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REDACTED—FOR PUBLIC INSPECTION

January 25, 2018

BY ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Meeting, Applications of Tribune Media Company and Sinclair Broadcast Group, Inc. for Consent to Transfer Control of Licenses and Authorizations, MB Docket No. 17-179

Dear Ms. Dortch:

On January 23, 2018, representatives of DISH Network L.L.C. ("DISH") met with representatives of the Commission staff copied below to discuss the above-referenced docket. Participating for DISH were Jeffrey Blum, Senior Vice President & Deputy General Counsel, DISH, Hadass Kogan, Corporate Counsel, DISH, Pantelis Michalopoulos and Andrew Golodny of Steptoe & Johnson, LLP, Janusz Ordover, Emeritus Professor of Economics, New York University, and Bill Zarakas and Jeremy Verlinda of the Brattle Group.

At the meeting, DISH summarized its position, as expressed in its Petition to Deny and Reply,[1] that the proposed transaction would produce severe anticompetitive effects by raising prices for distributors of the merging parties' broadcast stations, and ultimately for consumers.

DISH also presented additional evidence of merger-specific harms, including increased consumer prices, as detailed in the enclosed presentation. The presentation, which was distributed at the meeting, contains Highly Confidential Information. DISH has denoted with "**{{ }}**" information it deems to be Highly Confidential Information. A redacted version of the presentation is enclosed with this letter. A highly confidential version is also being filed with the Commission.

[1] *See* Petition to Dismiss or Deny of DISH Network L.L.C., MB Docket No. 17-179 (Aug. 7, 2017); Reply of DISH Network, L.L.C., MB Docket No. 17-179 (Aug. 29, 2017).

In accordance with the Protective Order in the above-captioned proceeding and Sections 0.457 and 0.459 of the Commission's rules,[2] DISH respectfully requests that unredacted copies of the presentation be afforded confidential treatment and not be placed in the Commission's public files. Specifically, the Highly Confidential Information in the presentation is the Highly Confidential Information of DISH and is of the type authorized for redaction as Highly Confidential under Appendix A of the Protective Order, including:

- Information that details the terms and conditions of and strategy related to DISH's most sensitive business negotiations or contracts.

- Information that discusses in detail DISH's plans to compete for customers or types of customers.

- Information that discloses the identity or characteristics of DISH's specific customers or of those DISH is targeting or with whom DISH is negotiating.

- Granular information about DISH's costs, revenues, marginal revenues, market share, or customers.

- Information that provides numbers of customers and revenues broken down by customer type and zip code or market area.

- Information that discusses in detail the number or anticipated changes in the number of customers or amount of traffic, and detailed information about why customers discontinue service.

DISH requests that the Commission return copies of the presentation if its request for confidentiality is denied.

Please contact me if you have any questions.

Sincerely,

__________/s/___________________
Pantelis Michalopoulos
Counsel for DISH Network L.L.C.

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[2] 47 C.F.R. §§ 0.457, 0.459.

CC: Barbara Kreisman
Jeremey Miller
David Roberts
David Brown
Varsha Mangal
Darren Fernandez
Chris Robbins

Enclosure

The Anticompetitive Effects of a Sinclair/Tribune Merger

Presentation to The Federal Communications Commission

DISH Network L.L.C.

January 23, 2018

Presentation Overview and Agenda

A Sinclair/Tribune Merger Will Increase Consumer Prices

- **Size:** *The larger the broadcast group, the higher the retransmission fee, and (often) the worse the quality; DISH pays large groups {{ }} more than small groups; DISH pays Sinclair {{ }} more than it pays Tribune*
- **Mergers:** *Mergers lead to retransmission fee increases well above industry averages— {{ }} more in three recent acquisitions involving Sinclair and Tribune*

Other Evidence of Merger-Specific Effects

- DISH pays above-market rates to a broadcast group when faced with another group's blackout regardless of geographic overlaps
- Geographic overlaps are also the source of merger-specific effects: the loss of two stations in one market has an even greater effect on DISH than the sum of the effects of losing two equivalent stations in two markets
- New Sinclair will have a direct impact on DISH under {{ }}
- The merger will result in an estimated variable cost increase of {{ }} a year on DISH as well as higher prices to subscribers

Other Evidence of Merger-Specific Effects [1]

DISH pays above-market rates to a broadcast group when faced with another group's blackout, allowing us to quantify the effect that a hypothetical merger between the two groups would produce

- The super-additive effect can be estimated by observing DISH negotiating with broadcast group A during a blackout of the signals of broadcast group B
- DISH pays a higher price to group A than it would if it were not subject to the blackout of B's programming
- This can be proven by comparing the price DISH agreed to pay broadcaster A with the price that DISH had been prepared to pay based on market factors
- {{ }}

DISH Paid Higher Rates While {{ }}

{{ }} retransmission agreements came up for renewal {{ }}

- In these {{ }} deals, {{ }}
- In most of the {{ }} cases, there was no overlap between the station owner's DMAs and {{ }}
- By contrast, in the {{ }} negotiations that happened before or {{ }}

{{

}}

{{

}}

Comparison of Rates Paid Under Threat of Blackout vs. Before/After Blackout Was a Factor

{{

}}

Comparison of Rates Paid Under Threat of Blackout vs. Before/After Blackout Was a Factor

{{

}}

Other Evidence of Merger-Specific Effects [2]

Geographic overlaps result in higher rates

- The loss of two stations in one market has a more harmful effect on DISH than the sum of the effects of losing two equivalent stations in two markets
- After adjusting for the relative value of the Big 4 and non-Big 4 Tribune stations that were blacked out in 2016, Mr. Zarakas and Dr. Verlinda's FCC reply declaration shows that the loss of two Big 4 stations in one market would likely cause a churn increase that is {{ }} greater than the sum of the effects of losing two Big 4 stations in two markets

{{

}}

New Sinclair Will Have a Direct Impact on DISH {{ }}

- A New Sinclair blackout will trigger additional losses for DISH {{ }}
  - {{ }}
- {{ }}

Other Evidence of Merger-Specific Effects [3]

A New Sinclair blackout would result in a {{ }} loss on {{ }} earnings

{{

}}

Other Evidence of Merger-Specific Effects [4]

- New Sinclair would have a super-additive effect of {{ }} a year on DISH earnings
- DISH has calculated the impact on its earnings from New Sinclair forcing DISH to a blackout and eventually extracting the significantly increased rates that have been experienced in the aftermath of recent broadcast group mergers:
  - {{ }} a year from retransmission fee increases
  - {{ }} a year from DBS subscriber losses
  - {{ }} from potential {{ }} losses
  - A combined total of { }}

{{

}}

Other Evidence of Merger-Specific Effects [4]

- The merger-specific effects would increase by as much as another {{ }} if a New Sinclair blackout is compared to a blackout of only Tribune
- If a New Sinclair blackout is compared to a blackout of only Sinclair, the additional loss would be another {{ }}

A New Sinclair Blackout Would Result in a {{ }} Incremental Earnings Loss for DISH

{{

}}

A New Sinclair Fee Increase Would Result in a {{ }} Incremental Annual Earnings Loss for DISH

{{

}}

A New Sinclair Fee Increase Not Preceded by a Blackout Would Result in a {{ }} Incremental Annual Earnings Loss for DISH

{{

}}

Other Evidence of Merger-Specific Effects [5]

- Combined harm for DISH and its subscribers of {{ }} based on a market elasticity assumption

{{

}}

Sinclair's Bargaining Leverage Will not Decrease Due to the Mix of Big 4 and Non-Big 4 Stations

- Sinclair claims the merger will actually weaken its bargaining leverage because it will have a higher ratio of non-Big 4 stations
- This claim is:
  - Inconsistent with Sinclair's own statements about its motivation underlying this deal
  - Inconsistent with DISH's practice in negotiating retransmission rates
  - Rebutted by econometric analysis

The Big 4 Retransmission Fee is Affected by the Number of Big 4 Subscribers Held by a Broadcast Group

- Retransmission rates are affected by the number of Big 4 stations, not by the mix of Big 4 and non-Big 4 stations
- If Big 4 subscribers increase by 10,000 the Big 4 fee increases by {{ }} per subscriber per month
  - The Big 4 retransmission fee is not affected by the number of Little 2 subscribers
  - The Big 4 retransmission fee is not affected by the ratio of Little 2 to Big 4 station subscribers

{{

}}

Appendix: Non-Big 4 Adjustment to Two-Station Blackout Subscriber Cancellations

{{

}}

Appendix: Calculation of Simultaneous Blackout Incremental Churn

- The additional churn has been calculated based on the premise that the additional money that DISH pays {{ }} to avoid a double blackout is (at least) equal to the margin that DISH saves by avoiding the second blackout, i.e.,

$$PerSubMargin \times SubLosses = GoalPostAdder \times GoalPostFee \times (1 - PassThroughRate) \times Subs$$

- Rearranging to solve for incremental churn $SubLosses \div Subs$,

$$\frac{SubLosses}{Subs} = \frac{GoalPostAdder \times GoalPostFee \times (1 - PassThroughRate)}{PerSubMargin}$$

{{ }}