

January 8, 2018

**VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Room TWA325  
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentations  
MB Docket No. 17-179**

Dear Ms. Dortch:

On January 4, 2018, Courtney Neville of Competitive Carriers Association (“CCA”),<sup>1</sup> along with Trey Hanbury and Arpan A. Sura of Hogan Lovells US LLP, counsel to CCA, met with the following individuals at the Federal Communications Commission (“FCC” or “Commission”): (1) Brooke Ericson, Chief of Staff and Legal Advisor, Media, for Commissioner O’Rielly; (2) David Grossman, Chief of Staff and Media Policy Advisor for Commissioner Clyburn; and (3) Kate Black, Media Policy Advisor for Commissioner Rosenworcel. Drawing on the undisputed evidence of public interest harms in the record,<sup>2</sup> CCA urged the Commission to deny Sinclair’s proposed acquisition of Tribune. Alternatively, in the event that the transaction is approved, CCA requested that the Commission adopt behavioral conditions that would prevent Sinclair from delaying the 39-month repacking timeline following the 600 MHz incentive auction. While the Department of Justice also is reviewing this transaction for generally applicable competition issues, the Commission is uniquely responsible for maintaining the timeliness and orderliness of the post-auction repack, accelerating mobile broadband deployment, and promoting the public interest by ensuring compliance with FCC policies. Accordingly, the Commission must act to avert the concrete, transaction-specific injuries to mobile broadband competition that would ensue if the transaction were approved.

CCA described these injuries in detail during its meetings with the Commission. Sinclair has a demonstrable incentive to exploit its position as a 600 MHz incumbent to deny wireless carriers the nearly \$20 billion worth of spectrum they have purchased unless Sinclair’s preferred ATSC 3.0 technologies are incorporated into wireless handsets. As one example on record, according to a sworn statement from one of T-Mobile’s senior executives, Sinclair has refused to entertain

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<sup>1</sup> CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

<sup>2</sup> See Comments of Competitive Carriers Association, MB Docket No. 17-179 (filed Nov. 2, 2017); Reply of Competitive Carriers Association, MB Docket No. 17-179 (filed Aug. 29, 2017); Petition to Deny of Competitive Carriers Association, MB Docket No. 17-179 (filed Aug. 7, 2017).

discussions regarding an early transition for one of its broadcast stations unless T-Mobile agrees to place ATSC 3.0 technology into its mobile devices.<sup>3</sup>

Through its acquisition of Tribune, Sinclair also would have much greater leverage to hold the 600 MHz band hostage and frustrate carriers' efforts to bring mobile broadband to underserved areas. Sinclair and Tribune are two of the largest broadcasters in the United States. Post-transaction, Sinclair would be, in the words of its CEO Christopher Ripley, "the largest broadcast group by a country mile."<sup>4</sup> Its control over 200 stations that need to be repacked would include Tribune's 42 full-power stations that span 33 Designated Market Areas ("DMAs") and reach 44 percent of the country. These DMAs are cross-cut with multiple daisy chains—in other words, a delay in clearing one DMA could undermine the post-auction transition in other distant markets. Sinclair's enhanced control over both the Sinclair and Tribune DMAs would exacerbate these daisy chain complexities and increase Sinclair's ability to delay exiting the 600 MHz band. With its amplified power, Sinclair's anticompetitive conduct would chill mobile broadband investment, frustrate the economic growth that comes from more rapid deployment of low-band spectrum, and stymie competition in many parts of the country that stand to benefit from greater low-band spectrum coverage.

As CCA explained, Sinclair's acquisition of Tribune also could delay the post-auction repack by concentrating the purchasers of broadcast antenna equipment and broadcast tower facilities. Sinclair owns Dielectric, which is by far the largest supplier of broadcast equipment. By acquiring Tribune, a major purchaser of competing equipment, Sinclair would essentially displace the market share of Dielectric's rivals. Indeed, according to a recent press release, Dielectric has stated that it expects its post-repack market share to reach 80 percent.<sup>5</sup> With a near-monopoly on broadcasting equipment, Sinclair could force its broadcast rivals to deploy ATSC 3.0 or withhold critical infrastructure, which would further delay the repack. As Dielectric concedes, the repack-related equipment sold to broadcasters comes with ATSC 3.0 capabilities.<sup>6</sup> Denying the transaction would ensure that Sinclair does not use its dominant market power to slow the transition process not only for its own stations, but also for other purchasers of broadcast antenna equipment. In so doing, the Commission's denial of the transaction would accelerate mobile broadband deployment in rural and hard-to-reach areas, consistent with its goal of closing the digital divide.

CCA also noted that Sinclair's enhanced ability to impose ATSC 3.0 on wireless carriers would introduce significant technical challenges and operate as a tax on wireless consumers. T-Mobile has submitted a white paper extensively discussing "the significant issues associated with implementing ATSC 3.0 mobile device reception capability."<sup>7</sup> Nokia,<sup>8</sup> Qualcomm,<sup>9</sup> Ericsson,<sup>10</sup>

<sup>3</sup> See Declaration of Dave Mayo, *attached to* Reply Comments of T-Mobile US, Inc., MB Docket No. 17-179 (filed Aug. 29, 2017).

<sup>4</sup> Joe Flint, *Sinclair Broadcast to Buy Tribune Media for \$3.9 Billion*, Wall St. J. (May 8, 2017), <http://on.wsj.com/2qT9iR5>.

<sup>5</sup> Dielectric, Press Release, *A Ribbon-Cutting Readied For The Repack* (Nov. 30, 2017), <http://bit.ly/2AvDCZI>.

<sup>6</sup> *Id.*

<sup>7</sup> See T-Mobile, *Complications Associated With ATSC 3.0 Implementation In Mobile Devices* (Sept. 2017), *attached to* Letter from Steve B. Sharkey, T-Mobile, to Marlene H. Dortch, FCC, MB Docket No 17-179, at 1-2 (filed Sept. 11, 2017).

<sup>8</sup> Letter from Brian Hendricks, Nokia, to Marlene H. Dortch, FCC, GN Docket No. 16-142 (filed Sept. 15, 2017) ("It is expected that in order to receive ATSC 3.0, mobile devices would need to operate at additional frequencies, possibly as low as 470 MHz. If the same antenna is used to receive ATSC 3.0

Motorola Mobility,<sup>11</sup> and other equipment manufacturers,<sup>12</sup> likewise, have echoed their opposition to an ATSC 3.0 mandate due to the immense technical challenges that ATSC 3.0 would create for mobile broadband providers. Although the Commission has authorized television broadcasters to use ATSC 3.0 on a voluntary, market-driven basis, Sinclair seeks to evade that requirement by accumulating enough leverage to force ATSC 3.0 adoption through anticompetitive tying arrangements on 600 MHz licensees.

CCA therefore urged the Commission to deny the transaction. Sinclair has not rebutted the concrete, transaction-specific public interest harms on the record. And it has likewise failed to provide proper documentation about ATSC 3.0,<sup>13</sup> despite the Media Bureau's explicit request for more information.<sup>14</sup> The Commission must deny the proposed merger because narrowly tailored behavioral conditions are unlikely to avert Sinclair's ability to exploit its power as a 600 MHz incumbent to delay the repack. Nevertheless, if the Commission decides to approve this transaction, it must impose the following behavioral conditions on Sinclair: (1) strict adherence to the 39-month repacking timeline; (2) a prohibition against seeking ATSC 3.0-related concessions from any party in connection with the post-auction transition; and (3) a dispute-resolution mechanism under which the

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signals in the 470-608 MHz band in addition to 600 MHz band (3GPP Band 71 or 617-698 MHz), the antenna performance is likely to degrade," "[t]here is no 'free' space for additional or larger antennas in mobile devices," and "[a]dding a new receiver chain to mobile devices for ATSC 3.0 reception would impact device design, performance, and cost.").

<sup>9</sup> Letter from Dean R. Brenner and John W. Kuzin, Qualcomm, to Marlene H. Dortch, FCC, GN Docket No. 16-142, at 2 (filed Sept. 19, 2017) ("In light of the detrimental effects that including ATSC 3.0 support can have on the cost and size of a mobile device, the technology trade-offs required to accommodate competing technologies, and the reduced performance and spectral efficiency that it may have on other mobile bands and services.").

<sup>10</sup> Letter from Jared M. Carlson Vice President, Government Affairs and Public Policy, Ericsson, to Marlene H. Dortch, FCC, GN Docket No. 16-142, at 1 (filed Sept. 15, 2017) ("There exist today multiple options for the receipt of linear and on-demand mobile content on mobile phones, and a mandate to include ATSC 3.0 in mobile phones will provide little, if any, benefit to consumers while the cost of doing so, as outlined in page 6 of T-Mobile's analysis, is quite high.").

<sup>11</sup> Letter from Jeffrey Harper, Vice President, Motorola Mobility, to Marlene H. Dortch, FCC, GN Docket No. 16-142, at 4 (filed Sept. 12, 2017) ("In other words, it is not feasible to add ATSC 3.0 to a smartphone without impacting its industrial design significantly.").

<sup>12</sup> See, e.g., Ethertronics, Inc., *Antenna Issues Associated with Integration of Additional Radio Functionality in Smartphones*, at 1 (Sept. 2017), attached to Letter from Sebastian Rowson Ph.D., Chief Scientist, Ethertronics Inc, to Marlene H. Dortch, FCC, GN Docket No. 16-142 (filed Sept. 19, 2017) ("Integration of additional radio system functionality into smartphones has the potential to cause multiple problems in terms of interference, reduced cellular radio performance, and volume constraints (industrial design). ... These problems along with cost constraints and requirements for high antenna gain for TV reception are reasons why TV viewing usage in handsets in North America and Europe is practically non-existent, at least from a hardware perspective and ATSC 3.0 does not change these fundamental challenges."); Peter Gammel, Chief Technology Officer, Skyworks Solutions, Inc., to Marlene H. Dortch, FCC, GN Docket No. 16-142 (filed Oct. 5, 2017) (noting that "there would be detrimental consequences to attempting concurrent operability of LTE and ATSC 3.0 in the band").

<sup>13</sup> Responses of Sinclair Broadcast Group, Inc. to FCC Request for Information, MB Docket No. 17-179 (filed Oct. 5, 2017).

<sup>14</sup> Letter from Michelle M. Carey, FCC, to Miles S. Mason, Counsel to Tribune Media Co., and Mace J. Rosenstein, Counsel to Sinclair Broadcast Group, Inc., MB Docket No. 17-179 (Sept. 14, 2017).

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Commission would expeditiously resolve any complaints regarding Sinclair's conduct in connection with the post-auction transition.

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's rules. Please do not hesitate to contact me with any questions regarding this filing.

Respectfully submitted,

/s/ Arpan A. Sura

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