congress can express their views to the agency, see CRS Report R44122, *Charter-Time Warner Cable-Bright House Networks Mergers: Overview and Issues*, by (name redacted) .

Related FCC Local Media Ownership Rules

In reviewing the proposed Sinclair-Tribune Media transaction, the FCC is to examine whether it is consistent with the commission's local media ownership rules. The FCC has distinct sets of rules governing ownership of multiple media outlets in a single market. These include, but are not limited to, (1) local radio ownership rules; (2) radio/television cross-ownership rules; and (3) local television ownership rules (known as the television duopoly rules).[39]

The purpose of the local media ownership rules[40] is to promote diversity, localism, and competition by restricting the number of media outlets that a single entity may own or control within a geographic market.[41] The U.S. Supreme Court has supported diversity as a public interest goal, affirming that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public"[42] and "assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment."[43]

Localism addresses whether broadcast stations are responsive to the needs and interests of their communities. In evaluating the extent of competition, the FCC considers whether stations have adequate commercial incentives to invest in diverse news and public affairs programming tailored to serve viewers within their communities.[44] This differs from the competition analysis conducted by antitrust authorities, which primarily considers the prices stations charge advertisers to air commercials during programming, and, in the case of television stations, the prices they charge cable and satellite operators for the retransmission of broadcast programming.[45]

Section 202(h) of the Telecommunications Act of 1996 directs the FCC to review its media ownership rules every four years to determine whether they are "necessary in the public interest as a result of competition," and to "repeal or modify any regulation it determines to be no longer in the public interest."[46] Section 257(b) of the act directs the FCC to promote policies favoring the diversity of media voices and vigorous economic competition.[47]

Local Radio Ownership Rules

The local radio ownership rules limit ownership of radio stations within a single market, as defined by the Nielsen Company. These local radio markets, called "Metros," generally correspond to the metropolitan statistical areas defined by the U.S. government's Office of

[39] For more information about these rules, see CRS Report R43936, *The FCC's Rules and Policies Regarding Media Ownership, Attribution, and Ownership Diversity*, by (name redacted) .

[40] 47 C.F.R. §73.3555.

[41] 2002 Biennial Review, p. 13620.

[42] *Associated Press v. United States*, 326 U.S. 20 (1945).

[43] *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 663 (1994).

[44] Federal Communications Commission, "2014 Quadrennial Regulatory Review, 2010 Quadrennial Regulatory Review, Promoting Diversification of Ownership in the Broadcasting Services, Rules and Policies Concerning the Attribution of Joint Sales Agreements in Local Television Markets, Second Report and Order, FCC 16-107," 31 *FCC Record*, 9864, 9873, August 25, 2016 (2014 Quadrennial Review 2nd R&O).

[45] See, for example, U.S. Department of Justice, "Justice Department Requires Divestitures in Order for Nexstar to Proceed with Media General Acquisition," press release, September 2, 2016, https://www.justice.gov/opa/pr/justice-department-requires-divestitures-order-nexstar-proceed-media-general-acquisition.

[46] P.L. 104-104 §202(h), 257 (47 U.S.C. §303(h)).

[47] P.L. 104-104 §202(h), 257 (47 U.S.C. §257(b)).

Management and Budget (OMB), but are subject to exceptions based on historical industry usage or other considerations at the discretion of Nielsen.[48] In contrast to television markets, radio markets do not include every U.S. county.[49] The rules were most recently reviewed by the FCC in 2016.[50]

Sinclair is the licensee of three radio stations in the Seattle radio market, and has an application pending with the FCC to acquire a fourth radio station.[51] The acquisition of Tribune Media would not affect the Seattle radio market, but it would give Sinclair control of WGN-AM in Chicago. Because Sinclair's ownership of radio stations in both markets would fall within the FCC's limits, the Tribune acquisition would be consistent with the local radio ownership rules.[52]

Radio/Television Cross-Ownership Rules

The radio/television cross-ownership rules limit ownership of broadcast radio and television stations serving the same geographic area. The rules specify conditions regarding the proximity of radio and television stations that trigger the application of the rules, and how to count the number of separately-owned media outlets in a market, including television stations, radio stations, newspapers, and cable systems. The FCC uses broadcast signals to determine when the rules are triggered and a combination of broadcast signals and markets to determine how to count the independent media outlets. In its most recent review of the cross-ownership rules, the FCC concluded the rules promote the diversity of viewpoints.[53]

Under the rules, an entity may own up to four radio stations and two television stations within a television market, as long as 10 independently owned media outlets remain.[54] In Chicago, where Sinclair does not currently own any stations, Sinclair's purchase of Tribune's television and radio station would be consistent with this rule. In Seattle, the radio/television cross-ownership rules would permit Sinclair to acquire a fourth radio station while retaining ownership of two television stations, given that more than 10 independently owned media voices would remain in the market after the merger.[55]

Local Television Ownership Rules

As illustrated in **Figure 2**, in total, there are 14 different markets in which both Sinclair and Tribune own and/or operate broadcast television stations, including two in which the stations concerned are operated but not owned by Tribune. **Figure 3** illustrates the cluster of East Coast

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[48] The Nielsen Company, *Arbitron eBook Reference Guide*, 2009, p. 46, http://www.nielsen.com/content/dam/corporate/us/en/docs/nielsen-audio/guide-to-understanding-and-using.pdf.

[49] Americanradiohistory.com, "Arbitron Reports and Data of Interest," "Metropolitan Survey Area Maps," "2013 Metro Radio Metro Areas Hi-Res," http://www.americanradiohistory.com/Archive-Arbitron/2013_RadioMetroMap_hi-res.pdf.

[50] 2014 Quadrennial Review 2nd R&O, p. 9897.

[51] Lance Venta, "Station Sales Week of 6/23: Sinclair Purchases KOMO-FM," *Radio Insight*, June 22, 2017, https://radioinsight.com/headlines/118516/station-sales-week-623-sinclair-purchases-komo-fm/.

[52] 47 C.F.R. §73.3555(a).

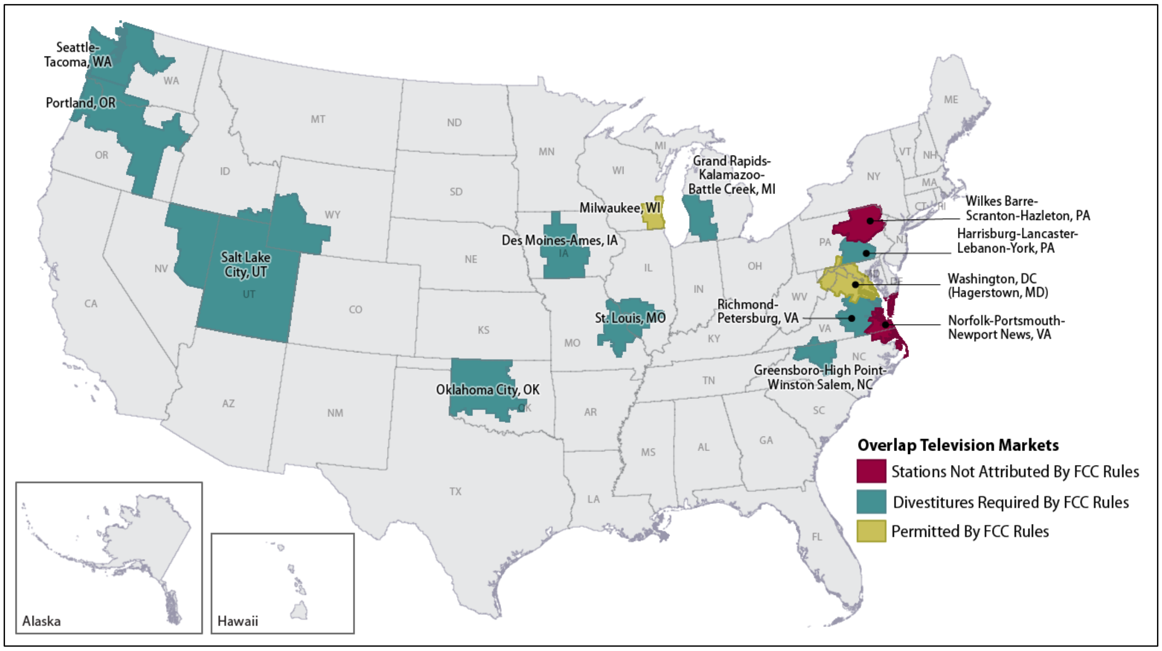
[53] 2014 Quadrennial Review 2nd R&O, p. 9945.

[54] 47 C.F.R. §73.3555(c)(2)(ii).

[55] Sinclair Broadcast Group Inc., FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, Attachment 15, pp. 15-16, https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101759802&formid=315&fac_num=125.

television markets in which both Sinclair and Tribune own and/or operate stations and the congressional districts wholly or partially located within those markets.

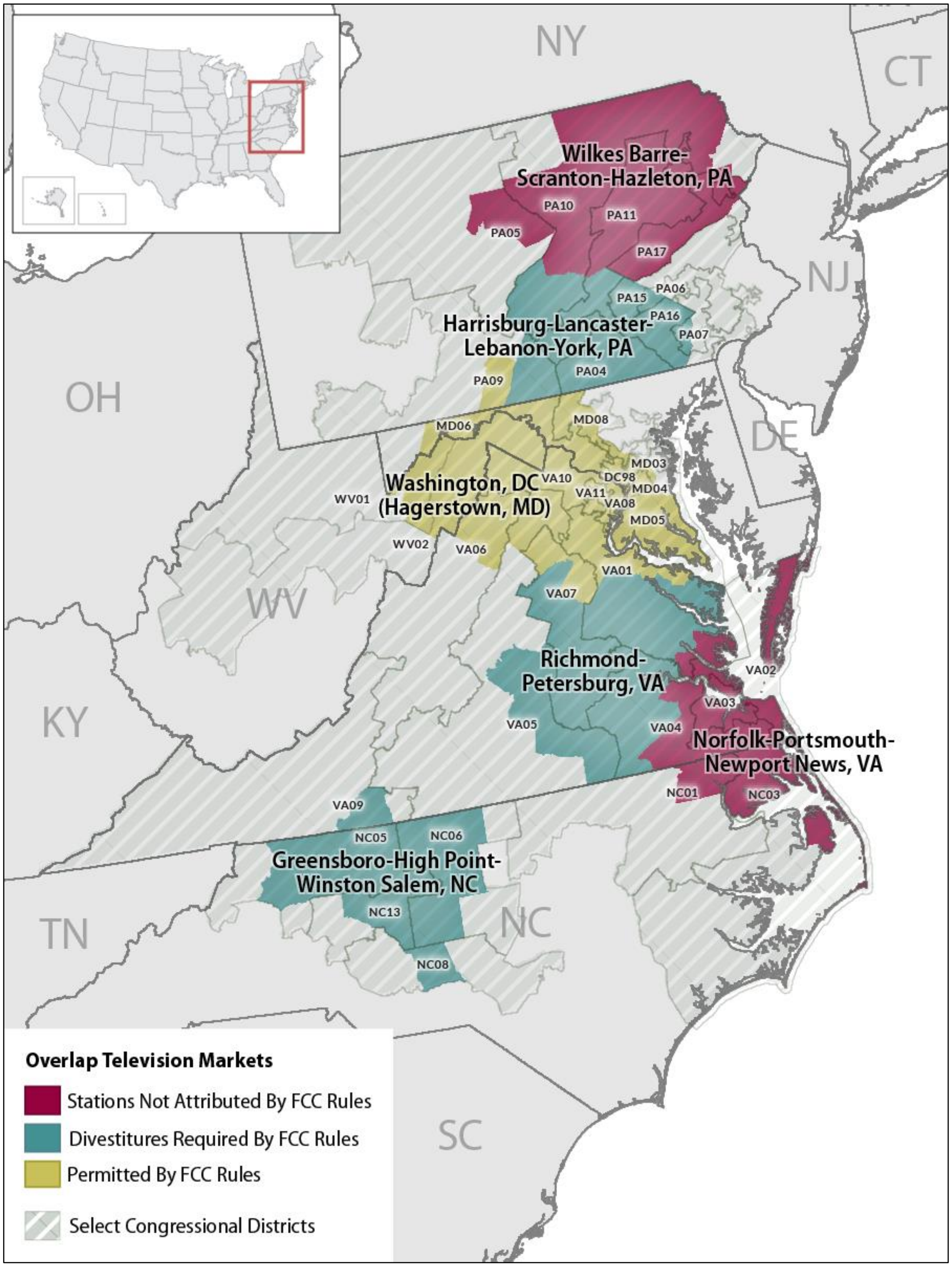
Figure 2. Sinclair-Tribune Overlap Markets



Sources: Application to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, Attachment 15 (stations owned by Sinclair and Tribune); company reports, company websites, FCC public inspection files (stations operated but not owned by Sinclair or Tribune pursuant to joint sales and/or shared services agreements); and the Nielsen Company (market names and ranks).

Figure 3. Sinclair-Tribune East Coast Overlap Markets

Congressional Districts Affected



Sources: Application to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, Attachment 15 (stations owned by Sinclair and Tribune); company reports, company websites, FCC public inspection files (stations operated but not owned by Sinclair or Tribune pursuant to joint sales and/or shared services agreements); and the Nielsen Company (market names and ranks).

The FCC's review regarding whether the proposed acquisition of Tribune's stations is consistent with its media ownership rules, and the DOJ's review regarding whether the proposed acquisitions could impede competition, may lead the agencies to come to different conclusions about Sinclair's need to divest or swap stations.

The FCC's local television ownership rules permit an entity to own or control two television stations in the same television market so long as the overlap of the stations' signals is limited and the joint control does not violate the "top four/eight voices test" (described in **Table 1**). The FCC uses broadcast television signals to determine when the rules are triggered, and uses Designated Market Areas (DMAs), as determined by The Nielsen Company, in counting the number of voices available to viewers.

Table 1. Local TV Ownership (Duopoly) Rules

Permitted Combinations of TV Stations in a Market

Top 4/8 Voices Test	Signal Overlap	Waiver Criteria	Notes
(1) At least one of the stations is not among the four highest-ranked stations in the DMA, *and* (2) at least eight independently owned and operating commercial or noncommercial full-power broadcast television stations would remain in the DMA after the proposed combination is consummated.	The digital noise limited service contours of the stations do not overlap.	On a case-by-case basis, the FCC will consider waivers if (1) one station failed/is failing. Applicants must demonstrate that an in-market buyer is the only entity ready, willing, and able to operate the station, and that sale to a buyer outside of the market would result in an artificially depressed price.[a] *or* (2) the combination will result in the construction of an unbuilt station. The permittee of the unbuilt station must demonstrate that it has made reasonable efforts to construct but has been unable to do so.	Stations cannot switch broadcast network affiliations if the switch would result in one party directly or indirectly owning, operating, or controlling two of the four top-rated television stations within the DMA at the time of the agreement.

Sources: 47 C.F.R. §73.3555(b); 47 C.F.R. §73.3555, Note 7; Federal Communications Commission, 2014 Quadrennial Review 2nd R&O.

a. A station is considered "failed" if it has not been in operation due to financial distress for at least four consecutive months immediately prior to the application, or is a debtor in an involuntary bankruptcy or insolvency proceeding at the time of the application. A station is considered to be "failing" if it has an all-day audience share of no more than 4% and has had negative cash flow for three consecutive years immediately prior to the application.

Sinclair's acquisition of Tribune's television stations in both the Washington, DC, and Milwaukee television markets would not be inconsistent with the FCC's duopoly rules. Tribune's station in Washington, DC, WDCW, is an affiliate of the CW television network and not among the four top-rated television stations in the market. After the merger, eight independently owned and operated television stations would remain.[56]

Although Sinclair already owns two television stations in Milwaukee, one of them, WCGV-TV, an affiliate of the MyNetwork television network, successfully bid to relinquish its license in the broadcast incentive auction and will go off the air. Sinclair is requesting a temporary waiver of the FCC's duopoly rules until WCGV goes off the air. **Table 2** illustrates Sinclair's estimated advertising and retransmission consent revenue shares within these two markets before and after its proposed merger with Tribune.

Table 2. Markets Where FCC Rules Would Allow Sinclair to Purchase Tribune Stations Despite Overlaps

Revenue Shares of Sinclair Stations Before and After Tribune Acquisition

Market Rank	Market Name	Local Ads Pre-	Local Ads Post-	Retransmission Consent Pre-	Retransmission Consent Post-
7	Washington, DC (Hagerstown, MD)	19.7%	25.2%	19.6%	22.0%
35	Milwaukee, WI	11.3%	33.9%	10.0%	29.3%

Sources: CRS analysis of data from SNL Kagan (market share information); The Nielsen Company (names and ranks of television markets); Sinclair Tribune FCC Application for Transfer of Control, Exhibit 15, pp. 14-15.

Note: Market share estimates as of 2016.

In the Seattle-Tacoma television market, Sinclair and Tribune each own two television stations. In this market, Sinclair would need to divest two stations in order to comply with the local television ownership rules. In 10 television markets where Sinclair owns television stations, FCC duopoly rules would preclude Sinclair from purchasing Tribune stations absent divestitures. **Table 3** illustrates Sinclair's estimated advertising and retransmission consent revenue shares within nine of these markets before and after its proposed acquisition.

[56] Sinclair Broadcast Group Inc., FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, Attachment 15, p. 14.

Table 3. Markets Where FCC Rules Would Not Allow Sinclair to Purchase Tribune Stations Due to Overlaps

Revenue Shares of Sinclair Stations Before and After Tribune Acquisition

Market Rank	Market Name	Local Ads Pre-	Local Ads Post-	Retransmission Consent Pre-	Retransmission Consent Post-
14	Seattle-Tacoma, WA	19.9%	39.2%	28.7%	54.2%
21	St. Louis, MO	11.7%	45.0%	30.2%	50.3%
25	Portland, OR	17.9%	23.8%	32.0%	34.7%
34	Salt Lake City, UT	30.9%	47.6%	3.2%	34.1%
41	Oklahoma City, OK	19.1%	46.3%	31.6%	46.3%
43	Harrisburg-Lancaster-Lebanon-York, PA	19.9%	35.1%	27.6%	50.6%
44	Grand Rapids-Kalamazoo-Battle Creek, MI	26.3%	43.1%	20.5%	37.4%
46	Greensboro-High Point-Winston Salem, NC	10.8%	35.8%	32.5%	47.9%
55	Richmond-Petersburg, VA	17.4%	43.8%	30.6%	48.1%
69	Des Moines-Ames, IA	13.5%	41.8%	27.1%	40.2%

Sources: Sinclair Tribune FCC Application for Transfer of Control, Exhibit 15, pp. 14-15; CRS analysis of data from SNL Kagan (market share information), company reports, company websites, FCC public inspection files (stations operated but not owned by Sinclair or Tribune pursuant to joint sales and/or shared services agreements), and the Nielsen Company (market names and ranks).

Note: Market share estimates as of 2016.

In three of the markets listed in **Table 3**—Seattle-Tacoma, WA; Salt Lake City, UT; and Oklahoma City, OK—Sinclair would own a total of four stations after merging with Tribune, including ABC and FOX affiliates in Seattle-Tacoma, WA; CBS and FOX affiliates in Salt Lake City, UT;[57] and NBC and FOX affiliates in Oklahoma City, OK.

In an additional three markets—St. Louis, MO; Portland, OR; and Greensboro-High Point-Winston Salem, NC—Sinclair would own a total of three stations after merging with Tribune. Sinclair would own ABC and FOX affiliates in the St. Louis and Greensboro-High Point-Winston Salem television markets.

In the remaining four markets—Harrisburg-Lancaster-Lebanon-York, PA; Grand Rapids-Kalamazoo-Battle Creek, MI; Richmond-Petersburg, VA; and Des Moines-Ames, IA—Sinclair would own two stations following its acquisition of Tribune. In three of those markets, Sinclair

[57] Because the signal contours of Sinclair's MyNetwork TV affiliate do not overlap with the signal contours of Sinclair's other two stations (a CBS affiliate and an independent station), Sinclair's ownership of the three stations is in compliance with the FCC's duopoly rules. Sinclair Broadcast Group Inc., FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, Attachment 15, p. 13, n. 9.

would own both CBS and FOX affiliates. In Des Moines-Ames, Sinclair would own NBC and FOX affiliates.

Related FCC Attribution Rules

Many owners of commercial broadcast stations have relationships that fall short of the FCC's definition of common ownership, yet allow the owner of one station to exert substantial influence over the operation and finances of another station. To minimize such behavior, the FCC has developed attribution rules "to identify those interests in or relationships to licensees that confer a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions."[58]

Joint Sales Agreements

Joint sales agreements (JSAs) enable the sales staff of one broadcast station to sell advertising time on a separately owned station within the same local market. In 2014, the FCC adopted rules specifying that television JSAs allowing the sale of more than 15% of the weekly advertising time on a competing local broadcast television station are attributable as ownership or control.[59] Congress subsequently twice extended the period by which parties must comply with these rules, ultimately extending the deadline to September 30, 2025.[60]

Sharing Agreements

In August 2016, the FCC adopted new disclosure requirements for all joint operating agreements, broadly encompassed by the term "shared services agreements" (SSAs) among broadcast television stations.[61] Had publication of the proposed requirements been approved by OMB, each station that is a party to an SSA, whether in the same or different television markets, would have been required to file a copy of the SSA in its online public inspection file.[62] The FCC declined to make SSAs attributable, but stated that it might do so later.

[58] Federal Communications Commission, "Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the Commission's Cross-Interest Policy, Report and Order, FCC 99-207," 14 *FCC Record* 12559, August 6, 1999. §103 of P.L. 113-200, the Satellite Extension and Localism Reauthorization Act, also prohibits a television broadcast station from negotiating a retransmission consent contract jointly with another broadcast station in the same market, regardless of its audience size, unless the FCC considers the stations to be directly or indirectly owned, operated, or controlled by the same entity. Thus, the FCC's attribution rules impact a station's retransmission consent negotiations.

[59] 2014 Quadrennial Review 2nd R&O, pp. 9888-9890. The FCC decided to attribute radio JSAs in 2003. Federal Communications Commission, 2002 Biennial Review, p. 13620. It proposed attributing television JSAs in 2004, and revisited the issue in 2011, but did not make a final decision. Federal Communications Commission, "Attribution of TV JSAs, NPRM, FCC 04-173," 19 *FCC Record* 15238, July 2, 2004; Federal Communications Commission, "2010 Quadrennial Review, NPRM, FCC 11-186," 26 *FCC Record* 17489, 17565-17566, December 22, 2011.

[60] Consolidated Appropriations Act, 2016, §626, P.L. 114-113 (2015). The first extension was through December 19, 2016, per §104 of the 2014 Satellite Television Extension and Localism Act (P.L. 113-200).

[61] 2014 Quadrennial Review 2nd R&O, pp. 10008-10023.

[62] The new disclosure rule was subject to the approval of OMB under §3507(d) of the Paperwork Reduction Act of 1995, P.L. 104-13. After the FCC publishes a separate document in the *Federal Register*, OMB, the general public, and other federal agencies may comment on the new information collection requirements. OMB would have evaluated the new rule to determine whether (1) it is necessary for the proper performance of a function of the agency requiring the disclosure (i.e., the FCC), including whether it will be practically useful; (2) it minimizes the burden upon those

In November 2016, the FCC placed its notice in the *Federal Register* seeking comment to the change in its rules to require disclosure of shared services agreements.[63] On January 17, 2017, the FCC resubmitted its request to OMB to incorporate revisions to the estimated number of stations/entities that would need to comply with the requirement.[64] On January 27, 2017, however, the FCC withdrew its information collection request from consideration.[65] Thus, broadcast television stations are not required to disclose SSAs to the FCC.

Tribune's Sidecar Stations

As part of Sinclair's acquisition of Tribune Media, Tribune's sidecar stations would become Sinclair's sidecar stations. **Table 4** lists the television markets in which the proposed acquisition would enable Sinclair to increase the number of stations it controls due to sidecar agreements it would assume from Tribune. In both Norfolk-Portsmouth-Newport News, VA, and Wilkes Barre-Scranton-Hazleton, PA, Sinclair would take over from Tribune the operations of stations licensed to Dreamcatcher Broadcasting.[66] Neither the FCC's duopoly rules nor its attribution rules would preclude Sinclair from operating Dreamcatcher's stations. If, however, Tribune owned the stations outright, current FCC rules would preclude Sinclair from purchasing them, as it already owns one station in the Virginia market and operates but does not own three stations in the Pennsylvania market.

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affected by the rules; and (3) maximizes the usefulness and public benefit that could be derived from the information. 44 U.S.C. §3504; §3507(g).

[63] Federal Communications Commission, "Information Collection Being Reviewed by the Federal Communications Commission, Notice and Request for Comments," 81 *Federal Register* 78591, November 8, 2016.

[64] Office of Management and Budget, "Reginfo.gov," https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201701-3060-012.

[65] Office of Management and Budget, "Reginfo.gov, Notice of Office of Management and Budget Action," https://www.reginfo.gov/public/do/DownloadNOA?requestID=280004.

[66] FCC Form 315 Application for Consent to Transfer control of Entity Holding Broadcast Station Construction Permit or License, Attachment 15, Agreement and Plan of Merger Among Tribune Media Company and Sinclair Broadcast Group Inc., dated May 8, 2017, Article VII, Covenants of Parents and the company, Section 7.1 Efforts (c).

Table 4. Markets Where FCC Rules Could Permit Sinclair's Operation of Stations Currently Operated, but Not Owned by, Tribune

Sinclair's Shares of Revenue from Stations Operated but Not Owned, Before and After Tribune Acquisition

Market Rank	Market Name	Local Ads Pre-	Local Ads Post-	Retransmission Consent Pre-	Retransmission Consent Post-
42	Norfolk-Portsmouth-Newport News, VA	6.4%	34.1%	3.7%	24.3%
56	Wilkes Barre-Scranton-Hazleton, PA	20.9%	64.8%	28.3%	51.2%

Sources: CRS analysis of data from SNL Kagan (market share information), company reports, company websites, FCC public inspection files (stations operated but not owned by Sinclair or Tribune pursuant to joint sales and/or shared services agreements), and the Nielsen Company (market names and ranks).

Note: Market share estimates as of 2016.

In Salt Lake City, where Sinclair would purchase a FOX affiliate from Tribune, Sinclair has sharing agreements with KENV-DT, an NBC affiliate licensed to Intermountain West.[67] Sinclair could continue to operate KENV without running afoul of the FCC's ownership regulations.

DOJ Versus FCC Treatment of Sidecar Divestitures

As the FCC's and DOJ's reviews of previous broadcast television station transactions illustrate, the two agencies have different standards of review, particularly with respect to the treatment of sidecars. In February 2014 comments filed with the FCC, the DOJ stated that "combinations of SSAs, [local news service] agreements, purchase options, substantial loan guarantees, or other engagements can confer similar degrees of controls as JSAs, or may preserve some competition between the participants, depending on their precise terms." The DOJ recommended that the FCC "scrutinize agreements on a case-by-case basis and take action where those agreements do not serve the public interest."[68]

In the case of Gannett Company Inc.'s acquisition of Belo Corporation, local FCC media ownership rules did not permit Gannett to acquire Belo's stations in 5 of the 10 markets where Belo owned stations.[69] The FCC permitted Gannett to transfer these stations to sidecar companies. When the DOJ determined that antitrust laws would not allow Gannett to purchase Belo's station in St. Louis, however, it would not permit Gannett to transfer the station to a sidecar company.[70]

[67] This station is the second NBC affiliate in the Salt Lake City market, and is physically located in Nevada**.** Prior to Sinclair's acquisition of the independent station, it had been involved in various sharing agreements since 2005. Scott Pierce, "KUTV's Parent Buys KJZZ from Millers," *Salt Lake Tribune*, April 28, 2016.

[68] Department of Justice, February 20, 2014, *Ex Parte* Comments, p. 2. These comments were submitted in the 2010 Quadrennial Review proceeding (MB Docket No. 09-182), the Diversity proceeding (MB Docket No. 07-294), and the TV JSA proceeding (MB Docket No. 04-256).

[69] Federal Communications Commission, "Applications for Consent to Transfer of Control from Shareholders of Belo Corp. to Gannet Co., Inc. and Applications for Consent to Assignment of Licenses form Subsidiaries of Belo Corp. to Subsidiaries of Sander Media, LLC and Tucker Operating Co., LLC, DA 13-2423, Memorandum Opinion and Order," 28 *FCC Record* 16867, December 20, 2013.

[70] Gannett Co. Inc. and Sander Media, "Gannett and Sander Media Announce That KMOV-TV, KTVK-TV, and

In the case of Nexstar Media Group Inc.'s acquisition of Media General Inc., local FCC media ownership rules precluded Nexstar from acquiring Media General's stations in seven television markets,[71] while the DOJ found that antitrust laws precluded acquisitions in six of those markets.[72] The DOJ prohibited Nexstar from transferring the stations in those six markets to sidecar stations.[73] In the seventh market, the FCC allowed Nexstar to assume control of Media General's shared services agreements with sidecar stations.[74] The FCC also allowed Nexstar to assume control of sharing and marketing agreements in seven additional markets.

Sinclair-Tribune Transaction

In the case of the Sinclair-Tribune transaction, both the FCC and DOJ would likely review the impact of Sinclair's acquisition of Tribune's stations in the 12 markets where Sinclair already owns stations. As described in **Table 3**, FCC media ownership rules would require Sinclair to divest television stations in 10 television markets. A key issue for the DOJ will be whether it would permit Sinclair to divest those stations to sidecar companies.

Secondly, the FCC's local media ownership rules would permit Sinclair to assume Tribune's sharing agreements in the Norfolk-Portsmouth-Newport News, VA, and Wilkes Barre-Scranton-Hazleton, PA, television markets.[75] Thus, a second key issue for DOJ to resolve is whether Sinclair's operational relationships with these stations after its proposed transaction would be anticompetitive.

According to press reports, Sinclair CEO and President Christopher Ripley predicted that if regulators require divestitures, they would most likely be in the Salt Lake City, UT; St. Louis, MO; and Wilkes Barre-Scranton, PA, television markets. Mr. Ripley further stated that Sinclair would try to convince DOJ that the definition of the advertising market in which Sinclair competes includes local advertising on cable systems as well as local broadcast stations. If Sinclair succeeds, this would mark a change in DOJ's analysis of broadcast television transactions.[76] The more broadly the DOJ defines the product market in which Sinclair competes,

KASW-TV Will Be Sold for $407.5 Million in Cash," press release, December 22, 2013, http://www.tegna.com/gannett-and-sander-media-announce-that-kmov-tv-ktvk-tv-and-kasw-tv-will-be-sold-for-407-5-million-in-cash/.

[71] Federal Communications Commission, "Applications for Consent to Transfer Control of License Subsidiaries of Media General, Inc., from Shareholders of Media General, Inc. to Nexstar Media Group, Inc., et. al.,DA 17-23, Memorandum Opinion and Order," 32 *FCC Record* 183, January 18, 2017 (FCC Nexstar-Media General Order).

[72] U.S. Department of Justice, Antitrust Division, "*United States v. Nexstar Broadcasting Group Inc., et al.*; Proposed Final Judgement and Competitive Impact Statement," 81 *Federal Register* 63206, September 14, 2016.

[73] Ibid., p. 63212.

[74] Nexstar-Media General Merger Applications, p. 36, n. 35.

[75] In a separate merger the FCC completed in 2013, Dreamcatcher Broadcasting LLC assumed control of the television stations of Local TV Holdings LLC because FCC media ownership rules precluded Tribune, which owned newspapers in the Norfolk-Portsmouth-Newport News, VA, and Wilkes Barre-Scranton-Hazleton, PA, markets from owning stations there. Federal Communications Commission, "Applications of Local TV Holdings, LLC, Transferor and Tribune Broadcasting Company II, LLC, Transferee and Dreamcatcher Broadcasting, LLC, Transferee for Consent to Transfer Control of Certain Licensee Subsidiaries of Local TV Holdings, LLC, Memorandum Opinion and Order, DA 13-2422," 28 *FCC Record* 16850-16852, December 20, 2013. The FCC permitted Tribune to enter into sharing agreements and financial agreements with Dreamcatcher, stating, "We disagree with Petitioners [asking the FCC to prohibit these arrangements] that the facts here show that Tribune will be operating the Dreamcatcher stations as though it owned them outright." Ibid., p. 16857.

[76] Jonathan Make and Matt Daneman, "Sinclair Doesn't Foresee Major Station Sales in $6.6 Billion Tribune Buy; Regulatory OK Seen," *Communications Daily*, May 9, 2017.

the lower its estimate of Sinclair's potential post-transaction market share would be, and the lower the likelihood that DOJ would require Sinclair to divest stations.

Related National FCC Media Ownership Rules

In addition to the local media ownership rules that limit the ability of one company to own multiple media outlets within a DMA, the FCC has national media ownership rules that limit the ability of one company to own multiple broadcast stations throughout the United States.

Impact on Sinclair's Mergers and Acquisitions

As **Table 5** illustrates, the FCC's reinstatement of the UHF discount set the stage for Sinclair's proposed acquisitions of Bonten Media and Tribune. Due to rounding, the reach estimates, based on data from the Nielsen Company, are approximate.[77]

Bonten Media

Absent the discount, counting only the stations that Sinclair owns, including those acquired from Bonten Media, Sinclair currently has a national reach of 38.8% of U.S. television households. With the UHF discount, Sinclair has a national reach of 23.94% of U.S. television households.

In two television markets, Gainesville, FL, and Wilkes Barre-Scranton, PA, Sinclair operates but does not own stations. Including these stations, and excluding the UHF discount, Sinclair has a reach of 39.4%, which is in excess of the national ownership cap for owned stations. Including the UHF discount, Sinclair has a national reach of 25.68% of U.S. television households.

Tribune Media

If Sinclair acquires stations owned by Tribune with no divestitures, its owned stations would have a reach of 71.59% of U.S. television households, absent the UHF discount. With the discount, Sinclair's owned stations would have a reach of 45.29%. Although, as Sinclair noted in its application, this reach would exceed the 39% cap, it stated that it would take necessary actions to comply with the terms of its agreement with Tribune, and the national television ownership limit (including the UHF discount), in order to obtain FCC approval of the transaction.[78] If the FCC changes or proposes to change the national television ownership rules, Sinclair would amend its application.

Including the stations that Sinclair operates but does not own in Wilkes Barre-Scranton, PA, as well as the station Sinclair owns but does not operate in Gainesville, FL, its reach absent the UHF discount would be 72.1%, and its reach with the discount would be 47.04% of U.S. television households. In a presentation to investors about its Bonten and Tribune transactions, Sinclair states that the transactions would give it "72% household coverage across 108 markets."[79]

[77] The Nielsen Company, "Local Television Market Universe Estimates [as of January 1, 2017], http://www.nielsen.com/content/dam/corporate/us/en/docs/solutions/measurement/television/2016-2017-nielsen-local-dma-ranks.pdf.

[78] Sinclair Broadcast Group Inc., FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, Attachment 15, p. 26.

[79] Sinclair Broadcast Group Inc., "Investor Presentation," May 8, 2017, p. 2, http://sbgi.net/wp-content/uploads/2017/05/Sinclair_Tribune-Media-Investor-Presentation_vF.pdf.

Issues for Consideration

In reviewing Sinclair's proposed merger with Tribune, the FCC might take several issues into consideration. If in a rulemaking the FCC were to revise the national ownership cap, it might not require Sinclair to divest any broadcast television stations. Likewise, if the FCC were to decrease the cap or attribute sidecar stations, Sinclair would need to sell its stations to third parties that do not have long-term business relationships with the company.

If, in a rulemaking, the FCC were to choose not to attribute sidecar stations for the purpose of enforcing the national ownership caps, it might permit Sinclair to operate, but not own, stations in additional markets. DOJ might consider whether the national scale of Sinclair's broadcast television operations, in combination with Sinclair's local scale of operations, might limit competition in the markets for national spot advertising and retransmission consent negotiations. If DOJ were to decide that they did, DOJ might require further divestitures.[80]

Table 5. Sinclair's Reach of U.S. Television Households

Pre- and Post-Mergers

Stations Included in Calculations	Reach of U.S. TV Households Without Discount	Reach of U.S. TV Households (With UHF Discount)
Sinclair (Pre-Mergers)		
Sinclair-Owned Stations Only	37.76%	22.89%
Sinclair-Operated Stations Owned by Third Parties	0.59%	1.74%[a]
TOTAL	38.25%	24.64%
Bonten		
Bonten-Owned Stations	1.14%	1.04%
Sinclair + Bonten Post-Merger		
Sinclair-Owned Stations Only + Bonten-Owned Stations	38.80%	23.94%
Sinclair-Owned + Sinclair-Operated + Bonten-Owned Stations	39.40%	25.68%
Tribune		
Tribune-Owned Stations (excluding stations in markets where Sinclair already owns/operates stations)	32.79%	20.25%
Tribune-Owned Station (VHF stations in markets where Sinclair already owns/operates UHF station)		1.10%[b]
Sinclair + Bonten + Tribune Post-Merger		

80 In its "Hold Separate Stipulation and Order" that the DOJ reached with Nexstar and Media General, the DOJ stated that it would require Nexstar to divest television stations in order to preserve competition in the sale of broadcast television spot advertising and the licensing of broadcast television programming for retransmission by MVPDs, https://www.justice.gov/atr/case-document/file/910671/download.

Stations Included in Calculations	Reach of U.S. TV Households Without Discount	Reach of U.S. TV Households (With UHF Discount)
Sinclair-Owned Stations Only + Bonten-Owned Stations + Tribune-Owned Stations	71.59%	45.29%
Sinclair-Owned Stations + Sinclair-Operated + Bonten-Owned Stations + Tribune-Owned Stations	72.19%	47.04%

Sources: CRS analysis of data from company reports, company websites, and FCC public inspection files (stations operated but not owned by Sinclair or Tribune pursuant to joint sales and/or shared services agreements); SNL Kagan broadcast television database; and the Nielsen Company's television household estimates.

Notes: Calculation of national television household reach excludes satellite television stations, which extend the signals of main stations. Full-power television stations only.

a. Includes two third-party VHF stations in markets where Sinclair owns UHF stations subject to the discount and two third-party UHF stations in markets in which Sinclair does not own stations (Gainesville, FL, and Wilkes-Barre-Scranton, PA).

b. Tribune owns VHF stations in Seattle-Tacoma, WA, and Harrisburg-Lancaster-Lebanon-York, PA, where Sinclair owns UHF stations only. Purchasing these VHF stations would increase Sinclair's reach.

Public Interest Analysis

As discussed in "Communications Law Concerns," when reviewing mergers, the FCC counts as benefits several broad aims of the communications laws, including ensuring a diversity of information sources and services to the public.[81] In addition, among the FCC's general policy goals is the promotion of localism—that is, the responsiveness of broadcast stations to the needs and interests of their communities.

Among the merger-specific benefits Sinclair presents to the FCC in its application, Sinclair states that the transaction would enable it to invest in and increase the amount of local news programming aired on the stations it would acquire.[82] In reviewing the merger, the FCC might consider whether the number of stations Sinclair would own and/or operate both within local markets and nationwide would promote the FCC's goals of localism and diversity.

Critics of broadcast licensees that own and/or operate multiple broadcast television stations within a market state that the newscasts on these stations are composed of the same news stories airing on different stations.[83] Therefore, they maintain, such arrangements do not promote the FCC's public policy goals of promoting diverse sources of news information. Broadcasters, however, claim that such arrangements enable stations to air news programming that they could

[81] Federal Communications Commission, "Applications of Comcast Corporation, General Electric Company, and NBC Universal Inc. for Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order, FCC 11-4," 26 *FCC Record* 4238, 4248, January 19, 2011.

[82] Sinclair Broadcast Group Inc., FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, Attachment 15, pp. 2-4.

[83] Josh Harkinson, "Ever Wonder Why Your Local TV News Stations Run the Same Damn Stories?," *Mother Jones*, April 4, 2014, http://www.motherjones.com/politics/2014/04/fcc-pew-local-tv-news-consolidation/.

not afford to produce on their own, thereby increasing the total amount of local news available in communities.[84]

Reports indicate that Sinclair has an internal corporate policy of requiring its stations throughout the country to air centrally produced video segments known as "must runs."[85] Critics claim that this practice inhibits stations' ability to air news programming that is responsive to the needs and interests of their local communities.[86] Others counter that Sinclair's practice is routine, and that its national presence offers a countervailing point of view to other national media outlets.[87]

The ability of broadcast television stations to produce and distribute local news sets them apart from other electronic media, such as online video distributors, national television networks, and MVPDs. Thus, in addition to the traditional competition analysis that both the DOJ and FCC are to undertake when reviewing the Sinclair-Tribune merger, the potential scale and scope of Sinclair's news operations post-merger will require a public interest review by the FCC. Moreover, the timing of the FCC's review of its media ownership and attribution rules will have a large impact on what conditions, if any, the agency might impose on Sinclair in order to complete the transaction.

[84] National Association of Broadcasters, "Notice of Ex Parte Communications, MB Docket No. 09-192," February 18, 2014, http://www.nab.org/documents/newsRoom/pdfs/021814_JSA_ExParte.pdf.

[85] Syndey Ember, "Sinclair Requires Stations to Air Segments That Tilt to the Right," *The New York Times*, May 12, 2017.

[86] Jeffrey Layne Blevins, "Sinclair's Proposed Purchase of Tribune Media is Bad for Des Moines," *The Courier-Post*, June 29, 2017, http://www.courierpostonline.com/story/opinion/columnists/2017/06/29/sinclairs-proposed-purchase-tribune-media-bad-news-des-moines/439884001/.

[87] Klye Smith, "Who's Afraid of Sinclair Broadcast Group? John Oliver," *National Review*, July 6, 2017, http://www.nationalreview.com/article/449260/john-oliver-sinclair-broadcast-group-calm-down-john.

Appendix.

Table A-1. Pre-Merger Joint Sales and Shared Services Agreements

Market Rank	Market Name	Number of Stations Operated per JSAs	Number of Stations Operated per SSAs	Number of Stations Operated	Stations' Local Ad Share	Stations' Retrans-mission Consent Share
		Tribune Broadcasting[a]				
42	Norfolk-Portsmouth-Newport News, VA		2	2	27.7%	20.5%
56	Wilkes Barre-Scranton, PA		1	1	44.0%	23.05
		Sinclair Broadcast Group Inc.				
26	Baltimore, MD	1	1	2	9.8%	2.3%
29	Nashville, TN		1	3	28.4%	37.5%
31	San Antonio, TX		1	3	34.2%	48.6%
32	Columbus, OH		2	3	43.9%	57.3%
34	Salt Lake City, UT	1	2	4	30.9%	23.2%
37	Greenville-Spartanburg-Anderson, SC-Asheville, NC		1	2	25.8%	29.4%
42	Norfolk-Portsmouth-Newport News, VA			1	6.4%	3.7%
45	Birmingham (Anniston and Tuscaloosa), AL		1	3	14.0%	9.0%
56	Wilkes Barre-Scranton-Hazleton, PA[b]	1	3	3	20.9%	28.3%
60	Mobile, AL-Scranton-Hazleton, PA	2	2	4	44.8%	51.9%
64	Dayton, OH		1	2	33.4%	47.9%
66	Wichita-Hutchinson, KS Plus		1	2	17.0%	24.5%
70	Charleston-Huntington, WV	1	1	2	39.2%	44.1%
74	Omaha, NE		1	2	19.2%	28.0%
81	Portland-Auburn, ME	1	1	2	37.3%	48.9%
83	Paducah, KY-Cape Girardeau, MO-Harrisburg, IL		1	2	14.9%	30.6%
85	Syracuse, NY	1	1	2	47.4%	47.4%
86	Champaign & Springfield-Decatur, IL		2	3	46.4%	46.7%
89	Chattanooga, TN	1	1	2	30.4%	38.9%

Market Rank	Market Name	Number of Stations Operated per JSAs	Number of Stations Operated per SSAs	Number of Stations Operated	Stations' Local Ad Share	Stations' Retrans-mission Consent Share
90	Cedar Rapids-Waterloo-Iowa City & Dubuque, IA	1	1	2	39.6%	53.4%
102	Myrtle Beach-Florence, SC		1	2	22.6%	30.8%
107	Tallahassee, FL-Thomasville, GA	2	2	2	23.3%	33.8%
112	Reno, NV	1	2	3	42.7%	44.9%
117	Eugene, OR	1	2	4	71.8%	76.9%
119	Traverse City-Cadillac, MI	1	1	2	49.1%	43.4%
141	Beaumont-Port Arthur, TX	1	1	2	65.3%	76.0%
149	Sioux City, IA	1	1	2	32.8%	50.1%
161	Gainesville, FL[c]	2	2	2	19.8%	54.9%
Bonten Media Group (pending acquisition by Sinclair)						
98	Tri-Cities, TN-VA	1	1	2	53.7%	54.0%
100	Greenville-New Bern-Washington, NC	1		2	32.3%	45.2%
132	Chico-Redding, CA	1		2	44.2%	51.0%
195	Eureka, CA	1		2	34.3%	51.1%
TOTAL		**19**	**40**	**74**		

Sources: CRS analysis of data from SNL Kagan (market share information), company reports, company websites, and FCC public inspection files (stations operated but not owned by Sinclair or Tribune pursuant to joint sales and/or shared services agreements); the Nielsen Company (market names and ranks).

Notes:

a. Tribune does not own stations within these markets. The stations are owned by Sinclair owns and/or operates stations within these markets.

b. Sinclair does not own stations within this market. Two stations are owned by Sedgwick Media and one station is owned by MPS Media.

c. Sinclair does not own stations within this market. Sedgwick Media and MPS Media each operate one station operated by Sinclair.

Table A-2. Chronology of National Broadcast Ownership and UHF Discount Rules

1941	FCC adopts national ownership ceiling of two broadcast televisions when it adopts rules authorizing television broadcasting as a commercial service.
1944	FCC increases national ownership ceiling to three broadcast television stations in response to a petition from National Broadcasting Company (NBC).
1948	FCC freezes the processing of new or pending applications for television construction permits. Only a few television stations are operational. They operate in the VHF band, primarily in large and midsized cities.
1952	FCC revises Table of Television Allotments, assigning stations in the VHF band and the newly created UHF band to various communities.
1954	FCC adopts national ownership ceiling of seven broadcast television stations, including a maximum of five VHF stations. FCC states that encouraging group owners to own UHF stations would promote development of UHF service.
1956	Supreme Court upholds FCC's national ownership limits, finding that rules are compatible with Communications Act as a whole and FCC's mandate to regulate broadcasting in the interest of the public. Holds that FCC can revisit the rules if time and circumstances reveal that they do not serve the public interest. [*United States v. Storer Broadcasting Company*, 351 U.S. 192]
1968	FCC adopts "top 50" policy, requiring licensees seeking to acquire a fourth television station or a third VHF station in the top 50 markets to make a "compelling public interest showing" that the presumed benefits would overcome the presumed detriment to the public's mass media communications sources.
1979	FCC eliminates "top 50" policy, finding that the feared trend toward additional ownership concentration had not occurred.
1985	FCC raises TV ownership cap to 12 stations and 25% of national audience. For purposes of national audience calculation, FCC discounts reach of UHF stations by 50% ("UFH discount").
1996	Congress enacts Telecommunications Act of 1996, P.L. 104-104. Act directs FCC to review its media ownership rules every two years and determine whether are "necessary in the public interest as a result of competition." Act directs the FCC to modify its national TV ownership cap to 35% of national audience and eliminates FCC's 12 station cap.
2000	FCC retains 35% ownership cap and UHF discount.
2002	U.S. Court of Appeals, D.C., holds that the FCC's "wait and see" attitude regarding the effect of the 35% ownership cap was impermissible, given Congress's direction to evaluate whether the rules were "necessary in the public interest as a result of competition." It directs the FCC to justify the rule. [*Fox Television Stations, Inc. v. Federal Communications Commission*, 350 U.S. App. 79, 280 F.3d 1027 (D.C. 2002) ("*Fox I*"), *modified on reh'g*, 352 U.S. App. 260, 293 F.3d 537 (D.C. 2002) ("*Fox II*")]
2003	FCC raises national TV ownership cap to 45% and retains UHF discount, concluding it is necessary to promote entry and competition among broadcast networks. FCC says it will phase out the UHF discount for stations owned and operated by the top four broadcast networks (ABC, CBS, FOX, and NBC) as the broadcast industry's transition from analog to digital technology is completed on a market-by-market basis.

2004	Congress enacts the 2004 Consolidated Appropriations Act, P.L. 108-199, which amends the Telecommunications Act of 1996. Act directs the FCC to increase its national TV ownership cap to 39% of national audience and review its media ownership rules every four years, exempting rules related to the ownership cap from the review.
	U.S. Court of Appeals, 3rd Circuit, finds that given Congress's directive to set ownership cap at 39% and exempting rules related to the national ownership cap from the FCC's media ownership rule, challenges to the FCC's 45% cap are moot, and therefore challenges to the FCC's UHF discount are moot. Court finds that barring congressional intervention, the FCC may decide the scope of its authority to modify or eliminate the UHF discount outside the context of its quadrennial media ownership review. *Prometheus Radio Project vs. Federal Communications Commission*, 373 F. 3d 372, 396-397 (3rd Cir. 2004).
2009	Full power broadcast stations complete the congressionally mandated transition from analog to digital transmissions. [47 U.S.C. §309(j)(14)(A)]
2013	FCC proposes elimination of UHF discount.
2016	FCC eliminates UHF discount, concluding technological change has eliminated the justification for retaining it. FCC grandfathers combinations in existence on or proposed in applications before September 26, 2013. Any such grandfathered combination assigned or transferred to another broadcast television licensee must comply with the FCC's national ownership cap in existence at the time of the transaction. Rules set to become effective November 23, 2016 (30 days after publication in the *Federal Register*).
	Broadcast station group owners (ION Media Networks Inc. and Trinity Christian Center of Santa Ana Inc.) file petition for reconsideration with FCC.
2017	FCC reinstates UHF discount. FCC states it will launch a comprehensive rulemaking to determine whether to retain the UHF discount in conjunction with a review of the national ownership cap.

Sources: Federal Communications Commission, "Multiple Ownership of AM, FM, and Television Broadcast Stations, Proposed Rule," 48 *Federal Register* 49438-49441, October 25, 1983; Herbert Howard, "Multiple Broadcast Ownership: Regulatory History," *Federal Communications Bar Journal*, vol. 27, no. 1 (1974), pp. 1-70; Federal Communications Commission, "2002 Biennial Review Order—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking," 418 *FCC Record* 13620, 13814, 13845-13847, July 2, 2003; *Prometheus Radio Project vs. Federal Communications Commission*, 373 F. 3d 372 (3rd Cir. 2004); *Fox Television Stations, Inc. v. Federal Communications Commission*, 350 U.S. App. 79 (D.C. 2002); Federal Communications Commission, "National Television Multiple Ownership Rule, Final Rule," 81 *Federal Register* 73035, October 24, 2016; Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Order on Reconsideration," 32 *FCC Record* 3390, April 21, 2017.

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