Nexstar : The SSA King

Nexstar may not be a household name, but it's built a mini empire in the nation's small- to mid-sized media markets. Nexstar got its start in 1996 when, shortly after selling most of its broadcast portfolio to Sinclair, ABRY Partners backed industry veteran Perry Sook's purchase of WYOU, Scranton, Penn.'s ABC affiliate.[67] From this purchase, Nexstar was born.

Though Sinclair invented outsourcing agreements, Nexstar was the first company to realize their full potential. Sook set up Mission Broadcasting as a shell company to help Nexstar evade FCC rules and form duopolies in markets that already had very few independent voices.[68] This strategy helped grow Nexstar from a single station in 1996 to 95 stations in 51 markets as of September 2013 (see Figure 15).

Nexstar's portfolio includes 32 stations operated under SSAs, 28 of which are owned by Mission. Though Mission remains Nexstar's primary shell company, it uses another shell — Rocky Creek Communications —to allow it to form triopolies in certain markets.[69]

There are many similarities between how Nexstar and Sinclair use shell companies. Nexstar runs all of Mission's stations. Nexstar guarantees all of Mission's debt.[70] Nexstar is considered the owner of Mission and all of its assets — *including its FCC licenses* — under Generally Accepted Accounting Principles and SEC rules.[71] Mission sends all of its revenues to Nexstar, and Nexstar covers any losses.[72] Thus, Mission's "owners" receive only a nominal fee for their participation in this shell game, while Nexstar's owners are lavishly compensated.[73] And as with Sinclair's shell Cunningham, Mission's founding CEO had another profession — in this case, as a preacher at an Ohio church.[74]

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[67] Harry A. Jessell, "Perry Sook: Broadcasting's Action Figure," *TVNewsCheck*, Sept. 9, 2011.

[68] *Id.* ("Mission Broadcasting, the company [Sook] set up long ago to be his virtual duopoly partner in markets where FCC rules prohibit real duopolies.")

[69] As part of its deal to buy out Communications Corporation of America and its 25 FCC licenses, Nexstar spun off some of these stations to a new entity, Rocky Creek Communications, in two specific markets where Nexstar will now run three stations. In the Evansville, Ind., market Nexstar runs WEHT (ABC; Nexstar-owned), WEVV (CBS; Rocky Creek-owned) and WTVW (Me-TV, Mission-owned). In Shreveport, La., Nexstar runs KTAL (NBC, Nexstar-owned), KMSS (FOX, Mission-owned) and KSHV (MyNetworkTV, Rocky Creek-owned).

[70] *See* Nexstar Broadcasting, Inc., Annual Report Pursuant to Section 13 or 15(D) of the Securities Exchange Act of 1934, for the fiscal year ended Dec. 31, 2012, Commission file number: 000-50478, March 15, 2013 (*Nexstar 2012 10-K*).

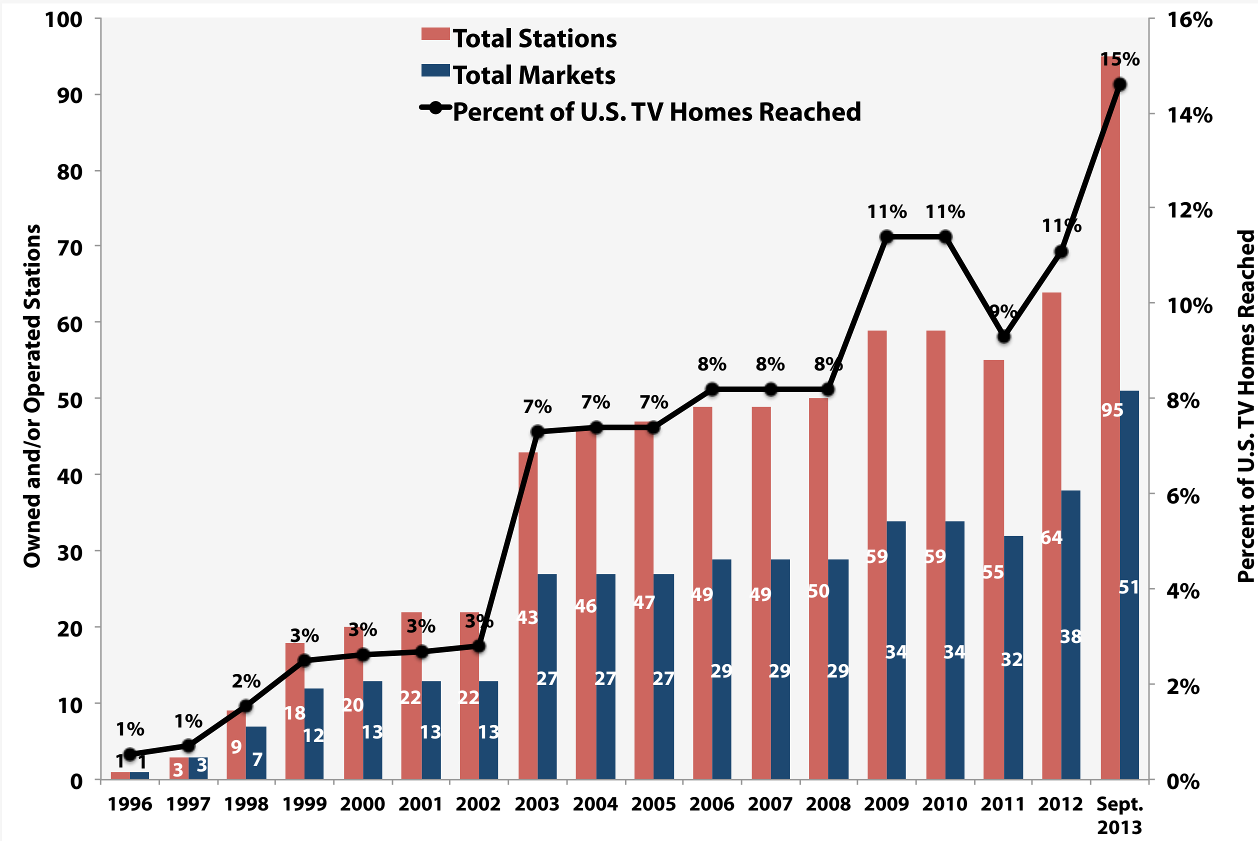
[71] *See Nexstar 2012 10-K* ("We are deemed under U.S. GAAP to have a controlling financial interest in Mission because of (1) the local service agreements Nexstar has with the Mission stations, (2) Nexstar's guarantee of the obligations incurred under Mission's senior secured credit facility, (3) Nexstar having power over significant activities affecting Mission's economic performance, including budgeting for advertising revenue, advertising sales and hiring and firing of salesforce personnel and (4) purchase options granted by Mission that permit Nexstar to acquire the assets and assume the liabilities of each Mission station, subject to FCC consent. ... These option agreements (which expire on various dates between 2013 and 2022) are freely exercisable or assignable by Nexstar without consent by Mission or its shareholders. Therefore, Mission is consolidated into these financial statements. We expect our option agreements with Mission to be renewed upon expiration.") *See also Nexstar 2012 10-K*, p. F-3 (showing that Mission's FCC licenses accounted for $22 million of Nexstar's assets).

[72] *See* Mission Broadcasting, Inc., Annual Report Pursuant to Section 13 or 15(D) of the Securities Exchange Act of 1934, for the fiscal year ended Dec. 31, 2012, Commission file number: 333-62916-02, March 29, 2013 ("Nexstar indemnifies Mission for Nexstar's activities pursuant to the local service agreements. Under these local service agreements, Nexstar has received substantially all of our available cash, after satisfaction of operating costs and debt obligations. We anticipate that Nexstar will continue to receive substantially all of our available cash, after satisfaction of operating costs and debt obligations.").

[73] In 2012, Mission's two sole executives received a combined $284,509 in compensation, which consisted solely of salary (i.e., it included no cash or stock bonuses). Nexstar's executives received a combined $14.2 million in compensation last year, which included salaries, bonus awards, stock awards, automobile allowances, life insurance premiums and 401(k) contributions. Thus, even though on paper the Nexstar-owned stations generated 20 times the revenues of the Mission-owned stations, Nexstar's executives received 50 times the compensation. *See Mission 2012 10-K*; *See also* Nexstar Broadcasting Group, Inc., Definitive Proxy Statement, Schedule 14A, April 30, 2012.

[74] "Mission Broadcasting's David Smith Has Died," *Radio and Television Business Report*, March 31, 2011.

Figure 15: Nexstar Stations, Market and Reach (1996–2013)



Sources: Nexstar 10-K filings, FCC Consolidated Database System and Free Press Research. Values include all owned and operated stations as well as all stations operated under outsourcing agreements. Ownership data reflect stations owned or operated as of Sept. 25, 2013, as well as all stations in pending deals.

In 26 of its 51 markets, Nexstar uses SSAs to operate virtual duopolies between two Big Four-affiliated stations (or more in the case of its triopolies). In Binghamton, N.Y., Nexstar controls the local ABC, FOX and NBC affiliates, as well as the MyNetworkTV station.[75] In some of these locations, Nexstar dominates the local news market. But in other markets Nexstar's stations offer no local news whatsoever. Consider Nexstar's operation in Billings, Mont. When Nexstar acquired the local FOX and ABC affiliates in 2003, it promptly shut down both stations' news operations.[76]

In fact, closing newsrooms is part of Nexstar's business strategy. A recent example involving Nexstar and Mission was particularly egregious. In 2012, Nexstar reached a deal to acquire two stations in the Little Rock, Ark., market (KLRT and KASN, the local FOX and CW affiliates). But since Nexstar already owned the local NBC and MyNetworkTV affiliates (KARK and KARZ), the company's go-to shell corporation stepped in and purchased the licenses, letting Nexstar operate the stations under outsourcing agreements. One month after closing the deal,

[75] On Sept. 16, Nexstar and Mission announced a $103 million deal where Nexstar will acquire three stations from Citadel Broadcasting, and Mission will acquire two stations from Stainless Broadcasting. The new Mission stations — WICZ (FOX) and WBPN-LD (MyNetworkTV) — are in the Binghamton, N.Y., market, where Nexstar already owns and operates WBGH-CA (ABC) and WIVT (NBC).

[76] Jan Falstad, "KULR Sold; ABC-6/Fox-4 Drop Local News," *Billings Gazette*, Sept. 30, 2003. In this article, the local police chief describes these stations' news reporters (under the prior owners) as "aggressive." "It was the Sherman-through-Atlanta philosophy. ... They just went full-speed ahead with the story for that day, not sometimes considering the aftershocks and repercussions for their actions." Usually, an arms-length distance from local law enforcement is considered a healthy journalistic practice. Nonetheless, the Billings police chief did applaud the now-defunct news operations for doing good things for the community, like airing segments that helped local police track down suspected criminals.

Nexstar consolidated the operations of all four stations into one facility, and fired 30 employees, including a number of longtime journalists at the FOX station.[77]

Like its peers, Nexstar has had a busy year. Since the beginning of 2013, the company has announced or closed on acquisitions of 31 stations in deals valued at nearly $440 million. Nexstar will operate 13 of these 31 new stations using Shared Services Agreements.

Tribune Company: Out of Bankruptcy and Over the Limit

In July, after months of searching for a buyer for its newspaper assets (which include the *Chicago Tribune* and the *Los Angeles Times*), Tribune announced it would split its broadcasting and newspaper operations into two separate companies.[78]

This move followed similar splits by former cross-ownership kingpins like Belo, Media General and News Corp. Even though Tribune's newspapers brought in more than its broadcasting division last year ($2 billion vs. $1.14 billion), investors see the newspaper business and its low margins as a drag on the broadcast segment over the near-to-medium term.

But just one year after emerging from bankruptcy, Tribune announced its purchase of 20 full-power TV stations from private equity group Oak Hill Capital Partners in a deal valued at $2.7 billion.[79] Oak Hill's portfolio consists primarily of mid-sized-market stations acquired since 2006 from CBS, News Corp and the New York Times Company.

This multibillion-dollar deal will nearly double the number of stations and markets in Tribune's portfolio (see Figure 16). It will also push Tribune's reach to 44 percent of the nation's households. However, under the FCC's outdated UHF discount, Tribune's reach is counted as just 27 percent. So even though it already reaches nearly half the country, Tribune still has plenty of room to grow if the FCC doesn't close this loophole.

Like Gannett, Tribune is taking a page from the covert-consolidation playbook. To avoid violating the FCC's newspaper-broadcast cross-ownership rules in the Norfolk, Va., and Scranton, Penn., markets, Tribune is spinning off its newly acquired TV stations in those markets to a new company, Dreamcatcher LLC. Tribune will operate the stations pursuant to Shared Services Agreements.

However, unlike almost all other SSA arrangements, Tribune does not operate any other stations in these two markets. This means Tribune can't use the "operational efficiencies" excuse that companies trot out to defend these kinds of outsourcing arrangements. This further exposes the Tribune-Dreamcatcher deals as a direct attempt to evade the FCC's rules.[80]

[77] *See* Kate Knable, "Almost 30 Lose Jobs at KARK, KLRT as TV Owners Consolidate," *Arkansas Business*, Jan. 29, 2013.

[78] Christine Haughney and David Carr, "To Cut Taxes, Tribune Is to Split Into Broadcasting and Publishing Units," *New York Times*, July 10, 2013.

[79] The deal includes 19 full-power stations and one full-power satellite station (KFCT). *See* "Tribune to Acquire Local TV, Creating Content and Distribution Powerhouse," Tribune Company Press Release, July 1, 2013.

[80] The same is true of the Gannett-Sander SSAs in the Portland and Louisville markets: Gannett will operate the stations in these markets, despite having no other broadcast presence there.